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PROCEEDINGS AND DEBATES OF THE *107th* CONGRESS, SECOND SESSION

SENATE—*Friday, November 15, 2002*

The Senate met at 9:45 a.m. and was called to order by the Honorable DEBBIE STABENOW, a Senator from the State of Michigan.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, all power and authority belong to You. You hold the universe in Your hands and focus Your attention on the planet Earth. We humble ourselves before You. You alone are Lord of all nations and have called our Nation to be a leader of the family of nations. By Your providence You have brought to this Senate the men and women through whom You can rule wisely in soul-sized matters that affect the destiny of this nation. With awe and wonder at Your trust in them, the Senators press on in consideration of the homeland security legislation.

Grip their minds with three assurances to sustain them today: You are Sovereign of this land and they are accountable to You; You are able to guide their thinking, speaking, and decisions if they will ask You; and You will bring them to unity so that they may lead our Nation in its strategies of defense and the world in its shared obligation to confront and defeat the insidious forces of terrorism.

God of peace, hear our prayer. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEBBIE STABENOW the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 15, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEBBIE STABENOW, a Senator from the State of Michigan, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Ms. STABENOW thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

SCHEDULE

Mr. REID. Madam President, there is going to be a period of morning business until 10 a.m. this morning with the time to be equally divided between the two leaders. At 10 a.m., the majority leader or his designee is to be recognized, and at that time there will be an effort to move to the conference report on terrorism. A rollcall vote is expected on the motion as soon as possible. At 10:45, the Senate will vote on cloture on the substitute amendment to the Homeland Security Act.

There is much work to be done today, including completing the homeland security legislation. The chairman of the Banking Committee is here, and also the chairman of the Rules Committee, the Senator from Connecticut, Mr. DODD. They have worked long and hard on the terrorism insurance legislation. The House passed that last night, and that will be passed as soon as possible. We are not going to leave here until that legislation is passed—whether it takes the next 10 minutes or the next 10 days. Both leaders have indicated it will be passed. It is something the White House wants very badly.

Finally, we have things worked out. We now have a conference report. I don't know it if has been given to us yet. But, if not, it will be presented shortly.

I would indicate for all those who are listening that there are ways: For example, someone could call for a quorum. Of course, we could call for a live quorum immediately. That is going to happen.

We are not going to have games played with terrorism insurance any longer. This legislation is supported by the President of the United States and the two leaders. It passed the House, and the legislation is going to pass.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m., with the time to be equally divided between the two leaders or their designees.

The Senator from Connecticut.

HOMELAND SECURITY AND TERRORISM INSURANCE

Mr. DODD. Madam President, I am curious, if I could get the attention of the distinguished majority whip, what is the plan this morning, if I can inquire of how we are going to proceed?

Mr. REID. We, of course, in 55 minutes, are going to vote on cloture on homeland security. Prior to that time, it would be our desire to move to the very important antiterrorism legislation that has been here for more than a year. We are going to do that. We would like to do it by unanimous consent. As the chairman knows, it is a nondebatable motion to move to that matter. We are going to have a vote on that in the near future. We do not know exactly when.

We are going to try to get a unanimous consent agreement, perhaps, to only have one vote and get rid of the legislation. That would be preferable, rather than trying to mess around with

● This "bullet" symbol identifies statements or insertions which are not spoken by a member of the Senate on the floor.

a cloture motion on it because, if necessary, we will file cloture on it.

Mr. BYRD. Will the Senator yield for a question?

Mr. REID. I am happy to yield.

Mr. BYRD. Is the Senator talking about a conference report when he says it is a nondebatable motion? Is he talking about a conference report?

Mr. REID. Yes. What I am talking about is, we have terrorism insurance legislation passed in the House last night.

Mr. BYRD. Is that a conference report?

Mr. REID. Yes, it is a conference report.

Mr. SARBANES. Will the Senator yield further for a question?

Mr. REID. Yes. I am happy to yield.

Mr. SARBANES. I am taken aback by the notion that we are not going to be able to go to this legislation by some unanimous consent, that we are going to have to invoke cloture, and all the rest of it. I do not quite understand where that opposition is coming from.

In fact, it passed the House on a voice vote without any opposition whatever expressed over on the House side. And this is something that has been laboriously worked over under the very effective leadership of my very distinguished and able colleague from Connecticut. I was operating under the assumption that we would be able to go to it in short order.

People will want to make some speeches and explanatory statements, I would assume, although I don't see any need for any lengthy debate or a long involvement of time in order to finally conclude this legislation.

Mr. REID. I respond to my friend, the chairman of the Banking Committee, logic, reason, common sense has not applied to this legislation. We have worked on this for more than a year, and just when it appears we are over the hill, some phantom objection comes and we are not able to do it.

We are now at this point, and I think that what should happen is there should be a couple of hours. This is some of the most important legislation that has passed this body. It is extremely important to all sectors of our economy. I think we should have a couple hours to explain the legislation and then have a vote on it and get it out of here and send it to the President's desk. I think that would be the preference of a vast majority of the people here.

But I want to make it very clear to everyone here, if we cannot do it in a logical, reasonable, orderly way, we are going to do whatever it takes to get this legislation out of here. If we have to work tomorrow, Sunday, Monday, this legislation will pass. And we are now in the procedural perspective where alternatives to slowing this down are very slim.

Mr. SARBANES. I thank the Senator.

Mr. BYRD. Will the Senator yield?

Mr. REID. I am happy to yield to the President pro tempore.

Mr. BYRD. I hope we are not going to work on Sunday. That is a religious holiday for this Senator. We do observe religious holidays around here. Furthermore, I think the distinguished Democratic whip's mention of reason and logic and common sense should be applied to the homeland security legislation as well.

I hope all Senators within the sound of my voice here in this Chamber and listening on the TV——

The ACTING PRESIDENT pro tempore. The time controlled by the majority leader has expired.

Mr. BYRD. Madam President, I ask unanimous consent to proceed for 1 minute.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. I hope that all Senators within the sound of my voice will vote no on cloture today. Here is a 484-page bill that we have not seen until the wee hours of the morning on Wednesday, the day before yesterday. And the Senators are being asked to invoke cloture on this measure when we do not know everything about it. What is in it? We are entitled to have some time to study this bill. We owe it to our constituents.

Mr. SARBANES. Will the Senator yield on that point?

Mr. BYRD. Yes, I yield, if I may have an additional 2 minutes.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. GRAMM. Madam President, could the Senator have an additional 10 minutes so we could discuss this?

Mr. BYRD. Yes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BYRD. I yield to the distinguished Senator from Maryland.

Mr. SARBANES. I just wondered, has the Senator noticed that the newspapers are filled now with stories about provisions that are in this legislation that have appeared, in a sense, out of nowhere? All of a sudden they have manifested themselves in this legislation, provisions that were not in this bill before, dealing with unrelated, extraneous matters.

Mr. BYRD. Yes, exactly, one of which happens to appear to target a facility for a district represented by a Member of the House from Texas. We do not know what that facility is, but it has been slipped into this measure.

Mr. SARBANES. I say to the distinguished Senator, I was not even aware of that one. That one has not yet risen to the level of being covered in these newspaper stories.

Mr. BYRD. I think that is where I got a glimmer of it, somewhere in a newspaper story.

Mr. SARBANES. I missed that. But that is just another example of what may well be stacked away—it is not as though this is simply or straightforwardly a revision or an alteration of provisions directly related to homeland security which we have been dealing with here, and so there have been some changes or modifications.

As I understand it, it is becoming increasingly evident that there are a number of provisions in here that have nothing to do with homeland security. Is that the Senator's understanding?

Mr. BYRD. Exactly. And I am very much alarmed by it. I spent 3 hours yesterday talking about some of these provisions. And, of course, there is a provision in here to reward the pharmaceutical companies. That is pork for pharmaceutical companies. That just came to light. That did not go through any committee. That had no hearings, no testimony of witnesses—just slipped into the bill in the wee hours of the morning of Wednesday. It is alarming.

Here we are about to pass this massive bill without our knowing its contents. It has never seen a day or an hour of hearings in any committee, and it is just put together by somebody in the shades of darkness. And then, here it is, dropped on our desks yesterday morning.

We are supposed to pass this. It provides for a massive shift of power to the executive branch, a massive shift, and Congress will be left out of the loop. I think we ought to at least have a few more days to study this bill, have our staffs able to study it, and advise us as to what is in it. That is all I am asking.

I do not doubt cloture will be invoked at some point, but it should not be invoked today. We ought to at least have until sometime next week to further study this before cloture clamps its beartrap on us.

Mr. SARBANES. I think the Senator raises a very important point. It would at least then give us the weekend to go through the provisions of this proposal.

Mr. BYRD. Yes. I thank the distinguished Senator from Maryland for his observations.

Mr. DORGAN. Madam President, I wonder if the Senator from West Virginia will yield further for a question.

Mr. BYRD. I will be glad to, if I may do so.

Mr. DORGAN. Madam President, if the Senator from West Virginia continues to have time——

The ACTING PRESIDENT pro tempore. Yes.

Mr. DORGAN. I would like to make an inquiry similar to the inquiry made by my colleague from Maryland.

There is an article in this morning's newspaper which contains some information which is very surprising to me, which was referenced briefly yesterday on the Senate floor, relative to the homeland security bill. This homeland security bill has a provision in it which says:

> Riding along on legislation to create a new federal Department of Homeland Security is a White House-backed provision that could head off dozens of potential lawsuits against . . . pharmaceutical [companies].

It goes on to further explain what this is. It says: Richard Diamond, a spokesperson for the retiring majority leader in the other body, Richard Armey:

> . . . said the provision was inserted because "it was something the White House wanted. It wasn't [Armey's] idea."

This is a circumstance where a homeland security bill contains a provision dealing with protection for pharmaceutical companies. The pharmaceutical companies, according to a Wall Street Journal article, spent $16 million.

Mr. BYRD. How much?

Mr. DORGAN. They spent $16 million in the recent election. Much of it went through organizations such as Seniors United and others set up to move this money out under the guise of an organization called Seniors United in order to defeat Democratic lawmakers and support Republican lawmakers.

The point is, this provision now is slipped into a homeland security bill. It has nothing to do with homeland security. Yet it is a provision that likely will be very beneficial to the pharmaceutical industry that spent $16 million in the last election.

Mr. BYRD. It is a blatant payoff to the pharmaceutical companies in return for their massive contributions to candidates during the election. That is a massive payoff.

Mr. DORGAN. If I may inquire further, has the Senator from West Virginia or have other Senators heard from the President or the White House by what justification would they insert—again, the White House apparently wanted it; that is what the majority leader of the House says—a special provision benefiting one industry in something called homeland security. Has anyone heard an explanation of that?

Mr. BYRD. That was very revealing what the majority leader's staff person from the other body had to say, pointing the finger at the White House. That was very revealing. I hope we have more time.

Mr. SARBANES. Will the Senator yield further?

Mr. BYRD. How much time do I have?

The PRESIDING OFFICER (Mr. CARPER). There are 4 minutes remaining.

Mr. BYRD. I yield.

Mr. SARBANES. This morning the Baltimore Sun has an editorial—they entitled it "Homeland Insecurity"—discussing this legislation.

Mr. BYRD. And rightfully so.

Mr. SARBANES. One paragraph follows right along with what the able Senator from North Dakota was bringing to our attention. I want to quote it:

> Most alarming is that the version of the legislation passed by the House on Wednesday—with the Senate apparently soon to follow—is a 500-page, 11th hour rewrite few lawmakers have read and perhaps none fully understands.

Mr. BYRD. Well stated.

Mr. SARBANES. Continuing:

> New snakes slither out daily, but doubtless many will remain hidden until long after the measure is enacted into law.

Mr. BYRD. Well stated. Well stated. I hope Senators will take notice of that editorial. I hope the Senator will put that in the RECORD.

Mr. SARBANES. Mr. President, I ask unanimous consent to print the editorial in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Sun, Nov. 15, 2002]

HOMELAND INSECURITY

ONE LAMENTABLE result of this month's elections is that the stalemate has been broken over the creation of a monstrous Department of Homeland Security. This cosmetic response to the myriad failures that made the nation vulnerable on Sept. 11, 2001, offers no assurance that Americans will be safer. Instead, it poses new dangers.

Most alarming is that the version of the legislation passed by the House on Wednesday—with the Senate apparently soon to follow—is a 500-page, 11th-hour rewrite few lawmakers have read and perhaps none fully understands. New snakes slither out daily, but doubtless many will remain hidden until long after the measure is enacted into law.

How can a bill that purports to protect the homeland be so scary? Let us count some ways:

First, the basic concept is flawed. Combining 22 separate departments and agencies with nearly 200,000 employees into one super agency is a recipe for bureaucratic chaos that will distract workers from their security duties rather than sharpen their focus. New bosses, new locations, new personnel rules, new rivalries, new turf battles. These are the issues that will most concern workers in the years just ahead. How helpful is that?

The recent squabble between the FBI and the Bureau of Alcohol, Tobacco and Firearms, neither of which is to be included in the new department, demonstrates there is little chance that blending separate agencies to eliminate overlap and clarify control can be anything but a bloody task.

This proposal came originally from Democrats and was opposed by President Bush. But the pressure on Congress to take some action that promised Americans greater security was so great that Mr. Bush decided to board the train before it ran over him.

Second, the White House refused to accept a Senate provision that would have created an independent commission to investigate government failures that preceded the Sept. 11 attacks, squelching what looked like the best chance of authorizing such an inquiry. Unless another opportunity emerges soon, there may never be a detailed look at what went wrong and why.

Third, union rights and other worker protections will be stripped from the employees of the new department because the president says he needs new flexibility to hire, fire and move people around. No convincing national security rationale has been offered to justify this broad power grab.

Fourth, citizen access to information about risks or threats related to critical infrastructure is sharply curbed, and criminal penalties will be imposed on workers who violate these strictures. This is a sweeping and unjustified infringement on press freedoms.

Fifth, the Defense Department is working on a plan to collect financial and other personal information on all Americans in the name of homeland security. The new legislation doesn't permit this outrageous privacy violation—but it doesn't prohibit it, either.

There's more, but critics are cowed.

Mr. Bush snatched the homeland security issue from Senate Democrats, then clubbed them with it in a campaign that challenged their patriotism. A cynical play that matches this bill.

Mr. BYRD. Mr. President, I yield to the distinguished Senator from Michigan.

Mr. REID. I suggest the absence of a quorum.

Mr. BYRD. The Senator can't do that. I have the floor.

Mr. REID. Oh, you have the floor. Sorry about that.

Ms. STABENOW. Mr. President, I thank the Senator from West Virginia. As the distinguished Senator knows, we were on the floor last evening talking about this very subject related to the pharmaceutical industry and the fact that there is a provision in this bill that has been slipped in, more for the financial security of Eli Lilly and the pharmaceutical industry than homeland security. In fact, it jeopardizes the rights of families who are now in court as a result of an additive to a vaccine for infants that contains mercury, where the concern is that it may, in fact, lead to autism. That is yet to be determined, but there are serious issues of health.

What we now have in this homeland security bill is an effort to eliminate any responsibility from the Eli Lilly company for the possibility that a product of theirs may, in fact, lead to an extremely harmful health problem for children, autism. I find it outrageous that in the middle of trying to deal with homeland security and legitimate issues for the American people that we would find it is, in fact, the White House slipping into this bill an effort to protect people who were clearly one of their biggest backers in the last campaign. It is clear that when the pharmaceutical industry put up millions of dollars to support the efforts finished on election day, they already are receiving rewards as a result of what they did in the election.

The American people do not deserve this kind of approach. I appreciate the Senator bringing it to our attention again. I know there is an amendment to strike these items which I strongly support. I think it is absolutely outrageous that, while we are trying to do something serious for the American people, we would see this kind of help put into this bill for an industry that is already heavily subsidized by taxpayers.

Mr. BYRD. Absolutely.

The PRESIDING OFFICER. The Senator has 30 seconds remaining.

Mr. DORGAN. Mr. President, I ask unanimous consent the Senator have 10 additional minutes.

The PRESIDING OFFICER. Is there objection to the unanimous consent request for 10 additional minutes for the Senator from West Virginia?

Mr. DASCHLE. Mr. President, I didn't hear the request.

The PRESIDING OFFICER. Is there objection to the unanimous consent request that the Senator from West Virginia be recognized for an additional 10 minutes?

Mr. DASCHLE. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. Will the Senator yield?

Mr. BYRD. Let me compliment the distinguished Senator from Michigan for her correct, characteristic, acute perception of what is in this bill. She spoke about this very item on yesterday. I wonder how many Senators were listening. She is speaking again today, quite appropriately, calling it to the attention of the Senate and the American people. I thank her.

I yield to the distinguished Senator from Florida, Mr. NELSON.

Mr. NELSON of Florida. Mr. President, I thank the Senator for yielding to me. Isn't it interesting, in the eleventh hour, the closing hours of the session, when the country is at war and a bill that is perceived to be vital to the defense interests of this country—

Mr. BYRD. Hear, hear.

Mr. NELSON of Florida.—that there would be suddenly inserted or deleted—

Mr. BYRD. Oh, yes.

Mr. NELSON of Florida.—for example, the provision that was deleted that passed unanimously in the Senate that we would have a bipartisan commission to understand the ramifications of September 11? That was in our version of the bill. And because the White House objected to that, even though an overwhelming vote had taken place in the House of Representatives, it was deleted. And because there was such an outcry, the morning's news says they are going to try to resurrect some bipartisan commission.

But it shows the legislative sleight of hand in the rush to adjournment that would now delete a provision so important to the security of this country, such as a bipartisan commission to find out what went wrong in the intelligence apparatus that led to September 11 and at the same time would insert provisions into this bill that would create all kinds of havoc, as enumerated by the Senator from West Virginia and the Senator from Michigan.

I thank the Senator for yielding.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Florida for his observations and for his contribution and for his service to his country, his service here in the Senate.

Liberty, freedom, justice, and right cry out today to be heard here on the Senate floor. I urge Senators not to vote later today for cloture. Let's see what else is in this bill. Let us have time to amend it, to correct the errors that may be in it, on behalf of the American people. I ask that we not vote for cloture today.

I suppose my pleadings, my importunings will fall upon deaf ears in many areas of the Senate Chamber, but please, let our constituents be heard on this bill which comes to us in the name of homeland security but within it has many injustices, many wrongs, I am sure, many things, many provisions the American people do not want.

I yield to the distinguished Senator from New Jersey.

Mr. CORZINE. Mr. President, the distinguished Senator from West Virginia has done a tremendous service to our Nation by pointing out, over the last several hours while we have been in session, some of the flaws in this 484-page bill, which many of us have been trying to study.

One of those flaws—and I would love to hear the Senator's comments—is with regard to freedom of information and the provision of that information to the American people, and to the people in Congress who are responsible for oversight of this new Department. Is it not true that in this new Department there have been given broad waivers of opportunity for the administration—any administration—to pick outside advisory committees to come in and give advice, to make specific policy recommendations with regard to the direction of the country—not unlike what we saw with regard to our energy policy—and then not have any of that information made available to the public, where it can be challenged in situations where there is a serious concern about conflicts of interest and about how people might approach these issues.

I think, if I have read this right, there is an almost blanket ability for the administration—any agency, and not necessarily Republican or Democrat—to completely keep from Congress, keep from the State, keep from others the ability to understand what is taking place within the policy-making arrangements of this new Department.

Mr. BYRD. Mr. President, I thank the distinguished Senator for what he has just called to the attention of the Senate. What he has made reference to, I have every reason to believe, is section 871 dealing with advisory committees. Let me read it. I will have more to stay about this. As a matter of fact, I will have an amendment to change this. It is section 871:

Advisory Committees.

> (A) In General.—The Secretary may establish, appoint members of, and use the service of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of Title 18, United States Code, for official actions taken as a member of such advisory committee.

A separate reading of this language does not stir one's blood, but a clear understanding of the laws that are referenced begin to stir one's blood.

Under current law, advisory committees may be appointed and the President may exempt a committee on a case-by-case basis. The public has a right to know what these advisory committees are doing. The public has a right to know what is happening. They have a right to know what is going on in Government, in these advisory committees.

But here is a provision that will give the Secretary blank authority to keep from the public the knowledge of what these advisory committees are saying, as to what's going on, and so on.

Mr. CORZINE. Will the Senator yield for one more quick question?

Mr. BYRD. Yes.

Mr. CORZINE. Am I not correct this was neither in the original Lieberman proposal that came out of the Governmental Affairs Committee, nor was it in the compromise proposals that were on the floor before we went into recess? This is another one of these midnight strikes, additions, that is completely outside of any of the review process that we normally have, is that right?

Mr. BYRD. To the best of my knowledge, it is. My staff, upon a cursory examination of this bill, informs me this is something that is new. So the President and the Secretary will be given blanket authority. Whereas, at the present time, under the Advisory Committee Act—I believe that is what it is called, and it is referenced in this language—one has to see what is being said behind the lines here. But now the Secretary would have blanket authority to shut out the press. The press ought to be aware of what is in this bill, and the Senator from New Jersey is calling the attention of the Senate and the world—may we have order, Mr. President.

The PRESIDING OFFICER. The Senate will be in order.

Mr. BYRD. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 36 seconds.

Mr. SARBANES. Will the Senator yield?

Mr. BYRD. Yes.

Mr. SARBANES. Mr. President, I want to take advantage of these few seconds to thank the very able Senator from West Virginia for raising these extremely important questions about this legislation. This editorial I made reference to that was in the Baltimore Sun talked about all these other provisions that were coming in, and it went on to talk about the basic concept of this bill itself—something the Senator has been addressing for days on the floor of the Senate. Listen to this. They are talking about the homeland security bill:

> First, the basic concept is flawed. Combining 22 separate departments and agencies with nearly 200,000——

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. SARBANES. I ask unanimous consent to proceed for 5 additional minutes.

The PRESIDING OFFICER. Is there objection?

The Senator from West Virginia is recognized.

Mr. BYRD. I yield to the Senator from Maryland.

Mr. SARBANES. I will quote this:

> First, the basic concept is flawed. Combining 22 separate departments and agencies with nearly 200,000 employees into one super agency is a recipe for bureaucratic chaos that will distract workers from their security duties, rather than sharpen their focus. New bosses, new locations, new personnel rules, new rivalries, new turf battles—these are the issues that will most concern workers in the years just ahead. How helpful is that? The recent squabble between the FBI and the Bureau of Alcohol, Tobacco, and Firearms, neither of which is to be included in the new Department, demonstrates there is little chance of blending separate agencies to eliminate overlapping, and clarifying control can be anything but a bloody task.

Then they go on to say:

> Union rights and other worker protections will be stripped from the employees of the new Department because the President says he needs new flexibility to hire, fire, and move people around. No convincing national security rationale has been offered to justify this broad power grab.

The problems inherent in this legislation, I have come to the conclusion, will divert focus, energy, and attention from the substantive challenge of providing homeland security to this kind of a procedural fight.

They are going to have to get a new location, new organization. They are going to be spending all their time on getting the boxes on the chart instead of focusing on the substance of the job that confronts them.

Mr. BYRD. Yes.

Mr. SARBANES. That is one of the basic points the Senator has been making consistently, as I understand it.

Mr. BYRD. How telling, how telling, how revealing what the distinguished Senator from Maryland just said in this excellent editorial in the Baltimore Sun. I thank him for that.

Senators need to wake up. Senators need to wake up as to what is going on.

Mr. President, I do not intend to take more time than I have because I know the leaders want to speak. How much time do I have?

The PRESIDING OFFICER. Two minutes and ten seconds.

Mr. BYRD. Does the distinguished Senator from Maryland have anything further to say?

Mr. SARBANES. No. I thank the Senator for yielding.

Mr. LEVIN. Will the Senator yield me 30 seconds for a parliamentary inquiry?

Mr. BYRD. Yes, I yield for a parliamentary inquiry.

Mr. REID. Will the Senator yield for an inquiry? The majority leader is in the Chamber and will take just a few seconds to offer a unanimous consent request. Can that happen? Then this dialog can take place for a long time after that.

Mr. BYRD. Yes, I yield to the majority leader. I hope I retain my 2 minutes.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the distinguished Senator from West Virginia retain the remainder of his time.

The PRESIDING OFFICER. The Senator from West Virginia retains the remainder of his time.

Mr. DASCHLE. Mr. President, after I have propounded this unanimous consent request.

UNANIMOUS CONSENT AGREEMENT—H.R. 3210

Mr. DASCHLE. Mr. President, I ask unanimous consent that immediately upon passage of H.R. 5005, the homeland defense bill, the Senate proceed to the terrorism insurance conference report to accompany H.R. 3210; that the Senate then vote immediately on cloture on the conference report; that if cloture is invoked, the Senate then immediately, without any intervening action or debate, vote on passage of the conference report; that if cloture is not invoked, the conference report continue to be debatable.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. I do not fully understand this request. I want to know what this does to homeland security.

Mr. DASCHLE. Mr. President, if I can respond to the distinguished Senator from West Virginia, this has no effect at all on the debate on homeland defense. All Senators are protected with regard to their rights under cloture, if cloture is invoked on homeland security. This only deals with the next issue, the terrorism insurance bill, to be taken up once homeland defense has been completed.

Mr. BYRD. Mr. President, further reserving my right to object, and I will be very brief, I am supportive of the measure the distinguished majority leader is seeking to advance in connection with this request. Does this in any way have a psychological effect with respect to the cloture we are going to vote on this morning?

I plead to Senators—further reserving my right to object—I plead with Senators not to invoke cloture today. I understand cloture will be invoked at some point. I just hope it will not be today. I hope we will have the weekend for our staffs to study this bill so that we will be better prepared after we have had more time to study it.

What I am concerned about is the desire to get to the bill about which the majority leader is speaking and which I fully support. I hope that desire will not have some psychological impact on Senators causing them to vote for cloture today.

I wonder if our two leaders would propose a unanimous consent request that would vitiate a cloture vote for today, push the cloture vote over until Monday. I know cloture is going to be invoked, but for God's sake, for Heaven's sake, for the sake of liberty and justice, and for the sake of Senators being able to understand what they are voting on in this 484-page bill that has been sprung on us—and we have only been able to see it at the beginning of Wednesday, the day before yesterday—would the leaders please consider at least vitiating that vote and putting it over until Monday so that we and our staffs will have some more time for study?

For Heaven's sake, would the majority leader and minority leader consider this request? That is all I am asking.

I know cloture is going to be invoked at some point, but for Heaven's sake, we have a right to know what is in this 484-page bill, and the people out there who are watching this debate through those electronic lenses have a right also to know. We have a duty to know what we are voting on. At this moment, as we get ready to invoke cloture, we do not know what is in this bill.

Mr. President, I remove my reservation.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Without objection, it is so ordered.

Mr. DASCHLE. I thank all of my colleagues. I thank in particular the distinguished Senator from West Virginia. I yield the floor.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from West Virginia retains the floor.

Mr. DASCHLE. Mr. President, I ask for the regular order which, as I understand, acknowledges 2 minutes remaining for Senator BYRD.

The PRESIDING OFFICER. The Senator from West Virginia has 1 minute

30 seconds remaining, and Senator LOTT retains 4½ minutes.

Mr. BYRD. I yield 1 minute to Senator LEVIN.

STATUS OF AMENDMENTS

Mr. LEVIN. Mr. President, parliamentary inquiry: A large number of amendments have been filed which, on their face, appear to be relevant to this bill. If cloture is invoked, not only nongermane but even relevant amendments would be precluded from being offered.

My parliamentary inquiry is this: How many of the amendments which have been filed and reviewed by the Parliamentarian would fall as being nongermane?

Mr. BYRD. What bill is the Senator referencing?

Mr. LEVIN. Homeland security.

The PRESIDING OFFICER. The Chair will attempt to answer that question.

Mr. LEVIN. The list I have, they all appear, most appear to be relevant amendments, but because of the technical rules, many of these would not be allowed apparently; many would be not allowed if they are not strictly germane. How many of these amendments are nongermane in the eyes of the Parliamentarian?

The PRESIDING OFFICER. The Parliamentarian advises the Chair that of the list of approximately 40 amendments, preliminary analysis indicates 10 are not germane and roughly 30 are either germane or are clearly relevant.

Mr. BYRD. Will the Chair repeat the response?

Mr. LEVIN. Ten of these amendments could not be offered after the vote.

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Would the Chair repeat—

The PRESIDING OFFICER. And that is homeland security.

Mr. BYRD. Would the Chair please repeat the response that was given to the Senator from Michigan so we can hear it? I did not hear the response.

The PRESIDING OFFICER. Of the list of approximately 40 amendments, preliminary analysis indicates 10 are not germane. Approximately 30 are either germane or are arguably germane.

Mr. LEVIN. That was not the question. The question is, Of the amendments reviewed, how many would not be strictly germane and therefore would fall?

The PRESIDING OFFICER. There are 10 amendments.

Mr. LEVIN. Pardon?

The PRESIDING OFFICER. Ten.

The time of the Senator from West Virginia has expired. The Republican leader has 4½ minutes. The Republican leader is recognized.

Mr. GRAMM. Will the Republican leader yield to me?

Mr. LOTT. Mr. President, I yield time off my leader's time. How much time does the Senator from Texas need?

Mr. GRAMM. We have 4½ minutes. Ten minutes.

Mr. LOTT. I yield 10 minutes of leader's time to Senator GRAMM.

The PRESIDING OFFICER. The Senator from Texas is recognized for 10 minutes.

HOMELAND SECURITY

Mr. GRAMM. Mr. President, we have drifted into a debate which I think we should be engaged in now, and that is a debate on whether we should vote for cloture on the pending amendment and, therefore, cloture to proceed with homeland security.

At this late hour, I do not think anybody is going to be convinced in terms of whether this is a good thing or a bad thing as it is written. I think people have pretty well reached that decision. I simply would like to make a couple of points that I think are important in making the decision.

I begin by saying I do not think anybody set out with a goal of homeland security becoming an issue that sort of divided us along party lines. I do not think anybody had that intention, but the net result is it happened. We now are at a point where we have one last opportunity to do this bill.

I make two arguments for doing it that I think are strong, and I make them not to the people who are for it—they are already convinced and I hope they will not listen because I do not want to change their mind. I want to make my argument to the people who are on the other side of the issue.

The first argument is that we have had an election. It is very easy in elections to read into them what you want to read into them. Elections are sort of like the Bible in the sense that everybody finds something in them that they want to find and they neglect the things they do not want to see. I do think one of the themes of the election was a desperate desire of the American people to see a homeland security bill passed.

Mr. BYRD. Will the Senator yield?

Mr. GRAMM. Whether it was this one or another one, I think that is open to interpretation, but I think they wanted to see it passed.

I certainly will yield.

Mr. BYRD. Just one quick observation. I hope the Senator will delete from his remarks which will appear in the RECORD any reference to the Holy Bible in the context that he was speaking. I do not think that has any place in this argument. I say that lovingly and fondly.

Mr. GRAMM. Well, I appreciate that. Let me remove "the Bible" and put "teaching" or "holy script."

What we tend to do with revered documents—whether it is the Constitution, the Koran, or some other holy teaching—is we take from it what we like and we tend to leave out what we do not like, and that was the point I was making. I thank my colleague for making the point.

The point I want to make beyond that is, I do believe an objective reading of the election shows a desire, an almost desperation of the American people, to see action taken on a homeland security bill, though I am not claiming necessarily this bill.

The second argument I hope opponents of the bill will listen to is, this bill does represent a compromise. The President would have not been subject to much criticism if, after the election, he had said: Look, I have already compromised too much on this issue. Given the results of the election and the mandate, I am going to get exactly what I want, and so as a result I am going to stop negotiating. We are going to go home, come back in January, and do it exactly my way.

He could have done that, and I do not think people could have been critical of him. But the President did not do that. Even though he perceived, and many others perceived, that he got a mandate in the election on this issue, he came back and compromised again. He compromised again by not giving public employee labor unions the ability to veto a homeland security reorganization, but by strengthening their ability to have input into it. That represented an additional compromise.

The bill before us is not a bill that all of our colleagues support. I know our dear colleague from West Virginia is very sincere in his opposition, but I say this: The first major issue that the distinguished Senator from West Virginia raised, in opposition to the original bill, was that it interfered with Congress's power of the purse by giving the President power—and the Senator and others argued arbitrary power—to rewrite appropriation bills.

I argue to our colleagues that whether they support or oppose this bill, that concern was responded to, and the bill before us sets an amount that the President has flexibility in, but it gives him no power, without reprogramming—which means the approval of the chairman and the ranking member—to move money around.

I simply say to my colleagues this is a compromise, even though it may not be one that the Senator finds supportable. But I ask the following question: Does the Senator believe the bill that will be adopted in the new Congress will be closer to what he wants than this bill is? Does he have a guarantee that in the new Congress the concerns that were dealt with here will be dealt with?

I guess really what I am saying—and not doing a very effective job in saying it—is the following: I ask my colleagues who oppose the bill to look at it in its totality, to look at the compromises that are in it, protecting our right to the purse, giving public employees an opportunity to have an input but not a veto. We all know the bill is going to pass now or it is going to pass later, and so will the bill passed in the new Congress be more to the liking of my colleagues who would vote no today than this bill? The answer is probably no.

Finally, the one thing we all agree on is, in creating this new department - whether it is a good idea or a bad one—if we do not do it now and do it 3 months later, we have lost the 3 months. So the bill we would do in 3 months might very well be less to the liking of the people who oppose it and we will be doing it 3 months later.

I think if I were on the other side, what I would probably conclude is I am not for the bill and I am going to vote against it, but doing it in the new Congress with the makeup of the new Congress will probably produce a bill that I like less and that the victories that have been won in it—and there have been some; this is a compromise—would be lost, could be changed, and waiting 3 months to get a bill that might be worse from my point of view is not a good decision.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. GRAMM. I am happy to yield.

Mr. BYRD. The Senator is absolutely right in what he says with reference to the appropriations process. That was a major weakness of the original bill, and the Senator from Texas knows that. He had a lot to do with a compromise that developed with respect to the appropriations process—he and Senator STEVENS, above all, on that side of the aisle. That part has been vastly improved. So I have not had much to say in my expressions of opposition to the way we are proceeding. I have had little to say except to compliment Senator STEVENS, and I will compliment the distinguished Senator from Texas because he has privately told me upon occasion that that was almost an unassailable position I was taking with reference to that appropriations process within the constitutional system.

This measure has gone a long way. It has not gone all the way, but it has gone a long way. I have had very little to say about that.

Finally, let me say, would we have a better bill 3 months later?

Mr. GRAMM. Mr. President, I ask for an additional 4 minutes if the Senator is going to speak. I want to conclude with one remark.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, with reference to the question, will the bill be better 3 months from now? I say there is an excellent chance the bill would be better, that the failings of this compromise as brought to light by the press and by Members, through the help of their staffs, the things that they are complaining about in this bill, yes, we would have time to remove those after debate and we would come out with a better bill. I think always that more debate results in a better end product.

As far as I am concerned, the answer is, yes, 3 months from now we could have a better bill. We would have more time. Our staff would have more time. The press would have more time. I am just pleading for us not to invoke cloture today so we can have at least the weekend to look at this bill.

I thank the distinguished Senator.

Mr. SARBANES. Will the Senator yield?

Mr. GRAMM. I would be happy to yield, but I do want to make sure I have 3 minutes at the end to sum up and we are 5 minutes from the vote.

I am happy to yield.

Mr. SARBANES. One of the things we could do if we had more time is get the special interest provisions out of this bill. As I understand it, and with appropriate respect to the Senator from Texas, those provisions were never in the alternatives being offered in the Senate as we considered homeland security.

In fact, I may or may not agree with your provisions on homeland security and think it should be done differently, but at least it was homeland security. Now we discover and are discovering every moment there are other special interest provisions that are in this legislation. I argue we should not invoke cloture, if for no other reason than in order to address those special interest provisions.

Mr. GRAMM. Mr. President, let me address that and get back to the Senator's point, which is the relevant point.

First of all, this bill results from three things: One is the old Gramm-Miller substitute with which we are all familiar and we debated for 6 weeks. It also includes compromises that were reached with three Democrat Members to try to increase input that public employees have in the process. I am first to say it does not give them veto power, but it gives them a greater degree to be heard. The third thing it entails is a compromise with the House. We had to meet with Members of the House to try to bring the two bills together, given we are at the end of the session, so they could pass the bill in the House and we could pass it in the Senate.

Are there special interest provisions in the bill? There are. But does anyone believe we would go to conference in February or March and not have special interest provisions in the bill? I am proud that my colleague has noted I didn't have any in the substitute we offered.

I say the following in addressing the important point of the Senator from West Virginia, and then I will conclude. I believe this is a good amendment. I believe it is a result of 6 weeks of work. It is a compromise that has been made, and then an additional compromise has been made on top of that. I believe from my point of view we might get a better bill in February, but I don't believe from the point of view of the opponents of this bill they would get a better bill. And to the extent we got greater support, we would get a bill that is not as good.

Secondly, I remind my dear colleague from West Virginia that when Benjamin Franklin read the Constitution, he asked himself: Is this the best product that we are going to get? As he knows, better than I, there were things in it he was doubtful of. I am not comparing this 484 pages to what, in a secular sense, is a document that is pretty holy to me and the Senator from West Virginia, and that is the Constitution.

But the point is relevant. This is a compromise. Even the Senator said his biggest concern has been dealt with. I say to critics, the fact that is the case says something about the fact that there was a genuine effort to compromise. I am not asking my colleagues that have taken a hard position to vote yes. I know that will not happen. I know I will not convince the Senator from West Virginia, but I hope I will convince him of two things.

The first is the most important one, and that is this bill is not all bad and there are some good things in the bill and there has been some legitimate effort to compromise. Second, when we do get cloture, we are at a point where we need to go ahead and act and adopt the bill.

I thank my colleague for the debate. Probably the Senator from West Virginia has had more impact in changing this bill than anyone else because of the strength of his arguments. I simply say, it is a long way from what he would like. I have voted on many bills here in my 18 years in the Senate, and they were a long way from what I liked. But you ultimately come down to, especially in these circumstances, the following questions: Is it going to get any better? Might it get worse? Is it worth waiting 3 months to find out?

My conclusion, and it is one I feel very strongly about, is that I believe it is a good bill. I don't believe it would get better with time, especially from the point of view of people who are concerned about workers' rights. And finally, waiting 3 months does not serve anybody's interests.

Thomas Jefferson said good men with the same opinion are prone to disagree.

Mr. BYRD. I yield the floor.

How much time does the Senator have remaining?

The PRESIDING OFFICER. Two minutes and nineteen seconds.

Mr. BYRD. I hope he has 3 additional minutes.

Mr. McCAIN. I object.

Mr. GRAMM. I give the 2 minutes to Senator BYRD.

Mr. BYRD. Mr. President, with reference to Benjamin Franklin, when the Constitutional Convention ended we are told a lady approached Benjamin Franklin with the question: Dr. Franklin, what have you given us?

His response: A republic, Madam, if you can keep it.

That is what is wrong with this bill. That is the problem. The third leg of the trilogy of reasons we have this compromise, which was related to us by the distinguished Senator from Texas, is that third leg, that compromise that he spoke of, which was entered into with the House so that the House could pass this measure over there virtually without debate, that is the leg I think we could improve with an additional 3 months. That is the leg which has the major flaw. That is the leg which has the dagger pointed to the heart of the Republic, which we all love. It is that leg which I think another month or 2 months or 3 months would vastly improve, I say with all due respect.

Mr. SARBANES. Will the Senator yield?

Mr. GRAMM. I have the time.

Mr. SARBANES. I say to the Senator, I think it is clear, I understand his point on the homeland security provisions about now or next year. But it seems to me clear that next year you will not have these special interest provisions that are in this legislation. They were not in your legislation. They have been put in here by the House. Some of them are absolutely outrageous.

Mr. GRAMM. Let me say when Senator MILLER and I wrote the substitute, it is true we did not have any special interest provisions in it. It is true that there are a few special interest provisions in this bill. But I would have to say—without getting into an argument with anybody on what may be my last words in the Senate—that more often than not when you are negotiating between the two bodies, you end up with some provisions, (a) you don't like, and (b) that have are promoted by some special interest. I would have to say—and I am sure my colleagues will remember me going through bills at midnight looking at proposed amendments that were going to be accepted—seldom have I seen a bill that had none of those. I am not going to be here in future years, so I guess I will read about it in the paper. But if we do not invoke cloture, I would be willing to bet good money, and I hope to have it to bet at that time, that there will be more special interest provisions in it 4 months from now than there are right now.

Mr. REID. Mr. President, all time is expired on this; is that right?

The PRESIDING OFFICER. That is right.

Mr. REID. I advise all Senators, we heard a lot of debate this morning. There will be immediately an up-or-down vote on cloture on the Gramm-Miller substitute amendment to the Homeland Security Act. On our side this is opposed by Senator BYRD. It is my understanding that Senator LIEBERMAN will vote in favor of the cloture motion.

Mr. DORGAN. Mr. President, I wish to inquire of the Senator from Texas where this negotiation took place?

Mr. ROBERTS. Regular order.

The PRESIDING OFFICER. Under the previous order, the clerk will report.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senator from——

Mr. ROBERTS. I object.

Mr. BYRD. I know the Senator objects.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the call of the quorum be terminated.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. No, reserving the—I can't reserve the right to object. I object until we get a clear understanding that the Senator from North Dakota can have 1 minute.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I ask that the Senator from North Dakota be recognized for 1 minute and the Senator from Texas, Mr. GRAMM, be recognized for 1 minute.

Mr. GRAMM. And the vote occur immediately thereafter.

Mr. REID. The vote to occur immediately thereafter.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Dakota.

Mr. DORGAN. I merely wish to inquire of the Senator from Texas: He indicated in the process of completing legislation, sometimes at midnight there is a negotiation that goes on and things happen. I am wondering if the Senator from Texas can tell us where the negotiation occurred that put in the homeland security bill the special piece for the pharmaceutical industry that shows up now, today, that says there will be special liability protections for the pharmaceutical industry. And the majority leader of the House, Mr. ARMEY, says: Well, I put it in, but it wasn't my idea; it was the White House.

I am asking, was there a negotiation someplace, sometime, between some people, of which I am unaware? Because I have heard of no such negotiation by which that provision should have ended up in this bill.

I inquire of the Senator from Texas where this negotiation occurred. Who was involved in it? Who made the decision that a special protection for the pharmaceutical industry that just spent $16 million in the last election ought to be stuck in this bill? Who was involved in it?

The PRESIDING OFFICER. The time has expired. The Senator from Texas has 1 minute.

Mr. GRAMM. I am glad the Senator picked one with which I am totally familiar.

In the Senate bill, we had a provision where the Federal Government indemnified those manufacturers that produced items to be used in the war on terrorism whereby the taxpayer would pay liability that arose from it.

I was never much for that provision, but I was desperately trying to get the votes to prevail, and so I took that provision.

The House had a provision that limited liability, similar to what we did in World War II and what we have done in most major conflicts. When you produce an item for defense purposes, there is a limited liability. It seemed to me that, rather than the taxpayer bearing the burden, forcing these cases into Federal court and limiting liability was a preferable choice.

That is where the negotiation came from. This was not a provision out of the clear blue sky. We had a provision, they had a provision, and we took less liability protection than they had. This is a good provision of the bill.

Mrs. LINCOLN. Mr. President, I rise in support of cloture on the Homeland Security bill because our country needs a unified effort to defend our shores. But I want my colleagues on the other side of the aisle to know that I am ashamed of the tactics that you have used. And this Senator will not forget what you and your patrons in the pharmaceutical industry have done to this bill and to the American people in the dark of the night. It appears that the $12 million PhRMA donated during the last election cycle can buy more than a handful of House and Senate seats. It can also buy a sneak attack on people—autistic children—who have been harmed by vaccines.

I say to my friends across the aisle and to my friends in the pharmaceutical industry: sneaking this unrelated provision into critical legislation like Homeland Security is not the way to make good public policy. It is un-American, and something to be ashamed of.

Why should the parents of autistic children—children who were injured by thimerosal in vaccines—lose some of their legal options in the name of Homeland Security? They too care about the security of our nation, but you cannot doubt their love and concern for their precious vulnerable children. The homeland security bill is not an appropriate vehicle to make this change to the vaccine injury compensation program on behalf of one interest group.

HOMELAND SECURITY ACT OF 2002

Pending:

Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute.

Lieberman/McCain Amendment No. 4902 (to Amendment No. 4901), to establish within the legislative branch the National Commission on Terrorist Attacks Upon the United States.

Dodd Amendment No. 4951 (to Amendment No. 4902), to provide for workforce enhancement grants to fire departments.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the substitute amendment No. 4901 to H.R. 5005, the Homeland Security legislation.

John Breaux, Ben Nelson of Nebraska, Larry E. Craig, Jon Kyl, Mike DeWine, Don Nickles, Craig Thomas, Rick Santorum, Trent Lott, Fred Thompson, Phil Gramm, Pete Domenici, Richard G. Lugar, Olympia J. Snowe, Mitch McConnell.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the Thompson amendment, No. 4901, for H.R. 5005, an act to establish the Department of Homeland Security and for other purposes, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maine (Mr. KENNEDY), the Senator from Maine (Mr. KERRY), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS) and the Senator from Colorado (Mr. CAMPBELL) are necessarily absent.

The PRESIDING OFFICER (Mr. DAYTON). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 65, nays 29, as follows:

[Rollcall Vote No. 244 Leg.]

YEAS—65

Allard
Allen
Barkley
Bayh
Bennett
Bingaman
Bond
Breaux
Brownback
Bunning
Burns
Cantwell
Carnahan
Chafee
Cleland
Cochran
Collins
Craig
Crapo
Daschle
DeWine
Domenici
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Hollings
Hutchinson
Hutchison
Inhofe
Johnson
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—29

Akaka
Baucus
Biden
Boxer
Byrd
Carper
Clinton
Conrad
Corzine
Dayton
Dodd
Dorgan
Durbin
Feingold
Harkin
Jeffords
Kohl
Leahy
Levin
Mikulski
Murray
Nelson (FL)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Wyden

NOT VOTING—6

Campbell
Helms
Inouye
Kennedy
Kerry
Torricelli

The PRESIDING OFFICER. On this vote, the yeas are 65, the nays are 29. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The majority leader.

AMENDMENT NO. 4902

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Lieberman amendment No. 4902 be in order.

Mr. GRAMM. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

The majority leader.

Mr. DASCHLE. Mr. President, I very regretfully make a point of order that amendment No. 4902 is not germane.

The PRESIDING OFFICER. The Chair sustains the point of order. The amendment falls.

AMENDMENT NO. 4911 TO AMENDMENT NO. 4901

Mr. DASCHLE. Mr. President, I call up amendment No. 4911.

Mr. BYRD. Mr. President, what is happening? What was the request? What has happened?

Mr. DASCHLE. Mr. President, I have called up amendment No. 4911. I would like it read.

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. BYRD. Mr. President, parliamentary inquiry. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. BYRD. Mr. President, what was the request agreed to; what happened? What was the decision of the Senate?

The PRESIDING OFFICER. A unanimous consent request that the pending first-degree amendment be in order was objected to. Objection was heard. A point of order was then made against the amendment on the grounds that it was not germane. The Chair sustained the point of order, and that amendment fell.

Mr. BYRD. I thank the Chair. There was so much noise in the Chamber that many of us could not hear what was going on.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LIEBERMAN, proposes an amendment numbered 4911 to amendment No. 4901.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide that certain provisions of the Act shall not take effect, and for other purposes)

At the end, add the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).
(2) Section 311(i).
(3) Subtitle G of title VIII.
(4) Section 871.
(5) Section 890.
(6) Section 1707.
(7) Sections 1714, 1715, 1716, and 1717.

(b) APPLICATION OF FEDERAL ADVISORY COMMITTEE ACT.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) WAIVER.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

Mr. DASCHLE. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

Mr. DASCHLE. Mr. President, I retain the floor.

The PRESIDING OFFICER. Is there a sufficient second?

In the opinion of the Chair, there is not a sufficient second.

Mr. DASCHLE. I suggest the absence of a quorum.

The PRESIDING OFFICER. There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4953 TO AMENDMENT NO. 4911

Mr. DASCHLE. Mr. President, I call up amendment No. 4953.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

Mr. DASCHLE. Mr. President, I hold the floor.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from South Dakota [Mr. DASCHLE], for Mr. LIEBERMAN, proposes an amendment No. 4953 to amendment No. 4911.

Mr. DASCHLE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

Mr. NICKLES. I object.

The PRESIDING OFFICER. Objection is heard.

The clerk will continue the reading of the amendment.

The legislative clerk continued the reading of the amendment, as follows:

Strike all after the first word and insert the following:

TITLE XVIII—NONEFFECTIVE PROVISIONS

SEC. 1801. NONEFFECTIVE PROVISIONS.

(a) In General.—Notwithstanding any other provision of this Act, (including any effective date provision of this Act) the following provisions of this Act shall not take effect:

(1) Section 308(b)(2)(B) (i) through (xiv).

(2) Section 311(i).

(3) Subtitle G of title VIII.

(4) Section 871.

(5) Section 890.

(6) Section 1707.

(7) Sections 1714, 1715, 1716, and 1717.

(b) Application of Federal Advisory Committee Act.—Notwithstanding paragraph (2) of subsection (b) of section 232, any advisory group described under that paragraph shall not be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Waiver.—Notwithstanding section 835(d), the Secretary shall waive subsection (a) of that section, only if the Secretary determines that the waiver is required in the interest of homeland security.

(d) The amendment made by subsection (a)(1) of this section shall be effective one day after enactment.

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I ask unanimous consent that during the next 90 minutes—that is until 1:30 today—there be no action, other than debate, on the matter now before the Senate.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Texas.

Mr. GRAMM. Mr. President, I do not want to give a lengthy speech, but briefly I will talk about where we are and then talk about the amendment that is pending. We have now invoked cloture on the pending substitute, and so we are in a very tightly scripted 30-hour period. The Democrat majority leader put into place two amendments, and in the process no amendment now is in order. This produces a situation where at some point, at the end of 30 hours, there will be a vote on the pending Lieberman amendment.

The pending Lieberman amendment is the amendment I will discuss. It is clear these amendments will not be dealt with until the 30 hours expires. So we will have one vote on the Lieberman amendment and then we will move to vote on final passage. I want to address the Lieberman amendment because what tends to happen in these cases, where things are done at the last minute, is that it is sort of easy to confuse people as to what has been done. I want people to understand where the provisions came from and why they are important. One can agree with them or disagree with them, but I want my colleagues to basically know where they came from.

Over the weekend, we had a series of negotiations. I want to go back to the point that the President could have said, after the election, that he had a mandate, that this Congress could go home, that we would then have a new Congress and he would write the homeland security bill the way he wanted it written, or he would have Congress write it that way. I think it tells us a lot about our President that he decided not to do that.

In fact, after having gotten a strong electoral mandate, the President actually negotiated further and made additional changes in his bill.

The substitute that is before us is basically the Gramm-Miller amendment, which is well-known, which we debated for 6 weeks—few amendments have ever been debated that long in my 18-year career in the Senate—with two sets of changes. One, the agreements that the President reached with three Democrat Senators and an Independent Senator in negotiations over the weekend, whereby the following changes were made: Workers in the Federal sector and unions that represent them were given a greater voice in expressing their views about how the new Department is organized, and they were given more clearly defined due process. They were not given veto power, but they were given a guaranteed input under a specific time period. That is the significant change that was made. That represents a compromise from the original Gramm-Miller amendment.

The second change that was made was recognized that the House had passed its own bill. So realizing that we were coming to the end of the Senate, one of the things we did over the weekend is we met with the House to try to make changes in our substitute to assure that at the end of the session we would not have to do a conference once we had passed the bill. Quite frankly, the Democrats who have been supportive of this effort felt strongly that they did not want to negotiate with us and then end up negotiating with other Republicans in conference. That makes sense. When a deal is cut, one wants it to be a deal. So we brought in the House. As a result, we took 95 percent of our provisions, took about 5 percent of the House provisions, and that now is the bill before us. This bill has been adopted by the House, which has now left town. They will be here in pro forma session on Monday, but practically the House has adjourned.

I will address the generic issue about add-on provisions and then I want to talk about something else. I hope nobody is offended by this, but I have to say I have probably been as strong in speaking out against add-on provisions as anybody. I remind my colleagues that many times at midnight or 2 in the morning we have had seemingly noncontroversial amendments that did all kinds of special projects that we were going to accept. In fact, earlier this Congress I sat in that very room and went through a list of amendments. One amendment would have the Federal Government absorb a billion dollars of liability for a project in one State. Now that is pretty targeted. I am not going to mention the State, and it does not matter.

Any time we negotiate with the House, with 435 Members focused on a very small congressional district, they are going to put in provisions that relate to their district. That has been the nature of the body from the very beginning. It started with the first Congress. It will end with the last Congress. It will never go away.

For the people who say there are extraneous matters in this bill, of all the major bills I have looked at that have been agreed to by the House and Senate, there are probably fewer extraneous matters in this bill than any major bill I have looked at in a very long time. I would like go down the list of amendments being discussed and explain where they came from and why they make sense.

The first one has to do with vaccines. We had a provision in our bill related to vaccines and related to the production of items to be used in the war on terrorism. In every war we have ever fought we have had some form of indemnification for people who produce things used in that war. The provision we had in the Senate bill was a taxpayer indemnification. I did not like that provision, but I had Republican colleagues who were for it. We were trying to get 51 votes. So I took it.

The House had a far better procedure. That was a limit on liability. We did not take all the limits on liability they had in the compromise because we were afraid that might offend powerful special interest groups. But what we did in three of the six items mentioned is we simply applied the principle that has been applied to every war this Nation has ever fought: if you are producing a new vaccine or new weapon or new system for use in that effort, there are some liability limits involved. That is where the item of vaccines came from and where the item of airport screening came from and the item on manufacturers came from.

To suggest this is some special interest sweetheart deal makes good political rhetoric, but the bottom line is it is not true. Not only do the provisions fit, not only are they part of the fabric of the bill, but we had a provision to have the taxpayer pay for the liability risk, and we picked a better, preferable approach, which is to limit liability when we introduce new technology like airport screening and new vaccines. We always had some limit on vaccines because they are risky, but the threat is now serious. It has never been relevant to a war effort before because we have not viewed smallpox as being a weapon. We do now.

In three areas our colleagues have singled out as being special interests—vaccines, airport screening, and manufacturing of items used in the war on terrorism—those items were in the Senate substitute, but they were in it in the form where the taxpayer would have paid. We put in simple limits that make sense and that have been part of every war we ever fought of any significance in American history.

The next item viewed as being extraneous is a change made to the Wellstone amendment. Senator Wellstone introduced an amendment adopted by a voice vote because it was clear it would pass and nobody wanted to vote on it. It said if any company has ever been domiciled in America, throughout American history, and that company is now domiciled somewhere else, that company cannot bid on contracts related to the war on terrorism.

The change made in the amendment is a good government change. It is not an extraneous special interest provision. It is simply a provision that says the President, for national security reasons, has a right to waive this requirement. Why would he do it? First, there might be only one supplier. Second, there might be no competitor if it is not waived, in which case you could end up paying an exorbitant price. Finally, it might actually be better from America's point of view if the company has substantial production in America, even though its home office is somewhere else, for us to buy from that company for national security reasons, for job reasons, and for economic reasons. That provision is hardly an add-on provision. It is, in fact, a good government provision.

Now, let me discuss transportation security rules. We know the provisions and deadlines we mandated for air travel security are so strenuous they cannot be met. Occasionally, we get into these situations where we are debating some deadline and we know the deadline cannot be met and will not be met, no matter what we write into law. What this bill does in a careful and reasoned way is set out a new deadline for meeting them, a deadline that can be met and that is reasonable. Instead of creating a farce in law where we say something will be done by December 31—and we know very well it cannot and will not be done and, as a result, you get no pressure to do it on time—we set a realistic deadline.

Next we have these advisory committees. If there is anything more useless than an advisory committee, I don't know what it is. I am not saying advisory committees cannot be valuable. I am not saying there are not some that are valuable. But we use them so often they become irrelevant. The striking or not striking of these advisory committees has no import, no significance to this bill. If, however, by striking the committee we change the bill and end up killing homeland security because the House has adjourned, then it becomes very significant.

Those are five of the six items that have been listed. The final item is the designation that a university be involved in the process. It is one item where there is an earmark. Seldom do we see a major piece of legislation that we do not have several dozen earmarks.

We are down to a simple question, and I will conclude on this. This is hardly an unknown amendment. We have debated it for several weeks. I know there are strong feelings on the issue, but we had an election, and if anybody got a mandate out of that election on any issue, the President got a mandate: Pass homeland security.

The House passed a bill. They negotiated with us in good faith. Was everyone involved in the negotiations? No. But I didn't help write the Lieberman amendment, either, because it was his amendment. We have bipartisan effort. We have a majority vote. We are down, now, to where an amendment has been proposed that would strike six provisions. I believe if the amendment is adopted, it will jeopardize the bill. The House passed the bill, they have gone home, and they are only going to be back in pro forma session. Five of the six provisions represent important elements in the bill.

To suggest trying to protect and encourage the production and distribution of smallpox vaccine is a special interest favor to a drug company is taking politics beyond the realm of reason.

On airport screening and manufacturer protection, this liability protection is something we have done in every war we fought. This is either a war or it is not a war. Should we start to buy from foreign companies over companies that are producing products in America but the headquarters was here in 1804 and it is now in London? I think we take this Buy America stuff too far. We should buy the best product at the lowest possible price that conforms with our national security. But to give the power to waive it when our national security interest is involved is hardly unreasonable.

Changing the deadline on airport security—every Member of the Senate knows we are not going to meet the deadline. Why not change it?

Finally, advisory committees—who cares? You could strip all of them out and I wouldn't care. But by stripping them out you are risking killing the bill.

So, in the end, this amendment really comes down to a threat to the passage of homeland security. Five of the six provisions are totally defensible. The sixth one is important only if appropriations occur and we are going to pass the appropriations later, so we are not committing to anything.

Contrary to the criticism that there are extraneous materials in this bill, there are fewer extraneous matters in this bill than any major bill I have seen in many years. When you reach an agreement between the two Houses, you are always going to have extraneous material.

So, we will have a vote at 5 o'clock on Monday. First of all, I think it is bad policy to strike these six provisions. I think no legitimate case can be made against four of them. I think one of them is irrelevant—whether we have advisory committees or not. I think the other one is a small item in a big bill and I do not think it is worth risking this bill to make that change. Nor do I believe this issue would ever have been raised, that this amendment would ever have been offered, had this not been an extraordinarily controversial bill to begin with.

So I just have to say, in the big picture, I feel totally comfortable in defending the great majority of these six provisions. I think we need them. On substantive grounds, we should limit liability for new vaccines that may save American lives; for airport screening equipment that may keep our children, our spouses, or ourselves from being killed on airplanes; and from new manufactured items and new weapons we need in the war on terrorism. Those items should not be stricken.

I know special interest groups like the plaintiffs' attorneys are opposed to these provisions. But they are limited, they are narrow, they are reasonable, and the alternative, which we had in the Senate amendment, was to have the taxpayer pay all these damages. So this seems preferable to me.

I urge my colleagues when we vote on Monday to vote against this amendment and, in the process, let us pass this bill in the form it passed the House and, to the maximum extent possible, guarantee that we are successful in seeing this bill become law.

I yield the floor.

The PRESIDING OFFICER (Mr. LEAHY). The senior Senator from West Virginia.

Mr. BYRD. Mr. President, I ask unanimous consent that my name may be added as a cosponsor of the pending Daschle-Lieberman amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator's name is added as cosponsor.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, it is a very special moment on the floor of the

Senate to hear my colleague from Texas defend special provisions being put in legislation—actually to hear him describe the negotiations at the end of the process that result in these special provisions. Because he has been a tireless opponent of provisions that are put in pieces of legislation that in most cases or many cases have nothing to do with the underlying bill. So it is a real treat today to hear my colleague from Texas justify and support and ask Members of the Senate to support these special provisions that were put in the homeland security bill which, in most cases, had nothing at all to do with homeland security.

I must say, with respect to the issues of childhood vaccines liability protection, manufacturer liability protection, transportation security—I would wonder whether these have had hearings. Because we so often hear our colleagues, especially my colleague from Texas, say: You know, someone has put a provision in the bill. There has been no hearing on the bill. I am wondering whether these provisions have had hearings and discussion, and if there were negotiations, as was represented earlier by my colleague, were the parents of autistic children part of the negotiations? Where were the negotiations? Was it late at night? Early in the morning? Was it at the White House, as Congressman ARMEY would have us believe? I don't know the answer to that. But my hope is our colleagues will vote to strip these provisions from the bill.

Homeland security, that is what this legislation is about. Frankly, the way this legislation has been created, it was not under normal circumstances, where you have committee exploration in some detail and some depth of all of these provisions. What has happened is at the eleventh hour a piece of legislation is written and it is placed on desks. It has a rubber band around it. It is four-hundred-and-some pages and I know of very few Members of the Senate who would have read all of it at this point.

But having heard my colleague from Texas, for whom I have great fondness, describe his support for special provisions, especially at the end of his career here in the Senate, I must say that this is a very unusual moment. We will, of course, miss him for a lot of reasons. Among other things, I will miss him because at the end of most bills, he will be the one counted on to stand up and say: I object to these special provisions.

But he seems to have hit a speed bump here at the end of the road, on special provisions. I hope my colleagues will decide they want to vote to strip these provisions out of this bill.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mr. DORGAN. I will, of course, yield.

Mr. BYRD. I will only be a moment. The distinguished Senator from North Dakota, Mr. DORGAN, has referred to the distinguished Senator from Texas, Mr. GRAMM. May I interpose this observation.

Diogenes went about the streets of Athens with a lantern, saying that he was looking—in broad daylight—he was looking for a man, he was seeking a man.

Plato, upon going to Syracuse, was asked by Hieron the—I wouldn't say he was a beneficent dictator. But he was asked why he came to Syracuse.

He said: I came seeking an honest man.

I rarely make the observation as a premise to what I am about to say—I believe the Senator from Texas is not only a man, but is also an honest man. He is very frank and open. He doesn't have to come to the floor with written speeches as I often do. He speaks from the heart and from the head and is very up front. He has always been that way. He explains his reasons. He doesn't hide his reasons. And he will answer your questions and he will answer honestly.

So I pay tribute to the Senator from Texas in that regard. I am glad the distinguished Senator from North Dakota has given me the platform for a moment to say that. We may not agree with the distinguished Senator from Texas. I certainly don't agree with the request for some of the special interest provisions here in this bill. But I do say here is an honest man, as far as I am concerned. He is aboveboard. He will answer your questions. He doesn't need a written speech to do it.

So I say I wish we had more PHIL GRAMMs in the Senate. Excuse me for taking this time. I will say no more, except to thank him for the good relations.

Mr. GRAMM. Will the Senator yield for just 30 seconds? It is said, in the old Confederate Army, that they didn't give medals.

So the single honor was to be mentioned in Robert E. Lee's communiques to Richmond.

Having the distinguished Senator from West Virginia say something about me and to pronounce me a honest man I take in the same way that any private in Hood's brigade would have taken in the mention of their name in one of those communiques.

I love the Senator from West Virginia, as he knows. I think he serves a great purpose in the Senate. In my opinion, he is not always right, but right is not always easy to find. I think it is the give and take that ultimately produces it. Senator Wellstone, in my opinion, was not always right, he did speak honestly and with clarity. And he knew where he was coming from, and you could be for it or against it. I do think that is important to the Senate.

I thank the Senator.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, the comment that not always right but never in doubt may well apply to every Senator. I must say to my colleague from Texas that I intend for a few moments on Monday to say a word about the Senator from Texas, and my colleagues from South Carolina and North Carolina, and others who are leaving the Senate. I don't know if Senator BYRD indicated that he wished there were more such as the Senator from Texas, and he is, indeed, an extraordinarily bright and talented Senator. There are times at midnight when he is objecting to all kinds of provisions that I suspect the Senator from West Virginia and a few others would not wish that we had 25 more exactly in the same mood at midnight on important pieces of legislation. But he and so many others contribute in very significant ways to this body.

This body produces for the American people best when it achieves the best ideas that everyone has to offer. There are times when we end up with the worst rather than the best. I have always thought that politics and our political system is not who is the worst; it is who is the best, who has the best ideas, and who can best manifest those ideas in public debate to achieve a result for this country.

Regrettably, too much of American politics—especially if you are coming off recent campaigns—is not at all about who is the best but rather who is the worst. That, in my judgment, becomes an anvil on the body politic. John F. Kennedy used to say with some beautiful prose that mother kind of hopes her child might grow up to be President, as long as they don't have to become active in politics. But, of course, politics is the way we make decisions in America.

I am enormously proud of this political system of the participation by Republicans, Democrats, Conservatives, Liberals, Independents, and moderates. I think all bring a great deal to the public debate and discussion, and strengthen our country.

Having said that, on Monday I will say a few words about our colleagues who will be leaving us—Senator CLELAND, Senator CARNAHAN, and others who have been mentioned on the Republican side. I believe that it is a great privilege to serve with each and every one of them, even though we from time to time have our differences. It is a remarkable privilege to be here and to serve with them.

I wish to make a point about homeland security that is not a part of this bill but I think a part of something that is very important. To underscore how important it is, I would note that we have been told by the head of the CIA that the threat of attack by al-

Qaida and other terrorists now is as high as it was the day before September 11.

On October 25 of this year, a task force headed by former Senators Warren Rudman and Gary Hart issued a report on America's homeland security. That report was entitled "America Still Unprepared, America Still In Danger." It was a bipartisan task force sponsored by the Council on Foreign Relations, which included former Secretaries of State, Warren Christopher, George Shultz, ADM William Crow, Retired, former Chairman of the Joint Chiefs of Staff.

They found that 1 year after the September 11 attacks America remains dangerously unprepared for another terrorist attack.

I specifically wish to talk about one of their concerns raised in this report that I read, which gave me great personal concern.

In the report, the task force concluded that the 650,000 local and State law enforcement officials around the country "continue to operate in a virtual intelligence vacuum without access to the terrorist watch list provided by the U.S. Department of State to Immigration and consular officials."

Our government has a watchlist to identify foreign nationals suspected of ties to terrorist organizations. That watch list is at the State Department. It is provided to the Immigration Department and to consular officials. It sets out the names of people whom we ought to watch because they are known terrorists. They are people who associate with terrorists; they are a terrorist threat to this country.

Guess what. That watch list is unavailable to state and local law enforcement officials around this country.

Thirty-six hours before the September 11 attack, one of the hijackers was pulled over by a Maryland State police trooper for driving 90 miles an hour on Interstate 95. The hijacker's name was Ziad Jarrah. He was a 26-year-old Lebanese national. He was one of the key organizers of the al-Qaida terrorist cell formed in Germany 3 years ago. He shared an apartment with Mohammed Atta. And he was at the controls of flight 93 when it crashed in a rural area of Pennsylvania.

When that hijacker—or at that point the potential hijacker—was pulled over by the Maryland trooper, he was driving a car rented under his own name.

There are a couple of things with respect to this issue that are interesting.

No. 1, his name was not on the watch list.

No. 2, had it been on the watch list, it wouldn't have mattered because a highway patrolman or a city police officer has no access to that watch list. The officer can run the name of an individual through the NCIC computer and find out if that individual has an outstanding warrant, or if there are law enforcement warnings about him but the officer has no way of knowing if the individual is on the State Department terrorism watch list.

The State Department watch list has the names of 80,000 terrorists or suspected terrorists on it. And 2,000 names are being added each and every month. The watch list is drawn from a good many area intelligence agencies. And as we speak, there is no way for law enforcement authorities to access the database.

Let me read in detail an excerpt from the Hart-Rudman report:

> 'With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the Federal Bureau of Investigation. This burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void. When it comes to combating terrorism, the police officers on the beat are effectively operating deaf, dumb, and blind. Terrorist watch lists provided by the U.S. Department of State to immigration and consular officials are still out of bounds for state and local police. In the interim period as information sharing issues get worked out, known terrorists will be free to move about to plan and execute their attack.'

This comes from the report of former Senators Hart and Rudman, entitled "America Still Unprepared, America Still In Danger."

I asked my staff—after I read this in the Report—to contact the task force. The task force, through my staff, has told me that they are not aware of any administration initiative to fix the problem. This, despite the fact that this is a top recommendation of a blue-ribbon task force.

So I asked the Congressional Research Service to contact the White House Office of Homeland Security, the Department of State, and the Department of Justice. They have done this in recent days.

My understanding is that after I made these inquiries the White House convened a meeting with State and Justice officials, and they are now apparently looking into ways to integrate the State Department terrorist watch list—called the "Tipoff" database—with the National Crime Information Center, which is accessible by State and local law enforcement authorities.

This effort must be expedited. Let me quote from the article in the Washington Post of just yesterday:

> U.S. intelligence officials, increasingly confident that al Qaeda leader Osama bin Laden is the speaker on a new audiotape released this week, said yesterday that the message was part of a disturbing pattern indicating that terrorist groups may be planning a new wave of attacks on Western targets.
>
> Even before the purported bin Laden tape surfaced on the al-Jazeera satellite network on Tuesday, the CIA, FBI and National Security Agency had detected a significant spike in intelligence "chatter" over the previous 10 days that strongly indicated new assaults are being planned, officials in U.S. intelligence agencies said.

That is from the Washington Post.

They continue to say:

> The amount of alarming information was approaching the volume seen in the weeks before the Sept. 11, 2001, attacks in Washington and New York, and again in the middle of last month following a wave of attacks on overseas targets, some sources said.

The point is this: Homeland security and homeland protection rests, yes, with our intelligence-gathering agencies, yes, with the FBI, the CIA, and all of the officials who are working very hard, spending a lot of hours doing the best job they can to make it work. But beyond that, it also rests with cooperation with all of the local responders, especially local law enforcement officials across this country. There are 650,000 of them.

If, today, a terrorist drives through a rural county in North Dakota this afternoon, or a rural county in Vermont, or Kentucky, or in the middle of New York City, and is picked up for a traffic violation, and is a known terrorist on a watch list—guess what—that highway patrolman, that city police officer is going to run that terrorist's name through the database at the NCIC, and they are going to get no warning that what they have on their hands is a terrorist in the car in front of them. There would be no warning at all because they cannot access the watch list.

If we have a watch list in which we have identified the names of terrorists and suspected terrorists, it makes no sense at all to withhold that information from law enforcement officers, who every single day climb out of bed and go protect this country on America's streets, on our highways. They are our eyes and ears. They are also watching out for the security of this country. They ought to have access to that watch list.

Again, let me say, this was the No. 1 recommendation in the report offered by former Senator Rudman and former Senator Hart. The report, which I would urge everyone to read, is entitled: "America Still Unprepared—America Still in Danger." These are former Secretaries of State, former Senators, Republicans, Democrats, evaluating what needs to be done to protect this country for this country's security.

I want to go back to read just a portion of the report. The task force had this to say:

> With just fifty-six field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the FBI. The burden could and should be shared with 650,000 local, county, and state law enforcement officers, but they clearly cannot lend a hand in a counterterrorism information void.

Yesterday, I was on the phone with a community in North Dakota, and the county sheriff was there in the room, and we talked by conference phone. We talked about this issue. He is not too far from the Canadian border. If one of his deputies or that county's sheriff stops a car on a rural highway, and it turns out to be a terrorist driving a rented car, he is not going to know because he does not have access to the watch list, he does not have access to the information. The FBI will not know, the CIA will not know, no one will know that terrorist was driving a car on that rural road because the person who apprehended him—the county sheriff, the city police officer—had no access to the information the State Department has, the consular officials have, the CIA has. It is not that the information does not exist, it is that it is not shared with local law enforcement officers across this country for the purpose of securing this country's homeland.

So this was the task force's top recommendation. This was not No. 5 or No. 10, it was the top recommendation of this group, a group that included several former Secretaries of State under Republican and Democratic administrations, Republican and Democratic former Senators, and others.

So I implore the President and the folks who are apparently now working on this to do everything they can in this regard. When a trooper stops someone for speeding tomorrow, or the day after tomorrow, or the day after that, and the individual that was pulled over is a terrorist, I want that trooper to realize who he has in that car—for the trooper's protection, and for the protection of this country.

Let me talk briefly about one other piece of homeland security, and we addressed part of it yesterday.

I have told my colleagues previously, I was recently at a port in Seattle. I don't know much about ports because I come from a landlocked State. I don't come from a State near an ocean. So I went down to see how the ports worked. They showed me all these ships that come in with all these containers.

I asked: What is in all these containers? They said: We have all these bills of lading and invoices, so we know what is in them. I asked: Can I see? And they showed me some containers they were opening.

They showed me a container from Poland that had frozen broccoli in it in 100-pound bags. They pulled out a bag of frozen broccoli and cut it open. Sure enough, it was frozen broccoli. I asked: What is in the middle of the container? I know what is in this bag. And they said: Well, we just know what's on the invoice.

We are spending $7 to $8 billion to see if we can stop an incoming missile because we are very afraid a terrorist group might get hold of an ICBM. But it is more likely a terrorist group might put a weapon of mass destruction in a container on a container ship that comes in at 3 miles an hour pulling up to a dock in New York City or Los Angeles.

We have 5.7 million containers every year coming into our ports. So 5.7 million containers every single year; 100,000 are inspected, 5.6 million are not. Is that a matter of homeland security? You bet your life it is.

A fellow in the Middle East—many of you read about this fellow—decided he was going to ship himself to Toronto and then come into this country. He had a GPS, a computer, a toilet, fresh water, a cot, all in a container loaded on a container ship, shipping himself to Toronto, Canada, with the intention, apparently, of coming into this country.

Do we need to be concerned about these things? You better believe it. And many of these issues, even if we passed a homeland security bill, will not be resolved.

The first issue I mentioned today is not resolved, and will not be resolved with the passage Monday of this bill: The fact that 650,000 local law enforcement authorities have no ability to access a watch list to determine who is a terrorist and who isn't. And 5.6 million uninspected containers coming into our ports will not be inspected next Tuesday when the homeland security bill is passed.

So my point is, there is much left to be done for those of us—and I am sure that is all of us—who care deeply about homeland security in this country.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York was on his feet. I know the Senator from Tennessee is waiting.

Mr. SCHUMER. If the Senator will yield, I was waiting behind the Senator from North Dakota, Mr. DORGAN. If we are going back and forth—I only want to speak for about 10 minutes.

Mr. FRIST. Mr. President, I sought recognition first.

The PRESIDING OFFICER. There is not a particular order. The custom is usually to go back and forth from side to side. I am wondering if we might recognize the Senator from Tennessee, to follow the normal custom.

Mr. FRIST. Normal procedure would be to turn to me?

The PRESIDING OFFICER. I am sorry. I heard the Senator from New York, but if the Senator from Tennessee says he sought recognition earlier, then I will apologize for not hearing him.

Mr. FRIST. Mr. President, I would be happy to yield, although I felt I was—

The PRESIDING OFFICER. The Chair recognizes the Senator from Tennessee.

Mr. FRIST. Mr. President, I will yield 10 minutes to the Senator from New York. Is that enough time?

Mr. SCHUMER. I appreciate it. I don't want to break the protocol.

The PRESIDING OFFICER. I am prepared to recognize the Senator from Tennessee.

The Senator from New York.

Mr. SCHUMER. I thank the Senator from Tennessee.

The PRESIDING OFFICER. I thank both my colleagues for helping the Chair out of a difficult situation.

Mr. SCHUMER. Let us hope and pray that is the Chair's most difficult situation in the upcoming months.

I thank the Senator from Tennessee for allowing me to speak. I will try to be brief. I would like to talk about two related subjects in this bill: What is in the bill and what is not in the bill.

What is in the bill, aside from the original homeland security provisions which we have been debating for a very long time, are little pieces of legislation unrelated to homeland security, none of which could stand the scrutiny of individual debate. In other words, if any of these little provisions were put in separate legislation and brought to the floor of the Senate, my guess is they would be overwhelmingly defeated.

For those to be in homeland security right now, for those pieces of pork, for those rifleshot pieces of legislation that benefit one company to be in this bill, particularly after the President made such a fuss about keeping this bill the way he wanted it without any other provisions in it, is very wrong.

I hope we will support the Lieberman amendment. There are a few that are particularly galling to me. Probably the worst is a provision in this bill that was in the original bill that the House just took out that said, if you go overseas to avoid paying taxes, the original provision said, you can't bid on homeland security contracts. This takes it out. It says to companies that move overseas that they can benefit from the homeland security issues. I find that very troubling.

There is a provision that exempts one company, Eli Lilly, from any liability against a drug that is already subject to many lawsuits because of its mercury levels. That kind of provision would never pass standing on its own, and it was slipped in in the dark of night by the other body. We should not countenance it here.

There are provisions that redebate the tort law. We will have plenty of debates about tort law next year; I am sure of that. But to put them in this legislation with no debate would make the Founding Fathers gag.

We should stop doing these things, but particularly in a homeland security bill that was so subject, in the election, to a debate that the President wanted it his way or no way and led, at least if you believe some of the pundits, to some of our colleagues losing their elections because they wanted it a slightly different way. Now to put these sometimes pork, sometimes lard, sometimes extraneous provisions in this legislation is unfair, is wrong. We should support the Lieberman amendment.

I also would like to talk about what is not in the bill. This bill is a reorganization of agencies. All things being equal, it is better than not having it. But anyone who thinks, as my colleague from North Dakota has outlined, that this is going to make us safer, this is going to do the job, is sadly mistaken. I will support the legislation because it is a little bit better than the present situation. But I am worried that then we will think we have done all we can on homeland security.

This administration is letting our Nation down on domestic security—not by design but by effect—when they say that nothing can be added to homeland security that costs money. I don't get it. We are willing to spend $80 billion on a war in Iraq which I have supported, but we are not willing to spend $250 million to prevent nuclear weapons from being smuggled into our country. Where is the logic there?

Does anyone think that rearranging agencies is going to get the INS to have better computers or the Coast Guard to better defend our borders? No. And this administration is going to run up against a serious problem if it continues to have the view that we cannot spend a nickel on domestic security. The analogy, the comparison is stark. The military gets all the money it needs—it should—but our domestic agencies, both Federal and State and local, that deal with homeland security get virtually no dollars at all.

I was told that my provision, which had bipartisan support—Senator LIEBERMAN, Senator THOMPSON, Senator MCCAIN, Senator HOLLINGS—that would have enabled us to have nuclear detection devices attached to the cranes that load and unload containers and could detect a nuclear weapon that would be smuggled in, had to be out of the bill because it cost money. I find that to be sad. I find that to be troubling in the sense that we are letting our national guard down. If we were under such spending constraints when it came to the rest of the parts of the war on terrorism, I would say OK. But I don't understand why we can spend all the money we want overseas but when we come to the water's edge, even carefully thought out small amounts of money are not allowed.

This bill is problematic for what was just added in and what was not put in. It is a little bit better than nothing. It is a baby step in the direction of better homeland security because our agencies do have to be reorganized. But I hope and pray that not only we take out the extraneous provisions that should be debated another day, but that we don't make the mistake that this reorganization bill is doing what we need for homeland security.

With that, I yield the remainder of my time and once again thank my colleague from Tennessee for his graciousness in allowing me to speak. I will now exit for the shuttle to New York.

The PRESIDING OFFICER. The distinguished Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, I rise to speak in opposition to the Lieberman amendment and will spend a little bit of time over the next probably 30 minutes going to the substance of what this amendment does, talking policy, but also talking to the impact that passing the Lieberman amendment would have on our homeland security.

The bottom line is that I believe striking the provisions, which is what the Lieberman amendment does—it pulls out certain provisions from the underlying bill—will put the people of our Nation at greater risk, when we are talking about homeland security and safety and protection of individuals, of families, of children. That is a broad statement. It is a bold statement for me to make. But over the next several minutes I want to give you the substance of it.

A lot of people have said these provisions having to do with vaccines and smallpox are one-company provisions. The second argument is that in some way these provisions cut off the rights of individuals to go to court. We have heard statements by the proponents that one agent, one preservative, causes autism and thus in some way the underlying bill will hurt families with children with autism.

As a scientist, as a physician, as someone who is very familiar with the provisions that were placed in the homeland security bill, I have a certain obligation to walk my colleagues and the American people who are listening through what the Lieberman provision would do by stripping out the smallpox provisions, by stripping out the vaccine provisions.

Let me begin by saying we are a nation at risk. We are at risk from nuclear weapons and from chemical weapons; we know. But when it really comes to what could potentially happen to our homeland—remember this is homeland defense that we are talking about—I would argue that the greatest risk for a weapon of mass destruction to be microorganisms, to be anthrax, which terrorized the Nation, when we don't even think, we don't know, we don't think it was used by a State, or the introduction of smallpox, which we know is a weapon of mass destruction, if introduced into a population that is unprepared, that has not been vaccinated. Vaccine is the front line for people at risk from anthrax. It is the front line for people at risk from smallpox. That means your children. That means your spouse. That means your grandparents. That means your family.

So we must not do anything and the LIEBERMAN amendment would do this—to increase the barrier for you to be protected.

Iraq has been mentioned. Most of my colleagues know that Iraq had one of the most robust biological weapons programs in the history of the world. It loaded anthrax, it loaded botulism toxin on missiles during the gulf war, inserted it into the warheads of these missiles. We don't know about smallpox. We didn't know that refrigerators had been found in Iraq that said "smallpox" across them, but we do know this robust biological weapons program is the foundation for a program of weapons of mass destruction.

The interesting thing about these microorganisms, these viruses, these bacteria, is that you don't have to have a big ship out there to send in a missile. We know that once you put smallpox in a society, it will travel through our schools, it will travel through our businesses and through our homes, and the only defense we have—the only defense, in terms of a medical treatment, is that vaccine. That is why, when we talk vaccines and when we talk smallpox, it is incumbent upon us to have those provisions in this bill.

I will begin with smallpox because it is the one that, a week from now, can be a problem. What about right now, or tomorrow morning, if we hear of three or four smallpox cases in the country? What actually happens at that standpoint? Smallpox is a disease that is one of the most deadly infectious diseases. There is a 30-percent chance, to anybody who gets it, that they are going to die. If three people are here, one of those three will die if they get smallpox.

What is the treatment? The only treatment—real treatment—is to get that vaccine on your arm within 3 days. Some people say 4 days. I personally think it is 3. Some say 5 to 10, but if your child has smallpox, not from when the manifestations start appearing but from the time of actual contact, and that entails having a vaccine out there—say 300 million doses, because we know smallpox in an unprotected population, which we are, knows no barriers. Right now, if I had smallpox lesions within my mouth, people around these four or five desks probably would already be infected. The only protection is the vaccine itself. The only treatment for smallpox—and this isn't true with all biological agents, but the only treatment is the vaccine within 3 days.

The administration has a policy, that I agree with, that basically is, if there is an outbreak, or a case, you can inoculate people in that area. That is a great policy. We don't need to mass-vaccinate everybody. What about right now?

People listening, saying we are a nation at risk—Iraq has had biological weapons programs. We know Saddam Hussein is a mass killer, a serial killer, who kills his own people and other people. He hates the United States. We know the most powerful weapon of mass destruction is smallpox, and we know there is a refrigerator sitting there that has "smallpox" written on it.

What if I wanted to get the vaccine now, just in case? Right now, you cannot get it. I argue that you should be able to get it. But that is not yet the policy of the United States. I think with informed consent, knowing the side effects and knowing what the advantages could be—lifesaving—weighing the relative risk—what about if a case breaks out in the Northwest, say Oregon, tomorrow? If you wanted to get the vaccine and you live in Nashville, TN, you could not get it. We ought to change that. That is not what we are talking about today, but you see that vaccines are a front line for homeland security.

I don't know what is going to happen in Iraq; none of us knows. If we come back and deal with this 6 months from now, or a year from now, or 2 years from now, we are inadequately protecting the American people. I don't want to overstate it, but that is my belief.

If smallpox hits here, right now, we are inadequately protected. The Lieberman legislation would strip out a provision, within 2 days or 3 days or 4 days, that would make us more adequately protected as a nation.

The threat of liability—this is where the other vaccine provisions are important—should not become a barrier to the protection of the American people. I will repeat that. The threat of liability should not become a barrier to the protection of the American people.

Then you go back to the question, What is this threat of liability? I will boil it down and use smallpox as an example. Smallpox can hit here tomorrow or in 30 days or in 60 days from now or in 90 days or maybe never. We all pray it never hits. We have 300 million doses of vaccine. It is not all licensed yet, but it is good vaccine and I have utmost confidence in it. It is a risky vaccine. The childhood vaccines we use, which we are inoculated with—even the anthrax vaccine that potentially has certain side effects—if you look at these, I put smallpox among the most risky because we know the side effects are that about 1 in a million people would die. If you vaccinated 300 million people, about 300 would die. Ten times that number would have serious side effects—maybe encephalitis or many others that are life threatening. As a matter of fact, probably 30, 40 times that many would have a bad rash, many of which would cause hospitalization. So it is a vaccine, in medical terms, with more potential side effects than others.

What would you say if there were an outbreak tomorrow? You would call in nurses and public health officials, and pediatricians and other doctors, and you would say, as part of the American response to bioterrorism and the use of bioterrorist agents or microorganisms as weapons of mass destruction, you need to get this vaccine to as many people as you can within 3 days. It could be maybe 100 or maybe 1,000, or 10,000; and in a city such as New York, it could be a million easily within 3 days. Okay, you have the vaccine. You have willing health care providers. I think of myself as a physician. Everybody could be mobilized to do that. You are basically saying, as American policy: You need to give that vaccine. It has side effects, but we are not going to protect you in the event there is a side effect—death or encephalitis. We are not going to protect you in any shape or form, although you are fulfilling the mandate and the policy, the emergency response of the American people.

Why would they not do that? Because of the lack of protection from skyrocketing lawsuits. I have a great fear—and I don't want to say I know for sure, but I have a fear in talking to health care providers and to the nurses who recognize, given that vaccine is important to life saving, but at the same time is subjected to these unlimited lawsuits with punitive damages—they just might say: I cannot subject myself to giving a thousand of those doses, even looking at the statistics. That is the problem, that is why the smallpox provision has to be in there.

We have had so many people make all these statements, but nobody has been to the substance. The bill extends the Federal Tort Claims Act—the FTCA—protection to any person, such as a doctor, or a pediatrician, or a nurse, or somebody who is qualified to be giving that inoculation, lifesaving inoculation, in your arm. It provides them a protection of the Federal Tort Claims Act.

What is important there—people say if that is the case, you cannot sue. Well, that is simply not true. It basically says that the Federal Government is going to be on your side and will defend you in any lawsuit and the Federal Government will pay the damages. It does not deny adequate, just, fair compensation if there is a side effect, but what it does do is you are going to have somebody behind you; namely, the Federal Government, to pay you damages. It does say you go to Federal court. People say Federal courts cannot do this. In truth, we all know Federal courts can do that.

It is important to point out that in Federal court, the rules that are actually used are going to be applicable to that State or according to State law. Thus, you can still sue, but the Federal Government pays. A lot of people say you should be able to punish anybody—punish that nurse who put that vaccine in your arm—so let's have punitive damages on top of compensation. The underlying bill says you get adequate, just, fair compensation. You are defended by the Federal Government and they will pay you, but there is no punitive damages component, which makes sense because, remember, that nurse is putting that inoculation on your arm to save your life under a plan put forward by our Government, probably in response to an emergency.

Over time, I think we need much more balance in terms of the overall provisions. It was not my idea, although I support these provisions strongly, to take these specific provisions out and to put them into the bill. So over time, we need to develop a more comprehensive policy to make sure we have both a full range of vaccines developed, that we have appropriate countermeasures, and if somebody is harmed by a vaccine, there is fair compensation.

We need to come back and visit this in a more comprehensive way as we go forward. I will add, though, there is some sense of urgency to this given the threats today.

The issue of what is front line is important because the use of germs, microorganisms, and bacteria is new to the American people as weapons of mass destruction. It is causing us to say we understand nuclear weapons, gas, but what about these organisms that can wind their way through a society? What is the front line?

That is why vaccines are absolutely important because they become the front line, and that is why we address vaccines in the homeland security bill, especially since we are at risk today. One cannot turn on a television or read a newspaper without learning of this enhanced risk, this higher risk.

Let me back out of this broader issue of vaccine. Smallpox is one case. It happens to be a virus. What about the plague which wiped out a third of Europe? What about anthrax? We have an old vaccine. The vaccine has to be administered over and over, so we need newer vaccine developed for anthrax.

What about Ebola? About 3 months ago, the National Institutes of Health said in their response to bioterrorism that one of its major priorities is going to be the development of a vaccine for the Ebola virus. That makes sense because we know that other states in their offensive biological weapons programs—and there are 12 offensive biological weapons programs outside the United States; people need to know that—there has been a linkage of smallpox with the Ebola virus. We know Ebola has a 90-percent mortality rate; smallpox has a 30-percent mortality rate. We should at least be thinking of a front line there which means a new vaccine. NIH said 4 months ago—and most people do not even know it—has as one of their major initiatives development of an Ebola vaccine. Why? Because intelligence tell us people have attempted to link viruses. Thus, we need to have an effective response system in terms of the development of vaccine.

Research is good. NIH is doing research. But unless we have manufacturers in the field manufacturing vaccines, we can have the greatest research in the world and know how to do it, but unless we can produce it and produce it quickly, the know-how does not do us any good because we are not going to be able to develop the vaccine to put on your arm and protect you from the Ebola virus.

There are provisions in this bill that provide smallpox as a microcosm, but in the macro sense, there are other vaccines. Every year—and the distinguished Presiding Officer knows this—we hear about these shortages of vaccines about every 6 months. People ask: Why are there these shortages? It is multifactorial, and we have to address that.

One of the issues we know is this unlimited liability. Think back to the smallpox vaccine. It is put on your arm, and you have a bad side effect. Somebody is going to sue for that side effect. There are no protections today. In the same sense, the manufacturers, the pharmaceutical companies, which is very popular for people to beat upon aggressively these days, the manufacturing companies, the pharmaceutical companies are the only ones that can make the smallpox vaccine, the front line for that weapon of mass destruction, for the Ebola virus.

We can, through NIH, promote the research, but only a manufacturing firm, a pharmaceutical firm can make the Ebola vaccine. There used to be in the eighties 12 pharmaceutical companies making vaccines. Then it dwindled to 10, then to 8, then to 7, then to 6, then to 5, and there are now only 4 vaccine manufacturers licensed to sell vaccines in the United States, and only two of these are American companies.

Why is that the case? Why would they stand out totally exposed for making a medicine that is lifesaving, yes, but one that with one lawsuit can wipe out their whole development process, their whole manufacturing process today?

That is an issue that has to be developed, and the urgency of it is the fact we are a nation at risk from biological agents, and there are 12 states that have offensive biological weapons programs, and we are today unprotected.

On the liability issue, people have said one preservative causes autism. They mentioned this on the floor. That is just wrong. The Institute of Medicine has made it very clear that there is no established causal relationship between that preservative and autism. I will and others need to go back and look at the data, but the Institute of Medicine has basically said that to date. We need more research.

I was one of the primary authors of the autism research bill. We need to look at it again. I want to assure families in the country that those statements made on the floor of the Senate are wrong. There is nothing in the underlying bill that slows down research for autism or just compensation, if there is an association between autism and a certain preservative.

It is interesting, with these vaccines being sort of inherently risky, with the risk of liability costs driven up so high because it is easy—it is not easy, but we can have lawyers coming in and starting these lawsuits.

In the 1980s, this body started the Vaccine Injury Compensation Program. They did this through the National Children's Vaccine Injury Act. It was passed in 1986, I believe. The whole purpose of this program is to provide injured patients compensation while attempting to control litigation, based on the recognition that vaccines will always be an easy target because they have inherent side effects and everybody gets vaccines—everybody in this body has been vaccinated. Everybody listening hopefully has been vaccinated. We all depend on those vaccines. That at the end of the day, since everybody gets it and there are certain side effects, that if you want to make a lot of money you can go out and start getting these people and start creating these lawsuits. That is why in the mid-1980s we said we have to put all of this together and look at it in a reasoned way, a way that is efficient, a way that is fair to people broadly. The vaccine injury compensation program is essentially a no-fault alternative to the traditional tort system in this whole area of vaccines. It has been a key component of stabilizing the vaccine market, of not driving even those last four companies—or the last two in this country—out of making vaccines. It has a streamlined process. It puts down a less adversarial alternative so not everybody is going to court and spending weeks, months, and in some cases years trying to have their cases actually looked at.

It encourages research and development of new and safer vaccines, and it provides the appropriate liability protection to that nurse who is putting that inoculation, that vaccine, in your arm, as well as the health care providers, the facilities, and the manufacturers.

What is in the underlying bill is a narrow set of provisions that were actually taken from a bill that I have studied for the last 3 years and that I introduced this Congress, that should eventually be passed in this comprehensive form, but the provisions have been taken out and included in the underlying bill I feel strongly about and I will continue to talk to my colleagues about them individually as they understand why those provisions were included.

I will say that the provisions that are in the bill are far narrower than what I think we actually need to do to have this balance in our liability system so we can continue to develop vaccines to protect our children, the current generation. In the event there is a bioterror attack a week from now, a month from now, a year from now, we will be adequately prepared.

The Lieberman proposal would strike these sections that are in the underlying bill. And all of them merely restate to some extent what was intended by Congress. This is a clarification, a restatement. In 1986, when it passed the bill, the underlying bill called the National Children's Vaccine Injury Act, what that act did was to create an administrative mechanism by which those children who have a serious side effect from a vaccine can receive compensation without ever having to prove in court a vaccine caused their particular injury. So you do not have to go to court. You can go to this new administrative body.

There are a handful of people who do not believe in vaccines. They just say all vaccines are bad. Most know that they are invaluable and have spared our children from many of the diseases that haunt us. Thus, when you have that which we all really fully understand today, that they are a protection for our children, plus this new threat of bioterror, that is why you link it to homeland security and that is why it is important in this bill. We know we must preserve that manufacturing base so with the research that is done, yes, by the pharmaceutical companies, but also maybe even more importantly by the NIH, we can actually manufacture those vaccines.

Section 171 clarifies that the components and ingredients of a vaccine listed in the vaccine's product license application and label are not contaminants or adulterants. Importantly, the advisory committee, from which all of this essentially was taken, is an advisory committee called the Advisory Commission on Childhood Vaccines. They unanimously concur with this particular provision.

The next section, section 1716, adds a definition of "vaccine" to the Public Health Service Act since that term was not defined at all in the initial legislation back in 1986. This section states the obvious—that the term "vaccine" includes all components and ingredients listed in the vaccine's product license application and product label. Again, the Advisory Commission on Childhood Vaccines recommended the appropriate modification which is a part of the underlying homeland security bill, again, which the Lieberman amendment would strip out.

Sections 1715 and 1716 restate the original intent of the law that a vaccine is all the ingredients and components in the product which are approved by the FDA. This is an important one because there have been some allegations that all this was stuck in for a single company. The fact is that there are presently more than 150 of these lawsuits against the four vaccine manufacturers, as well as pediatricians, children's hospitals, state health departments and other healthcare providers. From my comments, one can see that it is not a single company. We are talking about a huge issue that reflects back to the protection of our families and our Nation.

Section 1714 clarifies that the term "manufacturer," under the VICP, includes any corporation, organization, or institution that manufactures, imports, processes or distributes any vaccine on the vaccine injury table, including any component or ingredient of such vaccine. The Advisory Commission on Childhood Vaccines, again, an independent body making specific recommendations—it is composed, by the way, of trial lawyers, medical providers, and injured parties—unanimously supported this provision. This provision restates Congressional intent to ensure that any lawsuit alleging vaccine-related injury or death follow the same process and groundrules regardless of whether it is against the final manufacturer, a physician or hospital, or a component or ingredient manufacturer and addresses those lawsuits seeking to circumvent the Vaccine Injury Compensation Program.

I also want to point out that these provisions are supported by the American Academy of Pediatrics, and I will talk more about that in a minute.

I want to run through a couple of other specific ones, again because nobody has really talked to the substance underlying what this amendment would mean.

The congressional intent very much was to encompass the manufacturers of component materials of vaccines in the definition of "vaccine manufacturer," and these provisions—what they do is clarify this intent. They restate the congressional intent as part of the Vaccine Injury Compensation Act. The courts are presently correctly ruling that these amendments—what they are doing is part of that congressional intent. The courts have correctly rejected the contention that a component or ingredient of an FDA-approved vaccine can also be considered substitute an adulterant or contaminant.

Among these decisions, the court charged with adjudicating the vaccine injury compensation program recently concluded that the language and legislative history of the National Children's Vaccine Injury Act demonstrated that claims relating to components of covered vaccines are plainly subject to the act. As to the misconceptions that have been presented on the floor, No. 1, these provisions do not prevent patients from suing in court. The statement has been made that it takes away rights. It does not. It does not prevent patients from suing in court. Instead it merely requires, as is required under current law, claimants must first go through the compensation program designed in the 1980s which has worked effectively but does need to be modified, as is being carried out in these provisions. They maintain their right to pursue a court case.

One can go through that program itself, the administrative program, in a timely way. If someone does not agree with the compensation that they put forward, they can go to court. I will say that without this clarification, litigation outside the program—and that is what is happening today—will continue and the supply of vaccines could well be jeopardized as we have these huge lawsuits.

One lawsuit today is $30 billion. That is what they are looking for in one lawsuit, $30 billion. The whole vaccine industry is only $5 billion. There are about 150 of these lawsuits out there today. Those who desire to bring litigation outside the compensation program will continue to sue the manufacturers of components of vaccines and ultimately that is going to result in the manufacturers of the products themselves simply walking away and not making vaccines and getting out of the vaccine business. Then who is going to make the vaccine for the Ebola virus, which our Federal Government, through intelligence, has identified as one of the six agents of which we are at risk, one of the six agents against which other nations have had offensive biological weapons programs.

If litigation continues against component manufacturers outside of the vaccine injury compensation program, those companies that make the components simply are going to be unnecessary to provide the vaccine or those people who make FDA-approved components and give them to the vaccine manufacturers will stop making those components. We saw that in the mid-1990s when raw material suppliers refused to sell the necessary components to the medical device manufacturers. People just stopped making materials there because of this fear of litigation. Ultimately there it took an act of Congress to protect those component manufacturers, the people making the pieces that go, for example, into a pacemaker or, in this case, it would be a component of the vaccine. It took an act of Congress to prevent a shortage back then of pacemakers and of other vital medical devices.

These provisions that are in the underlying bill have been unanimously supported by the Advisory Commission on Childhood Vaccines. As I mentioned, that includes injured patients, trial lawyers, and an expert group of patients as well. They have been endorsed by the American Academy of Pediatrics.

I ask unanimous consent to have a portion of letters from the Advisory Commission on Childhood Vaccines and the American Academy of Pediatrics printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ADVISORY COMMISSION
ON CHILDHOOD, VACCINES,
Alexandria, VA, June 19, 2002.

Hon. TOMMY G. THOMPSON,
Secretary of Health and Human Services,
Washington, DC

DEAR SECRETARY THOMPSON: The Advisory Commission on Childhood Vaccines (ACCV) is authorized under Section 2119 of the Public Health Service Act to advise the Secretary of Health and Human Services (the Secretary) on the implementation of the National Vaccine Injury Compensation Program (VICP). At the June 6 meeting, the ACCV discussed in detail the need for urgent modifications of the VICP and the necessity to ensure the viability of the Vaccine Safety Datalink Project. Actions are needed to address a variety of concerns that directly impact the VICP.

BACKGROUND

As of May 2002, more than 50 individual and class action lawsuits with millions of plaintiffs alleging potential thimerosal-related injuries from childhood vaccines have been filed in state and federal courts. The plaintiffs in these lawsuits argue that their claims are not governed by the VICP because they allege that thimerosal is an "adulterant" to, and not a part of the vaccines. *These claims have been filed against vaccine companies and, in some instances, against health care providers. Thimerosal, as you know, is approved for use by the Food and Drug Administration and is part of the vaccine formulation when licensed; hence clarification is needed to direct these claims to the VICP before tort remedies can be pursued.*

Concurrently, some 500 incomplete cases have been filed as placeholders with the VICP alleging that thimerosal (mercury) has caused vaccine-related injuries. The medical records that the Act requires upon filing do not accompany many VICP petitions, including these cases. This causes problems because of the time constraints spelled out in the Act. The presiding special master must generally resolve a case within 240 days (this period excludes any period of suspension and any period during which a petition is being remanded). If the special master fails to issue a decision within such time, the petitioner may withdraw from the VICP and pursue outside litigation without affording respondent or the special master any meaningful opportunity to evaluate the VICP claim.

THE ACCV BELIEVES THIS DISTURBING NEW TREND IN CIVIL LITIGATION COULD CIRCUMVENT THE ACT

We submit the following recommendation for action:

RECOMMENDATION ON CERTIFICATION OF COMPLETENESS OF PETITIONS

The ACCV recommends that the Secretary propose legislation to amend the National

Childhood Vaccine Injury Act of 1986, as amended, to require special masters to issue a certificate of completeness once a determination is made that a petition is complete in accordance with section 2111. The time period described in sections 2112(g) and 2121(b) of the Public Health Service Act would begin from the date the special master issues a certification of completeness. This would allow for a period of 240 days (excluding any period of suspension of any time the petition is on remand) for the parties to consider all of the evidence and for a decision to be reached. If the special master fails to issue a decision within this time period, calculated from the date the certificate of completeness is issued, the petitioner could withdraw from the VICP and pursue outside litigation.

SENATOR FRIST'S BILL

In addition to the previous request, we also ask that you consider our recommendations regarding legislation introduced by Sen. William Frist (R–TN), "Improved Vaccine Affordability and Availability Act" (S. 2053). The ACCV concentrated on Title II of the bill that has provisions to ensure that all claims for a vaccine-related injury or death are first filed with the VICP. The ACCV makes the following recommendations:

RECOMMENDATIONS ON THE "IMPROVED VACCINE AFFORDABILITY AND AVAILABILITY ACT"

The ACCV unanimously concurs with the following sections of S. 2053 which are the same as or very similar to proposals made in the "Vaccine Injury Compensation Program Amendments of 1999" (the 1999 Amendments), which were developed from recommendations made by the ACCV and sent to Congress as legislative proposals by the former Secretary:

Section 206, "Clarification of When Injury is Caused by Factor Unrelated to Administration of Vaccine";

Section 208, "Basis for Calculating Projected Lost Earnings";

Section 209, "Allowing Compensation for Family Counseling Expenses and Expenses of Establishing Guardianship";

Section 211, "Procedure for Paying Attorneys' Fees";

Section 212, "Extension of Statute of Limitations";

Section 213, Advisory Commission on Childhood Vaccines"; and

Section 218, "Conforming Amendment to Trust Fund Provision."

The ACCV unanimously concurs with the following sections of S. 2053:

Section 204, "Jurisdiction to Dismiss Actions Improperly Brought";

Section 215, "Clarification of Definition of Manufacturer";

Section 216, "Clarification of Definition of Vaccine-Related Injury or Death";

Section 217, Clarification of Definition of Vaccine"; and

Section 220, "Pending Actions".

The ACCV does not concur with the following sections of S. 2053 and recommends:

Replacing Section 201, "Administrative Revision of Vaccine Injury Table", which changes the public comment period from 180 to 90 days with Section 2, "Administrative Revision of Vaccine Injury Table", of the 1999 Amendments which changes the public comment period from 180 to 60 days and shortens from 90 to 60 days the period that the ACCV has to review a proposed rule;

Modifying Section 202, "Equitable Relief", and Section 214, "Clarification of Standards of Responsibility" to add "past or in front of present physical injury". Some individuals may have sustained a vaccine-related injury in the past, but do not have a present physical injury. These individuals should not be prohibited from obtained relief in a civil action filed against a vaccine manufacturer or administrator;

Replacing Section 207, "Increase in Award in the Case of a Vaccine-Related Death and for Pain and Suffering" with the 2001 ACCV recommendation to increase the $250,000 benefit caps for both death and pain and suffering. These $250,000 benefit caps should be retroactively increased since 1988, and increased annually, thereafter, to account for inflation using the Consumer Price Index for All Urban Workers (CPI–U) as envisioned by Congress in the original National Childhood Vaccine Injury Act of 1986;

Replacing Section 210, "Allowing Payment of Interim Costs" which does not stipulate a timeframe for when the interim payment is to be made with Section 6, "Allowing Payment of Interim Costs of the 1999 Amendments", which states that the interim payment can only be made after a determination has been made concerning whether or not the petitioner is entitled to compensation;

Modifying Section 219, "Ongoing Review of Childhood Vaccine Data" by deleting the phrase, "together with recommendation for changes in the Vaccine Injury Table"; and

Replacing Section 221, "Report", with this language, "The ACCV shall provide the Secretary of Health and Human Services with annual status reports on the Vaccine Injury Compensation Trust Fund (the Trust Fund), including recommendations on the allocation of funds from the Trust Fund."

With regard to Section 203, "Parent Petitions for Compensation", the ACCV believes that the language in this section must be modified. The issue of compensating parents and third parties was raised when the original Act was drafted, but the focus remained on the need for an adequate compensation package that would cover the life of the injured child. Over the years, a few parent or third party petitions for compensation have been filed in state and federal courts. However, many of the class action suits contain parent petition, which prompted ACCV to revisit the issue. ACCV strongly believes that parent or third party petitions for compensation are more appropriately managed and adjudicated through the VICP rather than through outside litigation. Because of our concern for the well being of the child, the ACCV recommends that the award to the vaccine-injured child be separate from any award offered to the parent. At your request, the ACCV will develop options for such an award. In addition, this Section, as is currently drafted, raises serious constitutional concerns. The ACCV recognizes that the proposed provision, as drafted, may need to be supplemented to: (1) address potential constitutional concerns; and (2) assure that such parents' or third parties' claims may be properly administered by the VICP. Moreover, the ACCV believes that further consideration should be given to review of whether a third party's claim should be tied to the injured party's claim in civil actions.

Section 205, "Application", is a conforming change to Section 203, and therefore, the ACCV does not concur with this Section until the language in Section 203 is sufficiently modified.

BACKGROUND ON THE VACCINE SAFETY DATALINK PROJECT

In order to enhance the understanding of rare adverse effects of vaccines, CDC developed the Vaccine Safety Datalink (VSD) project in 1990. This project is a collaborative effort, which utilizes the databases of eight large health maintenance organizations (HMOs). The database contains comprehensive medical and immunization histories of approximately 7.5 million children and adults. The VSD enables vaccine safety research studies comparing prevalence of health problems between unvaccinated and vaccinated people. Over the past decade, the VSD has been used to answer many vaccine-related questions, and has been used to support policy changes that have reduced adverse effects from vaccines.

Rep. Dan Burton, (R–IN), Chairman of the Committee on Government Reform, requested any and all records collected under the VSD and was prepared to subpoena the records if he was not given access. The CDC and HMOs, understandably, do not want to give this data to Rep. Burton because these records include confidential patient information. For now, Rep. Burton agreed to a compromise with CDC which would allow an independent researcher to replicate or conduct a modified analysis of a previous VSD study, while maintaining the confidential nature of the data, but Rep. Burton has not rescinded his threat of the subpoena. Therefore, the ACCV makes the following recommendation:

RECOMMENDATION ON THE VACCINE SAFETY DATALINK PROJECT

The Vaccine Safety Datalink Project (VSD) is a critical component of our vaccine safety infrastructure. Participation by health maintenance organizations in the VSD is predicated on confidentiality of patient identifiers. In order to assure the continued viability of the VSD, the privacy of individual patient data must be protected. Therefore, the ACCV recommends that the Secretary of Health and Human Services take all steps necessary to protect the privacy of patient data in order to ensure the continued support and viability of this important project.

In conclusion, Mr. Secretary, we believe that the VICP plays a critical role in our nation's childhood immunization program, and we urge your immediate attention to our concerns. The ACCV greatly appreciates your continued support, and looks forward to your timely reply.

Sincerely,

ELIZABETH J. NOYES,
Chair, ACCV.

Mr. FRIST. In part it says:

> These claims have been filed against vaccine companies and, in some instances, against health care providers. Thimerosal, as you know, is approved for use by the Food and Drug Administration and is part of the vaccine formulation when licensed; hence clarification is needed to direct these claims to the VICP before tort remedies can be pursued.

That is what the underlying bill does. That is what the Lieberman amendment strips out.

The American Academy of Pediatrics also wrote in support of this. I'll quote a final sentence from this letter of June 19, 2002:

> The AAP has reviewed S. 2053 and has the following comments beginning first and foremost with our strong support that all claims for vaccine-related injury or death first must be filed with the VICP.
>
> In addition, we concur with the ACCV's most recent recommendations in support of sections 204, 215, 216, 217 and 220.

I ask unanimous consent to print the letter in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN ACADEMY OF PEDIATRICS,
Washington, DC, July 19, 2002.

Hon. BILL FRIST,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: The American Academy of Pediatrics (AAP), and the 57,000 pediatricians we represent, greatly appreciates your leadership and support of the various immunization provisions outlined in your bill, S. 2053, the Improved Vaccine Affordability and Availability Act. This legislation addresses several issues of critical importance to the Academy.

VACCINE INJURY COMPENSATION PROGRAM

Enacted in the late 1980's, with the support and guidance of the AAP, the National Vaccine Injury Compensation Program (VICP) has helped to stabilize what was then and appears to be again a fragile vaccine market. For the past 14 years, this program has been successful in its efforts to ensure an adequate supply of childhood vaccines, promote more research and development of even safer and better vaccines and most importantly to provide for a fair and just compensation program for those that suffer vaccine-related injuries. However, over time, as reflected in your legislative proposal, some modifications are necessary to ensure that the VICP is working at it full potential.

The AAP has reviewed S. 2053 and has the following comments beginning first and foremost with our strong support that all claims for vaccine-related injury or death first must be filed with the VICP.

The Academy concurs with several sections of the bill, some of which were previously proposed in 1999 by the Advisory Committee on Vaccine Compensation (ACCV) and you have incorporated in S. 2053. These include: Sections 206, 208, 209, 211, 212, 213 and 218. In addition, we concur with the ACCV's most recent recommendations in support of sections 204, 215, 216, 217, and 220. The AAP is particularly pleased that S. 2053 includes language that allows compensation for family counseling, ongoing review of childhood vaccine data and clarifies the definition of vaccines, manufacturers, and vaccine-related injury or death.

The AAP, however, does have specific concerns about Section 203, "Parent Petitions for Compensation," as currently drafted. The AAP believes that petitions for compensation by parents or third parties must be adjudicated through the VICP and not through the judicial system. Moreover, in addition to potential constitutional issues that this provision may pose, we contend that such claims by parents should be separate and apart from awards to the vaccine-injured child. Although the issue of the compensation of parents and third parties was initially raised during the drafting of the VICP in the 1980's, it was rejected to maintain the focus of the Act on providing appropriate and just compensation that covers the life of the vaccine-injured child. We believed then, as well as now, that this approach is in the best interest of the child. The AAP would suggest that consideration could be given to providing, within the scope of the VICP, a provision for the loss of consorrum that would be separate from the award to the vaccine-injured child.

The AAP agrees with your identification in Section 207, of the need for an adjustment to the award for a vaccine-related death and for pain and suffering. However, we recommend a modification to this section as written. Use of the Consumer Price Index (CPI) to account for annual inflation in providing these benefit awards had been the original intent of Congress in drafting the VICP. The AAP encourages your adoption of this approach that was also recommended in 2001 by the ACCV. In 2002 dollars, such an award would be the equivalent of an award of over $300,000.

MENINGITIS AND INFLUENZA VACCINES

The AAP supports your recommendation in Section 103 to provide information to a variety of entities concerning bacterial meningitis. We are ready to work with you to implement these efforts.

This past June, the Advisory Committee of Immunization Practices (ACIP) made the decision to expand the Vaccine for Children (VFC) program coverage of the influenza vaccine to all healthy children aged 6 to 23 months. This will take effect March 1, 2003. As physicians, we are both aware that this age group has a high likelihood of hospitalization if they get the flu, therefore the availability of an adequate supply of the influenza vaccine is critical. In addition, this expanded recommendation means that adequate funding—both public and private—is essential. The estimated first-year costs of influenza vaccination of children, according to the Centers for Disease Control and Prevention, are $11.5 million in the VFC program, $2.6 million in Section 317 funds, and $1.42 million in state funds. This assumes vaccination of 20% of children aged 6 to 23 months (most requiring two doses), 15% of high-risk children aged 2 to 18 years, and 5% of children living with high-risk household contacts. These costs dramatically increase as we assume higher vaccination coverage rates for these populations of children. We applaud your support of increasing the supply of the influenza vaccine (Section 101) and encourage your proactive support to ensure sufficient public and private funding to meet the need and demand of the pediatric population. We should expect nothing less than, at a minimum, coverage by the Medicaid program for our youngest citizens as is received under Medicare for our senior citizens.

IMMUNIZATION RATES

The AAP appreciates the recognition of increasing immunization rates and data collection especially for adolescents as well as adults included in Section 102 of S. 2053. However, as pediatricians dedicated to the health, safety and well being of infants, children, adolescents and young adults we would be remiss if we also did not encourage the inclusion of *all* infants and children in the collection of data and in efforts to increase immunization rates. We have made remarkable progress. Presently, the rates of immunizations for children may well be at an all time high. But we still have significant disparities and pockets of need among rates of immunization for racial and ethnic groups. This is further exacerbated by the potential impact that vaccine shortages may have on the rates of immunizations. We cannot allow complacency or less vigilance of rates for infants and children at this critical time.

VACCINE SUPPLY

Although pediatricians over the years have encountered brief childhood vaccine shortages nothing compares to the most recent situation because of both the number of different vaccines involved and the scarcity of the available supply. For most of the first half of this year, the shortage of vaccines included eight of the 11 diseases preventable through routine vaccination of children. In many instances these shortages and delays by necessity resulted in temporary changes to immunization entry requirements for day care and school. Until just recently the longest-standing significant shortage was with the Td vaccine that began about a year ago and affected the ability to give teens the booster Td they need. Currently, the most serious shortage continues to be with the new 7-valent pneumococcal conjugate vaccine (PCV7, Prevnar). The AAP supports and appreciates the recognition in Section 104 of the need to maintain a sufficient vaccine supply. Moreover, we also support the discretionary authority of the Secretary of Health and Human Services to develop a national vaccine stockpile for a minimum of six months and as long as 12 months. This stockpile should include *all* of the routine recommended childhood vaccines and certain other vaccines that may be critical to the public's health such as Hepatitis A and meningococcal.

Thank you for your commitment to an immunization strategy that promotes the safety, efficacy as well as the adequacy of the supply of vaccines for the nation. We look forward to working with you as this legislation moves forward.

Sincerely,

LOUIS Z. COOPER,
President.

Mr. FRIST. I will read from a statement by Dr. Timothy Doran, testifying on behalf of AAP, to the Health, Education, Labor and Pensions Committee earlier this year on behalf of the American Academy of Pediatrics, relating to these provisions. He testified it was crucial:

> to preserve and strengthen the liability protections for consumers, manufacturers and physicians through the Vaccine Injury Compensation Program. The VICP has been an integral part of maintaining the vaccine market. Enacted in the last 1980's with the support and guidance of the American Academy of Pediatrics the VICP has helped to stabilize what was then and appears again to be a fragile vaccine market. We reiterate our strong support that all claims for vaccine-related injury or death must be filed first with the VICP. We appreciate the intent of the legislative proposal put forth by Sen. Frist and others to craft appropriate modifications as necessary to ensure that the VICP is working to its full potential.

Those are the provisions in the underlying bill. That is exactly what is in the homeland security legislation that would be stripped out by the Lieberman amendment.

The effect of these provisions in this bill is important because of the new era of bioterrorism, not knowing the direction the world is moving, recognizing we are unprotected today from smallpox. We now have a tremendous initiative by the administration, the private sector, and the public sector. We have better coordination and better public health infrastructure, better communication, better coordination. But at the end of the day, if smallpox is in your community and you know it, you know where to go, that is good, but unless you have a health care provider to put it on your arm, you are not protected. We do not know when it will hit again.

The fact the Advisory Commission on Childhood Vaccines endorses these provisions is important. The fact that the American Academy of Pediatrics endorses these provisions is also important. This shows they are not just pulled out or from a single company or they have not been thought through by both trial lawyers and patients and families and providers. We have heard the claims that these are not relevant to the underlying bill. But at the end of the day, in this world where we are at risk from bioterrorism, germs, viruses, I guarantee, based on everything I know and everything I have read, it is critical we increase our protection for these agents. That is what the underlying bill does.

The liability protections are important for health care providers. I argue, also, for the facilities where they are administered and the manufacturers. If we allow out-of-control lawsuits to drive people out of the business of making these vaccines, no matter how good our research is, we will not be able to make vaccines which are critically important. We started with 12 companies and we are now down to 4 companies in the United States who make the vaccines. We have no guarantee they will stay in the business. They are unlikely to stay in the business if the huge lawsuits hit them in a way that simply is not favorably judged.

The provisions in the underlying bill only restate the original intent of Congress. They restate current law that individuals claiming injury for covered vaccines must first file for compensation under the vaccine injury compensation program, the VICP. These sections state what really should be obvious. A vaccine itself is the sum total of all of its parts as determined by our Food and Drug Administration, and that the manufacturers of vaccines include those who contribute to each of these various components. We have the vaccine, the components, the manufacturers who make the vaccine, and also the people who make the components.

Nothing in this language takes away one's right to sue. These provisions simply clarify and restate current law which requires all claims of injury related to a vaccine covered by the compensation program must first go through the compensation program before a lawsuit can be filed. There is much more that needs to be done, I believe in a more comprehensive way, but these provisions take the first step in a timely way, when time certainly matters.

In the long run, it is critical to expand the vaccine market for a whole range of microorganisms we are not protected from. We need to provide greater access to their vaccines. We need to be able to look the parents in the eye and say, when you take your child to the doctor or the public health center, those children, as well as all Americans, are not going to be in some way turned away by a barrier that we failed to address in the Senate. That is why a vaccine provision is necessary, is necessary now, is necessary in this homeland security bill.

I yield the floor.

Mr. REID. Mr. President, we have a consent in order for debate only until 1:30 p.m. There are numerous Senators who wish to speak. I ask unanimous consent that the order for debate only be extended until 3 o'clock today.

The PRESIDING OFFICER (Mrs. LINCOLN.) Without objection, it is so ordered.

The Senator from Rhode Island.

Mr. REED. Madam President, I rise to discuss the amendment proposed by the Senator from Connecticut, Mr. LIEBERMAN. First, I commend the Senator from Connecticut, Mr. LIEBERMAN, not only for his amendment but also for his work on this very important legislation. He introduced this legislation months ago, even before the administration recognized the need for a homeland security bill. He has brought to the floor a very well-crafted, well-balanced, thoughtful piece of legislation, a product of deliberation over many months. It is disheartening at this moment to see a piece of legislation that has arisen in the last couple of days, almost 500 pages long, with greater omissions but also including what I argue in certain cases to be are extraneous provisions.

One of the provisions at issue is the curtailing of the ongoing discussion about the scope of the vaccine injury compensation program. We have a situation where vaccine manufacturers included a preservative, Thimerosal. This preservative has been alleged to have caused medical harm; it has not been scientifically proven. The Senator from Tennessee has indicated the Institute of Medicine has suggested there is no causal link between Thimerosal and autism or other childhood diseases. Yet there is ongoing litigation to determine if this, in fact, is a causal factor.

In a homeland security bill designed to focus our attention on the most urgent and dramatic threats to the United States, we find a very transparent attempt by at least one manufacturer to curtail potential liability because of their products. Frankly, there is no other rationale for putting this one provision in the legislation. It is inappropriate to be included in this legislation. It certainly does not raise the urgency of the issues the Senator from Tennessee discussed in terms of smallpox protection or potential for a mass casualty crisis because of the use of a biological agent.

In point of fact, Thimerosal was withdrawn from use in vaccines in 1999. So this is not a situation where we have to act today, in this very critical legislation, to ensure that manufacturers will continue to use this material. In fact, quite the contrary, this material, although no one has established a definitive link to any particular disease, has been voluntarily withdrawn from inclusion in vaccines.

So what we have is a situation where allegations have been made by parents of children that this preservative caused a disease in their child. And as the Senator from Tennessee rightly pointed out, in 1987 Congress enacted the Vaccine Injury Compensation Program as a no-fault alternative to the tort system for resolving these types of claims. The procedure for the compensation program is that you must first go through this system of evaluation of your claim and determination of award, if any, before you are allowed to pursue your claim in court.

What has occurred in this situation is that families have alleged that this particular element, Thimerosal, is not covered under the Vaccine Injury Compensation Program because, even though it is an ingredient listed on the label, was a contaminant or adulterant and, as a result, is not included in the scope of the VICP. That is a legal issue. That legal issue is being decided as we speak.

In fact, the VICP has requested that the Special Master of the U.S. Court of Federal Claims consider this question, and the Special Master is currently deliberating the issue, but has not yet ruled.

So here we are, at the 11th hour of this legislative session, trying to pass a homeland security bill. And what we find, mysteriously and surprisingly, is a provision in the bill that would short circuit the ongoing litigation, that would thrust our view on the courts. And, frankly, I suspect the Special Master has a much more attuned notion of what are the permutations, what are the consequences, what are the legal precedents of concluding whether or not Thimerosal is covered under the VICP, than we have on this floor.

Again, this is reduced quite easily, quite simply, quite transparently, to an attempt by an industry to insert, within a bill that is deemed to be absolutely necessary to pass, a provision that short circuits all of the legal discussion and potentially short circuits the rights of parents to recover the full compensatory and other damages that they deserve because of their child's illness.

None of this has been settled in terms of scientific cause and effect. But procedurally I think we have to, in short, allow the process to take place. It is not uncommon—in fact, it is quite common—that there are disputes about the interpretation of a particular statute, the coverage of a particular statute. But we seldom—unless of course there are very well connected and influential proponents—we seldom pick out these items for legislative relief prior to any type of judicial conclusion. So I suggest, particularly with regard to this matter—the striking of these specific provisions—is appropriate.

Indeed, one wonders why we are spending time debating this issue on a homeland security bill when in fact there are so many other needs that deserve our attention and deliberation. Many of my colleagues have suggested that, not just with regard to what is in this bill but, frankly, the need to support more vigorously those programs and policies that we already have in place might take precedence over simply recreating and reshuffling the deck in terms of the organization of the Federal Government with respect to homeland security.

I urge my colleagues to support Senator LIEBERMAN's efforts, at least to eliminate these items which are entirely extraneous to the homeland security bill, and in fact fall far from the urgency that is so apparent, appropriately, in the homeland security bill.

A final point I should say, and I think my colleague from Tennessee said it so well, is that the issue of access to vaccines is a very critical issue that warrants our close attention. I was fortunate enough to chair a hearing of the Senate Health, Education, Labor and Pensions Committee in which the General Accounting Office testified about existing obstacles to a dependable and adequate supply of vaccines for children. The Senator from Tennessee, with his unique perspective as a physician, not only has been helpful but has taken a very prominent role, working with others and myself, in developing a comprehensive approach. That comprehensive approach might require an examination of the VICP program. It certainly might also require vaccine stockpiles, notification by manufacturers, if they chose not to produce a vaccine, so that our public health authorities know prior to the onset of a particular shortage that you will have one, two, three, or four manufacturers in the market to meet the demand.

So I would argue that a comprehensive approach to maintaining the supply of vaccine is important. The Senator from Tennessee has been working on it. I have been working on it. But that is not what we are talking about this afternoon. We are not talking about protecting the American public in a systematic, comprehensive way by ensuring that vaccines are available. What we are talking about today is a special interest provision that short circuits ongoing litigation involving a product that is no longer being used as a preservative. It is not about what we need to do today to protect ourselves from the very real threat of bioterrorism. Frankly, my assumption was, when we came to the floor to talk about the homeland security bill, we would be talking about what we need to do today to protect this country in the future.

So I urge my colleagues to support Senator LIEBERMAN, to recognize this bill would be much improved by adopting the provisions he has suggested.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Madam President, we have heard hours and weeks of debate on the Senate floor on this legislation. Among the principal arguments of some of the opponents of this bill is that President Bush and his administration cannot be trusted. I think the election last week proved that many Americans do believe our President can be trusted. He is a man of character. He is a man of integrity. He says what he means, and he means what he says.

I think an example of that was—if you recall, there were many people who were opposed to the passage of the Iraq resolution by the Senate. Many of the calls I got in opposition to it were from folks who believed the President, if the resolution passed, would peremptorily go into Iraq and take out Saddam Hussein.

I think all of us were quite impressed with his patience and the diplomacy of Secretary of State Powell that somehow was able to get through a very strong resolution in the Security Council that will finally enforce Iraq's compliance with those 16 previous resolutions of the United Nations.

I think we do have a President who can be trusted. I think that is the basis of this legislation. It is not perfect, but I am confident it will not be abused. It is not, as some say, an encroachment on legislative branch prerogatives, as I have heard some contend.

Madam President, I rise today to talk about an issue of critical importance to our Republic, and that is the urgent need for Federal civil service reform. I came to this floor earlier this fall to discuss how civil service reform can improve our ability to secure the homeland, and I rise again today because this issue remains at the crux of our renewed debate on the homeland security legislation.

As a member of the Governmental Affairs Committee and chairman and ranking member of the Oversight of Government Management subcommittee, I have worked to focus the spotlight on this issue since I came to the Senate 4 years ago. During the course of 12 hearings and numerous meetings with national leaders in management and public policy, it became crystal clear that we were in the midst of a human capital crisis in the U.S. Government. Moreover, it became clear that this crisis is growing and will only get worse unless this Congress acts decisively to address it.

Some people still ask what the human capital crisis is, how serious is it, and whether it really threatens the operations of the Federal Government. The human capital crisis is, simply stated, the inability of the Federal Government to properly manage its workforce. Robust personnel management includes the ability to recruit the best candidates, hire people in a timely manner, award performance bonuses and other motivational tools to provide training and professional development opportunities and the flexibilities to shape a balanced workforce. Good management includes the flexibility to act quickly and to compete as an employer of choice in this fast-paced 21st century knowledge economy.

Madam President, I believe that if a Federal agency or department is important enough to receive the hard-earned tax dollars of my constituents and yours, we have a moral responsibility to see to it that the people's money is spent wisely. Outdated personnel practices and lack of training not only put agencies at risk of not being able to fulfill their mission and providing needed services to the American people, they also represent wasteful spending. We simply must provide the flexibility agencies need and give them the right tools to do their work.

Within 2 years, more than 50 percent of the 1.8 million person Federal workforce will be eligible for early or regular retirement. It is virtually impossible to predict accurately the amount of experience and institutional knowledge that is literally going to walk out the door by the end of the decade. That is why it is not only right to focus attention on our human capital crisis, it is essential.

Unfortuantely, until recent months, very few Members of Congress have paid much attention to this growing set of challenges.

Now, as the Senate is considering legislation designed to reorganize the Federal Government in a way that will help secure our Nation against future terrorist attacks, civil service reform is front and center. This issue, which for years has not been substantively addressed, is of paramount importance in the consideration of the most significant government reorganization to take place in our Nation in half a century. It's about time.

Congress last enacted major civil service legislation for the entire Federal Government 24 years ago in 1978. To operate effectively, the Federal Government cannot afford to revise its personnel laws only every quarter century. So much has changed over the years, and changing times require new thinking and new laws—policies that allow flexibility in our Federal government's civil service system.

During the 107th Congress, I have worked with some of the Nation's premier experts on public management to determine what new flexibilities are necessary to create a world-class 21st century Federal workforce. These include: the Council for Excellence in Government, Partnership for Public Service, Private Sector Council, Brookings Institution, National Academy of Public Administration, and the Volcker Commission; Administration officials including OPM Director Kay James, and former OMB Deputy Director and current NASA Administrator, Sean O'Keefe; and representatives of federal employee groups like Bobby Harnage of the American Federation of Government Employees, Colleen Kelley of the National Treasury Employees Union, and Carol Bonosaro of the Senior Executives' Association. I am grateful for the perspective and recommendations all of these groups provided and we drafted our legislation based on their insights.

Our bill, S. 2651, the Federal Workforce Improvement Act of 2002, which I introduced with Senators THOMPSON and COCHRAN, is designed to get the right people with the right skills in the right jobs at the right time. It is a consensus package of human capital reforms that I believe will have a positive impact on the Federal Government's personnel management.

Working closely with Senator AKAKA, I successfully amended key provisions of this bill to the homeland security legislation during its consideration by the Governmental Affairs Committee in July. I am grateful for the support that Senator AKAKA provided as we adopted those important governmentwide personnel flexibilities. I only wish we had put more of S. 2651 in the homeland security bill. We need to get it all done.

Next year, I intend to introduce these provisions again, as well as other human capital legislation that was not enacted this year. For example S. 1817, which would make Federal student loan forgiveness benefits tax-free; S. 1913, the Digital Tech Corps Act, which would establish a public-private exchange program for IT professionals, and S. 2765, the Federal Law Enforcement Pay Equity and Reform Act, which would create an employee exchange program between Federal agencies that perform law enforcement functions and state and local law enforcement agencies. These bills would strengthen the performance of our Federal workforce throughout the government.

In the 108th Congress, I also intend to take a closer look at compensation issues, especially for the Federal law enforcement community. Serious recruitment and retention challenges have been a problem at agencies such as the FBI and other law enforcement agencies for a long time and we simply have to address this issue.

The governmentwide human capital provisions we have already included in the homeland security legislation will have an impact not only on the new department, but on all Federal agencies. Our language will help the Federal Government begin to address its human capital challenges—challenges that extend far beyond the corridors of the proposed Department of Homeland Security.

The language does the following:

It creates Chief Human Capital Officers at the Federal Government's 24 largest departments and agencies—officials who will have responsibility for selecting, developing, training and managing a high-quality workforce;

And, it establishes an interagency Chief Human Capital Officers Council, chaired by the OPM Director, to advise and coordinate the personnel functions of each agency and meet with union representatives at least annually.

In other words, we are giving human capital a much higher priority in the Federal Government, just as it is given in most corporations that are successful.

It requires OPM to design a set of systems, including metrics, for assessing agencies' human capital management, something that has been largely ignored;

It reforms the competitive service hiring process, allowing agencies, consistent with merit principles (including veterans' preference), to use an alternative category ranking method for selecting new employees instead of the "Rule of 3," making the process more efficient and fair—a practice that has been very successful at the Department of Agriculture for the past decade;

It provides governmentwide authority for offering voluntary separation incentive payments and voluntary early retirement ("buyouts" and "early outs") for the purposes of workforce reshaping, not downsizing. This authority, which I was able to secure with legislation three years ago, is currently being used effectively on a limited basis at the Department of Defense;

It lifts the total annual compensation cap for senior executives, allowing performance bonuses to be paid in full in a single year;

And, it reduces restrictions on providing academic degree training to Federal employees, thereby emphasizing the importance of individual professional development.

All of these things I just talked about are not only going to impact the homeland security department, but they are governmentwide. All agencies will be able to take advantage of these provisions in the homeland security bill.

In light of the fact that there has not been governmentwide civil service reform in a quarter century and, as the Hart-Rudman Commission noted just last year, personnel is the basis for maintaining national security, it is absolutely appropriate that this legislation be included in the bill to create the Department of Homeland Security. In fact, in testimony before the Subcommittee on Oversight of Government Management, former Defense Secretary and member of the Commission, James Schlesinger noted:

> . . . it is the Commission's view that fixing the personnel problem is a precondition for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy.

If we do not fix the personnel problem, we are not going to be able to fix anything else that is wrong with the system.

I thank the leadership on both sides of the aisle for including these important provisions in the compromise language we are considering today.

The Homeland Security Department is not the first—and not the last—agency that needs to have greater flexibility. Flexibilities and reforms, similar to those proposed in the compromise language for the Department of Homeland Security, which I will describe in a moment, are needed throughout the executive branch.

I would like to take a few moments now to discuss the personnel provisions in the compromise language that apply specifically to the new department. As I said, I have worked with Republicans and Democrats on these provisions and I believe this language will provide the Department with the tools it needs to get the job done, and at the same time will respect the rights of those union workers being transferred into the new department.

First, the compromise language includes the House-passed language proposed by Representatives CONNIE MORELLA and CHRIS SHAYS with an additional provision that I have recommended. This language would, for the first time, limit the current authority of the President to exclude an agency or agency subdivision from participation in a collective bargaining unit.

Under current law, the President may exclude participation in a collective bargaining unit upon determining that the entity has as a primary function intelligence, counterintelligence, investigative or national security work and that permitting the entity to have collective bargaining rights would be inconsistent with national security requirements and considerations.

The compromise language would limit the President's current authority only with regard to the new department. It would prohibit the President from using the exclusionary authority unless the mission and responsibilities of a transferred agency materially change and a majority of the employees within such an agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism. So in effect, we have limited the President's authority to exclude employees from union membership.

The language does provide, however, that the President could waive the above limitations on his authority if he determines in writing that their use would have a substantial adverse impact on the department's ability to protect homeland security. If he does this, I presume he will do it under this provision.

We have also added some language I have proposed requiring that if the President does not execute his authority under the Morella language, he must notify Congress at least 10 days prior to the issuance of his written order. This will bring the light of day into his decisionmaking process. I don't expect him to do it, but I think that is one way we can guarantee that such action will not be arbitrary and capricious.

The second compromise provision in this bill was proposed by Representatives JACK QUINN and ROB PORTMAN over in the House. I want everyone to understand this so they can see how much more limited this bill is than what the President originally sent us.

That initial proposal featured a personnel system that was similar to the one established last fall for the Transportation Security Administration, which waived most of title 5. Of course, the Homeland Security Department, the President realized Congress would flesh out his proposal, and that is what happened. This legislation we are considering would create a new agency under title 5, allowing modifications in only six areas.

The House-passed version is less flexible than what the administration wanted, but it is designed to deal with the personnel flexibility sought by the President, and to address the collective bargaining rights that many of our colleagues seek to protect, including me.

This language would preserve employee rights, including hiring and promotion based on merit and equal pay for equal work, and would protect employees from improper political influence and reprisal for whistleblowing. Employees would still be protected from prohibited personnel practices, such as illegal discrimination, politicized hiring or promotion processes, and violation of veterans' preference requirements.

Furthermore, employees would still have the right to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.

The compromise language requires the new Department collaborate with unions and other employee organizations in creating its personnel system. The language also improves the arbitration process by ensuring both employees and management concerns are fully and publicly vetted.

If a collective bargaining unit disagrees with a management proposal related to one of the 6 areas subject to modification, the union representative would have 30 days to consult with agency management on rule changes and offer recommendations. If agreement is not reached, the Secretary of Homeland Security could declare an impasse and submit the dispute to the Federal Mediation and Conciliation Service, a process that could last an additional 30 days. At the conclusion of that period, the Secretary could proceed with the proposed changes, regardless of the mediator's recommendations.

Again, this is very much like the language I added requiring the President to make public his decision if he waives the Morella language. In this case, at the beginning of the 30-day arbitration period, the differences between collective bargaining unit employees and management would be established so everyone would know what the differences are. In other words, if there is a difference of opinion, it is aired publicly. It is not going to be hidden somewhere. We are all going to know about it. The American people will know about it, and Congress will know about it.

After the 30-day period, the differences would be resolved. At the end of the total of 60 days, it is over.

I would have been open to more robust participation of the Federal Mediation and Conciliation Service or another third-party mediator in resolving disagreements over title 5 modifications. However, the system established by this legislation is a compromise, and I support it.

The real test of this language is going to be how the administration handles work rule changes, whether or not disputes are handled openly, and the unions' concerns treated fairly. It will be imperative for the administration to demonstrate its commitment to an open and fair process in a spirit of cooperation rather than confrontation with the unions.

If we do not resolve some of the differences between the administration and the unions, the chances of this new agency being successful are remote. And I have encouraged the President to meet with Bobby Harnage and with Colleen Kelley.

As a mayor and Governor, I went through reorganizations, and I learned that you cannot get it done unless you have built trust with your labor union members.

I would like to make one final observation on this bill before us today. We should not sacrifice the good for the perfect. I recognize Members on both sides of the aisle have some concerns about certain provisions. So do I. For example, I disagree with the language that will transfer the first responder program from its current location in FEMA to the new Department's Border Security Directorate rather than the Emergency Preparedness and Response Directorate. That does not make sense to me. Nevertheless, the legislation before us to create a new Department of Homeland Security, I think, overall, is a good bill, and I intend to vote for it.

I have been one of the leaders on civil service reform during the last two sessions of Congress. I believe I have probably dedicated more time than any other Senator to addressing the Federal Government's personnel needs. I have tried to raise the profile of this issue, and then to work in good faith with all interested parties to develop solutions.

Based on my work, I want my colleagues to know I feel that the personnel provisions in the compromise language can go a long way towards putting personnel management in the executive branch back on track.

I urge the passage of this very important bill. We have to get on with it. It is going to take time to establish this new department. We have to secure the homeland. We need to get going.

I thank the Chair.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I compliment the Senator from Ohio for his very thoughtful and important comments in which he reached to a deeper level, which I was going to do, but now I do not feel the need to because he spoke of the importance for good working relations between management and those who work with management, particularly in a field as important as homeland security.

I rise today to lend my support to the Homeland Security Act. I thank Senator LIEBERMAN for taking really the lead, before anybody else did, on this issue and for his tireless work to bring the new Department to the point it is today. I think it is a remarkable feat on his part.

I also would be remiss in not thanking my senior colleague from West Virginia, with whom I disagree on this important issue, but who has, nevertheless, led the opposition with clarity, with conviction, and passion.

In the end, I am glad it now appears we will be able to answer the President's call to pass this legislation, and to do so before we adjourn this session.

The tragedies of September 11, and the continuing terrorist threat to our Nation, demand powerful and decisive action from us and from the President.

He has asked this Congress, after the leadership of Senator LIEBERMAN, to support him by creating a new Department of Homeland Security. I think we should do that. The President believes this massive reorganization of government, combining our currently fragmented homeland security functions into a single Cabinet-level agency, makes sense.

Anybody who thinks we are prepared, no matter what reports you read—including the most recent ones—that we are prepared to handle attacks of any sort, is just greatly wrong. In each of our individual States, as you look at hospitals and police departments, and all the rest, we know that is the case.

So I think a single Cabinet-level agency is crucial in providing this Nation and its citizens with the protection they deserve.

I agree this historic reorganization is a bold and necessary step that we, as lawmakers, must take, quite frankly, in order to be faithful to our first and foremost duty as lawmakers—I do not think this is generally understood by the American people—because our first and foremost duty as lawmakers is the guaranteeing of the safety of people we represent in our individual States, and also throughout the country.

I hope all who are present will recognize this is but a first step. This is going to be an extraordinarily complicated evolution.

When the Aviation Security Act was passed not very long after September 11, it became the assumption of the American people that all airport security would be in place, ready to go, with all of the equipment and people trained, within a matter of months. I said from the very beginning it was probably a matter of 3 to 4 to 5 years before we would arrive at a point where we had the kind of aviation security, the training, personnel, and the equipment that we needed.

People have to understand all of this is going to take time, but you can't start the clock running unless you pass a bill to get homeland security going.

I don't think anybody should be under the illusion that this new Department will solve all of our security problems at home. I hope we will remember the lessons of the Goldwater-Nichols Act of 1986, which basically made the largest previous reorganization of Government—that is, the creation of the Department of Defense in 1947—a working reality. I strongly believe this new Department of Homeland Security will be a work in progress; that the public has to understand it is a work in progress; that you cannot take 170,000 people, meld them together, create a whole new series of layers of intelligence agencies, and expect them all to work very crisply together, when they don't work crisply together now. Nevertheless, there needs to be a central point. I believe in that firmly.

So with the understanding it is a work in progress, we will, therefore, have to shepherd its ongoing development, and we will.

Although the homeland security act should not be mistaken for the definitive answer for all of our security woes, I believe it is a strong piece of legislation with a lot of potential to serve its purpose and all of us and the people we represent well.

The Department we are creating is strikingly similar to the original proposals both the White House and Senate introduced last summer. It has been some time since then.

The new Department will combine the functions of 22 Federal agencies and subagencies. Again, this will be complicated. There will be all kinds of problems. We have to assume that. That is not a bad thing. That is the evolution of anything that large that takes place, whether it is in business or in government; change, reorganization of that sort, does not happen quickly.

By placing these agencies and all of their people in one new Department, we should foster much better communication—it will take time—eliminate internal redundancies—that will take time—and greatly improve our ability to detect, respond to, and recover from future actions from terrorism.

The new Department is intended to be a cooperative environment in which intelligence from all sources is brought together, analyzed, and then used more efficiently than in the past, guiding the customers, as the term is used, which is the President and his National Security Council, allowing us a much clearer view of all threats from whatever source against America.

The Department is charged with carefully coordinating with State and local governments, none of which is prepared at this point to handle what could very well and probably will be confronting them. As well, I might say, private industry faces this same challenge. Some have responded, most have not, partly because they don't know what to do. Secondly, the economy is not strong, and they don't feel they can do that now. But their condition will be much worse if they don't. So to them we have to collect and pass along threat information. They have to respond. This whole system has to begin to function in a rational way.

This is the most serious subject we could be discussing in the Halls of this Congress. Border security should be greatly improved under the new agency. Our ability to prevent chemical and biological and radiological and nuclear threats may be stronger than ever before. We have to make sure that is the case.

In the event the horrors of terrorism, in fact, visit our shores again, as I think they will, the new Department should be better equipped to respond with disaster relief.

However, we must not forget that many of the assets that we will need to respond to disaster or terrorism will continue to reside in agencies which are outside of the homeland security bill. The one that comes to my mind is, of course, the Veterans' Administration, which is the largest health care system in this country. That whole system is going to have to be not incorporated in the bill but incorporated into the process which I hope this bill will engender of its own force and momentum.

I have confidence in this act. I nevertheless would like to go on record as saying that clearly it does not do everything that I and many of my colleagues, including the Chair, to whom I am particularly grateful, wanted. I regret that we were unable to work effectively to create a new Department where dedicated employees are guaranteed the civil service protection to which they are entitled. However, having said that, I think that, as the Senator from Ohio said in his very powerful and deep speech, I have to believe our President will act wisely, partly because of the light that will be on him, partly because of the situation, partly because of the need for workers to be happy and to be doing their work well, assuming the flexibility that we give him only when he really needs that, and that he will be wise in that respect.

So with this act, Congress and the White House have cooperated to make a powerful statement to our citizens as well as to our enemies. We will work together to ensure that the American people are as free as possible from terror and as free as possible from the fear of terrorism.

I am very thankful to have been able to play a role in the creation of the Department. I look forward to playing a continuing role, as I indicated, in watching this development in sort of a congressional oversight mode.

I ask my colleagues to join with their support of this homeland security act.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I take to the floor to talk about where we are in the homeland security bill, and to call attention to some special interest provisions added to this bill in the hope that the American people will take a look at what is happening to their country.

As Senator VOINOVICH has stated, Osama bin Laden is still alive. While we cannot be positive of that, it appears that he is still alive. Certainly, al-Qaida is alive and certainly al-Qaida is working full time to hurt us—meaning the American people. That we know. The world is a terribly dangerous place.

Taking care of America is crucial. That is why I was so stunned and upset when the President refused to spend $5.1 billion that this Congress gave him for homeland security to ensure that our ports are more secure, to ensure that our nuclear power plants are safe, to ensure that our chemical plants are safe, to ensure that our airports are safer, and to speed up development of necessary vaccines. I was stunned when the President did what he did.

I was also stunned when he opposed the idea of making the Homeland Security Department a Cabinet position. Stunned. Only after Senator

LIEBERMAN and his committee had voted out a bill—at least the Committee Democrats did—did the President decide he wanted to support this concept.

We know one thing about September 11th. We know that the CIA and the FBI were not speaking to each other. We know that they were not communicating with each other. And yet there is not one thing in this homeland security bill that addresses that issue.

The homeland security bill tinkers around the edges with creating new ways for the intelligence community to let the Homeland Security Director know what is happening. But we do not get to the heart of that cultural problem that exists between these agencies. That is amazing to me, since we know one thing—that there was a breakdown in communication between these two agencies.

I also happen to believe that massive reorganization is generally an invitation to chaos and more bureaucracy. I began my political career a long time ago in a small county of about 200,000 people. We found that when you combine agencies in the name of trying to be efficient, oftentimes you have less accountability. That is what is happening here—combining all of these agencies, with some 170,000 people, creating all kinds of subheads, and so on and so forth.

So I am very worried. I hope to be proven wrong because this bill will pass, but I am worried that there will be less accountability rather than more. That is why I supported the Byrd amendment, way back when we started this debate, which would create a Cabinet level Homeland Security Director and a streamlined Homeland Security Department, with people who would be held accountable, and with a way for the Congress to continue to play a role as we develop this very important agency. I thought that would have been the way to go. I was proud to stand with ROBERT BYRD on his amendment.

I happen to believe in my heart of hearts that the President's change of heart about the need for a homeland security department had a lot to do with the fact that he is very interested in stripping away worker protections. I have to believe that deep in my heart. Why do I say that? Because of his actions. Of the 170,000 people in the new Department, only 40,000 of them have worker protection, that is all. There are people at the bottom of the barrel, in terms of pay; the secretaries, the janitors, the file clerks. I don't understand—and I have said this before on the floor of the Senate—why a President who calls himself "compassionate" would want to take away the most minimum of rights from such people, endanger their level of health care. I don't understand why this President would have held up this bill all this time for that.

Now there is a compromise. I am glad a few more protections are added. That is good. But I don't know how a person who says he is compassionate could go after people who have the most minimal job protections. They don't have the right to strike. No Federal employee has the right to strike. They can scarcely collectively bargain given the provisions of this bill. That, to me, is a sour note in this debate and continues to weigh on my heart—that maybe this President changed his mind, in part, because of this "opportunity" to take after these workers. It is really a sad thing to me.

If we look at the economy today—and I know my colleague from West Virginia gets this because he talks to me about it all the time—it is a tough economy we have. The fact is, in the last couple of years, as the President came into power, we have seen a tremendous loss of private sector jobs. More jobs have been lost than at any time in 50 years. We know what is happening to people's retirement security because of the stock market, with the worst performance in more than 50 years. People are frightened. So why do you go after 40,000 workers and give them insecurity?

We heard yesterday that the President is going to move more than 800,000 jobs into the private sector from the Federal Government—more than 800,000 jobs. At a time when people are feeling insecurity, he is going to throw them out into the marketplace where they will have very little security. There is something missing here that is upsetting to me.

So here we are. In my opinion, we have a bad choice to make when we finally vote on homeland security. I will make what I consider to be the best of that bad choice—a choice between no homeland security bill and one that I believe was thrown together in a way that is going to make it less accountable and is going to hit a lot of bumps in the road. Taking FEMA and putting it in there—what will happen when we have an earthquake in California? What is going to happen with the Coast Guard when they have to do search and rescue? These are troubling questions to me.

We will have that choice to make. That is life. We often don't have great choices here, and we will make that decision. But one thing I know I am going to vote for with great pride on Monday is the Daschle-Lieberman amendment.

I see a couple of colleagues on the floor who care about these issues, and I want to recognize my friend from Michigan, who called us together today to explore the ramifications of a particular rider that was added in the dead of night. I will explain it, and I hope she will engage me in a bit of a colloquy.

In the dead of night, with no one watching, after we thought we had made the compromise on these workers, a few things were snuck into this bill. A big campaign contributor of the Republican Party was rewarded phenomenally. A provision was added to the homeland security bill that protected that big contributor but it has nothing to do with homeland security or protecting the American people. In fact, I say that this provision which was added will create insecurity in our homeland by sending a message to thousands of families that their children's health takes a distant second to the interests of large, wealthy, powerful corporate America.

Let me explain. In my State of California, autism—a very haunting and mysterious brain disorder—has increased an astonishing 273 percent over the last decade and a half. Dr. Neil Halsey, a respected pediatrician and an expert in vaccination, for years said there was no connection between vaccines and autism. I am quoting from an article that appeared in Sunday's New York Times. There is "some real risk to children," he said, "from vaccines that contain mercury. It is used as a preservative in some of these vaccines."

So what provisions did the Republicans put into the bill? A provision that holds harmless the company that produces Thimerosal, a mercury-based preservatives for vaccines.

What does that have to do with homeland security? Absolutely nothing. Childhood vaccines have nothing to do at all with homeland security. What does it mean if this stands and we don't have the guts to strip it out? What does it mean to real people who are fighting this disease? Many of the families have filed class action lawsuits because—if you have ever seen an autistic child, although their symptoms range from mild to severe, in severe cases you are talking about essentially 24-hour care for that child. What will these families have to do? They will have to go to a taxpayer fund—a compensation fund that taxpayers pay for—which has very little money left in it, which is capped at an amount that will never pay for the cost of raising a child with this terrible disease.

We heard testimony on the House side that some families trying to collect from this compensation fund have had to fight for 10 years to receive their awards.

All the while, if this special interest rider passes, the companies that cause the problems will continue about their business. There is a lot about this rider which is upsetting and disturbing.

First of all, how would you feel if you were a parent of a young child and all of a sudden, without any science, you have a liability waiver for this mercury compound? They are going to think: My goodness, if the Republicans—the Bush administration—is protecting their biggest contributors, maybe they know something we do not know; that this is really a problem because why would they bother doing it if they were not worried?

This has nothing to do with homeland security. If it did, they would have said smallpox vaccines; they would have cited the vaccines.

There are moments when I wonder why we are here if we are not willing to stand up and fight for the American people. The special interests, the powerful interests have so much behind them. They can so easily hire the lawyers they need, the representatives they need to come here to lobby. But the average family that gets struck with this type of a tragedy, all they have is the love in their family to get them through. What are we doing here? We have to help these people, not have a special interest provision that is put in in the dead of night that says to them: We do not care about you; we do not care about your kids; and if you have to suffer through, too bad, because we are going to protect the people who write the large contributions.

(Mr. ROCKEFELLER assumed the chair.)

Ms. STABENOW. Will my friend from California yield?

Mrs. BOXER. I will be happy to yield to my friend.

Ms. STABENOW. On that point, we actually have counted the number of pharmaceutical lobbyists in the Senate. There are six lobbyists for every Member of the Senate: Six for me, six for the Senator from California, six for the Senator from New Jersey. Six lobbyists are being paid full time to lobby and bring in these kinds of provisions and also to kill other provisions.

We passed legislation to lower prescription drug prices for everyone, to increase competition of generic drugs, and open the border to Canada. There is a bill that has been languishing in the House for months that has been stopped by the same group that could take the time at the last minute to put this outrageous provision into the homeland security bill.

I thank the Senator from California for her eloquence and for standing up for families, because as a mother—and I know she is as well—it is outrageous to think that parents who are concerned about their children will not have an opportunity to have their day in court over something that potentially is extremely damaging and hurtful to them.

Mrs. BOXER. I thank my friend for her leadership. I point out to my colleagues who are here that four desks down from me sat Paul Wellstone for 12 years. If Paul was here now, he would be stepping outside that desk and telling us: Now is the time to stand up for people, for children, for people without a voice.

Autistic kids sometimes cannot talk. We have to stand up and be counted on Monday when this vote takes place and take the consequences if somebody gets mad at us here or there because there is no reason to be here if we do not protect the people of this country.

Mr. President, I am not going to take the Senate's time anymore. I have expressed myself. I look forward to casting a vote on the Daschle-Lieberman amendment to strike this rider and the other riders that were attached at the last minute, which I think is just a blatant attempt to give out special favors to the detriment of the American people.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CORZINE. I thank the Chair.

Mr. President, before I begin, I commend the Senator from California on raising not only the issue regarding childhood vaccines but the whole issue of adding riders about which I am going to speak in a moment on a whole series of issues. It makes a complicated and troubling piece of legislation even more difficult to weigh and balance as to whether it is truly one that gets us to a more secure future for America. All of us want to protect our freedoms and protect the lives of citizens across this country, but one has to think about it in the context of what is the give and take and whether it actually works.

My first comment is not dissimilar to what I heard from a number of Members who are supportive and not supportive of the direction we are taking. It is hard to conceive of how we can put 170,000 or 175,000 people together who had trouble in the organization that was in place before when it was smaller and more manageable and come up with a sense of security that we are actually going to make things better by pushing them together.

At least in my experience in my private life, sometimes mergers do not always amount to what is intended, and value is not always created. It certainly leads to a question of whether we have the flexibility and responsiveness in an organizational structure.

I am certainly troubled by the idea of creating a larger organization made up of parts that apparently have not been working so well historically. Clearly, we need to take positive steps. It may very well be we are doing that with the proposal with regard to homeland security, but at least as one individual, I am troubled with the overall size of the operation and whether it will bring about the responsiveness to the need, which I think all of us feel quite clearly needs to be addressed, of protecting the American people.

I also am equally concerned about a number of these provisions that were added in a closed manner.

I have to second my colleague's comments with regard to liability protection for pharmaceutical companies on vaccines. That should be an issue that is debated openly and understood. It should be fully vetted. It is an open question about whether this is a serious problem, but I do not think adding it as a rider that is particularly attractive to a particular segment is germane to the context of homeland security. It attacks the fundamental premise about which we are talking.

I wish to relate that to something about which I will talk which is really the heart of my comments today—chemical plant security—which I think is missing from the homeland security debate.

It is also troubling and hard to understand why pieces of the Wellstone amendment which prohibited contracting with corporate expatriates is pulled out of the bill. We have some adds and we have some drops. I am not sure why we are doing that. This was unanimously accepted by the Senate. I find it very difficult to understand why we are resourcing, promoting, or allowing those companies which choose not to be supportive of America with their tax dollars to have equal access and participate in contracting with the Federal Government with regard to homeland security issues.

It is hard for me to understand why this particular amendment was dropped. There are a whole series of these. There are special earmarks for a given university. There are liability protection issues that really get at tort reform debates which we ought to have on the Senate floor—no question about that—with regard to airport screening, negligent manufacturing of homeland security devices. All of those issues should be the subject of fair debates. So why are they added as a so-called element of compromise, on the floor of the Senate, without a debate? It is unclear to me, other than we are more interested in rewarding special interests than the general interests, which is what I think is the basic theme of both the administration and certainly Senator LIEBERMAN's initial proposal coming out of the Governmental Affairs Committee with regard to homeland security. There is a need. We all embrace that concept and think we should move forward.

For the life of me, I do not understand why we are putting down new barriers to the Transportation Security Agency with respect to rules for rail transportation in this country—it is one of those areas of vulnerability assessments that almost anyone would talk about—other than we are responsive to special interests and that it is going to cost too much.

As I earlier entered into a colloquy with the senior Senator from West Virginia on the freedom of information activities, I continue to be troubled as to why we are writing a blank check to cover up the kind of advisory meetings that could be held with private industry, hand-picked advisers, with regard to setting policy within an administration.

There may be things that should be carved out from public view, but when private sector individuals can have a perspective of conflict of interest in the advice, it seems perfectly clear that ought to be made available to the American public, and I am very troubled by the blank check mentality we are taking with regard to secret activity, particularly when it involves the private sector.

We have had that debate with regard to our energy policies, and I think we are now making that a normal course of events.

So for all of those reasons—and those are mostly adds, except for maybe the drop with regard to the Wellstone initiative—I am troubled.

Finally, this National Commission on September 11 and the review, to me, is incomprehensible. Hopefully we will find another way to bring this back, but in my 30 years in the world of management I have never seen a situation where you have a failure, a breakdown, a problem that people do not stand back and say, what went wrong and what could we have done differently to make sure we are secure going forward, without an independent review that people can have confidence that all of the facts are laid upon the table, including, by the way, observing whether congressional oversight is operated with its most effective provision.

I find it difficult to understand why we are investing so much with so great certainty about the direction we should be taking with regard to homeland security.

As I said, this is going to be a tough weekend for me because I have trouble with the conceptual issue of putting so many people together. Now that the senior Senator from West Virginia is present, we could argue that the Constitution he is carrying in his pocket would also raise serious questions about some of the authorities there. These special additions and drops at the end are particularly concerning to me.

So for all of those reasons, this is going to be a very difficult weekend for weighing and balancing these various elements because, like everyone else, and particularly for the people of New Jersey who lost 691 lives on September 11, there is an expectation that we have a responsibility to protect our homeland. It is obvious. It is self-evident. But it is not obvious and self-evident that we are, in my view, improving dramatically that effort.

I certainly believe there are risks in the transition from where we are today to the full implementation of this measure and that we may very well be operating under the analogy that people talk about of running a marathon while you are performing open heart surgery. Whether we are going to be more secure while that process is going on in the midst of a war is an open question. It has not been proven to me that we are actually developing greater certainty.

Now, there is another issue which has not been discussed on which I have worked very hard through most of this year and feel deeply about because it deeply impacts my State. Actually, it impacts almost every State in the Union.

I see the ranking member from the Committee on Environment and Public Works, the Senator from New Hampshire, who has heard much of this discussion in the committee, which I think is something that is missing from this bill, and that is the need to protect Americans from attacks on our Nation's privately owned chemical facilities.

I realize this is also one of those things that is futile in the context of the cloture debate, but it is absolutely essential that America be aware of an issue that needs to be focused on and needs to be moved forward. I would be remiss in not having brought this farther in the process, and hopefully this discussion and the efforts that have gone on before will keep it in the debate, in the committees, and in this new Department which is most certainly going to come to pass.

I will discuss it in the context that there are literally thousands of chemical facilities in the United States where a chemical release could expose tens of thousands of Americans to highly toxic gases. That is why these facilities are potentially so attractive to terrorists. As a matter of fact, if one goes to a chemical facility in Israel, they will see it protected by a security infrastructure that is not unlike what one would see at a nuclear powerplant in the United States.

As I will relate, if someone visits some of these facilities in the United States, they will see an entirely different standard by which we are securing them. In fact, there are currently no Federal security standards for chemical facilities—none—so that the private sector is left to do whatever it desires or believes it can afford. It is a completely voluntary situation.

Many facilities simply have not fulfilled their responsibilities, in my view. Many are certainly vulnerable to attack. As the statistics and studies show, literally millions of Americans are at risk. They are at risk in New Jersey. If one flies into Newark Airport and looks at the chemical plant storage facilities, the refining facilities that are right in the path of the landing strips, they will get a sense of the kind of exposure we have.

Also, if one looks at how easy it is to access, which I will speak more clearly to in a minute, they get an even greater sense of the insecurity with regard to this area of our infrastructure.

According to the EPA, there are 123 facilities in 24 States where a chemical release could expose more than 1 million people to highly toxic chemicals. One of these plants in New Jersey has exposure to 7½ million people inside the metropolitan region of New York. A lot of chemical plants are located in our urban communities, not scattered out into the hinterland but right smack dab in the middle of where we have high concentrations of populations. There are about 750 facilities in 39 States where chemical release could expose more than 100,000 people to toxic chemicals. There are nearly 3,000 facilities spread across 49 States where a chemical release could expose more than 10,000 people to highly toxic chemicals.

I think the numbers speak for themselves, and they are staggering. There is a large exposure in a broad context in our Nation.

A single attack on a facility could unleash highly toxic chemicals such as chlorine, ammonia, and hydrogen fluoride that cause widespread injuries and death. Considering the literally thousands of potentially deadly facilities across the country, we cannot escape the conclusion that it represents a major vulnerability, a major homeland security problem.

It is not just my opinion. In fact, the Justice Department issued a report on this matter a year and a half before September 11. I will read a brief excerpt from a summary of the report issued April 18, 2000.

> We have concluded the risk of terrorists attempting in the foreseeable future causing industrial, chemical release is both real and credible . . . Increasingly, terrorists engineer their attacks to cause mass casualities to the populace and/or more large-scale damage to property. Terrorists or other criminals are likely to view the potential of chemical release from an industrial facility as a relatively attractive means of achieving these goals.

That report was issued before September 11. Its conclusions have been echoed by several other Government agencies and individuals since.

For example, Governor Ridge said the following in recent testimony before EPW:

> The fact is, we have a very diversified economy and our enemies look at some of our economic assets as targets. And clearly, the chemical facilities are one of them. We know that there have been reports validated about security deficiencies at dozens and dozens of those.

Let me talk about the reports Governor Ridge may have been referring to. Earlier this year, the Pittsburgh Tribune-Review conducted a major investigation of western Pennsylvania. Here is what they found:

> A Pittsburgh Tribune-Review investigation has shown that intruder has unfettered access to 30 of the region's deadliest stockpiles

> of toxins and explosives, despite repeated warnings from the Federal intelligence agencies to safeguard large chemical tanks.

This Tribune-Review went on to say:

> Security was so lax at the 30 sites that in broad daylight a Trib reporter—wearing a press pass and carrying a camera—could walk or drive right up to tanks, pipes and control rooms considered key targets for terrorists.

After this initial story, the Tribune-Review expanded the scope of investigation. They went to Houston, Baltimore, and Chicago to see if what they found in western Pennsylvania was a fluke. They looked at 30 or more facilities in 3 other States and the findings were equally disturbing.

I point out in metropolitan New York the local television station has done similar sorts of walk-ons to chemical plant facilities, including the one that has the 7.5 million people exposure in metropolitan New York.

This is troubling, to say the least. There is a pattern. Perhaps that is why the chemical industry got low marks for post-September 11 terrorism response.

On September 10 of this year, the Washington Post graded critical infrastructure sectors, giving the chemical industry a D. Newsweek, which is owned by the same people, did a similar piece. They were even tougher. Newsweek gave the chemical industry an F. I have seen this repeatedly in a number of surveys of America's infrastructure.

While some companies may be doing everything they can, and I know there are some that are working very hard, they are concerned about it for security reasons and protecting their people and maybe themselves. But the fact is we need to do a lot more. We need to be a lot more certain the breadth of the industry is being attended to.

That is why in October 2001 I introduced the Chemical Security Act. That is why I worked with Senators on both sides of the aisle to move the bill through the EPW Committee. This is the hard part. Ultimately, the committee approved the legislation on a vote of 19-to-0. Not a single Senator voted no. I note Senator INHOFE did, in fairness, express concerns about the bill at markup and I agreed to continue to work with him on those issues afterwards, particularly so we could potentially add it as an amendment to homeland security.

In fact, as I suggested, I talked with other Members and we tried to keep the concerns of the bill, deal with them, and while I will not go through the post-markup negotiations, there were substantial revisions so it could get added to the bill. Unfortunately, we have not been able to get to conclusion in that process even though it was a 19-to-0 vote in committee for it. Sometimes I wonder whether special interests sometimes trump the people's interests.

I will not be offering my amendment; it is not germane. But I think we need to come back and go to work on this issue as soon, as forcefully, as possible. It is absolutely relevant to homeland security and protecting the American people. I know that is the case in New Jersey.

I will not go through it in detail, but the first thing we have to do is be very specific about identifying high priority chemical facilities. That can be done relatively straightforwardly. It will take cooperation between EPA and the new Homeland Security Department. There is some debate about that. We need a list. It does not have to be published on the front page of the New York Times, but we need to understand what the exposures are and get about protecting the American people.

Second, we need to have audits of what that process is so there is a reality to what has been talked about. There is not a moral hazard saying we have done something and nothing really has occurred.

In a nutshell, that is what this is about. It is a little more complicated than that in detail, but I suggest this is something that really should be a priority when we return. I hope we do not face the stonewalling that has come up from some elements in the industry. The need to act is urgent. This is, by the way, consistent with some of the things other people who have looked at homeland security on a broader basis have talked about.

I will quote from a recent op-ed piece by Warren Rudman and Gary Hart, who have been following homeland security as effectively as any two Americans studying this. They have an op-ed page written in October of this year:

> America's corporate leaders must accept their new responsibilities to protect the privately owned critical infrastructure and cease the behind-the-scenes lobbying against measures requiring them to do so. If necessary, the President must deliver this message bluntly and directly.

Some of those things that were added in the middle of the night, the kind of experience that I have experienced with regard to trying to deal with chemical plant security, is indicative that that process of resisting, protecting the American people, is not fully embraced in the private sector.

I could not agree more. We need to work together as a Congress, with the administration, and deal with this issue.

Homeland security in general, time is of the essence, as someone said around here. It is not neutral. So I hope we can move very quickly on this. I am sorry we have not been able to deal with this. There are some good voluntary efforts with regard to chemical security. But I don't think we have gone far enough. Voluntary efforts alone are not going to be sufficient. We need to work in Congress to make it happen.

Finally, I am proud to be an author, a promoter, a sponsor of this legislation with regard to chemical plants. I am also proud to be a cosponsor of the Daschle amendment that will deal with some of these other special interests. I think the two relate in the sense that we are not all on the same page pushing forward to protect the American people on homeland security. We need to get there. With both the private sector and the public sector.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I ask unanimous consent that there be debate only on the matter now before the Senate until 3:30 today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. CORZINE). Without objection, it is so ordered.

Mr. BYRD. Mr. President, if the Chair will bear with me momentarily.

Mr. President, over recent weeks as the President crisscrossed the Nation on campaign stops—campaign stop after campaign stop—he used a number of gimmicks, including this legislation, to rally support for his chosen candidates. He painted this bill as a panacea for the terrorist threats that plague us and challenged this Congress to pass this bill quickly.

On each occasion, as I followed the newspaper accounts of the President's stops during the campaign, the President left the impression among the public that this bill is urgently needed, and that it will make life safer for American families. But there was much he didn't say. Here is what the people can expect after the Congress approves this legislation to transfer 28 agencies and offices to a new Homeland Security Department.

Next February, the President will submit a plan—his plan—to the Congress about how he intends to transfer 28 agencies and offices into a massive new Department over the period of just 12 months. We don't know what is in the President's plan today, and we will not know what is in the President's plan when and if Congress passes this bill and it goes to the Chief Executive for his signature.

We will not know what is in the President's plan. After we have passed this bill and it becomes law, the President will then inform the Congress about how he intends to reorganize, consolidate, and streamline these 28 agencies as they are moved into the new Department. He will not seek approval of the Congress—the elected representatives of the people. He will not seek our approval. He will not need to because—according to the provisions of this bill on which we are being hurried and stampeded to act, according to the provisions of this bill—he will simply drop the plan in the laps of the committees so they can be informed about what he intends to do. He will not be asking for their approval. We will have already given our approval when we pass this bill.

I hope Senators understand that. When we pass this bill, we, the Congress, are out of it. The President will in due time submit his plan. In due time he will inform the Congress as to what he intends to do. He won't have to ask us if we approve of what he is going to do. We will have already said to him: Here it is. You submit your plan. According to the provisions of this bill, your plan will go into effect in due time. And we will not have any more to say about it.

He will simply drop the plan. It will not fall like manna from heaven, because it won't come from heaven. This is what we are authorizing the President to do when we adopt this bill that is before the Senate.

Here it is. Those who are watching this floor through the electronic lenses before us, here is the bill. It is made up of 484 pages. These pages are not like reading "Robinson Crusoe" or Milton's "Paradise Lost." They are very difficult pages to understand. On only a single page there may be many references to various and sundry laws that are already on the statute books, so that in order to understand what may be on a single page, we have to go back, look at the references, and go back to those statutes that have been on the books—some of them—for many years or decades. We have to go back and see what those laws contain before we understand what is on a single written page. It is not like reading a novel. In some senses, it is made to sound like a fairy tale. But it is indeed not a fairy tale.

This is a bill that affects you—a bill that affects those two members of the staff back here who are talking. This is a bill that affects you. This is a bill that will affect you, each of you—you, you, you, you, each Senator. Each of those persons out there who are watching this debate—it is really not a debate. There is only one Senator talking here and one Senator listening and one Senator in the chair. So there are not too many Senators here. Hopefully, they are watching from their offices, as we all do.

This is the bill. Let me say it again: 484 pages of complicated material.

How long have we had it? A little over 48 hours. It came to us early in the morning on the day before yesterday. Today is Friday—early in the morning of Wednesday. There it is. There is the whole thing—the whole thing. I don't know what is in it. I know about some of the things that are in it. But no Senator in here knows everything that is in this bill. I daresay that. I would be happy for any Senator to stand on his feet and challenge me on that and say: Hold up here a minute; I know everything that is in it.

We are authorizing the President to submit this plan. He can do it without our subsequent approval. This legislation authorizes the President to reorganize, consolidate, or streamline these 28 agencies and offices any way he chooses—any way he, that one man, the President of the United States—as these various agencies are moved into the new Department.

All this legislation asks of the President of the United States is that he let us know what he has decided. That is not asking a lot from the Chief Executive of this country. That is all he needs to be concerned about. All he needs to be concerned about is to explain what he plans to do. Too late. I am sorry to say to any of you Senators that you can't do anything about this. You have already given him the approval. When you vote aye on this 484-page bill, you will have given the President the approval that he needs. You can be sorry for what you have done. You can crab about it and be cranky and wish you had not done it. But it is too late now.

You remember that old song: "It is too late now." Well, it will be too late for any of us—too late.

We can weep and gnash our teeth—if we have any teeth left. And I happen to have my full set after 85 years. I have a full—I can't say quite a full set. But I have lost about I think four teeth in my lifetime of 85 years. These are real teeth. I can't take them out at night and scrub them, wash them, and put them in a big glass of water. I can't do that. They are real. They are real teeth. And they can bite, thank God. We didn't have all of this fancy medicine and all of these fancy health programs that the young people and children have today, with which mothers and fathers are blessed. We didn't have anything like that in those days.

So all I have is what the good Lord gave me through my mother's and father's genes. Well, that is all I have.

So here we are. I can gnash my teeth. They are real teeth. I can gnash those teeth. I seldom show them around here, but they are there. I can gnash my teeth, and complain all I want, and say I wish I had known—I wish I had known. Well, it is too late now. That will be the way it is.

He can move these agencies any way he chooses. All this legislation asks the President to do is: You please just tell us what your plan is. Will you do that? Please, just tell us what your plan is.

There are 1.8 million people in West Virginia whom I represent, and who are represented by my colleague, Senator ROCKEFELLER.

My people, my 1.8 million, would love to know what those plans are. But bless his name, the President does not have to tell us today. And we don't ask him. But we will get on our knees and fold our hands and say: Mr. President, will you just please tell us, when you are ready, what you plan to do? You can do it now. Here is the bill. We are passing it today, but just please tell us what you are going to do.

All this legislation asks is that the President let us know what he—he, the President of the United States. He will be with us 2 more years, maybe 6. Who knows. But anyhow, this man down here in the White House, one man out of 280 million, he will tell us what he plans to do.

A few months after we receive the President's proposal—after he is so generous to come up here and tell us what he plans to do—a few months after we receive his proposal, we will begin reading articles in newspapers and magazines. I am going to come back to the floor—the Lord willing, if He lets me live—I am going to come back on the floor and remind my colleagues; I am going to remind all these staff people around here: This is what I told you. I told you.

After we start reading all these articles in newspapers and magazines about special advisory committees—this is exactly what that Senator who is sitting in the Chair right now, the Senator from New Jersey, Mr. CORZINE, talked about this morning. He told us about it. He told us about these special advisory committees. And they will have been established, by the new Homeland Security Secretary, to make recommendations about certain homeland security-related issues.

Now, look at that. I hope Senators will go back and read today's RECORD or that of the first of the week about what Senator CORZINE had to say about this, yes, about certain homeland security-related issues.

Possibly, we will hear about an advisory committee being established—maybe we will see it in the Federal Registry, that an advisory committee has been established—to make recommendations about how the new Directorate of Information Analysis can look at our e-mail accounts. This will not be a laughing matter. I will tell you, this will not be a laughing matter.

Now, let me say that again. Possibly, we will hear about an advisory committee that has been established to make recommendations about how the new Directorate of Information Analysis can look at our e-mail accounts, can look at our banking transactions, can look at our telephone conversations, or can even look at our credit card transactions.

I don't have any credit cards. Let them look at mine. They can't look at my credit card transactions. I grew up the old-fashioned way. I pay for it as I get it. No credit card for ROBERT C. BYRD, or the Mrs. But to those who have credit cards, he can look at your credit card transactions to trace everything you purchase from butter to bullets. Welcome, Big Brother. How do you like that?

The American people will want to know, and will deserve to know, what recommendations are being made to the Homeland Security Secretary. The press will try to provide the public with answers. But under this bill, you can be sure that the press will not be allowed to access the minutes of those committee meetings. That is what we are making possible by the passage of this legislation. We are making it possible for the American public not to know what these special committees are considering. And the public will not be able to find out because this bill—this bill—here it is; 484 pages, new, never been in a committee, never seen the light of day in a committee meeting. There is no analysis of this bill that I know of from any departments here. There have been no witnesses appearing before Senate committees supporting this bill. Nobody had any committee markup that I know about. This bill just suddenly emerged out of the darkness on the morning of Wednesday, the evening of Tuesday night. There it was.

But that bill—that bill—will allow the new Secretary to exempt such advisory committees from the public disclosure laws that are on the books now that enable the press—the fourth estate—and the American public to find out what these advisory committees are doing.

This bill will allow the Secretary to drop a veil, to bring the curtain of secrecy down, to drop a veil of secrecy over these advisory committees and hide their work from the press—from the all-seeing eyes of the press—and from the public.

Do you want to vote for that? Is that what you Senators want to vote for? Is that what your constituents want you to vote for, Senators? I hope, if you are not hearing me now, that your staffs are listening. I hope, if you don't hear me, that somebody will show it to you in the RECORD on Monday morning what Senator CORZINE, the distinguished able Senator from New Jersey, who presides over this Senate at this moment, I hope they will read what he said and what I am saying here about these advisory committees and about what we are about to let happen. And here is the bill that will allow it to happen.

I hope you Senators who vote on this matter—probably one day next week—will have to answer to your constituents for that. I have been in this Congress 50 years, and I have cast many votes. I have cast more votes, than any Senator who ever lived, in the Senate of this Republic. And I just have to say, I have cast some votes that were critical votes, but I think that what we are doing in this bill, more than anything else I have voted on in my 50 years in Congress, is shifting power to an administration, shifting power to a President.

I would say this: God, so help me—and God could drop me in my tracks right here in this moment if I were not saying what I believe—I would say the same thing about this bill if it were a Democratic President in the White House.

I have no ax to grind. I am not on the payroll of any pharmaceutical company or any other company in this country. I am on the people's payroll right here in this Senate. That is it. So I have no ax to grind. I am just saying that if it were a Democratic President in the White House, I would be standing here today saying the very same thing. It isn't because the current President of the United States is a Republican. That is not it. But there is something about this Republican administration that is far different from what I have seen in former Republican administrations. And I served under Republican administrations, beginning with the Eisenhower administration.

This is a different kind of administration. This is a bill that I will vote against regardless of who might be in the office of the President. This bill will allow the Secretary to drop a veil of secrecy over these advisory committees and hide their works from the press and the public.

So what we are doing when we vote next week on this bill, if we vote next week, what we are doing is putting our hands over our eyes, and we are saying the public has no right to know. We are taking away the public's right to know.

That is what we are about to do to you out there in the land, across the land, across the plateaus, the Plains, the mountains, the valleys. That is what we are saying to you. You may not catch us at it, but that is what we are doing to you. That is exactly what we are doing to your right to know.

Later in the year, the people may begin to read in the newspapers about start-up problems in this vast new Department. The papers will possibly report about a failure by the new Immigration Service to deny entry to a known terrorist because the relevant immigration officials were too preoccupied with moving their offices, reconnecting their computers, reinstalling their phones, or even changing the heading on their stationery to handle their primary responsibility; namely, protecting our borders.

This would bring about a clamoring of public disgust as agency officials are found to be too busy organizing their offices to properly handle their duties. Editorials will appear around the country remarking about the failures of the new Department, and the public very well may have reason to lose trust in that Department.

These kinds of high-profile debacles could carry over to the Transportation Security Administration, the Customs Service, FEMA, the Coast Guard, or any of the 28 agencies and offices and 170,000 employees being transferred to the new Department. Senators may well read a few months from now about Federal workforces in their home States and the jobs of Federal employees being privatized under the labor rules included in this bill.

Don't say that you were not warned, I say to my colleagues. Don't say that you were not warned.

The Washington Post reported today that the administration plans to open as many as 850,000 Federal jobs to private contractors. Have you read it? If you haven't, go to today's Washington Post. Look for that story. It is there. Read it with your own eyes, and you will believe it. What a nice plum that is for the big business friends of the administration. How about that? What a shortsighted, ill-conceived political gimmick it is. What a hoax it is to play on the taxpayers.

Privatization has nothing whatsoever to do with improving security. Look at the private security firms that were in charge at some of our Nation's largest airports on September 11. Remember reading about these in the newspaper? Go back and look at some of those old newspapers. Is more of that what this administration really wants? I ask, is more of that what this administration really wants?

The Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date.

Now, imagine that. The Wall Street Journal. Hear me now. Paul Revere awakened Concord. I would like to be able to awaken this Senate and the other body. Do you suppose I could do that? Paul Revere did that. He was able to awaken Concord. Get out of your beds; the redcoats are coming.

Let me say that again. The Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date.

How many of our Senators today voted for cloture? If Senators had read the Wall Street Journal, the editorial today about the fallacy of pushing this bill through at such a late date, would the Senators who voted yes—and I implored and I importuned and I urged, which I seldom do, I urged Senators right there in front of that desk, that table in the well of the Senate. There were several Senators I urged: Please don't vote for cloture today. You can vote for it next week perhaps, but don't vote today. Let's take a little more time and study this bill.

The answer I got: Well, you have the weekend. You have 30 hours. You have 30 hours; isn't that enough?

Do we have? No. We have already been told by the minority: You won't be able to offer any more amendments.

The only amendment that is going to be offered is the amendment that has been offered by the majority leader, Mr. DASCHLE, that amendment on behalf of Senator LIEBERMAN, and I added my name to it afterwards, when I saw what was going on. So there it is, the Daschle-Lieberman-Byrd amendment.

But we are told by the current minority—soon to be the majority—that you can't offer any more amendments. That is the only amendment we are going to let you offer.

So how about that cloture now? I was told by some of my colleagues on this side of the aisle: Well, you have the whole weekend. You can study.

Who saw this thing coming? Who saw the situation coming in which we would offer one amendment and we are told by our Republican friends, that is it, no more; that is the only amendment that will be offered?

So what about it now, my colleagues who reminded me that we have this weekend? Even under cloture, we have this weekend.

I said to one of the Senators who said that to me: I wasn't born yesterday. I am not a new kid on the street here. I have been in this Congress 50 years. I know a little something. I have learned a little something about the rules of the Senate, and so forth.

But here we are, one amendment. That is all.

We are not going to be allowed to have any other votes on amendments, except that one. "You have 30 hours," I was told by Senators down in the well there. "Well, you have 30 hours; you have the weekend, and your staff has the weekend. You have 30 hours."

I have several amendments I would like to offer, but I cannot do it. The tree is filled. Remember the tree at the Garden of Eden? It is the first thing you read about in the Bible. The greatest scientific treatise ever written is that first chapter of Genesis. That will tell you more about science than many scientists today can tell you. It tells you the order of things in which they were created. The scientists of today will tell you that is the correct chronological order. Go back and read that first chapter of Genesis and you will read the chronological order of creation, and that was written thousands of years ago. What a piece of science that is.

I have three grandsons, two of whom are physicists. I have a son-in-law who is a physicist. I have a grandson who married a physicist. So we have lots of physicists, lots of scientists in my family. But before all those scientists came into being, the greatest scientific treatise ever written had been written right there in the Book of Genesis. We have no reason to stay dumb about how creation went forward. It is right there.

Anyhow, there it is for us. So here the Wall Street Journal editorialized today about the fallacy of pushing this bill through at such a late date. Here were these great Senators who stood up there in my face and two or three of them told me, "Well, you have this weekend, you have 30 hours," as though I didn't know that. How many Senators would like to tell me that? One or two of them did. I did say to one that this is not a new kid on the block. I know about that 30 hours.

Now look at what we have. I cannot offer an amendment, even though we have 30 hours. The tree is filled. But it is not that tree in the Garden of Eden. That is the tree of knowledge and we all can continue to learn. But I cannot offer an amendment. Our Republican friends would say you can go this far but no farther. You have an amendment pending, but that's all. That is the only amendment you are going to have to vote on before that 30 hours is up.

How do you like being given that kind of medicine? That is what we have to deal with here. Here is what the Wall Street Journal said. Get this:

> There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January.

That reminds me of the distinguished Senator from Texas. I love him in many ways, and I agree with him on occasion. He stood right here today and said, "This bill is the best you will get. How many in here are willing to believe that by putting this over another 3 months they can get a better bill?" I said, "I do." But that was his position, that this is the best bill you are likely to get. Do I think we will get a better bill after 3 months in a new Congress? Yes, I do. But that was his question.

I don't need to answer that. Let the Wall Street Journal answer that question. Do you think you can get a better bill if you wait 3 months? That is the question.

The first question that was ever asked was asked by God as He went into the Garden of Eden and started looking for Adam—Adam and Eve in that garden. God was walking in the cool of the day and he was looking for Adam in that paradise setting. How lovely that must have been. Here is old Adam over here somewhere under a tree, or back in the bushes, with some figleaves hiding from God. God said: "Adam, where art thou?" That was the first question ever asked.

The people are going to say to us: Senator, where were you? Those Senators who voted for cloture, God love them—and I love them and I respect their viewpoints. They have a right to cast the votes they want to cast them. I don't like to tell them how to vote. But let my constituents say: Robert, where were you? Where were you when you cast that vote?

So here is what the Wall Street Journal would say:

> There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January.

Hallelujah. Thank God for the Wall Street Journal. They answer the question well—better than I.

> There's little or nothing that this rump session can accomplish that couldn't be done better starting anew in January. That includes President Bush's priority of a new Department of Homeland Security . . . the proposal is mostly about rearranging the bureaucratic furniture . . . And as with any bill whipped through this quickly, we can expect to learn later about many bad ideas that deserved more scrutiny.

Mr. President, at a later moment, I will ask unanimous consent that the entire editorial be printed in the RECORD but not at this point. I suspect it won't be long before we begin to hear about the bad ideas that deserved more scrutiny.

Some Senators may find comfort in the fact that this bill has been touted as a compromise. It won't compare with the great compromise of July 16, 1787, which created this Senate. If it had not been for that compromise, you would not be here today, Mr. President. You would not be presiding over a Senate of equals, regardless of the size of your State, or the size of its population; you would not be in a Senate in which two Senators from the smallest State would have the same strength, as to their vote, as two Senators from the largest State in the Union. I would not be here. The Senator from New Hampshire would not be here. The Senator who is the minority leader from Mississippi would not be here. The Senator who is the majority leader, the Senator from South Dakota, would not be here. All of these pages, they would not be here. No, this would not be the Senate. But it is that Constitution—here it is; I hold it in my hand. Senators should, above all people, become more acquainted with this Constitution.

Some Senators may find comfort in the fact that this bill has been touted as a compromise. I don't know who this bill was a compromise between, other than the White House and the congressional Republicans, who already supported some version of the President's original plan.

Call me old-fashioned. Yes, there he is, there is that old-fashioned guy. I am married to an old-fashioned sweetheart. Thank God for her. She has been my sweetheart now for 65 years and going on quickly to the 66th. Thank God for that kind of an old-fashioned sweetheart. I hope she thinks the same thing about her old-fashioned husband—ha, ha, ha, that old-fashioned guy. That is the man. He has been around 85 years—an old-fashioned guy.

I remember a time, Mr. President, when compromises were crafted by individuals who had differing views on an issue. This kind of compromise, this 484 pages—let me make sure I am right. Yes, it is 484 difficult, complicated, hard-to-read, harder-to-understand pages. There it is. This kind of compromise is like legislative shadow boxing.

Have you ever tried boxing? I tried it, and I got knocked on my anterior. That was the end of my boxing. I found I was not so good at boxing. This kind of compromise here is like some kind of shadow boxing. It would be laughable if it were not so serious. This kind of compromise is like legislative shadow boxing—punching and jabbing and sparring with absent opponents. The opponents are not there.

This ephemeral compromise makes no concessions with regard to the President's efforts to exempt this new Department from public disclosure law, such as the Federal Advisory Committee Act. You will not find that spelled out, but you will find reference is made to it. You have to go beyond the plain print in section 871. You have to go beyond the plain print. It is referenced there, but you have to go back to the statute books to see what they are talking about.

This ephemeral compromise makes no concessions with regard to the President's efforts to exempt the new Department from public disclosure laws, such as the Federal Advisory Committee Act. It includes no concessions with regard to the President's reorganizing the 28 agencies and offices being transferred to this new Department without congressional approval.

I have never seen anything like it. In 50 years in Congress, I have never seen anything like it—never. All this without congressional approval. It includes only token concessions to those who have substantive, genuine reservations about this bill with regard to the civil service and collective bargaining issues. How can we pretend that this amendment is a serious attempt at a compromise when it is only an agreement between the President and the few supporters of the President's bill?

Oh, there are compromises in this. Yes, there are compromises in this amendment. It compromises the rights of Federal workers. It compromises the civil liberties of the American people out there. It compromises your daddies' and mothers' civil liberties, the parents of these nice pages we have here.

They are just the most wonderful people. They come here seeking to understand the legislative process. What are they getting? They are not getting the legislative process in this monstrosity. They are not getting the legislative process. These—I said kids; these are young people. They are all juniors in high school. They are at that tender age where they learn quickly. They have come here wanting to learn the legislative process. They are being cheated. I say to you young fine pages here, I love you.

From time to time, I meet out in the corridor with the pages, Republicans and Democrats. I tell them good stories, I mean wholesome stories. That is right. They are wholesome stories. I tell them stories in which there is a moral lesson. I tell them the story of the house with the golden windows. I tell them the story written by that great Russian, Tolstoy, "How Much Land Does A Man Need?" I tell them the story about "Acres of Diamonds" that was told, I understand, 5,000 times by that great Chautauqua speaker, Russell Conwell.

I tell these pages good stories, wholesome stories. I talk about the Bible. I talk about Milton. I talk about the Constitution. I talk about history. I talk about Nathan Hale to these young people here. Bless their hearts. I always am inspired when I talk to these young people. These are the cream of the crop. Mind you, there are millions across this country just like these. But they are being fooled. We are fooling these young people.

They come here to learn the legislative process. What do they get from this bill? This is not the legislative process. They do not learn in this amendment. They will go back one day and they will say: I heard Senator BYRD say that was not how our laws are made. No. We short circuited that process on this amendment, this 484-page bill. Here it is, 484 pages. What is in it? Don't ask me. I know a few things that are in it, and I have heard other Senators talk about a few things that were left out of it in the darkness of the night.

We talk about compromise. This 484-page monstrosity compromises the civil liberties of the American public. It compromises the constitutional doctrines of the separation of powers and checks and balances that we find in the Constitution, which I hold in my hand.

This bill compromises the notion that the Senate should debate and amend legislation and act as the greatest deliberative body in the world before passing massive—massive—reorganizations of the Federal Government.

Mr. President, we have allowed ourselves to be stampeded, and I could be as King Canute. A lot of King Canute's followers thought he could do anything. He thought he would disabuse his followers of that fallacy, that belief that King Canute could do anything. So he went down to the sands of the oceanside, and he commanded the waves to be still. The waves were not still. They did not go still, so the people finally understood that King Canute could speak to the ocean and it would not necessarily heed him.

I say that to say this, Mr. President: I might as well speak to the ocean. I might as well be like King Canute as to speak to some of my colleagues here. My speech would fall upon deaf ears, and they would say: There he goes again, that old-fashioned guy who believes that we ought to take the time; there he goes again.

We have allowed ourselves to be stampeded into passing this bill. Afraid to be on the wrong side of this issue, we hear cries from both sides of the aisle that we must support our President. We hear cries of, "My President," "My party," "My Commander in Chief." When will we hear, Mr. President, "My country"? When will we hear, "My country"?

Senators are obviously upset about the miscellaneous provisions that were included in this bill at the last minute. The Washington Post this morning outlined a number of these provisions ranging from language that would help the FBI obtain customer information from Internet service providers to language incorporated in the bill by the House Republican leadership that gives Texas A&M—I do not believe it mentioned Texas A&M—that gives Texas A&M the inside track in hosting the first university center on homeland security to be established within 1 year.

It will not say that in the bill. Senators will not find that in the bill.

But the language in the bill is so targeted only that one—at least that one institution would be most favored over others.

Probably the most egregious provision inserted is a White House-backed provision designed to head off dozens of potential lawsuits against Eli Lilly and Company and other pharmaceutical giants that are being sued by parents who have linked their children's autism to those companies' childhood vaccines.

How about that? I ask the distinguished Members of the other body. How do they feel about having passed this bill with that kind of language in it? Hear me over there at the other end of the Capitol. Yes, explain your vote, explain your vote to your constituents. You, back there in the other—we are not supposed to refer to the other body in our speeches, but the other body passed this bill in a hurry.

Those in the other body who voted for this, go back and look at what you voted for.

How much time do I have remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 5 minutes remaining.

Mr. SARBANES. Will the Senator yield to me on my time for a few questions?

Mr. BYRD. Yes, I will be glad to yield.

Mr. SARBANES. May I have this counted against my time under cloture?

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. I ask the distinguished Senator from West Virginia: In July, the Brookings Institution issued a report concerning this reorganization, and they said the following, and I am quoting from them now:

> Any fundamental reorganization represents a huge managerial undertaking, one that becomes ever more daunting as the number of agencies to be included increases. The danger is that top managers will be preoccupied for months, if not years, with getting the reorganization right, thus giving insufficient attention to their real job, taking concrete action to counter the terrorist threat at home.

This Brookings report advocated some consolidation of agencies, but it proposed a much smaller, more streamlined consolidation, and the report went on to say: "Reorganization is not a panacea. In fact, there is a risk that reorganization could interfere with, rather than enhance, homeland security tasks." Certainly, changes should be made only when there is a compelling case that consolidation offers clear benefits.

I supported a proposal—and this leads up to my question—that the Senator from West Virginia offered earlier in the consideration of this issue, which would have undertaken to do a reorganization, but would have phased it and would have brought it back at periodic times for further scrutiny, examination, and implementation by the Congress. Was that the approach which the Senator had taken?

Mr. BYRD. Yes, it was. Mr. President, if I may respond to the distinguished Senator. The amendment I offered to the legislation that was being proposed by Mr. LIEBERMAN in his committee, the language I offered with several cosponsors and supporters, such as the distinguished Senator from Maryland, Mr. SARBANES, would have provided for the recommendations of the administration to come back to the Congress periodically—every 4 months, for the next 12 months—which recommendations would have to do with the phasing in of the various and sundry agencies, a few at a time, three times, every 120 days. Some of the agencies would be phased in.

Those recommendations would come back to the Congress and would go to the appropriate committees having jurisdiction—in this case it would be Mr. LIEBERMAN's committee and his committee's counterpart in the House of Representatives—and expedited procedures would require that committee to act to bring out a bill implementing those recommendations, or amending them or changing them. Then the Senate, under expedited procedures, would proceed to call up that bill and pass it. That would be done three times.

So the amendment which the distinguished Senator from Maryland refers to would provide for a phased-in approach over the same period of time that is going to be utilized by the President and the Secretary under this bill—namely, 12 months—and over that same period of time a phased-in approach with Congress still in the mix. Congress would still have a say at each of these three junctures.

Mr. SARBANES. It seems to me that this is a far more sensible way to proceed. First, I think it maintains a better balance with respect to the roles of the executive and the legislative branches of our Government. I think the Senator has been absolutely right to underscore the fact that what is at stake here is a tremendous grant of authority to the executive branch.

Mr. BYRD. Tremendous.

Mr. SARBANES. It is sweeping in its dimension.

Mr. BYRD. Sweeping.

Mr. SARBANES. Secondly, I think that review process is more likely, far more likely, to produce beneficial results, because as the Senator said earlier today, the more scrutiny and discussion you have, the higher the likelihood—not a guarantee, but the higher the likelihood—that you will have a better result.

As I have listened to the Senator over these weeks of the debate, I have increasingly come to have very deep concerns about what we are doing with this legislation. I feel for the Senator when he says people are not—even now, as we near the last hour, focusing fully on the implications and the consequences of what we are discussing.

Back in September, the Baltimore Sun published an editorial, and I want to read a couple of paragraphs from it. This is from September 23 of this year:

> Months of debate have made clear that this bureaucratic boondoggle offers no promise of making the homeland more secure. Worse, it takes the focus off the need for tighter oversight of the Nation's security systems. President Bush offered the most sweeping government reorganization in a half a century, largely as a political and public relations tactic. He was trying to counter Senate Democrats who were advancing similar legislation of their own. He timed the unveiling of his plan to drown out the testimony of FBI Agent Coleen Rowley, who was blowing the whistle on the security failures of her hidebound agency that blinded it to the clues of the September 11 attacks. Shifting 22 Federal agencies and 170,000 workers into a new department will cost billions but will do nothing to solve the problems agent Rowley addressed. What is needed is greater sharing, coordination and synthesis of the security information collected by the myriad agencies. But this new department will not even include the FBI and the CIA which are the two premier intelligence gatherers. Nor is there any guarantee that greater sharing would take place between them if they were together.

I think this is right on point and parallels much of what the Senator, as I understand it, has been arguing.

Mr. BYRD. Mr. President, before I respond to the distinguished Senator from Maryland, I understand that the able Senator from Hawaii, Mr. AKAKA, has a unanimous consent request he would like to make. Will the Senator from Maryland yield for that request since this is on his time?

Mr. SARBANES. Certainly.

Mr. AKAKA. I thank the Senator from West Virginia and the Senator from Maryland for yielding to me.

Mr. President, I ask unanimous consent that my hour under cloture be yielded to Senator BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Hawaii, Mr. AKAKA, who is about to take the chair. He wanted to make the request before he took the chair.

Mr. REID. Mr. President, I ask unanimous consent that the order now in effect, that there be debate only until 3:30, be extended until 5 o'clock today.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. On the time of the distinguished Senator, let me be just a little bit loquacious in my response. I have served in this Senate for 44 years and in the Congress for 50 years. In my time in the Senate and in the House, the Senator from Maryland—I don't have to say this; I don't owe the distinguished Senator from Maryland the tribute I am about to say, except it is honest and he is entitled to it.

We often pass around our warm words of praise because we are Senators and this is a happy family here. I admire this son of ancient Greece. He is a son of Athens. He is American. He grew up in this country. His parents came to this country. He knows what being an immigrant means. He is a Rhodes scholar. I can't say that about ROBERT BYRD. But this man from Maryland is a Rhodes scholar. He is a true son of Athens, a son of the people whom Socrates, Sophocles, and Plato were a part. He is one of the most thoughtful Senators I have ever seen.

When I was majority leader and when I was minority leader—thank Heavens, thank Heavens that experience is in the background now; it is long past—but when I was the leader duly elected by my colleagues, I always had meetings in which I tried to get from the most brilliant, most thoughtful Senators on my side of the aisle, their thoughts, their opinion, their advice as to this or that issue, whatever issue might be before the Senate or about to come before the Senate. PAUL SARBANES was one who was always there. He was never out of the room. Not because he was the "yes" American. He wasn't, by any means. But I knew I would get the real stuff from PAUL SARBANES.

Here is a man who is head and shoulders above some Senators with whom I have served, and I have served with a great many Senators. This man is a true thinker. We have seen the picture of The Thinker. This is the thinker, PAUL SARBANES.

A little while ago he said something which brought to my mind the words of William Wordsworth who said: No matter how high you may be in your department, you are still responsible for the actions of the lowliest clerk in your department.

I forget now what the Senator said, but it brought that thought to mind. We are talking about 28 agencies. Who is going to be responsible for the lowliest clerk's actions in this conglomeration, the epitome of chaos that will occur?

I thank the distinguished Senator from Maryland. Please, if he has something further I will sit down at any moment. If he has anything further of me, I will be glad to respond.

(Mr. AKAKA assumed the Chair.)

Mr. SARBANES. First, Mr. President, I appreciate the generous and gracious remarks of the distinguished Senator from West Virginia. I must say that with all of my schooling he mentioned, I have learned more from him than at any other point along the way. I am extremely appreciative to him for that.

I did want to cite this quote that the Senator has used in the course of this debate, which is so appropriate to our situation, from the Roman poet and the adviser to Nero, Gaius Petronious Arbiter. It is another instant in which the Senator has enlightened this institution through his use of Roman history. The quote could not be more on point. It is written as though it were written for the current situation. It is as follows:

> We trained hard, but it seemed that every time we were beginning to form into teams, we would be reorganized.
>
> I was to learn later in life that we tend to meet any new situation by reorganizing, and the wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

We could not have a more appropriate quote to the situation that we are confronting today.

If the Senator would indulge me for just a couple of minutes, I tie in with the demoralization, confusion, and inefficiency what this legislation is doing to loyal, dedicated, hard-working, committed Federal employees. I am very frank to say taking from our employees rights that they now have, which this legislation will do on the grounds of flexibility to enhance homeland security, will do just the contrary. It will deal a blow to homeland security. We are talking about dedicated employees who are serving our country. They have been involved in protecting homeland security. They are loyal and committed workers. We want them to go on providing our high level of service, yet this legislation does not protect longstanding rights to bargain collectively about issues of importance, nor does it retain important civil service protections which have been worked out over a very long period of time.

The Federal employees in this new Department, all of whom are already working to protect our national security, ought to have the same rights and protections they heretofore have had. Taking these rights away, cutting them down, will undercut the morale of these employees. We will get lesser performance, although I think these are very dedicated people. In contrast, if we protect our workforce, our workforce will protect us.

Let me turn it around the other way. Our federal employees have been protecting us. Why should we withdraw from them important employee protections? Many of these protections came into being in order to protect whistleblowers who are trying to do a better job, to eliminate cronyism or favoritism or unfair labor practices. Some say that membership in unions by employees in the Homeland Department will impede efforts to protect our national security. I find this difficult to understand. There are currently 200,000 union employees—employees who have a union affiliation—at the Department of Defense. Many of those employees have high-level security clearances. This never seemed to impair our national security during the cold war. Many of the first responders on September 11 were union members. Their membership in unions in no way hindered their remarkable displays of bravery. They were thinking only of their duty to their country.

Many agencies that already protect homeland security have union members amongst their ranks: The Border Patrol, the Customs Service, the Federal Emergency Management Agency, to name just a few. These employees are already doing their job well. Are they to be rewarded by stripping them of these union protections, of these civil service rights?

We have spent a long part of our history working out these employee rights, and they are important to the success of the Government and to the attraction and retention of the best possible Federal employees. We ought not to be diminishing these rights and protections, as this legislation does.

I think that stripping the employees of these protections will harm national security rather than help it. That is a subissue within the larger issue on which the Senator from West Virginia has been focusing, about the dislocation that is going to be created by this sweeping proposal, the one that brings us back, of course, to this wonderful quote from Gaius Petronius Arbiter.

I urge my colleagues to reexamine this closely. I know this issue has now been politicized. No one is against homeland security. No one is against enhancing the security that our people feel, and protecting it. The question then becomes, what is the best way to do it?

We have had studies on this point. The Brookings Institute made a very careful evaluation. They said they thought some consolidation was in order, but they thought it should be limited, it should be done carefully, it should be done thoughtfully, it should be done with prudence. They pointed out, of course, that it is a huge managerial undertaking; that it becomes more daunting as the number of agencies to be included increases. And then last summer they said in their report:

> The danger is top managers will be preoccupied for months if not years with getting the reorganization right, thus giving insufficient attention to their real job, taking concrete action to counter the terrorist threat at home.

I think that is absolutely on point and it is a point which the able Senator from West Virginia has made repeatedly, of course, during this debate. It really tracks what Gaius Petronius Arbiter said, when he said:

> I was to learn later in life that we tend to meet any new situation by reorganizing, and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

Mr. BYRD. Hear, hear, hear.

Mr. SARBANES. And that is exactly what we are confronted with here.

Mr. President, I thank the Senator for yielding, and I yield the floor.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his contribution today, and for his references to the ancient Roman, Gaius Petronius Arbiter, whom the Senator from Maryland more than once has quoted on this floor. I thank the Senator for his defense of the patriotic Federal employees who work day and night to protect us.

Mr. President, we will not have one whit more protection with the passage of this 484 pages, not one whit protection more than we have now. The same people who will protect us at the borders, at the ports, at the airports and throughout the land at the ports of entry, the same people who will protect us then are out there now. They are there day and night protecting us.

So I thank the distinguished Senator from Maryland.

Mr. President, continuing my statement, and I will not be overly long, probably the most egregious provision inserted is a White House-backed provision designed to head off dozens of potential lawsuits against Eli Lilly and Company and other pharmaceutical giants that are being sued by parents who have linked their children's autism to those companies' childhood vaccines. The language would keep the lawsuits out of State courts, ruling out huge judgments and lengthy litigation and, instead, channel complaints to a

Federal program set up to provide liability protection for vaccine manufacturers. The program, funded through a surcharge on vaccines, compensates persons injured by such vaccines to a maximum of $250,000.

A number of Senators, including the very distinguished Senator from Michigan, Ms. STABENOW, strongly criticized these provisions yesterday. And yet at the same time, some Senators who have made these statements—not the Senator whose name I have expressed just now—but some Senators at the same time have pledged to vote in favor of this bill, regardless of whether these provisions are included or removed. How about that. We are acting as though this is a conference report that cannot be amended, as though its passage is a fait accompli. We still have the opportunity to amend this bill, except for the fact that our Republican friends on the other side of the aisle have said: This far and no further. We have got an amendment pending in the tree and that is all you will get. You will get a vote on that amendment—up or down on or in relation to it, I suppose, at the end of the 30 hours—but no more amendments. That is it. That is the only amendment.

Well, we will see about that.

We still have the opportunity to amend the bill, at least the basic bill, H.R. 5005, even postcloture. So this amendment introduced by Senator DASCHLE will strike language in this bill which the Senate has not previously considered, the language that would allow the Homeland Security Secretary to establish advisory committees within the Homeland Security Department and to exempt these committees from the Federal Advisory Committee Act.

When I saw that in the amendment that the leader was introducing on behalf of Mr. LIEBERMAN—I saw that in the amendment, and I immediately wanted my name attached because I have been complaining, I have been criticizing that, complaining about that language in the bill.

This statute which has been on the books, the Federal Advisory Committee Act, which has been on the books for 30 years, ensures that the ad hoc committees used to craft policy in the executive branch provide objective advice that is accessible to the public. These public disclosure rules allow Congress and the media and groups outside of Government to know how the executive branch is making important policy decisions.

Section 871 of this new substitute we have just been given, less than 60 hours ago, provides the Secretary of Homeland Security blanket authority to exempt all advisory committees in the Department from existing public disclosure rules. This provision was not included in Senator LIEBERMAN's substitute, but it has been slipped into this new bill, which was made available to us, as I say, less than 60 hours ago, with the hope that Senators will not have enough time to scrutinize this dramatic change to existing statute.

Many of the advisory committees in this new Homeland Security Department will be dealing with issues of national security that should not be subjected to public disclosure rules. But the Federal Advisory Committee Act already allows the President to exempt these public disclosure rules for advisory committee for national security reasons. This is authority that the President has used for 30 years, and authority he will be able to use for advisory committees in the Homeland Security Department.

But instead of relying on the President's current authority to exempt committees on a case-by-case basis, the new language in this bill allows the Secretary to exempt ANY advisory committee from public disclosure rules, regardless of whether national security is pertinent or not.

This new blanket authority is not necessary. As a matter of fact, we ought not have it. It shouldn't be that way because it interferes with the people's right to know, and it is a danger to our liberty. It is a danger to our constitutional system.

The provisions in this bill allow the Secretary to use ad hoc advisory committees to craft policy in secret, without making specific findings that such secrecy is necessary in any particular instance.

The press, I hope, will read this bill and understand this bill. I hope the press is fully aware of how this presents a danger and a threat to the media's efforts to probe, to ask questions, and to scrutinize and to protect the public's right to know.

This unnecessary new blanket authority will give the President carte blanche to respond and expand the culture of secrecy that now permeates this White House—this administration.

Let me say that again.

This unnecessary new blanket authority can be used to give the President carte blanche to expand the culture of secrecy that now permeates this White House—this administration.

The public disclosure exemptions in this bill are a license for abuse. They are a danger. They are un-American. They should not become law.

I hope that Senators, before they cast their vote on the passage of this bill, will think about this. I hope they will be prepared to answer the public—their constituents—in the next election, whatever election down the road awaits them. I hope they will be prepared. There are going to be stories in the press as time goes on, I would wager, about this particular authority that the Senate will extend with passage of this bill to this administration and to this new Department—to the Secretary of this new Department.

We see on the front page of the Washington Times today—I have already mentioned the Wall Street Journal, and I mentioned the Washington Post. Now I call attention to the front page of the Washington Times this morning. There is a headline which reads "Homeland Bill a Supersnoop's Dream."

There are many dreams to which we can allude—Jacob's dream—the dreams.

"Homeland Bill a Supersnoop's Dream."

In yesterday's New York Times, William Safire warned that if this homeland security legislation is passed as it is currently written, the Federal Government may be planning to use its new intelligence authority to compile computerized dossiers on every American citizen, including "every piece of information that government has about you . . ."

—every piece of information that the Government has about you, each of you, about you, about you, about you—

. . . including "every piece of information that government has about you—passport applications, driver's license, bridge toll records, judicial and divorce records, complaints from nosy neighbors to the FBI, your lifetime paper trail . . ."

That is a long trail.

". . . your lifetime paper trail plus the latest hidden camera surveillance."

No one knows about those hidden cameras and where they are.

They may be looking at you. Who knows. They may be in your office looking at you.

Do we need to add to all of this by providing even more authority for the Federal Government to hide decisions behind locked doors—decisions which affect the safety of every man, woman, and child in this Nation?

Exempting these committees from the Federal Advisory Committee Act also removes requirements that the advice of these committees be objective and that the membership of the committees represent balanced viewpoints on the issues. With this new authority, the Secretary will not have to make any effort whatsoever to ensure the integrity and objectivity of these committees.

The language in this bill—here it is—484 pages. It wasn't around a week ago today. Nobody saw one page a week ago today. This bill didn't exist a week ago today.

The language in this bill even exempts individual members of advisory committees from financial conflict-of-interest rules. We should not allow our homeland security policies to be crafted by corporate advisors with a financial interest in those policies. This bill should not become a vehicle for lining the pockets of corporate fat cats.

Section 232 of the new bill also exempts advisory committees within the

Office of Science and Technology in the Justice Department. This means that this new office, which will serve as the focal point for developing law enforcement technology, may rely on advisory committees whose members have a personal stake in the policy recommendations adopted by the committees. I am worried that exempting this new Science and Technology Office will allow the administration to provide special treatment for corporate campaign contributions who are pushing new anti-terrorism technologies.

It worries me that issues as important as homeland security and the safety of the American people may be decided in secret by ad hoc committees that are exempt from traditional good government laws. Under this language, the Secretary will be able to exempt not only new advisory committees, but also existing committees that are transferred into the Department along with these 28 agencies and offices.

This amendment, which I have cosponsored, will strike this exemption authority from the bill.

This dangerous new authority should not be slipped under the cover of darkness, as it were, into legislation that Senators have had little time to study or amend. If the Secretary of the new Department of Homeland Security needs this blanket authority, let him come to Congress and make his case. Congress must not hand over blanket authority to this administration which would allow it to cloak decisions in secrecy.

Now, Senators, this is what we are about to vote on, this bill. Now, if the amendment fails, Senators should not then go ahead and vote for this bill. If this amendment to strike these provisions fails to be adopted, Senators have no right then to go home and say: Well, I voted for the amendment. I was for that, but it failed and I, therefore, went ahead and voted for this bill.

What a crappy bill. Don't hide behind your vote when you vote on this amendment or you vote in relation to it or whatever the vote is when it comes. Don't hide behind that. If that amendment fails, don't hide behind that and say: Well, I voted for the amendment, and so I tried to get it in there, but the Senate voted it down, so I went ahead and voted for the bill. Shame on you. And your constituents should say so: Shame on you. Now, you say you voted for the amendment, and that the Senate didn't adopt it. Your convictions were not very strong, so you went ahead and voted for the bill, then, after that amendment failed. Shame on you.

Mr. President, I don't know of any measure that has ever come before the Senate in connection with which I have spoken more passionately, with greater conviction, than I have in regard to this bill. I have no special ax to grind. No, I have no special ax to grind. I am on nobody's payroll except the people's.

I am concerned about this. I am more concerned about this bill than I believe any bill I have ever voted on or will ever have voted on. And I have cast more votes than any Senator in the history of this Republic.

I have no special ax to grind. You say: Well, he's 85. He won't be running again. Don't bet on it. Don't bet on it. That is a matter for the Good Lord to determine and the people of the State of West Virginia. So don't count me out. There are those who may say: Don't count me in. I believe there is a song to that effect: "Don't Count Me In." But don't count me out.

That is my belief.

This dramatic reduction of transparency should not be clandestinely slipped into this eleventh-hour legislation, and the Senate should not allow such a dangerous provision to be rushed through this Chamber during the final minutes of this Congress.

So shame on you if you vote for this amendment, and then, if it fails, you turn around and vote for this 484-page bill. Don't use that as an excuse when you go back to your constituents.

Every Senator has the right to do what he thinks best, but, believe you me, your constituents, if you vote for this bill—if that amendment fails, and you still vote for this bill, I hope you won't try to hide behind your vote for the amendment that is before the Senate: Oh, I voted for that amendment, but the Senate rejected it, so I then felt that I had done my best, and I went ahead and voted for the bill. Shame on you.

This administration has worked hard to keep the Congress out of the loop. The President has sought to isolate himself from the American public and their Representatives in Congress. He has asked for the Congress to provide him with broad statutory powers to further block congressional involvement.

That is what this bill will do. Pass this bill, and you will say to the President: Well, I don't know what your plan is—you have not told us what your plan is—but we have approved it. Here it is. Here is the bill. So you have the next 12 months in which to determine your plan, and all you need to do—we hope you will tell us about it. The language here provides for the President "informing" the Congress about the plan.

Well, in some cases, Senators have supported the President on these issues, either to show unity with the leader of their party or because they fear political attacks if they do not. Less and less, it seems to me, do we think about these grants of power that will affect the constitutional checks and balances and separation of powers that protect the constitutional freedoms of our country.

I must say this, that the shelf life of appreciation one might expect from this administration, in having supported it—those of us, may I say, on this side of the aisle, in particular—the shelf life of appreciation from this administration for your efforts to curry favor with the administration, if that is what it is, is very short indeed.

We saw that in the case of the distinguished Senator from Georgia, Mr. **CLELAND**. We saw that in the case of the distinguished Senator from Missouri, Mrs. **CARNAHAN**. We have seen it in the cases of other Senators who supported the administration. They did what they thought was right. But in any event, their votes were in support of the administration on various issues—the tax cut, the Iraq war resolution, whatever it might have been—and yet, the President, himself, went into those very States and campaigned against those Senators. So this administration's thanks don't go very far, may I say to Senators.

So the best thing to do, as always, is to do your best, vote your convictions, and stand by your people who send you here, and stand by the Constitution.

Henry Clay, as a Senator from Kentucky in 1833, in building the case for the censure of President Andrew Jackson, asked the Senate:

> How often have we, Senators, felt that the check of the Senate, instead of being, as the Constitution intended, a salutary control, was an idle ceremony . . . We have established a system, in which power has been most carefully separated and distributed between three separate and independent departments. We have been told a thousand times, and all experience assures us, that such a division is indispensable to the existence and preservation of freedom. . . .

This is Henry Clay talking:

> The president, it is true, presides over the whole . . . but has he power to come into Congress, and to say such laws only shall pass . . . to arrest their lawful progress, because they have dared to act contrary to his pleasure? No, sir; no, sir.

Well, Henry Clay was an opponent of the Presidential veto. He thought that was a despicable thing, the President's veto.

So he spoke, as I have just read. He spoke of the President and he said: It is true, he presides over the whole:

> . . . but has he power to come into Congress, and to say such laws only shall pass . . . to arrest their lawful progress, because they have dared to act contrary to his pleasure? No, sir; no, sir.

The Senate must not blindly follow in the name of party unity. I don't blindly follow in the name of the Democratic Party unity. I don't do that. I won't do that. That will not be my guiding star. In storm or in tempest or in fair weather, that will not be my guiding star.

The Senate must not blindly follow, in the name of party unity or under the yoke of political pressure, a shortsighted path that ultimately undermines our sworn duty to support and defend the Constitution.

I will vote against this homeland security bill because even the amendment that is before the Senate is not enough. I have some amendments that I would like to offer. If this amendment fails, I would like to offer my amendments. It is very questionable as to whether I will get to do that, very questionable as to whether or not those amendments will pass the Senate. I doubt that they will.

So I intend to vote against this homeland security bill. I will raise my voice as long as I have a voice, and I will raise my hand as long as I can raise that hand to attempt to derail this blatant power grab and giveaway of the people's liberties.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BARKLEY). Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that I be able to reclaim 5 minutes of my time that I yielded to Senator BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Hawaii is recognized.

Mr. AKAKA. Mr. President, I rise in support of the amendment offered by Senator DASCHLE, Senator LIEBERMAN, and Senator BYRD to the pending legislation concerning homeland security.

I voted earlier against invoking cloture on this legislation because in part I disagreed with many of the amendments which were added at the last moment by the House to this bill. The amendment offered by Senator DASCHLE and Senator LIEBERMAN would correct many problems in this House bill, although not all. There is much about the underlying bill which still needs to be corrected. I laid out earlier my concerns. Today however, I want to address the House's legislative "add-ons" that should be stripped from this bill. I think it is clear what the house has done in the midnight hour of this Congress.

The House leadership has taken a moving train—legislation for a Department of Homeland Security—and attached gilded carriages for their special friends to travel on this legislative express.

What has been added does not enhance the security of the American people. It enriches a select few companies and special individuals, and very special people. One provision is clearly meant to earmark a new university-based homeland security research center program for Texas A&M University, avoiding an open and competitive award process. All of us have universities, distinguished centers of higher learning in our states, all of which would welcome the opportunity to make their case for this funding, but under this bill, they will not get that chance. However, if the Daschle amendment passes, other colleges and universities would be permitted to demonstrate their competence to be a center for homeland security research, including Texas A&M.

Another provision in this legislation would limit liability to companies producing homeland security technologies. The main intent of this provision is to eliminate the ability of Americans to obtain compensation should they be harmed by any of these technologies. The provision is open-ended. It does not define how anti-terrorism technologies will be identified. Under the liability provision sections, the Secretary has the discretion to designate which technologies will benefit from this additional protection from liability. This section is not about stimulating the development of new technologies to protect us. It is about finding new ways to protect companies from legal liability. Indeed one section of this bill is labeled "Litigation Management." That says it all.

The subparagraphs, almost too small to be noticed, undermine the Federal Advisory Committee Act, or FACA, and the public's right to know the make-up, meeting schedules, and findings of federal commissions, committees, councils, and task forces. These groups are chartered by the President, Congress, and agency heads to give independent advice and recommendations on substantial policy issues and technological problems.

Congress enacted FACA in 1972 to address concerns of committees being redundant, having inadequate oversight, using secretive operations, and not representing public interest. FACA requires that the advice provided by such committees be objective and responsive to public concerns. Committee meetings are required to be open and properly noticed, with specific exceptions. The House bill would give the Secretary of Homeland Security a blanket exemption from FACA requirements once the Secretary notices the creation of a committee and its intent. One wonders why the House Leadership wants to overturn sunshine rules. What do they want to hide?

This is a very serious matter. What sort of oversight will these committees have? Who will serve on them? Will all interests be represented? How will we confirm that the public interests have been met? To allow the Secretary of Homeland Security to set up advisory committees that are free from the balanced regulations of FACA is to retreat back to a time when special interests groups ran roughshod over the public's interest and recommended one sided-views without appropriate oversight.

The original Lieberman substitute, and the original Gramm-Miller amendment, were based upon provisions that were debated and discussed within the Governmental Affairs Committee through hearings and business meetings. The bill before us today has several provisions that have not had that treatment and will directly benefit the airline and rail companies and other special interests.

The Governmental Affairs Committee spent weeks and months studying, debating, and drafting legislation on homeland security. In contrast, this bill was not written in committee and some parts of the bill before us today have had only special interest input. That is not the best way to ensure public safety and national security.

I yield my time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 2003—CONFERENCE REPORT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report to accompany H.R. 4628, the intelligence authorization; that the conference report be considered and agreed to; the motion to reconsider be laid on the table; and that any statements relating to the conference report be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The conference report was agreed to.

(The conference report is printed in the House proceedings of the RECORD of November 14, 2002.)

Mr. REID. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. Mr. President, I ask unanimous consent that the Senate be in recess subject to the call of the Chair.

There being no objection, the Senate, at 6:12 p.m., recessed subject to the call of the Chair and reassembled at 8:11 p.m., when called to order by the Presiding Officer (Mr. BARKLEY).

ORDER OF BUSINESS

Mr. REID. Mr. President, I appreciate very much, first of all, the patience of the Presiding Officer. We are sorry that in your first few hours in the Senate you have had to spend so much time here when we have not been doing a lot, but it is necessary that you are here, and we appreciate very much your patience, as I have indicated.

Mr. President, it is my understanding that we are not in morning business. Is that right?

The PRESIDING OFFICER. That is correct.

MORNING BUSINESS

Mr. REID. I ask unanimous consent that we now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR JEAN CARNAHAN

Mr. CONRAD. Mr. President, I rise today to pay tribute to my distinguished colleague from Missouri, Senator JEAN CARNAHAN. After losing her husband and eldest son in a tragic plane accident, Missouri called upon Mrs. CARNAHAN to fill the remainder of her husband's Term. Senator CARNAHAN answered the call of duty and did it with a fair, courageous hand.

Senator CARNAHAN was Missouri's first member of the Armed Services Committee in over 25 years. She also served on the Small Business Committee, the Governmental Affairs Committee, the Commerce Committee, and the Special Committee on Aging.

Senator CARNAHAN made a strong economy her top priority. Her ability to secure defense projects for Missouri and safeguard funding for family farmers hurt by flooding and drought clearly shows Senator CARNAHAN's desire to bolster Missouri's economy, provide good jobs for Missouri workers, and support our Nation's effort in the war against terrorism.

Senator CARNAHAN also knew that a highly skilled workforce required equal educational opportunities. Her Quality Classrooms Amendment allowed local schools greater flexibility in deciding how to utilize Federal dollars. She also worked to secure over $1.3 million for programs boosting postsecondary education assistance to low-income students. These initiatives illustrate Senator CARNAHAN's deep commitment to a better education and a brighter future for all Missouri students.

Filling the seat of her late husband, Senator CARNAHAN led with dignity and courage as Missouri's first female Senator. She took office at a time of personal loss and hardship, yet prevailed and proved to be a strong leader for Missouri. I would like to join my colleagues in wishing Senator CARNAHAN and her family the very best in the future.

TRIBUTE TO SENATOR PHIL GRAMM

Mr. BUNNING. Mr. President, I rise today to pay tribute to my good friend and colleague, Senator PHIL GRAMM.

Without Senator GRAMM, none of us would ever know who Dicky Flatt is. We would not know nearly as much as we know about Texas A&M as we do. And we would probably still be trying to repeal Glass-Steagall.

I met Senator GRAMM on a number of occasions when I was a Member of the House of Representatives, but I did not really get to know him until I joined that Banking Committee in January 1999, when he was the chairman.

Senator GRAMM's first order of business was to finally pass a repeal of the Glass-Steagall banking law. I had worked on this same repeal during my first term in the House, 12 years earlier, and I know many others had been working on this effort for much longer than that. But it was Senator GRAMM's dogged determination that finally pushed the ball over the goal line and brought our banking laws into the 21st Century.

I won't bore everyone by going into a long list of Senator GRAMM's other legislative accomplishments; they are too numerous to mention, but I would put him right up there with a small group of other senators who have had the greatest impact on the Senate in the past century.

Outside of our working relationship, I have also gotten to know Senator GRAMM, and his lovely life Wendy, very well over as friends.

I would also like to tell a little story about how Senator GRAMM's unselfishness greatly assisted me when I was in a tight spot. Everyone in this body remembers the anthrax attacks of last year. As a resident of the Hart Building, I was one of those who was forced to find other space when the Hart building was closed. The Architect of the Capitol, the Senate Superintendent and the Rules Committee did a great job, under very trying circumstances, of finding space for everyone. But there were about fifty offices that were relocated so space was tight. My staff and I were sitting on top of each other down in EF–100 underneath the back steps of the Capitol.

We were glad to have the space. But it wasn't much more than a glorified broom closet.

Well, Senator GRAMM heard about my predicament and very graciously let me use his Capitol hideaway office until the Hart building was reopened. He only asked that I did not "trash the place and leave empty whiskey bottles on the floor." I can assure the Members of the Senate and the people of the Commonwealth of Kentucky that I followed his instructions.

I am also fairly confident that as much as I appreciated the kind gesture, my staff appreciated the fact I had somewhere else to go even more. It is not just Members who will miss Senator GRAMM, but staff as well.

We will miss his leadership, but I think we will miss his courage even more. Senator GRAMM is wiling to take unpopular stands. He is willing to lose a vote 99–1. He is willing to keep the Senate in all night to fight for what he believes in, no matter how unpopular that stand may be.

One example that stands out clearly in my mind was at the beginning of the debate on the Clinton health care bill. Many don't remember now, but when we first started working on that issue in Congress, President Clinton had a lot of momentum and it looked like only a foregone conclusion that he would get some sort of bill passed. Those of us who didn't the President's proposal really felt like we were swimming upstream.

Then PHIL GRAMM took the Senate floor, and laid out a withering assessment of the bill and why it would do so much harm to the country if passed. He wrapped up his remarks by saying that "the Clinton health bill would pass the Senate over my cold, dead political body." That served as a rallying cry for the rest of the Congress and signaled a real turning point in the debate. But, at the time, it wasn't popular and most people on Capitol Hill thought it wasn't very smart. But it was right. That's PHIL GRAMM for you.

I have heard him say on more than one occasion. "I've never taken a hostage I wasn't willing to shoot." Everyone knows Senator PHIL GRAMM will kill a bill if he thinks it's bad for America or if fellow Texans are being treated unfairly. And he has shot some legislative hostages.

But more often than not, he was able, through negotiation, to work out a better product.

I think the Senate will miss his homespun eloquence. I don't think there is anyone better at simplifying a complicated bill for his colleagues and the American people. Whether he uses the "Dicky Flatt test" or the wisdom his mama passed down to him, Senator GRAMM has the unique ability to make the complicated simple. On this side of the aisle, that eloquence will be missed, he always did a great job of articulating our position.

Mr. President, Senator GRAMM will be missed not just by me, but this entire body, the people of Texans and all Americans. I will miss him as a Senator and a friend.

TRIBUTE TO SENATOR FRED THOMPSON

Mr. BUNNING. Mr. President, I rise today to pay tribute to my good friend and colleague, Senator FRED THOMPSON.

Since his arrival in the Senate in 1994, Senator THOMPSON has been one of the most respected Members on both sides of the aisle. His constituents clearly have great admiration and respect for him. In 1996, Senator THOMPSON received more votes than any other candidate in the history of Tennessee and won his reelection by more than twenty points!

Throughout his tenure in the Senate, Senator THOMPSON has been a tremendous supporter of conservative ideals and principles. As a member of the Senate Finance Committee, he has fought to reduce taxes for his fellow Tennesseans and all Americans, and helped to stabilize Medicare and Social Security for future generations.

As a member of the Senate Government Affairs Committee, I have had the privilege of working with Senator THOMPSON on various projects when he served as chairman, and later as the ranking Republican member. The Senator should be congratulated for his hard work on the President's priority to create the Homeland Security Department.

In a recent interview, Senator THOMPSON said he has "always looked at public service as more an interruption to a career than a career itself." It is now time for Senator THOMPSON to begin his new career as the District Attorney on the hit television show "Law and Order." I wish my good friend Senator THOMPSON well in his new job, and I leave him with this little piece of advice: don't let Hollywood turn you into a liberal!

Senator THOMPSON will be missed not just by me, but this entire body, the people of Tennessee and all Americans. I will miss him as a Senator, but look forward to watching my friend on Wednesday nights as he begins his new career on "Law and Order."

TRIBUTE TO SENATOR TIM HUTCHINSON

Mr. BUNNING. Mr. President, it is with great pride that I rise today to pay tribute to Senator TIM HUTCHINSON of Arkansas

Since 1985, when he first began his career in public service as a member of the Arkansas State House of Representatives, TIM HUTCHINSON has fought for the people of Arkansas and the citizens of the United States of America. Throughout his 12 years in public office at the State and Federal level, TIM has worked hard to push his conservative agenda and ideals. He has been a strong proponent of a balanced budget, tax relief and reform of our Nation's education system.

As a Member of the House of Representatives from 1992 to 1998, TIM authored the much needed $500-per-child tax credit, which allows parents to place as much as $2,000 per year, per child, in a designated savings account. He was also one of the main actors in the pursuit to reform this nation's struggling and inefficient welfare system. Besides his many accomplishments in the areas of tax relief, education and welfare reform, TIM has been a major advocate of issues affecting our nation's veterans. He has worked tirelessly over the years to open additional outpatient clinics for veterans across Arkansas.

As a Member of the U.S. Senate, TIM HUTCHINSON served on the Armed Service Committee, Health, Education, Labor and Pensions Committee, Agriculture Committee, Veterans Affairs Committee and the Special Committee on Aging. As a member of the Education Working Group, Senator HUTCHINSON led the charge to pass the "Education Savings Accounts" Legislation. I am also very proud to have worked with Senator HUTCHINSON on trying to pass legislation which bans human cloning.

I have had the honor of serving with TIM HUTCHINSON in both the House and Senate. I have served with him on the Senate Armed Service Committee and know first hand how hard this individual has worked to make this Nation a safer and better place for all to live. With his background as a teacher and businessman, TIM was able to bring both expertise and leadership to the Republican party. We need more public servants like TIM HUTCHINSON who champion empowerment over dependency. It was a pleasure and honor to serve with him in this body.

THE PROTECT ACT

Mr. LEAHY. Mr. President, last night the Senate passed, by unanimous consent, the Hatch-Leahy PROTECT Act providing important new tools to fight child pornography. I want to take a moment to speak about the passage of this important bill and the effort that it took to get to this point. Although they have recessed subject to the recall of the Speaker of the House, I also want to implore the Republican leadership in the House of Representatives not to miss this important opportunity to pass such important bipartisan legislation as this.

In April, I came to the Senate floor and joined Senator HATCH in introducing S. 2520, the PROTECT Act, after the Supreme Court's decision in Ashcroft v. Free Speech Coalition ("Free Speech"). Although there were some others who raised constitutional concerns about specific provisions in that bill, I believed—and still believe—that unlike the Administration proposal, it was a good faith effort to work within the First Amendment.

Everyone in the Senate agrees that we should do all we can to protect our children from being victimized by child pornography. That would be an easy debate and vote. The more difficult thing is to write a law that will both do that and will stick. In 1996, when we passed the Child Pornography Prevention Act, "CPPA", many warned us that certain provisions of that Act violated the First Amendment. The Supreme Court's recent decision in Free Speech has proven them correct.

We should not sit by and do nothing. It is important that we respond to the Supreme Court decision. It is just as important, however, that we avoid repeating our past mistakes. Unlike the 1996 CPPA, this time we should respond with a law that passes constitutional muster. Our children deserve more than a press conference on this issue. They deserve a law that will last.

It is important that we do all we can to end the victimization of real children by child pornographers, but it is also important that we pass a law that will withstand First Amendment scrutiny. We need a law with real teeth, not one with false teeth.

After joining Senator HATCH in introducing the PROTECT Act, I convened a Judiciary Committee hearing on the legislation. We heard from the Administration, from the National Center for Missing and Exploited Children, NCMEC, and from experts who came and told us that our bill, as introduced, would pass constitutional muster, but the House-passed bill would not.

I then placed S. 2520 on the Judiciary Committee's calendar for the October 8, 2002, business meeting. I continued to work with Senator HATCH to improve the bill so that it could be quickly enacted. Senator HATCH circulated a Hatch-Leahy proposed Judiciary Committee substitute that improved the bill before our October 8 business meeting. Unfortunately the Judiciary Committee was unable to consider it because of procedural maneuvering by my colleagues that had nothing to do with this important legislation, including the refusal of Committee members on the other side of the aisle to consider any pending legislation on the Committee's agenda.

I still wanted to get this bill done. That is why, for a full week in October, I worked to clear and have the full Senate pass a substitute to S. 2520 that tracked the Hatch-Leahy proposed committee substitute in nearly every area. Indeed, the substitute I offered even adopted parts of the House bill which would help the NCMEC work with local and state law enforcement on these cases. Twice, I spoke on the Senate floor imploring that we approve such legislation. As I stated then, every single Democratic Senator cleared that measure. I then urged Republicans to work on their side of the aisle to clear this measure—so similar to the joint Hatch-Leahy substitute—so that we could swiftly enact a law that would pass constitutional muster. Unfortunately, instead of working to clear that bipartisan, constitutional measure, colleagues on the other side of the aisle opted to use this issue to play politics before the election.

They redrafted the bill, changed crucial definitions, and offered a new version. Facing the recess before the mid-term elections, we were stymied again.

Even after the election, however, during our lame duck session, I have continued to work with Senator HATCH to pass this legislation through the Senate. As I had stated I would do prior to the election, I called a meeting of the Judiciary Committee yesterday. In the last meeting of the Judiciary Committee under my Chairmanship in the 107th Congress, I placed S. 2520, the Hatch-Leahy PROTECT Act, on the agenda again. At that meeting the Judiciary Committee approved this legislation, as amended. We agreed on a substitute and to improvements in the victim shield provision that I authored. Although I did not agree with two of Senator HATCH's amendments because I thought that they risked having the bill declared unconstitutional, I nevertheless both called for the Committee to approve the bill and voted for the bill in its amended form.

I then sought, that same day, to gain the unanimous consent of the full Senate to pass S. 2520 as reported by the Judiciary Committee, and I worked with Senator HATCH to clear the bill on both sides of the aisle. I am please that late last night that the Senate passed S. 2520 by unanimous consent. I want to thank Senator HATCH for his help clearing the bill for passage last night.

I am glad to have been able to work hand in hand with Senator HATCH on S. 2520, the PROTECT Act, a bill that gives prosecutors and investigators the tools they need to combat child pornography. The Hatch-Leahy PROTECT Act strives to be a serious response to a serious problem.

The provisions of the Hatch-Leahy bill, S. 2520, as we introduced it are bipartisan and good faith efforts to protect both our children and to honor the Constitution. At our hearing last month, Constitutional and criminal law scholars—one of whom was the same person who warned us last time that the CPPA would be struck down—stated that the PROTECT Act could withstand Constitutional scrutiny, although there were parts that were very close to the line.

Unfortunately these experts could not say the same about the administration's bill, which seems to challenge the Supreme Court's decision, rather than accommodate the restraints spelled out by the Supreme Court. I have also received letters from other Constitutional scholars and practitioners expressing the same conclusion, which I will place in the RECORD with unanimous consent. The Administration's proposal and House bill simply ignore the Supreme Court's decision and reflect an ideological response instead of a carefully drawn bill that will stand up to scrutiny.

The PROTECT Act is a good faith effort, but it is not perfect and I would have liked to have seen some additional changes to the bill. Unfortunately, I could not obtain agreement to make the following modifications:

First, regarding the tip line, I would have liked to clarify that law enforcement agents cannot "tickle the tip line" to avoid the key protections of the Electronic Communications Privacy Act.

Second, regarding the affirmative defense, I would have liked to ensure that there is an affirmative defense for the new category of child pornography and for all cases where a defendant can prove in court that a specific, non-obscene image was made using not any child but only actual, identifiable adults.

Nevertheless, we were able to reach agreement in Committee on modifying the bill with my amendment to the victims' shield law by giving federal judges and prosecutors the discretion to override the new victim shield law when there is good cause, such as cases where the shield law is actually used as a sword by the defendant to help assert a defense.

As a general matter, I would have thought it far simpler to take the approach of outlawing "obscene" child pornography of all types, which we do in one new provision that I suggested. That approach would produce a law beyond any possible challenge. This approach is also supported by the National Center for Missing and Exploited Children, which we all respect as the true expert in this field.

Following is an excerpt from the Center's answer to written questions submitted after our hearing, which I will place in the RECORD in its entirety:

> Our view is that the vast majority (99-100%) of all child pornography would be found to be obscene by most judges and juries, even under a standard of beyond a reasonable doubt in criminal cases. Even within the reasonable person under community standards model, it is highly unlikely that any community would not find child pornography obscene. . . .
>
> In the post Free Speech decision legal climate the prosecution of child pornography under an obscenity approach is a reasonable strategy and sound policy.

Thus, according to the National Center for Missing and Exploited Children, the approach that is least likely to raise constitutional questions—using established obscenity law—is also an effective one.

Because that is not the approach we decided to use, I recognize that S. 2520 contains provisions about which some may have legitimate Constitutional questions. These provisions include:

A new "pandering" provision with a very wide scope;

a new definition of 'obscenity' that contains some, but not all, of the elements of the Supreme Court's test;

a new affirmative defense for pornography made not using any minors that does not apply to one new category of child pornography.

These provisions raise legitimate concerns, but in the interest of making progress I am pleased, as Chairman of the Judiciary Committee, to have tried to balance all the competing interests to produce a bill with the best chance of withstanding a constitutional challenge.

That is not everyone's view. Others evidently think it is more important to make an ideological statement than to write a law. A media report just this week on this legislation noted the wide consensus that S. 2520 is more likely than the House bill to withstand scrutiny, but quoted a Republican House member as stating: "Even if it comes back to Congress three times we will have created better legislation."

To me, that makes no sense. Why not create the "better legislation" right now for today's children, instead of inviting more years of litigation and putting at risk any convictions obtained in the interim period before the Supreme Court again reviews the constitutionality of Congress' effort to address this serious problem? That is what S. 2520 seeks to accomplish as drafted.

I want to commend Senator HATCH for working with me to include many other important provisions in the Hatch-Leahy bill that we developed together and are not as controversial. These include:

A tough new private right of action for victims of child pornography with punitive damages;

a victims' shield law to keep child victim's identity out of court and prevent them from suffering a second time in the criminal process;

a new notice provision designed to stop "surprise defenses;"

sentencing enhancements for recidivists and a directive to correct the disparity in the current sentencing guidelines that provides a lighter sentence for offenders who cross state lines to actually molest a child than for offenders who possess child pornography that has crossed State lines.

These provisions are important, practical tools to put child pornographers out of business for good and in jail where they belong.

I support S. 2520 as a good faith effort to protect our children and honor the Constitution, and the Committee substitute, which improved upon the original bill.

There were two amendments adopted in Committee to which I objected. I felt that they needlessly risked a serious constitutional challenge to a bill that already provided prosecutors the tools they needed to do their jobs. Let me discuss my opposition to two amendments offered by my good friend Senator HATCH that were adopted by voice vote by the Judiciary Committee.

Although I worked with Senator HATCH to write the new pandering provision in S. 2520, I do not support Senator HATCH's amendment, which criminalizes speech even when there is no underlying material at all—whether obscene or non-obscene, virtual or real, child or adult.

The pandering provision is an important tool for prosecutors to punish true child pornographers who for some technical reason are beyond the reach of the normal child porn distribution or production statutes. It is not meant to federally criminalize talking dirty over the internet or the telephone when the person never possesses any material at all. That is speech, and that goes too far.

The current pandering provision in S. 2520 is quite broad, and some have argued that it presents constitutional problems as written, but I thought that prosecutors needed a strong tool, so I supported Senator HATCH on the current provision.

I was heartened that Professor Schauer of Harvard, a noted First Amendment expert, testified at our hearing that he thought that the provision was Constitutional, barely.

Unfortunately, Professor Schauer has since written to me stating that this new amendment "would push well over the constitutional edge a provision that is now up against the edge, but probably barely on the constitutional side of it." I will place that letter and other materials in the RECORD with unanimous consent of the Senate.

Because this amendment endangers the entire pandering provision, because it is unwise, and because that section is already strong enough to prosecute those who peddle child pornography, I oppose this amendment. Nevertheless, in light of the broader support for this amendment on the Committee, it was adopted over my objection.

Senator HATCH and I agree that legislation in this area is important. But regardless of our personal views, any law must be within constitutional limits or it does no good at all. Even though it is close to the line, I support S. 2520 as Senator HATCH and I introduced it in the Senate. Senator HATCH's amendment which would include all "virtual child pornography" in the definition of child pornography, in my view, crosses the constitutional line, however, and needlessly risks protracted litigation that could assist child pornographers in escaping punishment.

Although I joined Senator HATCH in introducing S. 2520, even when it was introduced I expressed concern over certain provisions. One such provision was the new definition of "identifiable minor." When the bill was introduced, I noted that this provision might "both confuse the statute unnecessarily and endanger the already upheld 'morphing' section of the CPPA." I said I was concerned that it "could present both overbreadth and vagueness problems in a later constitutional challenge."

The Supreme Court made it clear that we can only outlaw child pornography in two situations: No. 1, it is obscene, or No. 2, it involves real kids. That is the law as stated by the Supreme Court, whether or not we agree with it.

The "identifiable minor" provision in S. 2520 may be used without any link to obscenity doctrine. Therefore, what saves it is that it applies to child porn made with real "persons." The provision is designed to cover all sorts of images of real kids that are morphed or altered, but not something entirely made by computer, with no child involved. That is the provision as Senator HATCH and I introduced this bill.

The Hatch amendment adopted in Committee that redefined "identifiable minor" by creating a new category of pornography for any "computer generated image that is virtually indistinguishable from an actual minor" dislodged, in my view, that sole constitutional anchor. The new provision could be read to include images that never involved real children at all but were 100 percent computer generated.

That was never the goal of this provision and that was the reason it was constitutional. There are other provisions in the bill that deal with obscene virtual child pornography that I support. This provision was intended to ease the prosecutor's burden in cases where images of real children were cleverly altered to avoid prosecution.

I support the definition of 'identifiable minor' as we originally wrote and introduced it. Because Senator HATCH's amendment seriously weakened the constitutional argument supporting this entire provision, I opposed it. Nevertheless, given the broader support for this amendment on the Judiciary Committee it was been adopted, over my objection and I still sought passage of the bill, which we achieved last night.

Even though S. 2520 is not perfect, I was glad that I was able to work with Senator HATCH to secure its approval last night. I had hoped that the House of Representatives would adopt the bill before they recessed for the end of the year. That way, we could have sent a bill to the President for his signature right now. Instead, the House of Representatives' Republican leadership decided to adjourn without either taking up the Hatch-Leahy bill or working with us to resolve any differences. I hope that the House leadership will reconsider this decision and consider this measure, rather than start all over again in the next Congress. It is certainly unfortunate that the House Republican leadership would rather adjourn for a recess than take the opportunity to pass a bipartisan bill which passed the Senate unanimously.

As I have explained, I believe that this issue is so important that I have been willing to compromise and to support a measure even though I do not agree with each and every provision that it contains. That is how legislation is normally passed. Again, however, I fear that some in the Administration and the House have decided to play politics with this issue that is so important to our nation's children. I urge them to reconsider their "take it or leave it approach" and consider the Hatch-Leahy PROTECT Act—or at least come back to discuss our differences.

I ask unanimous consent that the letters and materials to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW,
Charlottesville, VA.

Senator PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary,
Washington, DC.

DEAR CHAIRMAN LEAHY: On October 2, 2002, I testified before the Senate Judiciary Committee concerning S. 2520 and H.R. 4623. Each of these bills was drafted in response to Ashcroft v. Free Speech Coalition, 122 S. Ct. 1389 (2002), in which the Supreme Court threw out key provisions of the federal child pornography laws. As I stated in my testimony, the new sections contained in S. 2520 have been carefully tailored with an eye towards satisfying the precise concerns identified by the Supreme Court. Recently, Senator Hatch offered an amendment in the nature of a substitute to S. 2520 (hereinafter "the Hatch Substitute"). I have examined the Hatch Substitute, and I believe that it contains a definition of child pornography that is nearly identical to the definition rejected by Free Speech Coalition. Therefore, the Hatch substitute is unlikely to survive constitutional challenge in the federal courts, and the Committee should decline to adopt it.

As you know, each of these bills contains some complicated provisions, including especially their definition sections. As you also know, this complexity is unavoidable, for the Congress aims to intervene in and eliminate some of the complex law enforcement problems created by the phenomenon of virtual pornography. In the following comments, I will try to state my concerns about the Hatch Substitute as concisely as possible, while identifying the statutory nuances that are likely to generate significant constitutional questions in the event that the Hatch Substitute is enacted.

In Free Speech Coalition, the Supreme Court scrutinized provisions of the Child Pornography Prevention Act of 1996 ("CPPA") that were designed to eliminate obstacles to law enforcement created by virtual child pornography. The proliferation of virtual pornography has enabled child pornographers to escape conviction by arguing that it is so difficult to distinguish the virtual child from the real one that (1) the government cannot carry its burden of proving that the pornography was made using real children and/or (2) the government cannot carry its burden of providing scineter because the defendants believed that the images in their possession depicted virtual children, rather than real ones. In order to foreclose these arguments, the CPPA defined "child pornography" broadly so that it extended not only to a sexually-explicit image that had been produce using a real minor, but also to an image that "appears to be of a minor" engaging in sexually-explicit conduct. Free Speech Coalition rejected this definition of First Amendment grounds. The Court reaffirmed the holding of New York v. Ferber, 458 U.S. 747 (1982), under which the government is free to regulate sexually-explicit materials produced using real minors without regard to the value of those materials. However, the Court refused to extend the Ferber analysis to sexually-explicit materials that only appear to depict minors. The court noticed that many mainstream movies, as well as works of great artistic, literary, and scientific significance, explore the sexuality of adolescents and children. Such works, including ones that are sexually explicit, are valuable in the eyes of the community, and, as long as their production involves no real children, such works are protected by the First Amendment against governmental regulation.

In Free Speech Coalition, the Supreme Court expressly considered and rejected a number of arguments made by the Solicitor General on behalf of the CPPA definition. One of these arguments was that the "speech prohibited by the CPPA is virtually indistinguishable from child pornography, which may be banned without regard to whether it depicts works of value." In his opinion for the Court, Justice Kennedy explained that this argument fundamentally misconceived the nature of the First Amendment inquiry. Materials that satisfy the Ferber definition are regulable not because they are necessarily without value; to the contrary, Ferber itself recognized that some child pornography might have significant value. Indeed, the Court there reasoned that the ban on the use of actual children was permissible in part because virtual images—by definition, images "virtually indistinguishable" from child pornography—were an available and lawful alternative. Hence, as Justice Kennedy put it: "Ferber, then, not only referred to the distinction between actual and virtual child pornography, it relied on [the distinction] as a reason supporting its holding. Ferber provides no support for a statute that eliminate the distinction and makes the alternative mode criminal as well."

S. 2520 aims to reform the CPPA in ways that are sensitive to these First Amendment value judgments. By contrast, the Hatch Substitute proposes that the Congress should reenact a definition that is almost identical to the one that the Supreme Court just rejected. In the Hatch Substitute, the definition of child pornography would cover, among other things, sexually-explicit materials whose production involved the use of an "identifiable minor." The Hatch Substitute defines "identifiable minor" as including a "computer or computer generated image that is virtually indistinguishable from an actual minor." As I explained above, the Solicitor General suggested in Free Speech Coalition that the First Amendment would be satisfied if the Supreme Court limited the CPPA to depictions that are "virtually indistinguishable" from child pornography, and the Court rejected that interpretation. To put it mildly, it is hard to imagine that the Supreme Court would be inclined to view the Hatch Substitute as a good faith legislative responses to Free Speech Coalition when all it does is reenact a definition that the Court there expressly considered and disapproved. You will notice that I here am paraphrasing the definition provisions in the Hatch Substitute and omitting some of their complexity. In particular, the Hatch Substitute provides a further definition of the phrase "virtually indistinguishable," requiring that the quality of the depiction be determined from the viewpoint of an "ordinary person" and providing an exception for "drawings, cartoons, sculptures, or paintings." But neither the definition of "identifiable minor" nor these refinements of "virtually indistinguishable" are calculated to satisfy the concerns raised in Free Speech Coalition. As Justice Kennedy explained for the Court, an absolute ban on pornography made with real children is compatible with First Amendment rights precisely because computer-generated images are an available alternative, and, yet, the Hatch Substitute proposed to forbid the computer-generated alternative as well. Likewise, an exception for cartoons and so forth is insensitive to the Supreme Court's commitment to protect realistic portrayals of child sexuality, a commitment that is clearly expressed in the Court's recognition of the value of (among other things) mainstream movies such as Traffic and American Beauty.

In this regard, you will notice that the Hatch Substitute closely resembles some of the defective provisions of H.R. 4623, which would prohibit virtual child porn that is "indistinguishable" from porn produced with real minors. Unlike S. 2520, both H.R. 4623 and the Hatch Substitute seem to embody a decision merely to endorse the unconstitutional portions of the CPPA all over again. The Committee should refuse to engage in such a futile and disrespectful exercise. The law enforcement problems posed by virtual pornography are not symbolic but real, and the Congress should make a real effort to solve them. In my judgment, S. 2520 is a real effort to solve them, and the Committee should use S. 2520 as the basis for correcting the CPPA.

The Hatch Substitute contains additional innovations that the Committee should study carefully. Because this letter already is too long, I will allude to only one of them here. The "pandering" provision set forth in the Hatch Substitute contains some language that strikes me as being both vague and unnecessarily broad, and the provision therefore is likely to attract unfavorable attention in the federal courts. The Hatch pandering provision would punish anyone who "advertises, promotes, presents, distributes, or solicits . . . any material or purported material in a manner that conveys the impression that the material or purported material" is child pornography. To be completely candid, I am not sure that I understand what problems would be solved by defining the items that may not be pandered so that they include not only actual "material," but also "purported material." I suppose that there might be cases where a person offers to sell pornographic materials that do not actually exist and that the person might make the offer in a manner that violates the pandering prohibition. If that is the problem that the drafters of the Hatch Substitute have in mind, it seems that they might solve that problem more cleanly by adding the word "offers" to the list of forbidden conduct and deleting the references to "purported material." (In other words, the provision would punish anyone who "advertises, offers, promotes, presents, distributes, or solicits through the mails . . . any material in a manner that conveys the impression that the material" is child pornography.) If that is not the problem that the Hatch Substitute has in mind, I would suggest that the drafters identify the problem precisely and develop language that is clearer and narrower than the phrase "purported material," for that ambiguous term is likely to generate First Amendment concerns that otherwise could and should be avoided.

Respectfully yours,

ANNE M. COUGHLIN,
Class of 1948 Research Professor of Law.

THE COMMUNITARIAN NETWORK,
Washington, DC, October 11, 2002.

Hon. PATRICK J. LEAHY,
Chairman, U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN LEAHY: I want to thank you for your efforts to protect American children by filling the gap left by the Supreme Court's decision to strike down the Child Pornography Prevention Act. Ashcroft v. Free Speech Coalition dealt a blow to those who appreciate the important role the federal government must play in protecting young people from those who would exploit them. Your efforts to craft a bill, the PROTECT Act, that will withstand Constitutional scrutiny deserves the public's applause.

I would like to draw your attention to a similar, but separate, matter that also reflects on the health and security of our children in regards to pornography. Like the Child Pornography Prevention Act, the Child Internet Protection Act (CIPA), which was passed by the 106th Congress, has been struck down by the federal judiciary. In American Library Association, et al. v. United States of America, et al, a District Court in Pennsylvania threw CIPA out, arguing that its efforts to prevent children from exposure to harmful material on school and library computers amounted to a violation of the First Amendment. The Justice Department has appealed that case to the Supreme Court, where the lower court's decision will very likely be upheld. Unfortunately, as Harvard Law School professor Frederick Schauer testified at the hearing you recently held on CPPA, "constitutionally suspect legislation under existing Supreme Court interpretation of the First Amendment, whatever we may think of the wisdom and accuracy of those interpretations, puts the process of [prosecution] . . . on hold while the . . . courts proceed at their own slow pace."

I think we ought not wait for what will likely be a disappointing conclusion. Rather, I hope you will lead an effort to craft new legislation which (1) passes Constitutional muster, and (2) better enables schools and libraries to protect children from harmful images and websites. Let me take a moment to delimit how exactly a new, improved Children's Internet Protection Act would differ from the bill passed by the 106th Congress.

First, a new bill should distinguish clearly between measures affecting adults and minors. Though the title of the legislation is the Children's Internet Protection Act, it requires technology protection measures on all computers with Internet access, regardless of the age of the patron using each computer. If the aim is to protect minors, it is unnecessary to put filters on every computer in a library. This, of course, was one of the District

Court's primary concerns. I hope you will draft legislation requiring separate computers for adults and minors. All those under 18 should be required to use filtered computers, unless accompanied by a parent or teacher. Those over 18 should have access to un-filtered computers in a separate area. In smaller facilities, where only one computer is available, special adult hours could be set during which the filter is disabled and only adults may use the computer. The rest of the time a filter would be in place.

Second, I would encourage you to incorporate language that distinguishes children 12 and under from teenagers 13–18. Teenagers have greater capacities to process information than children, as well as different needs for information. In recognition of this, I would hope that your new bill would require different policies for children and teenagers, such as providing different filter settings.

Third, I hope you will consider expanding the scope of your bill to include provisions that protect minors from violent images as well as sexual ones. I realize that limiting the access of children to violent content poses a potentially more difficult constitutional question, but based on the weight of social science evidence showing the harm caused to children by violence in the media, I believe that violence must be included in any definition of content that is "harmful to children."

To further explain the reasoning behind these recommendations, I am enclosing a law review article, "On Protecting Children from Speech," which will be published next fall in the Chicago-Kent Law Review. I would welcome the opportunity to discuss our position with you further. In the meantime, please feel free to contact Marc Dunkelman, Assistant Director of the Communitarian Network, with any questions. Thank you for your consideration.

Sincerely,

AMITAI ETZIONI.

May 13, 2002.

Chairman PATRICK J. LEAHY,
U.S. Senate Judiciary Committee
Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our grave concern with the legislation recently proposed by the Department of Justice in response to the Supreme Court's decision in Ashcroft, et al. v. The Free Speech Coalition, et al., No. 00–795 (Apr. 16, 2002). In particular, the proposed legislation purports to ban speech that is neither obscene nor unprotected child pornography (indeed, the bill expressly targets images that do not involve real human being at all). Accordingly, in our view, it suffers from the same infirmities that led the Court to invalidate the statute at issue in Ashcroft.

We emphasize that we share the revulsion all Americans feel toward those who harm children, and fully support legitimate efforts to eradicate child pornography. As the Court in Ashcroft emphasized, however, in doing so Congress must act within the limits of the First Amendment. In our view, the bill proposed by the Department of Justice fails to do so.

Respectfully submitted,

Jodie L. Kelley, Partner, Jenner & Block, LLC; Washington, DC.

Erwin Chemerinsky, Sydney M. Irmas Professor of Public Interest Law, Legal Ethics and Political Science, University of Southern California, Law School; Los Angeles, CA.

Paul Hoffman, Partner, Schonbrun, DeSimone, Seplow, Harris & Hoffman, LLP; Venice, CA.

Adjunct Professor, University of Southern California Law School; Los Angeles, CA.

Gregory P. Magarian, Assistant Professor of Law, Villanova University School of Law; Villanova, PA.

Jamin Raskin, Professor of Law, American University, Washington College of Law; Washington, DC.

Donald B. Verrilli, Jr., Partner, Jenner & Block, LLC; Washington, DC.

HARVARD UNIVERSITY,
Cambridge, MA, October 3, 2002.

Re S. 2520.

Hon. PATRICK LEAHY,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR LEAHY: Following up on my written statement and on my oral testimony before the Committee on Wednesday, October 2, 2002, the staff of the Committee has asked me to comment on the constitutional implications of changing the current version of S. 2520 to change the word "material" in section 2 of the bill (page 2, lines 17 and 19) to "purported material."

In my opinion the change would push well over the constitutional edge a provision that is now right up against that edge, but probably barely on the constitutional side of it.

As I explained in my statement and orally, the Supreme Court has from the Ginzburg decision in 1966 to the Hamling decision in 1973 to the Free Speech Coalition decision in 2002 consistently refused to accept that "pandering" may be an independent offense, as opposed to being evidence of the offense of obscenity (and, by implication, child pornography). The basic premise of the pandering prohibition in S. 2520 is thus in some tension with more than thirty-five years of Supreme Court doctrine. What may save the provision, however, is the fact that pandering may also be seen as commercial advertisement, and the commercial advertisement of an unlawful product or service is not protected by the Supreme Court's commercial speech doctrine, as the Court made clear in both Virginia Pharmacy and also in Pittsburgh Press v. Human Relations Commission 413 U.S. 376 (1973). It is important to recognize, however, that this feature of commercial speech doctrine does not apply to noncommercial speech, where the description or advocacy of illegal acts is fully protected unless under the narrow circumstances, not applicable here, of immediate incitement.

The implication of this is that moving away from communication that could be described as an actual commercial advertisement decreases the availability of this approach to defending Section 2 of S. 2520. Although it may appear as if advertising "material" that does not exist at all ("purported material") makes little difference, there is a substantial risk that the change moves the entire section away from the straight commercial speech category into more general description, conversation, and perhaps even advocacy. Because the existing arguments for the constitutionality of this provision are already difficult ones after Free Speech Coalition, anything that makes this provision less like a straight offer to engage in a commercial transaction increases the degree of constitutional jeopardy. By including "purported" in the relevant section, the pandering looks less commercial, and thus less like commercial speech, and thus less open to the constitutional defense I outlined in my written statement and oral testimony.

I hope that this is helpful.

Yours sincerely,

Frederick Schauer,
Frank Stanton Professor of the First Amendment.

THE MEDIA COALITION INC.,
New York, NY, September 23, 2002.

Re S. 2520 and H.R. 4623.

Senator PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, Washington, DC.

Sen. ORRIN G. HATCH,
Ranking Republican Member, Committee on the Judiciary, Washington, DC.

DEAR SENATORS LEAHY AND HATCH: I am General Counsel of The Media Coalition, a trade association whose members represent most of the publishers, booksellers, librarians, periodical wholesalers and distributors, movie, recording and video game manufacturers, and recording and video retailers in the United States. While Media Coalition and its members unanimously deplore child pornography and support prosecution of offenders, they are also concerned that the dictates of the First Amendment remain inviolate, even as to material that one finds to be offensive.

The Media Coalition and its members believe that the various attempts to respond to the decision in *Ashcroft v. Free Speech Coalition*, 122 S.Ct. 1389 (2002), are unconstitutional and problematic in a number of respects, as described below.

S. 2520

1. As to proposed §2252A(a)(3)(B)—the "pandering" provision—it seems to criminalize commercial fraud as child pornography. *Ginzburg v. U.S.*, 383 U.S. 463 (1966), held only that pandering could convert borderline nonobscene material into obscenity. ("Where the purveyor's sole emphasis is on the sexually provocative aspects of his publications, that fact may be decisive in the determination of obscenity.") This goes much further. It applies without regard to the nature or quality of the material "pandered".

2. Proposed §2252A(c) adds an affirmative defense that, for computer-generated images, each pictured person was an adult and, for virtual child pornography, it was not produced using any actual minor. With respect to non-virtual child pornography, this results in a reversal of the usual burden of proof. In a prosecution for traditional child pornography (e.g., as defined in §2256(8)(A)), one of the elements of the crime that the government must prove is that the production of the material involved the use of a minor. Further, under *United States v. X-Citement Video, Inc.*, 513 U.S. 64 (1994), in the case of a librarian, retailer or distributor, the government must prove that he or she knew that the material was of an actual minor. This proposal impermissibly and unconstitutionally shifts this burden.

With respect to virtual child pornography, there are similar constitutional problems. The Supreme Court in *Free Speech Coalition* found that the evil in child pornography, and the basis for excluding it from First Amendment protection, is the unlawful conduct vis-a-vis an actual child. Thus, the Court held that, unless an actual child is used and thus abused in the creation of the material, there can be no crime as to otherwise First Amendment-protected material. The government must provide this necessary factual predicate. To shift the burden of proof as to this necessary element of the crime to the defendant is unconstitutional, even putting aside the often impossible task of proving the negative—that no child was used.

3. S. 2520 also amends the record-keeping provisions, which themselves have had a checkered constitutional history, having been held unconstitutional (*ALA v. Thornburgh*, 713 F. Supp. 469 (D.D.C. 1989)), revised in 1990, again held unconstitutional

by the District Court (*ALA v. Barr*, 794 F. Supp. 412 (D.D.C. 1992)), held constitutional, although certain regulations were invalidated (*ALA v. Reno*. 33 F. 3d 78 (D.C. Cir. 1994)), and subsequently the Tenth Circuit has held a regulation more central to the regulatory scheme unconstitutional (*Sundance Assocs. Inc. v. Reno*, 139 F. 3d 804 (10th Cir. 1998)). Throughout, however, the records kept have been barred from use in prosecutions other than for the failure to keep the records.

S. 2520 would permit the use of the recordkeeping records in a child pornography prosecution. However, requiring producers to maintain records at the risk of criminal liability for not doing so, which records can be used against them in a child pornography prosecution, violates the constitutional prohibition against mandatory self-incrimination.

4. Finally, there is a provision in Section 9 creating a new §2252A(f), which is particularly pernicious. It permits a person aggrieved by reason of child pornography to commence a civil action for injunction relief and compensatory and punitive damages. First, it is vague, since both the grievance and the person aggrieved are apparently in unlimited, undefined categories; and the potential civil defendant is in another unlimited, undefined category. Moreover, apparently a defendant is liable whether or not he or she knows of the minority of the child. And, since it applies to both the pandering and "appears to be" prongs of the statute, there may be civil liability even when no child is involved.

Most important, it opens a Pandora's Box. Under state law, a person using a minor to create child pornography is not only criminally liable, but is also liable to the child whom he or she has used. But to open the protected class to parents, spouses, etc. and the defendant class to distributors, retailers, etc. is inappropriate and ultimately harmful to legitimate First Amendment interests. It raises the specter of the Pornography Victims Compensation Act, which raised such an outcry that it failed to pass Congress.

H.R. 4623

A. Section 3(a) of the Bill criminalizes as child pornography computer images as long as they are, or are indistinguishable from, actual child pornography. The majority in *Free Speech Coalition* clearly held that unless material either meets the *Ferber* test, which protects children exploited in the production process, or is obscene under, *Miller v. California*, it is protected by the First Amendment. Like the material covered by the unconstitutional CPPA, the material described in the "indistinguishable from" portion of section 3(a) does not involve or harm any children in the production process. Thus, section 3(a) is unconstitutional under *Free Speech Coalition*.

B. Section 3(c) of the Bill provides an affirmative defense to a child pornography prosecution that no actual child was involved in the creation of the material. Thus, despite section 3(a) discussed above, the Bill actually permits computer-generated sexually explicit depictions of minors (other than pre-pubescent minors and computer morphing which appears as an identifiable minor), *if* the defendant meets the burden of proving the affirmative defense. (Curiously, the provision limiting the defense excludes material defined in §2256(8)(A), i.e., that which used an actual minor in its production. Read plainly, that suggests that in a non-computer child pornography case, one cannot escape liability by proving that only adults were photographed. It is unlikely that this is what was intended.)

As Justice Kennedy, writing for the Court, says in Free Speech Coalition (122 S.Ct. at 1404), shifting the burden of proof on an element of the crime raises serious constitutional issues. In fact, in the First Amendment context, we believe that shift is unconstitutional; among other things, it violates Smith v. California, 361 U.S. 147, 153 (1959) in that it eliminates the requirement that the government prove knowledge of minority by shifting the burden of proof to the defendant. Thus, defendant must prove a negative—that no children were used—a difficult chore, particularly if the computer programmer-designer is not available or known to the defendant. Finally, under United States vs. X-Citement Video, Inc., 513 U.S. 64 (1994), in the case of a librarian, retailer or distributor, the government must prove that he or she knew that the material was of an actual minor. This proposal impermissibly and unconstitutionally shifts this burden.

C. Section 4 creates a crime of pandering child pornography, defined as the sale or offer of material intending to cause the purchaser or offeree to believe that the material is child pornography, whether it is or not. Similarly, one who accepts or attempts to receive or purchase material, believing it to be child pornography (whether or not it is such), is also guilty of this new crime. This, in effect, transforms consumer fraud into a felony. One could be selling copies of Mary Poppins or the Bible, but if one intends to cause the buyer to believe that the book contains a visual depiction of a minor engaging in sexual conduct, it is a felony. In fact, the Bill goes one step further and provides that the crime can be committed even though no person actually provides, sells, receives, purchases, possesses or produces any visual depiction (e.g., selling an empty box). In effect, it criminalizes the intent to market or to procure child pornography if some action is taken to effectuate that desire, even if the material actually is not child pornography. As discussed above, this seems to go significantly further than Ginzburg v. U.S. permits and is therefore likely unconstitutional.

D. The first portion of section 5 of the Bill (new 18 USC §1466A) provides that computer images of persons indistinguishable from pre-pubescent children in sexually explicit conduct are punishable as child pornography. (A pre-pubescent child is defined as a child whose "physical development indicates" the child is 12 or younger, or who "does not exhibit significant pubescent physical or sexual maturation." "Indistinguishable" is defined as "virtually indistinguishable, in that . . . an ordinary person . . . would conclude that the depiction is of an actual minor" engaging in sexual acts. Drawings, cartoons, sculptures and paintings are excluded.) This is based on Justice O'Connor's distinction between virtual youthful-adult and virtual-child pornography. However, there appears to be no requirement under 1466A that minors were involved in the creation of the depiction. Thus, it falls under Free Speech Coalition.

E. The second part of §5 of the Bill is new §1466B, which appears to be similar to §1466A except it does not have the "indistinguishable" concept and it does apply to drawings, cartoons, sculptures and paintings. Thus it seems directly contrary to the Free Speech Coalition holding, differing only in its limited application only to depictions of younger children (i.e., 12 and under). Further, it appears that material covered by §1466A is a subset of that covered by §1466B, and would be covered by both.

Media Coalition and its members urge you and the other members of the Judiciary Committee not to approve either of these bills. Not only are they clearly unconstitutional, but passage of either bill would result in constitutional challenges that could be exploited by person charged with possession of actual child pornography.

Sincerely yours,

MICHAEL A. BAMBERGER,
General Counsel.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 11, 2002, in New York, NY. A gay man, Eric D. Miller, 26, was shot in the chest on a Harlem street by a man who shouted anti-gay remarks at him, according to police. Miller and his partner were walking down a street when they were confronted by two men who became enraged at the sight of the couple. The assailants yelled, "Black men shouldn't be gay," and threw rocks and bottles at the victims. During an ensuing scuffle, one of the assailants shot Miller in the chest. Miller was treated at a local hospital and released.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

IN HONOR OF THE NATION'S VETERANS

Mr. SANTORUM. Mr. President, I rise today in celebration of National Veterans Awareness Week, a time to commemorate and appreciate all the men and women who have served in America's Armed Forces. The week of November 10, 2002, is for honoring the soldiers, sailors, airmen, and marines—some now gone, and some still alive—who have fought to protect our freedoms and liberties.

The Nation's veterans have often stood as the last barrier between our country and the terrors of fascism, communism, and anarchy. They have waged war, kept peace, and deterred the threat of the unknown. The work of those in uniform is dangerous and difficult; it requires a personal commitment and sacrifice, as well as the patience and support of their families. Members of the armed services have a brave, admirable responsibility and a privileged perspective of history. It is with deepest respect that I thank them for their courage and their continued dedication to our Nation's security.

Pennsylvania is the proud home of more than a million veterans, all of whom have demonstrated their love of country in defending our borders and our way of life. But in remembering and applauding their service, we must also recognize America's next veteran generation: the men and women in uniform today. Our duty as lawmakers is to ensure that our service members' commitment to the Nation is matched by the Government's diligence in preparing them to face our current and future threats. Also important is the quality of life that these service members and their families deserve. It should, therefore, be a priority to improve the salaries, benefits, and facilities that our military men and women, and their families, rely upon.

America's troops on the ground, on the sea, and in the air make up the most capable military force in all the world, and their equipment and support systems should be nothing less than first rate. The current war on terrorism and the changing threats of the 21st century demand a new level of readiness from our military that can only be met with better funding and more effective programs. The Nation's Armed Forces need to be prepared for the realities of a new security paradigm and a new kind of combat. Last year's terrorist attacks have changed our understanding of modern warfare and the need to protect our cities and our citizens. And in response to this realization, the Senate has passed legislation to increase spending so that our military can be equipped and trained to counter the world's growing, nontraditional threats.

We owe much to our veterans: respect and admiration, in addition to appropriate retirement and healthcare benefits. We can most greatly honor these men and women, however, by focusing on the needs of the current service members who will one day be veterans themselves. We must support their mission today so that we can celebrate their accomplishments tomorrow. I encourage my colleagues and my fellow Americans to join me in paying tribute to the veterans, past, present and future, who are an indispensable part of what makes our country the greatest in the world.

NOMINATION OF JAMES L. JONES TO BE SUPREME ALLIED COMMANDER, EUROPE, SACEUR

Mr. LEAHY. Mr. President, I rise today to speak about the nomination of Gen. James Jones to be Supreme Allied Commander in Europe. General Jones has served in the Marine Corps with tremendous skill and dedication, and I know he will make an equally effective U.S. and NATO commander in Europe.

I first met General Jones when he served as a Corps liaison here in the U.S. Senate in the mid-1980s. Like other Marines, then Major Jones was quiet about his war record but I learned he served gallantly in Vietnam. In some of the worldwide travel that the Corps supported and he helped arrange, I quickly realized that the service had itself a man of exceptional intellect, skill, and determination. In other words, the Corps possessed a leader in every sense of the word.

Despite his fluent French and obvious sense of diplomacy, General Jones is foremost a warrior and his career is dominated by such critical assignments as commanding the 24th Marine Expeditionary Unit. I visited this prestigious unit when it participated in Operation Provide Comfort after the Gulf War. One of the most impressive sights I have ever seen was then Colonel Jones giving crisp orders to his Marines only miles outside of the Iraqi town of Zaku while Air Force A–10 Thunderbolts provided aerial cover. He brought his typical professionalism to other combat-related assignments.

As the 32d Commandant of the Marine Corps, General Jones has served exceptionally. Under his leadership, the Marine Corps has developed new capabilities that will help America's 9–1–1 force to operate effectively at greater distances. In response to September 11 attacks, General Jones ordered the creation of a new unit to protect the country domestically, in addition to inspiring Marines to serve in truly outstanding action in Afghanistan and across the turbulent Middle East.

It is a testament to his achievements and character that the President selected General Jones to become the Supreme Allied Commander, Europe. General Jones will be the first Marine to take on this most prestigious military command. He faces a number of challenges, including navigating the expansion of the Atlantic Alliance along with the prosecuting the war on terrorism. He will command an enormous Area of Responsibility, including much of Africa where the AIDS/HIV epidemic promises to create untold security instabilities. If anyone is up to leading allied forces to protect our interests and promote our values it is Jim Jones.

Marcelle and I wish General Jones and his wife Diane all the best as they move to Mons, Belgium. Based on our friendship and contact over the years, I know he will make us proud. I congratulate him, and, as an American, I am thankful our country has his services.

ANTON'S LAW, H.R. 5504

Mr. FITZGERALD. Mr. President, I rise today to applaud the passage of Anton's Law, H.R. 5504, by the House of Representatives.

I introduced the Senate version of Anton's Law, S. 980, in May 2001. S. 980 is named in memory of Anton Skeen, a four-year-old who was killed in a car crash in Washington State. Anton's mother Autumn—a national passenger safety advocate—believes that Anton's life could have been saved had he been riding in a booster seat. Designed specifically to help standard adult seat belts fit better, booster seats are used to protect children who have outgrown their car seats but are still too small to fit properly in an adult-sized safety belt. On average, children in this group range from 4 to 8 years of age, weigh 40 to 80 pounds, and are less than 4 feet 9 inches tall. It has been reported that only about 5 to 6 percent of these 19.5 million U.S. children are using booster seats. In 2000, 721 children aged five to nine were killed and 103,000 were injured in car accidents.

The Senate Committee on Commerce, Science and Transportation approved Anton's Law in August 2001, and the Senate passed the measure by unanimous consent on February 25 of this year. Last month, in order to help ensure that this important measure is placed on the President's desk for signature before the end of the year, the Senate Commerce Committee accepted my amendment to insert Anton's Law in the Senate version of the National Transportation Safety Board Reauthorization bill, S. 2950, which the Committee then approved by unanimous consent. I would like to thank all of my colleagues for their continued support of this bipartisan legislation that will help to improve the safety and effectiveness of child restraints in automobiles and protect our Nation's young people.

Like the bill that I introduced in this body, the bill that was passed yesterday by the House of Representatives will improve the safety of children from 4 to 16 years old by requiring the Secretary of Transportation to initiate a rulemaking regarding establishing performance standards for child restraints, especially for booster seats, for children weighing more than 50 pounds. This measure will also lead to the development of a 10-year-old dummy that can be used to test child restraint devices. It also requires automobile manufacturers to install three-point lap and shoulder belts in all rear seating positions of passenger vehicles.

Since February, I have been working to have this measure passed by the House, and I commend them for the work that they have done on this important issue. While I am happy that Anton's Law will finally be presented to the President, this bill represents only part of what the Senate sought to accomplish when we passed Anton's Law in February. The Senate's version of Anton's Law, unlike the House bill, contained provisions that would extend for 2 years a Federal grant program for

States to promote child passenger safety and education, and that would encourage State action by providing States with financial incentives to adopt mandatory booster seat laws by 2004. Absent this incentive grant program, States will have little impetus to promulgate the laws needed to adequately protect this group of children. As I have already mentioned, the version of Anton's Law passed by the Senate this year has been incorporated in the Senate's version of the National Transportation Safety Board Reauthorization bill. I urge the conferees from both the House and the Senate to retain these grant provisions in the conference report of this bill.

I thank Congressman SHIMKUS and Chairman TAUZIN for their work in securing passage of Anton's Law by the House of Representatives, and urge President Bush to sign this necessary child safety bill into law as soon as possible.

2001 FEDERAL BUREAU OF INVESTIGATION UNIFORM CRIME REPORT

Mr. LEVIN. Mr. President, according to the Federal Bureau of Investigation's Annual Uniform Crime Report for 2001, 15,980 people were murdered last year; 8,719 of the 15,980 deaths were caused by a firearm, and of those murders, 6,790 were caused by a handgun. Six hundred and seventy-two murders occurred in my home State of Michigan. These numbers are staggering. There are several commonsense bills in the Senate that would reduce gun violence and gun crime, and I am disappointed that it appears that the 107th Congress will come to a close without the enactment of meaningful gun safety legislation.

On April 24, 2001, Senator REED introduced the Gun Show Background Check Act. This bill would close a loophole in the law which allows unlicensed private gun dealers to sell guns without performing a National Instant Criminal Background System check. I cosponsored that bill because I believe it would be an important tool to prevent guns from getting into the hands of criminals and other people prohibited from owning a firearm.

I am also a cosponsor of Senator DURBIN's Children's Access Prevention Act. Under this bill, adults who fail to lock up a loaded firearm or an unloaded firearm with ammunition would be held liable if the weapon is taken by a child and used to kill or injure themselves or another person. The bill also increases the penalties for selling a gun to a juvenile and creates a gun safety education program that includes parent-teacher organizations, local law enforcement and community organizations. This bill is similar to a bill President Bush signed into law during his tenure as the Governor of Texas.

More recently, I cosponsored Senator KOHL's Ballistics, Law Assistance, and Safety Technology Act, or BLAST Act, which would require licensed firearms manufacturers to test fire firearms, and prepare ballistics images of the fired bullets and casings of new firearms. Expanding the National Integrated Ballistics Information Network to include these ballistics images would increase the crime gun tracing capabilities of the Bureau of Alcohol, Tobacco, and Firearms. ATF agents could quickly identify firearms by using the ballistics images of cartridge casings and bullets recovered at crime scenes, even when criminals obliterate the serial number.

In recent months, we have seen snipers with an assault rifle kill people around the country and a student at the University of Arizona go to his school and kill three of his teachers and himself. These events represent only a few of the thousands of murders that have already occurred this year. These brutal killing sprees were given national media attention, and hopefully will generate legislative action. While there is little time left in the 107th Congress to address these issues, it is critical that we press for consideration of these issues early in 108th Congress.

THE CONFIRMATION OF 98 JUDICIAL NOMINEES

Mr. LEAHY. Mr. President, yesterday the Senate confirmed the 98th judicial nominee of President George W. Bush.

These past 16 months, since the reorganization of the Senate Judiciary Committee following the change in majority last year, have been an historic and impressive period in which we have fairly considered hundreds of the President's executive and judicial branch nominees. Despite partisan rhetoric to the contrary, the Senate has done a good job.

If this Senate had a "lousy" record on judicial confirmations, then the Republican leadership, which controlled the pace on confirmations from 1995 through the first part of 2001, must have been far, far worse than "lousy". Under Republican control judicial vacancies on the Courts of Appeals more than doubled, from 16 to 33, and overall vacancies rose from 65 to 110. We have heard no criticism from the White House of that period, in which Senate Republicans blocked President Clinton's nominees. We have heard no apologies from the Republican leadership that engineered those efforts.

Just last night, in one night, the Democratic-led Senate confirmed more judges, 18, including more circuit judges, than the Republican-led Senate allowed to be confirmed in the entire 1996 session more in one day than Republicans were willing to proceed on for an entire year. Seventeen of those judges were the nominations we were able to get reported from the Committee on October 8 with some significant effort and in spite of Republican efforts to divert the Committee into other matters.

This week the Committee met, again, as I had said it would. We considered the nominations of Dennis Shedd and Michael McConnell and voted on them as the 101st and 102nd judicial nominations voted on by the Committee during the last 16 months and reported them to the Senate. One hundred judicial nominations have now been reported favorably to the Senate by the Judiciary Committee during the past 16 months; two were rejected. One indication of the fairness with which we have conducted ourselves is that as chairman I have proceeded to consider nominations that I do not support and the Committee has reported nominations that I do not support to the Senate. As I said during this week's Committee consideration of the Shedd nomination, for example, having examined his record as a District Court Judge, I intend to vote against his nomination to the Court of Appeals for the Fourth Circuit.

With the Senate's actions last night, we have confirmed 98 of this President's judicial nominees in only 16 months. This compares most favorably to the 38 judicial confirmations averaged per year during the six and one-half years when the Republican majority was in control of the Senate. Last night, the Senate confirmed another 18 judicial nominees. In the entire 1996 session over the course of an entire year, the Republican majority allowed only 17 district court judges to be confirmed all year and would not confirm a single circuit court nominee—not one. Last night, the Democratic-led Senate confirmed all 17 district court nominees reported to the Senate by the Judiciary Committee after our October 8 business session as well as a 6th Circuit nominee from Kentucky. The Democratic-led Senate exceeded in one day what it took the Republican majority of the Senate an entire year to accomplish. That should put our historic demonstration of bipartisanship toward this President's judicial nominees in perspective.

The 17 district court nominees confirmed last night were on the Senate calendar because, on October 8, the Senate Judiciary Committee was able to report those nominations despite unparalleled personal attacks by Republicans on me as chairman. The circuit court nominee confirmed last night, Professor John Rogers, is the second of this President's judicial nominees confirmed to the Sixth Circuit this year. They are the first confirmations to the 6th Circuit since 1997, when Republicans for four years shut down consideration of President Clinton's nominees to that circuit. Three of

President Clinton's nominees to that court were never allowed a hearing by the Republican majority; the Democratic majority has, in contrast, proceeded to confirm two new judges to that same circuit court.

The hard, thankless, but steady work of the Democratic members of the Judiciary Committee has reduced judicial vacancies substantially during these last 16 months. We inherited 110 vacancies and an additional 49 have arisen since July 10, 2002. Today, after 98 confirmations, district and circuit court vacancies combined number only 60—not the more than 150 vacancies that would exist had we shut down the process or the 111 vacancies that would exist if we had followed the Republican pace of confirmation during the Clinton administration. The President has failed to send nominations for almost half of the 60 current vacancies on the district and circuit courts and only 11 of his remaining nominees have both home-State consent and ABA ratings. Despite false attacks on our record, the Senate has acted with bipartisanship, fairness and expedition on this President's judicial nominees, confirming 98 in just 16 months. We have reduced judicial vacancies from the 110 we inherited to fewer than the 65 vacancies the Republicans began with when they took over the Senate in 1995. Unlike the Republican majority that allowed judicial vacancies grow, we have outpaced attrition and reduced the overall level of vacancies, including the vacancies on the circuit courts.

IN MEMORY OF LIVES LOST IN THE BERING SEA ON OCTOBER 20, 2002

Mrs. MURRAY. Mr. President, I rise today to express my condolences to the families and friends of men who lost their lives recently because of an accident aboard the *Galaxy*, which was fishing for cod in the Bering Sea.

Aboard the *Galaxy* were First Mate Jerry L. Stephens of Edmonds, Washington; Crewman Jose R. Rodas of Pasco, Washington; and Cook George Karn of Anchorage, Alaska. From the *Clipper Express:* Crewman Daniel Schmiedt of Arlington, Washington.

On October 20, 2002, an explosion occurred aboard the *Galaxy*, a 180-foot vessel fishing for cod off of Alaska's remote Pribilof Islands. Preliminary reports indicate that crew members were battling a small fire below deck when a hatch was opened to allow smoke to escape. This triggered an explosion which ignited multiple fires that quickly superheated its iron hull. With little time to act, the crew scrambled to don survival suits and release lifeboats as they tried to rescue shipmates who had been thrown overboard by the blast.

Captain Dave Shoemaker of Carnation, Washington, sustained burns and broken ribs as he struggled through the fire to make the crucial Mayday call alerting the Coast Guard and other fishing vessels to come to the *Galaxy's* assistance. The heroic efforts of Deck Boss Ryan Newhall of San Antonio, Texas, saved the life of National Marine Fisheries Service biologist Ann Weckback, who was thrown into the icy water without a survival suit. One of the fishing boats which responded to the Mayday call, the *Clipper Express*, was drawn into the tragedy when 24 year old crew member Daniel Schmiedt was swept overboard during the rescue operation.

It may be months until we know what caused the fatal explosion on the *Galaxy*. However, the immediate response of the *Clipper Express* and the other ships that came to the rescue of the *Galaxy's* crew is a testament to the industry. My heart goes out to the families and friends of the four men who died on October 20, 2002. I extend my deep appreciation to all those in the fishing industry and the Coast Guard who responded quickly to prevent even greater loss of life from this accident.

IDENTITY THEFT VICTIMS ASSISTANCE ACT OF 2002

Ms. CANTWELL. Mr. President, the Senate, last night, took a great step toward helping the victims of identity theft, and those law enforcement officers investigating identity theft, by passing S. 1742, the Identity Theft Victims Assistance Act of 2002.

This legislation provides a consistent national remedy for victims of identity theft to restore their credit and their good name. This bill is a critical step in helping victims of identity theft restore their good credit.

Identity theft can be extraordinarily destructive to people's lives. People are denied credit, spend enormous time, effort, and money correcting the problems caused by identity theft, and suffer profound frustration and distress in dealing with the problems that result from identity theft.

These problems often arise when they have the potential to wreak the greatest havoc: when buying a new home or a car, or getting a loan to put a child through college. It can be devastating to make a major life change, only to find out that your creditworthiness has been destroyed by fraud, and it is going to take months of excruciating effort by you to clear your name.

These crimes rarely meet the threshold for prosecution because each crime involves a small amount of money. Meanwhile victims must independently contact numerous federal, state and local law enforcement agencies, consumer credit reporting agencies and creditors over a period of years, as each new event of fraud arises.

One of the most significant problems victims face is gathering the evidence of the fraudulent use of their identity. In order to prove fraud, the victim needs copies of creditors' business records, such as applications, invoices or other information related to the fraudulent transactions. These records are often difficult to obtain because the victim's personally identifying information does not match the fraudulent information on file with the business. Ironically, in the interest of protecting consumer privacy, a business will refuse to provide the information to the victim, believing the victim to be an unauthorized third party.

This bill establishes a nationwide process for all victims of identity theft to obtain business records that are evidence of identity theft to enable a victim to reclaim his or her identity and assist law enforcement in finding the thieves.

This legislation also requires consumer credit agencies to block reporting of bad credit that arises from identity theft, so the harm caused to the victim is stopped dead in its tracks.

The bill also extends the statute of limitation from 2 years to 4 years, giving victims a reasonable time period to decide whether they need to sue a business under the Fair Credit Reporting Act.

Finally, the bill amends the Internet False Identification Prevention Act of 2000 to expand the jurisdiction and membership of the Coordinating Committee currently studying enforcement of Federal identity theft law. This will allow the Coordinating Committee to examine State and local identity theft law enforcement and identify ways the federal government can better assist state and local law enforcement in addressing identity theft and related crimes.

The bill is based on a Washington state law enacted in 2001. Other States, including California and Idaho, have enacted similar laws. But identity theft is a national problem growing at an exponential rate. Identity information may be stolen in Washington state and used to perpetrate a fraud in Wisconsin, New Jersey, or Alabama. That is why it is critical that we have passed this bill to help all victims move more quickly and easily through the process of restoring their good name at the least emotional and financial cost as possible.

I thank my colleagues who have worked hard with me to bring this legislation to the floor. Particularly, my thanks goes to Senators ENZI, GRASSLEY and LEAHY, and Banking Committee Chairman SARBANES.

I also want to mention the broad support that this legislation has received. The bill is supported by the National Center for the Victims of Crime, the Fraternal Order of Police, Consumers Union, Identity Theft Resource Center, U.S. Public Interest Group, Police Executive Forum, Privacy Rights Clearinghouse, and Amazon.com, and the

Committee has received a letter of support signed by 22 Attorneys General.

The passage yesterday of this legislation is a win for consumers and a win for businesses because identity theft leaves both as victims in its wake. It should be among the highest priorities in the waning days of this Congress that we work together to get the bill enacted into law. The sooner we give victims of identity theft these tools, the more victims we will help and the fewer businesses that will be defrauded by identity theft in the future.

LOAN FORGIVENESS FOR SOCIAL WORKERS AND ATTORNEYS CAN IMPROVE CHILD WELFARE SERVICES

Mr. ROCKEFELLER. Mr. President, I am very proud to join my friend and colleague, Senator DeWine, as an original cosponsor of two important bills, S. 3165 and S. 3166, to offer loan forgiveness to social workers and attorneys willing to work in the child welfare field. Senator DeWine has been an inspiring leader on child welfare issues for many years, and I am delighted to work closely with him to continue to seek ways to improve the administrative agencies and legal courts that serve such vulnerable children.

The bills are designed to encourage students graduating with social work degrees and law degrees to spend several years working in the child welfare system. Eligible students would receive loan forgiveness for working in child welfare agencies and courts for abused and neglected children. The amount of loan forgiveness would increase over time to reward experience, and to retain social workers and attorneys in the system.

Every day, approximately 500,000 children are in the foster care system. Services to such children need to be improved so that every child's health and safety is paramount, and every child secures a permanent home. These priorities were established in the 1997 Adoption and Safe Families Act, thanks to the leadership of Senator DeWine and a bipartisan coalition. To achieve such bold goals, we must have trained, committed social workers and skilled attorneys serving such children and their families.

There is a compelling need to invest in social workers. The turnover rate for child welfare agencies has doubled in the past decade. Making decisions about a child's health and safety is a serious challenge, and we need more experienced and trained social workers to serve children and their families.

Many social workers are burdened with a staggering caseload. The number of social workers per children in the child welfare system varies widely from state to state, and not all states even report their child protective services workforce data. Still, we know there is a compelling need in many places. The Child Maltreatment 2000 Report published by the Department of Health and Human Services indicates that the national average is 130 children per investigative workers, and several states acknowledge that workers have over 200 children to monitor and assess. Obviously, we need to recruit and retain qualified social workers to serve children and families at risk.

Experienced attorneys are also needed to help manage the individual cases and to help ensure that the bold, new time frames established by the Adoption and Safe Families Act are met. Under this new law, courts face stricter requirements to monitor and make decisions about a child's safety, health, and placement in a permanent home. This means qualified attorneys need to work with the courts, the agencies, and the families.

In West Virginia, and across our country, children and families in the child welfare system need and deserve qualified social workers and attorneys. Senator DeWine's bill to offer student loan forgiveness would provide the right incentive to recruit and retain new professionals in the system. It would be a meaningful addition to the Higher Education Act reauthorization.

SOWING THE SEEDS FOR DEMOCRACY IN CROATIA

Mr. SMITH of Oregon. Mr. President, I rise today to bring to my colleagues' attention the Civitas International Civic Education Exchange Program—a program that is helping to promote democratic principles in emerging and established democracies throughout the world.

The Civitas Exchange Program, administered by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act, engages educators from around the world in the development of effective civic education initiatives that can be implemented in their own countries. The program provides international leaders in civic education the opportunity to learn from one another and to assist each other in improving education for democracy in their nations.

The Civitas Exchange Program makes use of the experience, expertise, and programmatic offerings of U.S.-based State and national civic education centers by linking them in partnerships with public and private sector entities in emerging and advanced democracies. The partnerships serve to institutionalize civic education in these nations, creating working relationships that lead to tangible results for both American and international students and teachers. Today the Civitas Exchange Program is operating in 30 countries linked with 22 American States.

One of those partnerships involves my home State of Oregon, and the States of Delaware and Maryland, linked with the country of Croatia. Marilyn Cover, the executive director of the Classroom Law Project in Portland, OR, manages the partnership. Ms. Cover recently brought a delegation of American teachers and Croatian educators to Capitol Hill to observe our system of government first hand. I am pleased to recognize the two Oregonian teachers participating in the exchange, Bert Key from Sandy Union High School in Sandy, OR and Maggie McSwiggen, from Vocational Village in Portland, OR. I would also like to recognize the Croatian teachers in the delegation, Jadranka Kostanjsak from Zagreb, Jasminka Zagorac from Zagreb, and Natalija Palcic from Split.

These teachers, and others from Delaware and Maryland, are currently working with teachers from Croatia to develop a series of lessons comparing the Constitutions of the United States and Croatia, examining political parties within each country, and exploring ideas of personal and civic responsibility for use in their respective classes. Begun during a summer writing program, the teachers continue to refine their lessons through team teaching in classrooms in both the United States and Croatia. It is an excellent example of the reciprocal nature of the exchange, which provides benefits to American students and international students alike.

The ideas exchanged in Oregon's partnership have led to at least two significant developments with the support of the Croatian Ministry of Education and Sport: first, as part of the exchange, an American civics curriculum, Foundations of Democracy program on justice, has been translated and is now a requirement in Croatian preschools and primary schools; second, We the People . . . Project Citizen, an American civic education program which engages young people in learning how to monitor and influence public policy, has become a requirement in grades 7 and 8 for secondary schools in Croatia.

The Civitas Exchange Program is an excellent example of how programs supported by the federal government can help achieve U.S. foreign policy objectives by helping emerging democracies develop a political culture supportive of democratic values, principles, and institutions. I wish to thank the Center for Civic Education for their successful administration of the Civitas program and applaud Oregonian Marilyn Cover for her excellent work in the project.

RETIREMENT OF SENATOR FRED THOMPSON

Mr. CONRAD. Mr. President, I rise today to pay tribute and recognize the accomplishments of a colleague who will be retiring at the end of this term. Senator FRED THOMPSON has represented Tennessee in the Senate for 8 years. During his tenure, he has been an important advocate for a wide range of legislative reform activities.

Throughout his Senate career, Senator THOMPSON has fought for protecting our national security, making government more efficient, and improving programs that are important to America's families, such as Social Security and Medicare. Senator THOMPSON has also been nationally recognized for his expertise in international affairs as was evidenced by his recent nomination to the prestigious Council on Foreign Relations.

As the ranking member of the Committee on Governmental Affairs, FRED THOMPSON held more than a dozen hearings on important national security issues, including missile defense technology and the proliferation of weapons of mass destruction. As a result of his efforts, Senator THOMPSON played a key role in bringing the issue of weapons proliferation to the forefront of the national agenda.

In addition, FRED THOMPSON has been the leader in many efforts to reform and improve government. He has strongly supported proposals to streamline the regulatory process and to ensure the cost-effectiveness and benefit of regulatory programs. As the primary author of the Government Information Security Act, he also championed efforts to enhance the security of government computer systems and to strengthen privacy protection on Federal Web sites.

Finally, as his colleague on the Finance Committee, I had the opportunity to work with FRED to address the challenges facing Social Security and Medicare. Among the efforts we jointly supported, a primary concern we have shared is improving the long-term solvency of these important social programs. As a Finance Committee member, as well as in the other roles he has served, Senator THOMPSON's work has been thoughtful, and our Nation is a better place because of his efforts.

Most of all, I will miss Senator THOMPSON's unfailing good humor. We shared many laughs as we bantered back and forth about his future in film and television. I will really miss his sense of humor and basic decency.

Mr. President, for these and many other reasons, I have been honored to serve with FRED THOMPSON. I would like to join my colleagues in wishing the Senator and his family the best in the future and in paying tribute to his contributions to the Senate and our Nation. I wish him well.

ADDITIONAL STATEMENTS

TRIBUTE TO VASHON HIGH SCHOOL

• Mr. BOND. Mr. President, I rise to pay tribute to the 75th anniversary of Vashon High School. In the early quarter of the 20th century, the high school that most African-American students attended in St. Louis was overcrowded and quite a distance from their homes. Consequently, in 1922, a citizens group called the Central School Patron Association led by Reverend George Stevens and other community alliances began formulating plans for a second high school designated for African-American students. On September 6, 1927, Vashon High School opened and has been educating and changing the lives of students since. Over time, Vashon High School has established itself as a premier educational institute, known for its athletics as well as academics.

There are several outstanding individuals who have contributed to the founding and success of Vashon High School. The school was named for a family with a long tradition of struggle and sacrifice dedicated to the importance of education while battling to secure civil and human rights for African-Americans. Specifically, the school was named for George B. Vashon, 1824–1878, the first African-American graduate of Oberlin College, OH in 1844, and his son John B. Vashon, 1859–1924, an outstanding educator in the city of St. Louis for 34 years. James W. Meyers served as the first principal of Vashon from 1927–1932 and Otto Bohanan, a member of the faculty, composed the school song, "Vashon We Love". Many students honed their talents, skills, and abilities to become future educators and community leaders from the positive influence and support of these and other influential faculty members.

Over the past 75 years, Vashon High School has undergone changes and relocated to several different locations, but irrespective of physical location, the spirit of Vashon High School continues to inspire students to pursue their dreams and achieve their goals. Congratulations to the students, faculty, and alumni of Vashon High School.•

NEAL GONZALES

• Mr. BINGAMAN. Mr. President, I rise today to say a few words about Neal Gonzales, a prominent new Mexico labor leader who died in late October.

In the early 1970's when I became acquainted with the working of the new Mexico Legislature, I also became acquainted with Neal Gonzales, a powerful presence in the halls of power in our state. He was the representative of labor and as such his influence was felt in most of the important legislative battles that were waged.

Neal was a true professional at his job. Liked and respected by all, he was a formidable adversary as those who found themselves opposing him soon learned.

I learned much from watching Neal Gonzales work as the advocate for the working people of New Mexico. He kept his focus on the impact of legislation on the lives of those he represented. He did his homework and, more often than not, he prevailed.

With his death, many of us in New Mexico have lost not only a valued friend, but the working families of our State have lost a tireless champion.•

TRIBUTE TO DR. LURA POWELL

• Ms. CANTWELL. Mr. President, I rise today to say thank you to one of the true leaders in the Washington state science community, who has recently announced that she will be stepping down from her position at the end of the year. I am speaking of Dr. Lura Powell, vice president of Battelle and Director of the Department of Energy's Pacific Northwest National Laboratory, PNNL, in Richland, WA.

During the past 2 years, Dr. Powell has developed a bold strategy to ensure that the Pacific Northwest National Laboratory will play a significant role in carrying out the missions of the Department of Energy as we move forward into the 21st century. The recent installation of two major pieces of equipment will position the laboratory to be a leader in molecular research—research that reaches across many disciplines, including environmental cleanup, national security, and the life sciences. The new 9.2 teraflops supercomputer and the 900-megahertz nuclear magnetic resonance spectrometer, both of which are part of PNNL's Environmental Molecular Sciences Laboratory, will attract academia, industry, and other Government researchers to the lab in an atmosphere of collaboration and discovery. I had the opportunity to attend the dedication of the NMR spectrometer on March 28, 2002. This equipment is poised to play a central role in the fast-approaching revolution in systems biology, the seeds for which were sown by the amazing success of the Human Genome Project.

Dr. Powell has set out to establish a systems biology program for PNNL that will position the laboratory to play a significant role in the Department of Energy's Genomes to Life initiative and to participate in the National Institutes of Health biomedical mission. Congress has consistently supported increased funding for scientific research in the biomedical sciences at NIH, and there is an equally important role for the Department of Energy to play in this field. Genomics research holds great promise for unraveling many previously intractable scientific problems, and will one day lead to the development of technologies that will help address some of our nation's most pressing challenges: carbon sequestration and climate change, the national security risks posed by bioterrorism, even clean and sustainable energy production. The Genomes to Life program will indeed enhance the Department of Energy's ability to fulfill its many diverse missions, and PNNL—thanks in large part to Dr. Powell—is poised to be a prime contributor to this initiative.

In her term as Director of the Pacific Northwest National Laboratory, Dr. Powell has reached out to create new partnerships within Washington State to support this agenda. They include the University of Washington, Washington State University, the Fred Hutchinson Cancer Research Center, and the Institute of Systems Biology. Meanwhile, conversations are ongoing with still other institutions in the Pacific Northwest that will further expand PNNL's collaborations. These efforts will bring a strong bioscience presence to the State of Washington, provide economic sustainability to the Tri-Cities area and lead to scientific discoveries that will ultimately benefit this Nation as a whole. I want to recognize Dr. Powell for her vision and commitment to public service and wish her much success in her future endeavors.•

TRIBUTE TO DR. VINCENT ZECCHINO

• Mr. CHAFEE. Mr. President, it is with great honor that I recognize Dr. Vincent Zecchino and his wife, Julia, for the numerous contributions they have made to the field of medicine in Rhode Island and throughout the world. I am pleased to say that after a lifetime of achievement, Rhode Island Hospital dedicated their newest facility as the Julia and Vincent Zecchino Pavilion on October 18, 2002.

After graduating from the University of Bologna Medical School in 1936 and completing his internship at the Long Island College Hospital in 1938, Dr. Zecchino served his orthopedic and fracture residency at Rhode Island Hospital, which he completed in 1940. Subsequently, Dr. Zecchino continued his medical training as a fellow at Harvard Medical School and as a resident at Boston's Children Hospital and Mass General until entering the United States Army in 1942, Dr. Zecchino served the United States in the China Burma-India Theatre as Chief of Orthopedic Surgery until his discharge as Lieutenant Colonel in 1946.

Upon completion of his military service, Dr. Zecchino returned to Rhode Island where he joined the orthopedic staff at Rhode Island Hospital and Miriam Hospital and the faculty of Brown Medical School. During his illustrious career, Dr. Zecchino also served as Chief of Orthopedics at the Veterans Hospital, worked and taught at Project Hope medical schools in Columbia, Tunisia and Sri Lanka, and was a member of the Tufts Medical School faculty.

Dr. Zecchino has authored and co-authored numerous articles in medical journals and textbooks. He was critically important in the development of knee prosthesis and its instrumentation, and invented the double-edged bone cutting "Z" blade bone say. After such a long and distinguished career, it is especially noteworthy that Dr. Zecchino founded an orthopedic clinic for people in need after his retirement in 1982.

Throughout his medical career, Dr. Zecchino has benefited from the love, compassion and commitment of his wife, Julia, who was in a nurse-training program when they met. Together, Dr. and Mrs. Zecchino have improved the lives of thousands of people and with the dedication of the Julia and Vincent Zecchino Pavilion; future generations will continue to benefit from the Zecchino's goodwill, dedication and tireless effort to improve the world around them.•

IN RECOGNITION OF HARTFORD MEMORIAL BAPTIST CHURCH ON THE OCCASION OF THEIR 85TH ANNIVERSARY

• Mr. LEVIN. Mr. President, I am pleased to recognize the members of the Hartford Memorial Baptist Church for 85 years of dedication and service to the Detroit community.

Since 1917, Hartford Memorial Baptist Church has established an environment of strength within the parish walls as well as throughout the surrounding community. Through commitment to social change, they welcomed the nonconformist insights of W.E.B. DuBois and Paul Robeson during the Civil Rights Movement and continue to make significant contributions to social development through extensive community outreach programs.

The establishment of the Hartford Agape House is one of their current initiatives dedicated toward an urban mission that provides needed social services to the local community. Widely respected among the Michigan faith-based organizations, their exemplary programs take on the issues of poverty through hunger initiatives and free clothing; medical necessities through a public health consortium, Alcoholics Anonymous, and AIDS awareness; as well as educational assistance that provides both college preparation and scholarship programs.

I take great pride in recognizing the efforts of the Hartford Memorial Baptist Church throughout their 85-year history in the Detroit community. Their ministry attends to the entire person: mind, body and soul. I know my Senate colleagues will join me in saluting their contributions to society and wish them continued success in the future.•

SPINA BIFIDA AWARENESS MONTH

• Mrs. HUTCHISON. I rise today to let my colleagues know that October is National Spina Bifida Awareness Month and to pay tribute to the more than 70,000 Americans—and their family members—who are currently affected by spina bifida—the Nation's most common, permanently disabling birth defect. The Spina Bifida Association of America—SBAA—an organization that has helped people with spina bifida and their families for nearly 30 years, works every day—not just in the month of October—to prevent and reduce suffering from this devastating birth defect.

The SBAA was founded in 1973 to address the needs of the individuals and families affected by and is currently the only national organization solely dedicated to advocating on behalf of the spina bifida community. As part of its service through 60 chapters in more than 100 communities across the country, the SBAA puts expecting parents in touch with families who have a child with spina bifida. These families answer questions and concerns and help guide expecting parents. The SBAA then works to provide lifelong support and assistance for affected children and their families.

Together the SBAA and the Spina Bifida Association of Texas work tirelessly to help families meet the challenges and enjoy the rewards of raising their child. I would like to acknowledge and thank SBAA and the Spina Bifida Association of Texas for all that they have done for the families affected by this birth defect, especially those living in my State.

Spina bifida is a neural tube defect that occurs when the central nervous system does not properly close during the early stages of pregnancy. Spina bifida affects more than 4,000 pregnancies each year, with more than half ending tragically in abortion. There are three different forms of spina bifida with the most severe being myelomeningocele spina bifida, which causes nerve damage and severe disabilities. This severe form of spina bifida is diagnosed in 96 percent of children born with this condition. Between 70 to 90 percent of the children born with spina bifida are at risk of mental retardation when spinal fluid collects around the brain.

We must do more to ensure a high quality of life for people with spina bifida so more families choose the blessing and joy of having a child with this condition. Fortunately, spina bifida is no longer the death sentence it once was and now people born with spina bifida will likely have a normal or near normal life expectancy. The challenge now is to ensure that these individuals have the highest quality of life possible.

Today, approximately 90 percent of all babies diagnosed with this birth defect live into adulthood, approximately 80 percent have normal IQs, and approximately 75 percent participate in sports and other recreational activities. With proper medical care, people who suffer from spina bifida can lead full and productive lives. However, they must learn how to move around using braces, crutches, or wheelchairs, and how to function independently. They also must be careful to avoid a host of secondary health problems ranging from depression and learning disabilities to skin problems and latex allergies.

The Spina Bifida Association of Texas has four chapters in San Antonio, Austin, Dallas, and Houston. These chapters serve the individuals and their families with spina bifida in the great state of Texas through a number of programs and services including providing emergency assistance; running a summer camp for children and a weekend retreat for adults; scholarships; and medical seminars. In addition, the Texas Scottish Rite Hospital is the largest single-site interdisciplinary center for the treatment of spina bifida in the United States and provides ongoing treatment for more than 13,000 children annually, without charge.

During the month of October, the SBAA and its chapters make a special push to increase public awareness about spina bifida and teach prospective parents about prevention. Simply by taking a daily dose of the B vitamin, folic acid, found in most multivitamins, women of child-bearing age have the power to reduce the incidence of spina bifida by up to 75 percent. That such a simple change in habit can have such a profound effect should leave no question as to the importance of awareness and the impact of prevention.

As a member of the Senate Appropriations Committee, I am pleased that we provided $2 million in much-needed funding to establish a National Spina Bifida Program at the National Center for Birth Defects and Developmental Disabilities—NCBDDD—at the Centers for Disease Control and Prevention—CDC—to ensure that those individuals living with spina bifida can live active, productive, and meaningful lives. In addition, I am proud that we in the Senate recently passed by unanimous consent the Birth Defects and Developmental Disabilities Prevention Act of 2002, which takes many critical steps that will work to prevent spina bifida and to improve quality of life for individuals and families affected by this terrible birth defect. I am hopeful that the House will act shortly to pass the measure so it can be sent to the President for his signature.

I again wish to thank the SBAA and its chapters for all of their hard work to prevent and reduce suffering from this birth defect and for their commitment to improve the lives of those 70,000 individuals living with spina bifida throughout our Nation. I wish the Spina Bifida Association of America the best of luck in its future endeavors.●

MESSAGES FROM THE HOUSE

At 10:34 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills and joint resolution, each without amendment:

S. 1010. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina.

S. 1226. An act to require the display of the POW/MIA flag at the World War II memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1843. An act to extend certain hydroelectric licenses in the State of Alaska.

S. 1907. An act to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon.

S. 1946. An act to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail.

S. 2239. An act to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

S. 2712. An act to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 3044. An act to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 3156. An act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress.

The message also announced that the House has passed the following bills and joint resolution, in which it requests the concurrence of the Senate:

H.R. 628. An act to designate the facility of the United States Postal Service located at 440 South Orange Blossom Trail in Orlando, Florida, as the "Arthur 'Pappy' Kennedy Post Office".

H.R. 629. An act to designate the facility of the United States Postal Service located at 1601-1 Main Street in Jacksonville, Florida, as the "Eddie Mae Steward Post Office".

H.R. 2458. An act to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

H.R. 3429. An act to direct the Secretary of Transportation to make grants for security improvements to over-the-road bus operations, and for other purposes.

H.R. 3747. An act to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.

H.R. 3775. An act to designate the facility of the United States Postal Service located at 1502 East Kiest Boulevard in Dallas, Texas, as the "Dr. Caesar A.W. Clark, Sr. Post Office Building".

H.R. 3955. An act to designate certain National Forest System lands in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System, and for other purposes.

H.R. 4750. An act to designate certain lands in the State of California as components of the National Wilderness Preservation System, and for other purposes.

H.R. 5097. An act to adjust the boundaries of the Salt River Bay National Park and Ecological Preserve located in St. Croix, Virgin Islands.

H.R. 5280. An act to designate the facility of the United States Postal Service located at 2001 East Willard Street in Philadelphia, Pennsylvania, as the "Robert A. Borski Post Office Building".

H.R. 5334. An act to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

H.R. 5436. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.

H.R. 5495. An act to designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the "Major Henry A. Commiskey, Sr. Post Office Building".

H.R. 5499. An act to reauthorize the HOPE VI program for revitalization of severely distressed public housing, and for other purposes.

H.R. 5504. An act to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

H.R. 5512. An act to provide for an adjustment of the boundaries of Mount Rainier National Park, and for other purposes.

H.R. 5513. An act to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership and a land exchange in the State of Colorado to acquire a private inholding in the San Isabel National Forest, and for other purposes.

H.R. 5586. An act to designate the facility of the United States Postal Service located at 141 Erie Street in Linesville, Pennsylvania, as the "James R. Merry Post Office Building".

H.R. 5604. An act to designate the Federal building and United States courthouse located at 46 East Ohio Street in Indianapolis, Indiana, as the "Birch Bayh Federal Building and United States Courthouse".

H.R. 5609. An act to designate the facility of the United States Postal Service located at 600 East 1st Street in Rome, Georgia, as the "Martha Berry Post Office".

H.R. 5611. An act to designate the Federal building located at 324 Twenty-Fifth Street in Ogden, Utah, as the "James V. Hansen Federal Building".

H.R. 5716. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

H.R. 5728. An act to amend the Internal Revenue Code of 1986 to provide fairness in tax collection procedures and improved administrative efficiency and confidentiality and to reform its penalty and interest provisions.

H.R. 5738. An act to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

H.J. Res. 117. A joint resolution approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

The message further announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 466. Concurrent resolution recognizing the significance of bread in American history, culture, and daily diet.

H. Con. Res. 499. Concurrent resolution honoring George Rogers Clark.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 333) to amend title 11, United States Code, and for other purposes, with an amendment.

The message further announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4628) to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

The message also announced that the House has passed the following bill, with amendments:

S. 990. An act to amend the Pittman-Robertson Wildlife Restoration Act to improve the provisions relating to wildlife conservation and restoration programs, and for other purposes.

The message further announced that the House has passed the following bill, with an amendment:

S. 2017. An act to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

The message also announced that the House passed the following bill, with amendments:

S. 2237. An act to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education, benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.

The message further announced that the Speaker has signed the following enrolled bills:

H.R. 1070. An act to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to carry out projects and conduct research for remediation of sediment contamination in areas of concern in the Great Lakes, and for other purposes.

H.R. 2546. An act to amend title 49, United States Code, to prohibit States from requiring a license or fee on account on the fact that a motor vehicle is providing interstate pre-arranged ground transportation service, and for other purposes.

H.R. 3340. An act to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes.

H.R. 3389. An act to reauthorize the National Sea Grant College Program Act, and for other purposes.

H.R. 3394. An act to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes.

H.R. 4878. An act to provide for estimates and reports of improper payments by Federal agencies.

H.R. 5349. An act to facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interests retained by the United States in 1955 when the land was conveyed to the State of Missouri.

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

At 11:26 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 4883. An act to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–9537. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report on Fiscal Year 2000 relative to Low Income Home Energy Assistance Program (LIHEAP); to the Committee on Health, Education, Labor, and Pensions.

EC–9538. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "7 CFR 1412—Peanut Buyout Program" (RIN0560–AG71) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9539. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "2002 Farm Security and Rural Investment Act of 2002 Sugar Program and Farm Facility Storage Loan Program" (RIN0560–AG73) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9540. A communication from the Administrator, Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Apple Market Loss Assistance Program II" (RIN0560–AG63) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9541. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Nectarines Grown in California; Decreased Assessment Rate" (Doc. No. FV02–916–2) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9542. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements" (Doc. No. FV02–955–1) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9543. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Oranges, Grapefruit, Tangerines and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit" (Doc.No . FV02–905–5) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9544. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulation" (Doc. No. FV02–996–1) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9545. A communication from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Pork Promotion, Research and Consumer Information Order: Rules and Regulations—Decrease in Assessment Rate and Decrease of Importer Assessments" (Doc. No. LS–02–09) received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9546. A communication from the Administrator, Foreign Agriculture Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Technical Assistance for Specialty Crops Program" (RIN0551–AA63) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9547. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of the Agriculture, transmitting, pursuant to law, the report of a rule entitled "Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables" (Doc. No. 98–030–4) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9548. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of the Agriculture, transmitting, pursuant to law, the report of a rule entitled "Importation of Clementines from Spain" (Doc. No. 02–023–4) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9549. A communication from the Administrator, Food and Nutrition Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled

"Codification of Poultry Substitution and Modification of Commodity Inventory Controls for Recipient Agencies" (RIN0584–AD08) received on October 21, 2002.

EC–9550. A communication from the Administrator, Rural Development, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Farm Labor Housing Technical Assistance" (RIN0575–AC25) received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9551. A communication from the Regulatory Contact, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "United States Standards for Milled Rice" received on October 15, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9552. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of 50,000,000 or more to South Korea; to the Committee on Foreign Relations.

EC–9553. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Visas: Aliens Ineligible to Transit Without Visas (TWOV), As Amended" (RIN1400–AA48); to the Committee on Foreign Relations.

EC–9554. A communication from the Acting Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of an amended rule entitled "Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulate" (22 CFR Part 22) received on October 28, 2002; to the Committee on Foreign Relations.

EC–9555. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a certification regarding the proposed transfer of major defense equipment valued (in terms of its original acquisition cost) at $14,000,000 or more to United Arab Emirates; to the Committee on Foreign Relations.

EC–9556. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to the Republic of Korea; to the Committee on Foreign Relations.

EC–9557. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–9558. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–9559. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–9560. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–9561. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license involving the manufacture of Significant Military Equipment to the United Kingdom; to the Committee on Foreign Relations.

EC–9562. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to Kuwait; to the Committee on Foreign Relations.

EC–9563. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to Taiwan; to the Committee on Foreign Relations.

EC–9564. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed manufacturing license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to the Israel; to the Committee on Foreign Relations.

EC–9565. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to South Korea; to the Committee on Foreign Relations.

EC–9566. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or services sold commercially in the amount of $50,000,000 or more to Israel; to the Committee on Foreign Relations.

EC–9567. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to the Foreign Operations Export Financing and Related Programs Appropriations Act, 2002, a notification that the President has exercised the authority provided to him and has issued the required determination to waive certain restrictions on the maintenance of a Palestine Liberation Organization (PLO) Office and on expenditure of PLO funds for a period of six months; to the Committee on Foreign Relations.

EC–9568. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to Spain; to the Committee on Foreign Relations.

EC–9569. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to Japan; to the Committee on Foreign Relations.

EC–9570. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to The United Kingdom, Chile, and Germany; to the Committee on Foreign Relations.

EC–9571. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license agreement involving the manufacture abroad of significant military equipment to Italy; to the Committee on Foreign Relations.

EC–9572. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles and services sold commercially under contract in the amount of $14,000,000 or more to Austria; to the Committee on Foreign Relations.

EC–9573. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to Global Project Authorization and Arms Export Control Act, the report of a certification of a export license involving technical data and defense services to Australia; to the Committee on Foreign Relations.

EC–9574. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to the United Kingdom; to the Committee on Foreign Relations.

EC–9575. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–9576. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–9577. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of a certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC-9578. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, agreements relative to treaties entered into by the United States under the Case-Zablocki Act; to the Committee on Foreign Relations.

EC-9579. A communication from the Secretary of the Federal Trade Commission, transmitting, pursuant to law, the report relative to the operation of the premerger notification program; to the Committee on the Judiciary.

EC-9580. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, the annual report of the Office of Police Corps and Law Enforcement Education for calendar year 2000; to the Committee on the Judiciary.

EC-9581. A communication from the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Passenger Data Elements for the Visa Waiver Program" received on October 15, 2002; to the Committee on the Judiciary.

EC-9582. A communication from the Acting Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC-9583. A communication from the Under Secretary of Defense for Acquisition and Technology, transmitting, pursuant to law, a report entitled "Defense Environmental Quality Program Annual Report" for fiscal year 2001; to the Committee on Armed Services.

EC-9584. A communication from the Deputy Secretary of Defense, transmitting, pursuant to law, the report relative to the renovation of the Pentagon; to the Committee on Armed Services.

EC-9585. A communication from the Under Secretary of Defense, Acquisition and Technology, transmitting, pursuant to law, the report for Department purchases from foreign entities in Fiscal Year 2001; to the Committee on Armed Services.

EC-9586. A communication from the Secretary of Energy, transmitting, pursuant to law, the report relative to the material protection, control, and accounting of fissile materials in Russia; to the Committee on Armed Services.

EC-9587. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Performance-Based Contracting Using Federal Acquisition Regulation Part 12 Procedures" (DFARS Case 2000-D306) received on October 28, 2002; to the Committee on Armed Services.

EC-9588. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Caribbean Basin Country—Honduras" (DFARS Case 2002-DO28) received on October 28, 2002; to the Committee on Armed Services.

EC-9589. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Contracting Officer—Qualifications" (DFARS Case 2002-DO21) received on October 28, 2002; to the Committee on Armed Services.

EC-9590. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Competition Requirements for Purchase of Services Under Multiple Award Contracts" received on October 28, 2002; to the Committee on Armed Services.

EC-9591. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Performance of Secretary Functions" received on October 9, 2002; to the Committee on Armed Services.

EC-9592. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Partnership Agreement Between Department of Defense and the Small Business Administration" received on October 9, 2002; to the Committee on Armed Services.

EC-9593. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Department of Defense Pilot Mentor—Protege Program" received on October 9, 2002; to the Committee on Armed Services.

EC-9594. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Preference for Local 8(a) Contractors—Base Closure or Realignment" received on October 9, 2002; to the Committee on Armed Services.

EC-9595. A communication from the Director, Defense Procurement, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Competition Requirements for Purchases from a Required Source" received on October 9, 2002; to the Committee on Armed Services.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 1284: A bill to prohibit employment discrimination on the basis of sexual orientation. (Rept. No. 107-341).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1602: A bill to help protect the public against the threat of chemical attack. (Rept. No. 107-342).

By Mr. LIEBERMAN, from the Committee on Governmental Affairs:

Report to accompany S. 3054, a bill to provide for full voting representation in Congress for the citizens of the District of Columbia, and for other purposes. (Rept. No. 107-343).

NOMINATION DISCHARGED

The following nomination was discharged from the Committee on Foreign Relations pursuant to the order of November 15, 2002:

DEPARTMENT OF STATE

Mary Carlin Yates, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ghana.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BREAUX:

S. 3170. A bill to authorize Chief Judge Richard T. Haik, of the western district of Louisiana, to participate in the retirement program provided for judicial officials under section 376 of title 28, United States Code; to the Committee on the Judiciary.

By Mr. INHOFE:

S. 3171. A bill to amend the impact aid program under the Elementary and Secondary Education Act of 1965 to improve the delivery of payments under the program to local educational agencies; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BOND (for himself, Mr. KERRY, Mr. DOMENICI, Mr. CONRAD, Mr. BURNS, Ms. LANDRIEU, Ms. SNOWE, and Mr. HARKIN):

S. 3172. A bill to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BIDEN:

S. Res. 358. A resolution congratulating the people of Mozambique on their successful efforts to establish, build, and maintain peace in their country for the past ten years, and for other purposes; considered and agreed to.

By Mr. NELSON of Florida (for himself and Mr. SMITH of Oregon):

S. Con. Res. 158. A concurrent resolution urging the Government of Egypt and other Arab governments not to allow their government-controlled television stations to broadcast any program that lends legitimacy to the Protocols of the Elders of Zion, and for other purposes; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 847

At the request of Mr. DAYTON, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 847, a bill to impose tariff-rate quotas on certain casein and milk protein concentrates.

S. 2215

At the request of Mrs. BOXER, the name of the Senator from Texas (Mr. GRAMM) was added as a cosponsor of S. 2215, a bill to halt Syrian support for terrorism, end its occupation of Lebanon, stop its development of weapons of mass destruction, cease its illegal importation of Iraqi oil, and by so doing hold Syria accountable for its role in the Middle East, and for other purposes.

S. 2573

At the request of Mr. REED, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2573, a bill to amend the McKinney-Vento Homeless Assistance Act to reauthorize the Act, and for other purposes.

S. 2626

At the request of Mr. KENNEDY, the name of the Senator from Arkansas

(Mrs. LINCOLN) was added as a cosponsor of S. 2626, a bill to protect the public health by providing the Food and Drug Administration with certain authority to regulate tobacco products.

S. 2945

At the request of Mr. WYDEN, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2945, to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 2991

At the request of Mr. TORRICELLI, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 2991, a bill for the relief of Sharif Kesbeh, Asmaa Sharif Kesbeh, Batool Kesbeh, Noor Sharif Kesbeh, Alaa Kesbeh, Sandos Kesbeh, Hadeel Kesbeh, and Mohanned Kesbeh.

S. 3114

At the request of Mr. LEAHY, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 3114, a bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S.J. RES. 35

At the request of Mrs. FEINSTEIN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S.J. Res. 35, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

S. RES. 325

At the request of Mr. SESSIONS, the name of the Senator from Utah (Mr. BENNETT) was added as a cosponsor of S. Res. 325, resolution designating the month of September 2002 as "National Prostate Cancer Awareness Month".

AMENDMENT NO. 4911

At the request of Mr. BYRD, his name was added as a cosponsor of amendment No. 4911 proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4911

At the request of Mr. CORZINE, his name was added as a cosponsor of amendment No. 4911 proposed to H.R. 5005, supra.

AMENDMENT NO. 4911

At the request of Mr. LIEBERMAN, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of amendment No. 4911 proposed to H.R. 5005, supra.

AMENDMENT NO. 4953

At the request of Mr. BYRD, his name was added as a cosponsor of amendment No. 4953 proposed to H.R. 5005, a bill to establish the Department of Homeland Security, and for other purposes.

AMENDMENT NO. 4953

At the request of Mrs. MURRAY, her name and the name of the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of amendment No. 4953 proposed to H.R. 5005, supra.

AMENDMENT NO. 4953

At the request of Mr. REED, his name was added as a cosponsor of amendment No. 4953 proposed to H.R. 5005, supra.

AMENDMENT NO. 4960

At the request of Mr. SARBANES, his name was added as a cosponsor of amendment No. 4960 proposed to H.R. 3529, a bill to provide tax incentives for economic recovery and assistance to displaced workers.

AMENDMENT NO. 4960

At the request of Mrs. CLINTON, the names of the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of amendment No. 4960 proposed to H.R. 3529, supra.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INHOFE:

S. 3171. A bill to amend the impact aid program under the Elementary and Secondary Education Act of 1965 to improve the delivery of payments under the program to local educational agencies; to the Committee on Health, Education, Labor, and Pensions.

Mr. INHOFE. Mr. President, today I am introducing a bill to make the Impact Aid Program a Federal entitlement.

Over the past few years, the need for a change in the delivery of Impact Aid payments to eligible school districts has become increasingly clear. Impact Aid was originally designed to compensate a local school district for financial losses caused by a Federal presence in that district, whether due to a military base or to other designated Federal land in the community. Congress met its obligation and fully funded the program for the first twenty years of its existence. When the funding was cut in 1971, appropriations for Impact Aid were allocated for school districts according to a need-based formula. In subsequent years, multiple changes in the law have revised and further complicated both the formula and the additional factors that determine funding for each district. The result of these numerous revisions has been large payment disparities for the same types of students in different districts, as well as inherent flaws in reimbursements due to how school districts are defined in different states.

I have consistently defended increased appropriations for Impact Aid not only because it is a vital source of revenue for many local school districts, but also because it constitutes a clear-cut Federal responsibility. When the Federal Government's presence in a community detracts from the local tax base, which often comprises nearly 90 percent of local schools' funding, we must compensate for the lost funds. When we do not do so, the children suffer the consequences.

Despite increases in the past few years, Impact Aid remains substantially under-funded. We can no longer ignore the inequity this causes in educating our students. It is for this reason that I have introduced this bill today. When this legislation becomes law, Congress will be required to meet its obligation to the children and the schools that have been negatively impacted for so long. I urge my colleagues to join me in supporting our local schools by permanently fully funding the Impact Aid program.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 358—CONGRATULATING THE PEOPLE OF MOZAMBIQUE ON THEIR SUCCESSFUL EFFORTS TO ESTABLISH, BUILD, AND MAINTAIN PEACE IN THEIR COUNTRY FOR THE PAST TEN YEARS, AND FOR OTHER PURPOSES

Mr. BIDEN submitted the following resolution; which was considered and agreed to:

Whereas, on October 4, 1992, having overcome the hardships of a colonial struggle, decolonization, and armed regional and national conflict, the people of Mozambique, the parties to the civil war in Mozambique, and the leadership of Mozambique reached a peaceful settlement to the devastating 16-year civil war;

Whereas this peace was facilitated by the good offices of the Comunita di Sant' Egidio in Rome and supported by regional friends and the international community;

Whereas in 1994 and 1999 Mozambique held multi-party elections deemed free and fair by the international community;

Whereas this peace has been consolidated and strengthened by Mozambique civil society, helping to keep the Government of Mozambique on a course of political and economic reforms despite the challenges currently presented by HIV/AIDS, floods, droughts, and regional instability;

Whereas the Government of Mozambique has initiated sound economic reforms, including the privatization of state-run enterprises, the reduction and simplification of import tariffs, and the liberalization of agricultural markets, resulting in extraordinary economic growth;

Whereas the resources that have become available by Mozambique's participation in the Highly Indebted Poor Countries Initiative have been responsibly channeled by the Government of Mozambique into anti-poverty programs;

Whereas, despite the progress that Mozambique has made, more than one-half of the people of Mozambique over 15 years of age are illiterate, twenty-eight percent of the children under five are malnourished, infant mortality stands at more than 12 percent, and life expectancy is only 42 years;

Whereas the United States values democratic principles, the rule of law, peace, and stability in all nations that comprise the community of states; and

Whereas Mozambique has been transformed from a war-torn country to one where political disputes are settled through peaceful means: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the people of Mozambique on ten years of continued peace and growing democracy and commends the Government of Mozambique for continued economic and political reforms;

(2) salutes the Comunita di Sant' Egidio for using its good offices to facilitate and mediate the peace process that led to the October 4, 1992, agreement;

(3) recognizes the indispensable role that civil society in Mozambique has played in both achieving peace and deepening democratic reforms; and

(4) stands ready to assist the Government of Mozambique on a variety of programs, including humanitarian and development assistance, HIV/AIDS prevention, and technical assistance to fight corruption.

SENATE CONCURRENT RESOLUTION 158—URGING THE GOVERNMENT OF EGYPT AND OTHER ARAB GOVERNMENTS NOT TO ALLOW THEIR GOVERNMENT-CONTROLLED TELEVISION STATIONS TO BROADCAST ANY PROGRAM THAT LENDS LEGITIMACY TO THE PROTOCOLS OF THE ELDERS OF ZION, AND FOR OTHER PURPOSES

Mr. NELSON of Florida (for himself and Mr. SMITH of Oregon) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 158

Whereas in November 2002, a number of government-controlled television stations in Egypt began broadcasting a multi-part series, "Horseman Without a Horse", based on the Protocols of the Elders of Zion and conspiracy myths about Jewish global domination;

Whereas the Protocols of the Elders of Zion are a notorious forgery, written by Russian anti-Semites in the early 20th century, which purport to reveal a plot for Jewish domination of the world;

Whereas the Protocols of the Elders of Zion have been a staple of anti-Semitic and anti-Israel propaganda for decades and have long since been discredited by all reputable scholars;

Whereas the broadcast of this series takes place in the context of a sustained pattern of vitriolic anti-Semitic commentary and depictions in the Egyptian government-sponsored press, which has gone unanswered by the Government of Egypt; and

Whereas the Department of State has urged Egypt and other Arab states not to broadcast this program, saying "We don't think government TV stations should be broadcasting programs that we consider racist and untrue": Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) condemns any publication or program that lends legitimacy to the Protocols of the Elders of Zion;

(2) believes the use of such heinous propaganda, especially in the Arab world, serves to incite popular sentiment against Jewish people and the State of Israel rather than promoting religious tolerance and preparing Arab populations for the prospect of peace with Israel;

(3) commends the Department of State for its denunciation of the "Horseman Without a Horse" television series and its efforts to discourage Arab states from broadcasting it; and

(4) urges the Government of Egypt and other Arab governments—

(A) not to allow their government-controlled television stations to broadcast this program or any other racist and untrue material; and

(B) to speak out against such incitement by vigorously and publicly condemning anti-Semitism as a form of bigotry.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4962. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table.

SA 4963. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4940 submitted by Mr. DODD and intended to be proposed to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY, and Mr. VOINOVICH)) to the bill H.R. 5005, supra; which was ordered to lie on the table.

SA 4964. Mr. NELSON, of Nebraska (for himself, Mr. HARKIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 124, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 4962. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4902 proposed by Mr. LIEBERMAN (for himself, Mr. MCCAIN, and Mr. NELSON of Nebraska) to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER, Mr. THOMPSON, Mr. BARKLEY and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all in the pending amendment No. 4902 and insert in lieu thereof the following:

Notwithstanding any other provision of this Act, section 1314 of the Thompson amendment is null and void, and shall have no effect.

SA 4963. Mr. GRAMM submitted an amendment intended to be proposed to amendment SA 4940 submitted by Mr. DODD and intended to be proposed to the amendment SA 4901 proposed by Mr. THOMPSON (for Mr. GRAMM (for himself, Mr. MILLER Mr. THOMPSON, Mr. BARKLEY and Mr. VOINOVICH)) to the bill H.R. 5005, to establish the Department of Homeland Security, and for other purposes; which was ordered to lie on the table; as follows:

Strike all in the pending amendment No. 4940 and insert in lieu thereof the following:

Notwithstanding any other provision of the Thompson amendment is null and void, and shall have no effect.

SA 4964. Mr. NELSON of Nebraska (for himself, Mr. HARKIN, and Mr. JOHNSON) submitted an amendment intended to be proposed by him to the joint resolution H.J. Res. 124, making further continuing appropriations for the fiscal year 2003, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. . EMERGENCY AGRICULTURAL ASSISTANCE.

(a) CROP DISASTER ASSISTANCE.—

(1) IN GENERAL.—The Secretary of Agriculture (referred to in this section as the "Secretary") shall use such sums as are necessary of funds of the Commodity Credit Corporation to make emergency financial assistance authorized under this subsection available to producers on a farm that have incurred qualifying crop losses for the 2001 or 2002 crop, or both, due to damaging weather or related condition, as determined by the Secretary.

(2) ADMINISTRATION.—The Secretary shall make assistance available under this subsection in the same manner as provided under section 815 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A–55), including using the same loss thresholds for the quantity and quality losses as were used in administering that section.

(3) CROP INSURANCE.—In carrying out this subsection, the Secretary shall not discriminate against or penalize producers on a farm that have purchased crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(b) LIVESTOCK ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Secretary shall use such sums as are necessary of funds of the Commodity Credit Corporation as are necessary to make and administer payments for livestock losses to producers for 2001 or 2002 losses, or both, in a county that has received a corresponding emergency designation by the President or the Secretary, of which an amount determined by the Secretary shall be made available for the American Indian livestock program under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A–51).

(2) ADMINISTRATION.—The Secretary shall make assistance available under this section in the same manner as provided under section 806 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (Public Law 106-387; 114 Stat. 1549A–51).

(c) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall—

(1) use such sums as are necessary to carry out this section; and

(2) transfer to section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), an amount equal to the amount of funds under section 32 of that Act that were made available before the date of enactment of this Act to provide disaster assistance to crop and livestock producers for losses suffered during 2001 and 2002, to remain available until expended.

(d) REGULATIONS.—

(1) IN GENERAL.—The Secretary may promulgate such regulations as are necessary to implement this section.

(2) PROCEDURE.—The promulgation of the regulations and administration of this section shall be made without regard to—

(A) the notice and comment provisions of section 553 of title 5, United States Code;

(B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 Fed. Reg. 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and

(C) chapter 35 of title 44, United States Code (commonly known as the "Paperwork Reduction Act").

(3) CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.—In carrying out this subsection, the Secretary shall use the authority provided under section 808 of title 5, United States Code.

(e) EMERGENCY DESIGNATION.—

(1) IN GENERAL.—The entire amount made available under this section shall be available only to the extent that the President submits to Congress an official budget request for a specific dollar amount that includes designation of the entire amount of the request as an emergency requirement for the purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900 et seq.).

(2) DESIGNATION.—The entire amount made available under this subsection is designated by Congress as an emergency requirement under sections 251(b)(2)(A) and 252(e) of that Act (2 U.S.C. 901(b)(2)(A), 902(e)).

(f) BUDGETARY TREATMENT.—Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines set forth in the Joint Explanatory Statement of the Committee of Conference accompanying Conference Report No. 105-217, the provisions of this section that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) were it included in an Act other than an appropriation Act shall be treated as direct spending or receipts legislation, as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902).

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following calendar numbers: No. 1177 and No. 1179; that the nominations be confirmed, the motions to reconsider be laid on the table, the President be immediately notified of the Senate's action, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

THE JUDICIARY

Michael W. McConnell, of Utah, to be United States Circuit Judge for the Tenth Circuit.

DEPARTMENT OF JUSTICE

Kevin J. O'Connor, of Connecticut, to be United States Attorney for the District of Connecticut for the term of four years.

NOMINATION OF MICHAEL W. MCCONNELL

Mr. HATCH. Mr. President, it is my high honor and privilege to speak on the confirmation of Professor Michael McConnell to the Tenth Circuit Court of Appeals. Professor McConnell is a Utahn, a scholar of the highest talent, and a man of profound integrity and judicial temperament.

Professor McConnell holds the prestigious Presidential Professorship at the University of Utah College of Law in Salt Lake City. He began his legal career at the University of Chicago Law School, where he was Comment Editor of the Law Review and graduated Order of the Coif. Thereafter he served as a law clerk for two of the leading liberal jurists of the 20th century: Supreme Court Justice William J. Brennan, Jr. and D.C. Court of Appeals Judge J. Skelly Wright.

After completing those clerkships, Mike became Assistant General Counsel of the Office of Management and Budget and then served as Assistant to the Solicitor General. He then joined the faculty of the University of Chicago Law School, where he was awarded tenure and later the William B. Graham Professorship.

In addition to his academic credentials, Professor McConnell is an able and experienced appellate lawyer. He has argued eleven cases before the United States Supreme Court—and won nine of them. In fact, the Los Angeles Daily Journal named one of his presentations to the Supreme Court "best oral argument" of the year. His clients include a wide range of entities: Fortune 500 companies such as NBC and Ameritech; organizations such as the United States Catholic Conference; municipal authorities including the New York Metropolitan Transit Authority; and many individuals.

This combination of intelligence and experience was very likely the reason that the American Bar Association rated Professor McConnell unanimously "well qualified"—its highest possible rating.

Now, Mr. President, I imagine you have heard some of the attacks waged against these fine nominees by the usual suspects—that group of Washington-based special interest lobbyists who make their living trying to thwart President Bush's judges. Those groups are trying to make believe that Professor McConnell is out of the mainstream of American politics.

Well, let me set the record strait. I'll mention just a few of the positions Professor McConnell has taken that prove he is an independent-minded thinker who calls things as he sees them, and does not follow anyone else's political prescription. Professor McConnell represented, without charge, three former Democratic Attorneys General in opposition to an order of the first President Bush; publicly opposed impeachment of President Clinton; urged the confirmation of several of President Clinton's judicial nominations; testified against a school prayer amendment; worked, without charge, on a lawsuit representing both People for the American Way and Americans United for the Separation of Church and State; has been described by Supreme Court Justice Antonin Scalia as "the most prominent scholarly critic" of Scalia's approach to the free exercise clause; and has served as co-chair—together with a former ACLU president and a former American Bar Association president—of an organization whose purpose is to oppose MY proposed constitutional amendment to protect the American flag from desecration.

So you see, Mr. President, the idea that McConnell is in lock-step with the Republican party is absolutely untrue. Rather than credit all of the unsupported attacks with responses, I instead would like to tell you a couple of things the ARE true about Professor McConnell.

First, Professor McConnell is widely regarded as modern America's most persuasive advocate for the idea that our government should ensure every citizen's right to worship—or not worship—in his or her preferred manner. Through his scholarship and advocacy in court, he has stood up for the rights of all religious people—including members of some politically out-of-favor faiths—to worship free of government restriction or intrusion.

Many Americans believe that the freedom to exercise their own religion is the most profound and important idea on which this country was founded. Before Professor McConnell began his prodigious scholarship in the area of the First Amendment's religion clauses, the idea was taking root that the government must disfavor religion in its policies. That is, judges and scholars believed that all groups must be treated equally except religions, which must be excluded entirely from any government program or policy.

Professor McConnell's scholarship served as a dramatic wake-up call. He researched the Founders' writing and presented with illuminating clarity that the point of free exercise is for government to remain neutral as between religions, and must accommodate religious activity where feasible. He demonstrated there was no basis in the founding for the view that our government must be anti-religion. The persuasiveness of his writing reawakened American legal scholars and judges to the Founders' view that the First Amendment's purpose is to protect religion from government, not the other way around. His work has helped reinvigorate the healthy and dynamic pluralism of religion that has allowed all faiths to flourish in this promised land, the most religiously tolerant nation in human history.

McConnell's views defy political pigeonholing. Although he has generally sided with the so-called liberal wing of the Court on questions of Free Exercise of Religion, McConnell's view of Establishment of Religion is that religious perspectives should be given equal but not favored treatment in the public sphere—a view that has led him to testify against a school prayer amendment, while supporting the rights of religious citizens and groups to receive access to public resources on an equal basis.

Few people in modern America have contributed more to their area of expertise than Professor McConnell. He has written over 50 articles in professional journals and books. He has delivered hundreds of lectures and penned many op-ed pieces. He has contributed an immeasurable amount to the discourse of legal ideas. As Professor Laurence Tribe wrote to the Judiciary Committee, "McConnell is among the nation's most distinguished constitutional scholars and a fine teacher." Tribe further explained that he and McConnell "share a commitment to principled legal interpretation and to a broadly civil libertarian constitutional framework."

The significance of McConnell's contributions to the legal profession in part explains why 304 professors—ranging from conservative to liberal to very liberal—have signed a single letter urging us to confirm McConnell's nomination.

Mr. President, when was the last time that 304 professors agreed on anything? Professor McConnell's peers consider him one of the nation's foremost constitutional scholars and appellate advocates and as a person with a reputation for open-minded fairness.

Because of his outstanding reputation for scholarship, the attacks on Professor McConnell have not focused so much on his judicial abilities, but on his personal beliefs. I think this is wrong. All Americans have the right to think their own thoughts and believe their own beliefs. That right should apply as much to the Americans who don robes in service of the Federal Judiciary as to any other citizen.

One of the Senate's most important roles in exercising advice and consent on judicial nominees is to make sure that they are free from any bias—whether political, religious, personal or otherwise—that would endanger their ability to follow the law as written by the legislature and interpreted by higher courts. No one wants a judge who plays legislator from the bench. We want and expect judges who know their limited role and will uphold the law regardless of their personal views. And as long as a judge is willing to do that, any other litmus test on their personal views is contrary to our constitutional responsibility, and an invasion into the freedom of conscience.

I am concerned that some who are involved in the judicial confirmation process are pursuing a course that endangers the freedom of conscience for the Americans who serve on our courts. This is not only a personal offense against nominees who are dragged through the mud or even rejected for their private, personal opinions, it is also an offense against the citizens of this great country, who rely on our federal judges to enforce our many rights and liberties. The diversity of backgrounds and points of view are often the stitches holding together the fabric of our freedoms.

If I may be blunt about this, an impression has been created this year that there are some in the Senate who are attempting to impose a litmus test on the issue of abortion. No one should stand for this—not even people who are pro-choice as a matter of public policy. In fact, people who are pro-choice should be especially reluctant to establish a precedent that would allow the Senate to select judges according to their personal views rather than their willingness to follow and enforce established legal precedents. Pro-choice activists have as much to gain from the triumph of precedent over personal view as anyone else.

The fact that most people who are pro-choice hold their position as a matter of political viewpoint or ideology. They do so in good conscience no doubt, and I respect that. But the great majority of people who are pro-life come to their positions as a result of their personal religious convictions. It is one thing to ensure that judicial nominees pledge to follow the law—we must do that—but quite another to require nominees to have a particular private view. Enforcing such a test would not only destroy the freedom of conscience, but also would exclude from our judiciary a large number of people of religious conviction who are prepared to follow the law.

Now, Professor McConnell has written about abortion, and it is very important for us not to violate his freedom of conscience while exploring his views. The most important thing he has written on this topic, for the Senate's purposes, is that U.S. Supreme Court precedent setting forth the basic abortion right is settled and secure. Indeed, he believes that lower court judges have a clear duty to follow and apply that case law, and he will do just that if confirmed.

Beyond that, Professor McConnell's scholarship on the subject defies standard stereotypes. His writings have focused on two questions. First is the methodology or legitimacy of the Court's reasoning in *Roe v. Wade*. Like many constitutional scholars—including prominent supporters of abortion rights such as Justice Ruth Bader Ginsberg—Professor McConnell has written that the Court in *Roe* overstepped the bounds of proper judicial decision making and has argued that, when facing other issues of deep moral disagreement—for example, assisted suicide—the courts should not constitute their judgment for that of the legislatures, particularly where there is a broad consensus among the states regarding the proper role for regulation.

The second area he has addressed is the possibility of middle-ground approaches to abortion that would find support even from many pro-choice advocates—dealing with such problems as inadequate counseling and support for troubled pregnant women. He has been critical of the extremes on both sides of the questions surrounding abortion, and has argued that one result of the constitutionalization of abortion law has been that is has prevented political leaders from exploring middle-ground approaches.

Professor McConnell has also written in defense of the free-speech rights of abortion protestors.

The fact is that, despite some attempts to confuse this issue, there is nothing in Professor McConnell's writings that should cause any doubt that Professor McConnell is committed to the ideas of stare decisis and controlling legal precedent. To look beyond that belief, to probe his personal views based on religious conviction, is not only to miss the point of our job but also to jeopardize the freedom of conscience of those who serve our country as members of the judiciary.

Many people across the political spectrum know that Professor McConnell will obey precedent even when it is at odds with his own views. That explains why Professor McConnell's nomination has been praised by a number of people who disagree with some of his opinions, including former Clinton administration officials Acting Solicitor General Walter Dellinger, Deputy White House Counsel William Marshall, Domestic Policy Advisors Bill Galston and Elena Kagan, and Associate Attorney General John Schmidt.

Listen to part of a letter I received from the Legal Director of the ACLU chapter in Utah. He wrote—in his personal capacity—to endorse Professor McConnell "enthusiastically and without qualification," saying that "there can be no doubt that [lawyers who appear before him] will receive a fair and impartial hearing, thoughtful scrutiny and careful consideration toward a decision that will be based solely on the merits and not on any predetermined ideological or political agenda."

Professor McConnell is immune to any political litmus test because he has a solid bipartisan reputation for integrity and fairness. He is committed to the rule of law and to the ideal of nonpartisan judging. He is known for his principled defense of a limited and restrained role for the judiciary in our constitutional system. He has argued for constitutional interpretation based on constitutional text, original understanding, historical experience, and precedent. He has criticized scholars and judges of both the right and the left for advocating interpretation based on the judge's own political or moral views. He has advocated a major role for Congress in defining and protecting civil rights and has criticized the Supreme Court's decisions limiting such measures to mere enforcement of the Supreme Court's own interpretations. Civil rights groups should take special note of his defense of broad congressional power under Section Five of the Fourteenth Amendment.

In conclusion, Mr. President, Professor McConnell is one of the very best people ever nominated to be a judge. I am very pleased that the Senate confirmed him today. He will be a great judge.

Thank you, Mr. President. I yield the floor.

Mrs. BOXER. Mr. President, tonight, the Senate will consider the nomination of Michael McConnell to a lifetime appointment to the Tenth Circuit Court of Appeals. I oppose this nomination.

Professor McConnell's record as a scholar, an advocate and an activist show him to be far outside the American mainstream on a number of critical constitutional, civil rights, and other legal issues. His views are so clear and consistent that I believe no litigant on areas such as reproductive rights or the separation of church and state could reasonably expect to receive a fair and impartial hearing in Judge McConnell's court room.

Let me tell you why I believe that. Professor McConnell has called the right to choose an "evil" and one of the greatest injustices of our day. He would not simply overturn *Roe* v. *Wade*—a disastrous outcome for American women—he has gone so far as to suggest that the courts should declare embryos persons under the Fourteenth Amendment. He has called *Roe* v. *Wade* "illegitimate," and has called for a constitutional amendment banning the right to choose and granting constitutional rights to embryos.

Professor McConnell has also written and spoken against the Freedom of Access to Clinic Entrances Act (FACE). He believes—in contrast to every Federal appellate court that has considered the question—that it is unconstitutional. In a recent article, he expressed admiration for a district court judge who refused to apply FACE because the defendants did not act with "bad purpose." Mr. President, that is not in the statute Congress passed. McConnell's statements of admiration for the "judicial nullification" of a Federal statute that he does not agree with speaks volumes about his inability to fairly and impartially apply a range of civil rights statutes that may conflict with his views.

And it makes it clear that as a judge, he would be a judicial activist.

McConnell has even criticized the Supreme Court's 8–1 decision in the Bob Jones case from 1983. In that decision, the Court ruled that the IRS may deny tax-exempt status to a school that discriminates against minorities. In a 1989 article, McConnell wrote that the "racial doctrines of a Bob Jones University" should have been "tolerated" because they were "church teachings."

Mr. President, I realize that this is not a Supreme Court nomination. But, the reality is that Circuit Courts make new law in many areas where the Supreme Court has not spoken. The Supreme Court hears fewer than 100 cases per year, while the Courts of Appeal decide close to 30,000. The truth is, the appellate court are very often the courts of last resort. As Justice Scalia recently wrote, "the judges of inferior courts often make law, since the precedent of the highest court does not cover every situation, and not every case is reviewed."

Already, Mr. President, increasingly conservative Federal courts are upholding greater and greater restrictions on the right to choose, chipping away at the protections of *Roe* vs. *Wade*. In the area of reproductive rights, the Circuit Courts routinely make new law, as anti-choice advocates test the constitutional limits with new and creative restrictions on the right to safe and legal abortion. The importance of each Federal judge in protecting the right to choose is underscored by the fact that many recent abortion cases have involved reversals and dissents, demonstrating that judges often disagree on the correct application of law. I believe that Professor McConnell's extensive anti-choice record shows that he will use every opening the law permits to further restrict a woman's right to choose.

Unfortunately, Professor McConnell does not stand apart from other Bush nominees for his extreme ideology. I believe he was chosen because of it.

Remaking the Federal courts has been a long-term goal of the right-wing base of the Republican party. They have pursued this goal with dogged determination and persistence for more than two decades, and they are succeeding. More and more restrictions on a woman's right to choose are being upheld as constitutional by the increasingly conservative Federal courts, while portions of anti-discrimination law and Violence Against Women Act—a law that Senator BIDEN wrote and that I was proud to sponsor when I was in the House—are struck down. This is not the right direction for the federal courts.

Now Bush Administration is poised to tip the scales of justice even further to support an extreme anti-choice agenda, and the right to choose may well disappear for more and more American women—especially for poor women. Don't take my word for it. After last week's elections, former Reagan Administration attorney Bruce Fein said that there will be a philosophical revolution in the courts and that Bush nominees will impose a variety of new restrictions on a women's right to choose. The impact, he said, will be almost as great as if Robert Bork had been confirmed.

Mr. President, during the Clinton Administration, I was repeatedly told by the Republican leadership in the Senate that I should only recommend moderate judges to fill judicial vacancies on the Federal courts in the state of California. Otherwise, I was told, Republicans would not let them be confirmed.

President Bush should be held to the same standard. In fact, President Bush said he wanted to govern from the middle. And he fulfilled that commitment on the district court level in California when he agreed to a bipartisan committee selection process. That process has worked well, producing well-qualified mainstream nominees for eight open district court seats in California.

However, Professor McConnell's nomination does not meet the test. He does not fulfill President Bush's commitment to govern from the middle. He does not meet the requirement established by the Senate Republican leadership during the Clinton Administration that nominees be moderate. No, Mr. President, Professor McConnell is far outside the mainstream.

I again call on President Bush—as have so many in the Senate—to reach out across the aisle and to work with all of us to find and nominate the moderate, consensus judges that Americans deserve.

NOMINATION DISCHARGED

NOMINATION OF MARY CARLIN YATES TO BE AMBASSADOR TO THE REPUBLIC OF GHANA

Mr. REID. I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of the nomination of Mary Carlin Yates to be the Ambassador to the Republic of Ghana; that the Senate proceed to the immediate consideration of the nomination; that the nomination be confirmed, the motion to reconsider be laid on the table; that any statements be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

Mary Carlin Yates, of Oregon, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Ghana.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

UNANIMOUS CONSENT AGREEMENT—NOMINATION OF DENNIS SHEDD

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that at 12 noon on Monday, November 18, the Senate proceed to executive session to consider Executive Calendar No. 1178, the nomination of Dennis Shedd to be United States Circuit Judge; that there be a time limitation of 6 hours for debate equally divided between Senators LEAHY and HATCH or their designees; that at the conclusion or yielding back of the time, but not before 5:15 p.m., the Senate vote on cloture on the nomination; that if cloture is invoked, the Senate then vote immediately on the confirmation of the nomination; that if the nomination is confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate return to legislative session; that if cloture is not invoked, the nomination be returned to the calendar and the Senate return to legislative session; and that the preceding all occur with no intervening action or debate; further, that the granting of this consent fulfill the cloture filing requirement under rule XXII.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—H.R. 5005

Mr. REID. Mr. President, I ask unanimous consent that no other amendments be in order to H.R. 5005 prior to the disposition of the Thompson amendment; that when the Senate concludes its business today, it next resume consideration of this bill on Monday, November 18, upon disposition of Executive Calendar No. 1178; that the 30 hours under cloture conclude at 10:30 a.m. on Tuesday, November 19; that the 90 minutes prior to that time on Tuesday be divided as follows: 30 minutes for each of the two leaders or their designees, and 30 minutes for Senator BYRD, with the Republican leader controlling the time from 10 to 10:15 a.m. and the Democrat leader controlling the time from 10:15 to 10:30 a.m.; that at 10:30 a.m. the Senate vote on the Daschle-Lieberman-Byrd amendment, No. 4953; that upon disposition of that amendment, the Senate then vote immediately on amendment No. 4911, as amended, if amended; that upon the disposition of that amendment, the Senate vote on or in relation to the Thompson amendment, No. 4901, as amended, if amended; that upon the disposition of Senator THOMPSON's amendment, the Senate then vote on cloture on H.R. 5005, with the preceding all occurring without intervening action or debate, provided further that no points of order be waived by this agreement.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, point of clarification: On Monday night after the Shedd matter is disposed of, will Senators be allowed to discuss the homeland security matter?

The PRESIDING OFFICER. That would be the order.

SUBSIDY RATE FOR SMALL BUSINESS LOANS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3172 introduced earlier today by Senator BOND.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 3172) to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. KERRY. Mr. President, I ask my colleagues to support the small business subsidy rate improvement bill before the Senate today. It is not perfect, but it takes us a step in the right direction. It takes us a step in the right direction by reversing a current 60-percent cut in loan dollars available to small businesses through the Small Business Administration's flagship 7(a) loan program, and it includes a budget change mid-year with OMB's blessing, which is unprecedented. However, it does not go far enough in correcting the way the government calculates the cost and fees of the SBA's small business loans. Specifically, the Administration would not also support our proposal to correct the errors in the subsidy rate used for the 504 development company loan program—errors that result in severe overcharging of thousands of dollars to 504 borrowers and lenders.

As so many of us in the Senate, House and White House have heard for moths, the small business community supported the Senate's plan to enact a recommendation by the General Accounting Office as part of one of the continuing resolutions. However, that provision was blocked time and again by a few Republican Congressmen on behalf of the Administration. We are now faced with leaving small businesses strapped for financing until next year or enacting this bill that would put in place something called an econometric model to calculate the subsidy rate for the 7(a) program immediately, but for one year only.

Our goal—that of Senator BOND, Senator CONRAD, Senator DOMENICI, Senator HOLLINGS, Senator BYRD, and myself—was to right years of wrong in which the government has played budget games with the two largest loan programs at the Small Business Administration. Our goal was to end a double-standard in which the government cooks the books but small businesses get penalized if a comma is missing on their financial statements. Our goal was to put transparency, accuracy, and fairness into a system that has overcharged small business borrowers and private-sector lenders more than $2 billion fees, fees that are tantamount to a tax on small businesses.

Specifically, our goal, in technical talk, was to put in place budget systems in this fiscal year that would more accurately calculate the cost of providing loans through the SBA's 7(a) and 504 lending programs, thereby maximizing appropriations to leverage an additional $6 billion in small business loans and assessing fees that are more in line with the true cost of providing the loans. In the end, it would stimulate lending by creating a greater incentive for lenders to loan in these uncertain economic times, it would leave more money in the pockets of small businesses, and it would allow almost 190,000 jobs to be created or retained.

There is a lot of concern among small business trade groups, bankers, and members of Congress about adopting an econometric model at this stage because the administration has not been forthcoming with supporting documentation and the estimated subsidy rates over the testing period have varied greatly. Without that information, it is unreasonable to expect the small business community to trust the government. They have been fighting this problem for too long to settle for mere promises, when promises have been broken time and again. In the coming months I look forward to working with the Administration to get this information and give all of us confidence that this model is more predictive and accurate.

On the plus side, as I mentioned earlier, passing this legislation would reverse the 60-percent cut in the 7(a) loan program by patching together $6 billion in lending dollars. That restoration of loan dollars is significant on a micro and macro level. In my home state of Massachusetts, small businesses stand to lose $121 million in loan dollars and almost 3,700 jobs if this bill isn't passed. Nationwide, a loss of $6.2 billion in loans would translate into 189,000 jobs either lost or not created.

In this economy, we can not afford to lose any more jobs or block job creation.

To my many colleagues who have courageously fought for small businesses on this issue—from Senator BOND and Senator CONRAD to Congressman MANZULLO and Congresswoman VELÁZQUEZ—I thank them. To the small business groups—from 7(a)'s NAGGL and 504's NADCO to the small business coalition lead by the U.S. Chamber of Commerce, which included among many others, the National Black Chamber of Commerce, National Small Business United, and the American Bankers Association—I am proud to work with them. Because of your grassroots efforts, probably every member of Congress knows what a subsidy rate is and how it hurts the small business community when it is left uncorrected year after year. Last, I thank the Office of Management and Budget for reaching this agreement with our Committee, the Committee on Small Business & Entrepreneurship, the Committee on Budget, and the Committee on Appropriations. I know they are strongly opposed, in general, to changes to their subsidy rates, and, in particular, to any adjustment to the budget mid-year. But, small businesses do not care about technicalities and budget intricacies; they care about access to capital. This bill accomplishes that.

Mr. President, I ask unanimous consent that the following be printed in the RECORD: a letter from the small business coalition; a letter to OMB from our Committee with the Committee on budget regarding this issue; and a letter from OMB Director Mitch Daniels regarding the FY2003 subsidy rate for the 7(a) loan program.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SMALL BUSINESS ACCESS
TO CAPITAL COALITION,
September 18, 2002.

Hon. JOHN KERRY,
Chairman, Committee on Small Business & Entrepreneurship, U.S. Senate, Washington, DC.

DEAR CHAIRMAN KERRY: On behalf of the hundreds of thousands of small businesses represented by the undersigned organizations, we are writing you to ask your support for legislation that would limit the use of outdated default rate data in calculating the subsidy rate for the Small Business Administration (SBA) 7(a) an 504 programs.

The undersigned associations believe government policies that foster and encourage robust entrepreneurial activity and small business ownership provide the basis for economic prosperity important to the long term vitality and success of our nation. Many of our small business members indicate that one major obstacle to entry or expansion of a small business is the availability and access to capital for small enterprises.

One source of funding, the SBA 7(a) and 504 guaranteed loan programs, play an important role in providing an alternative means of accessing capital for some small business owners where funding has not been available through conventional lending methods. However, in a recent Government Accounting Office (GAO) report, it was determined that the use of overly conservative default rate data by the SBA resulted in overestimated defaults for 1992 through 2000 by over $2 billion for the 7(a) program alone when compared to actual loan performance.

Indeed, overly conservative default rates used in calculating the subsidy rate, according to the GAO report, has during the same period, resulted in the overestimation of the cost of the 7(a) program by nearly $1 billion. Furthermore, consistent yearly program reestimates of this magnitude serve to undermine the intent of Congress during the appropriations process.

Even so, overly conservative default rate assumptions are still being used to calculate FY 2003 subsidy rates, resulting in diminished numbers or sizes the loans capable of being made given current program funding levels. Taken into account historic levels of demand, we can anticipate program shortages that may needlessly shutout some small businesses to sorely needed funds to start or grow their businesses, thus limiting their contribution to the fragile economic recovery.

The consistent use of overly conservative default rate date, resulting in the overestimation of the subsidy rate for the 7(a) and 504 programs by SBA is not only contrary to the spirit and intent of the Credit Reform Act, but an affront on Congresses role in determining program funding levels in the appropriations process. As a result, we encourage Congress to take legislative action to assure the FY 2003's subsidy rate calculation and future calculations will be limited to the use of recent default rate data that reflect the use of revised program credit standards and thus preserve the integrity of the appropriations process.

AeA, Air Conditioning Contractors of America, American Bankers Association, American Hotel & Lodging Association, American Nursey & Landscape Association, Association of Small Business Developmemt Centers, Asian American Hotel Owners Association, Hotel Brokers International, Independent Community Bankers Association, International Franchise Association.

National Association of Development Companies, National Association of Government Guaranteed Lenders, National Association of Small Disadvantaged Businesses, National Association of Women Business Owners, National Black Chamber of Commerce, National Restaurant Association, National Small Business United, National Tooling & Machining Association, Tire Industry Association, U.S. Chamber of Commerce, United Motorcoach Association, Women Impacting Public Policy, Yellow Pages Integrated Media Association.

U.S. SENATE,
Washington, DC, April 22, 2002.

Hon. MITCHELL DANIELS,
Director, Office of Management and Budget, Eisenhower Executive Office Building,
17th and Pennsylvania Ave., NW, Washington, DC.

DEAR MR. DANIELS: We are writing to express our concern about what appears to be the continued and routine over-estimation by OMB of the cost of the Small Business Administration's 504 and 7(a) loan programs to the government under the requirements of the Federal Credit Reform Act (Credit Reform). The Senate has repeatedly raised this issue with the OMB, most recently in the FY 2002 appropriations cycle, at a Roundtable held by the Senate Committee on Small Business and Entrepreneurship last fall, and in meetings between Senate Budget Committee staff and OMB staff.

Last fall, the SBA Administrator publicly stated, and your senior OMB staff indicated to our staff, that the subsidy rate for the 7(a) program would be cut at least in half, all else being equal. Unfortunately, the 2003 budget request reflects that only half of that goal has been accomplished. Given the systematic mis-estimates in these programs, this progress, while in the right direction, has been too slow and does not do much to engender confidence in the Administration's approach in light of SBA or OMB mistakes in budget documents over the years.

In our view, failure to solve the problem will continue the unfair practice of forcing small business borrowers and lenders, year after year, to pay fees that are substantially higher than necessary to participate in and cover the government's cost of these programs.

The nexus of the problem appears to be the use of overly conservative loan default rates as part of each program's cost calculation under Credit Reform and the failure to adequately weight historical data to reflect more accurately the program changes, both statutory and regulatory, that have resulted in reduced default rates and improved program performance.

The FY 2003 credit subsidy rate for the 504 program assumes an 8.3 percent loan default rate. But program statistics from the Bank of New York suggest the rate is in the 4 percent range instead. Use of the higher default rate results in the average 504 borrower unnecessarily paying approximately $10,000 in excess fees to participate in this program. We should emphasize that this program receives no federal appropriations and is totally funded through fees. Yet, since 1997 the program has paid nearly $400 million in excess fees to the U.S. Treasury as a result of OMB reestimates. Since 1995, the use of overly conservative default rate assumptions in the 7(a) program has resulted in total downward re-estimates of $1.429 billion, including interest.

The SBA testified earlier this year that it is developing an econometric model to estimate more accurately the default rate for each program. But, although we have already been told for at least a year how "econometric" modeling promises to be the solution, there is little to show for this new approach—at least, we have not seen anything yet. Because of the slow progress in the past and the experience of unfulfilled expectations, we remain skeptical that the emerging modeling approach will offer a significant improvement over previous approaches or that it will be ready with satisfactory results in time for the 2004 budget. Therefore, we request that OMB keep all of us up to date of the progress of the modeling through periodic briefings with our staff so we have an opportunity to ask questions.

Continued use of overly conservative assumptions in the credit reform model for both of these programs and the resulting continuation of downward re-estimates could undermine support for Credit Reform, which we do not want to see happen. The bias in the estimates for these two programs is simply unacceptable. We do not expect perfect subsidy rate estimates year-in and year-out, yet we do expect that over time the re-estimate will be randomly distributed around zero. One year the estimates may be high and the next year they may be low, but over time they should balance out. Unfortunately, that is not true today, and we are not optimistic that change will occur, absent your active intervention, any time soon.

Repeated opportunities to address this problem have not been realized. We believe the problem has dragged on too long. At a minimum, we expect the Administration to submit and support a budget amendment for 2003 for sufficient subsidy appropriations that will make possible $11 billion of 7(a) loan volume given the too-high subsidy rate OMB is currently using. Alternatively, if you expect that a review of the 2003 submission will reveal mistakes in the subsidy rates that would allow OMB to execute the 2003 budget using rates other than those published in the submission, as has occurred in other years, please submit that review. We would appreciate receiving your response to our letter, including the requests for an amendment and periodic meetings, by June 1, 2002. If legislative changes are necessary, we welcome your suggestions.

Sincerely,

Pete V. Domenici,
Kent Conrad,
John F. Kerry,
Christopher S. Bond.

Executive Office of the President,
Office of Management and Budget,
Washington, DC, November 14, 2002.

Hon. Donald A. Manzullo,
Chairman, Committee on Small Business, U.S. House of Representatives, Washington, DC.

Dear Mr. Chairman: Thank you for your letter of November 12, regarding the subsidy rate for small business loans.

As you know, the Administration is committed to improving the Small Business Administration's (SBA) ability to more accurately estimate the cost of subsidizing small business loans. This will enable the agency to allocate its resources more effectively, determine program risk more precisely, and increase its ability to target loan programs to the most deserving recipients.

In accordance with the commitment that the Administration made one year ago, the Office of Management and Budget has just approved SBA's 7(a) econometric subsidy model to calculate its fiscal year 2004 resource requirements. Further, in light of the fact that this improved subsidy calculation procedure is now available, the Administration would support legislation that allows us to implement the econometric model for fiscal year 2003 as well. Applying the econometric model would produce a subsidy rate of 1.04 percent rather than the 1.76 percent submitted in the FY 2003 budget.

Please let us know if you need any more information.

Sincerely,

Mitchel E. Daniels, Jr.,
Director.

Mr. KERRY. Last, I want to remember Senator Wellstone, a true advocate for small business who faithfully attended our committee hearings and markups and worked hard to help the 7(a) and 504 programs not just on this issue, but every single time. His contributions were great, and I wish he were here to see this agreement pass.

Mr. BOND. Mr. President, I rise today in support of legislation that has just been introduced to permit the Office of Management and Budget (OMB) to use a recently-completed econometric model to calculate the credit subsidy rate for the 7(a) small business loan guarantee program, the flagship loan program at the Small Business Administration. This bill, once signed into law by President Bush, will allow the 7(a) loan program to meet the borrowing demands of our Nation's small businesses, which is approximately $10 billion for Fiscal Year 2003. Without this bill, the program would limit 7(a) loans to less than $5 billion for FY 2003. In addition, the bill will permit unobligated, no-year funds previously appropriated for the STAR terrorist disaster recovery loans to be used for the 7(a) loan program.

The "econometric model" is a significant reform in the way the SBA and OMB calculates the credit subsidy rate for the 7(a) loan program. The bill provides that the OMB and SBA will adopt the new econometric model effective retroactively to October 1, 2002. Developed by the SBA and OMB, the econometric model will use far more comprehensive data about individual borrowers and loans when forecasting anticipated defaults and establishing loan reserves to cover them.

Under the Credit Reform Act of 1990, the annual appropriation for the SBA must, in advance, provide sufficient funds to cover the cost of a Federal loan guarantee, after taking into consideration the fees paid by small business borrowers and lenders under the 7(a) program. This amount, referred to as the credit subsidy rate, is determined by the OMB prior to the submission of the President's annual Budget Request to the Congress.

Critics of the credit subsidy rate for the 7(a) program have cited the use of historical loan-performance data that pre-dates the enactment of the Federal Credit Reform Act as a major cause of a credit subsidy rate that greatly exceeds actual loan performance. The consequence is the use of the most conservative loan-default rates, year-in and year-out, and the failure by the OMB and the SBA to adjust historical loan performance data to reflect 7(a) program changes, both statutory and regulatory, that have led to real reductions in the default rates and improved program performance. According to an in-depth analysis undertaken by the General Accounting Office (GAO), the excessively high credit subsidy rates have resulted in nearly $1 billion in unnecessary fees being paid by small business borrowers and lenders to the U.S. Treasury.

It is very unrealistic to believe that a 100% accurate credit subsidy rate estimate can be derived for the 7(a) loan program, or for any other Federal credit program. The econometric model, designed to calculate the 7(a) credit subsidy rate, is a major improvement over the "old" model. Originally, the Administration stated that the econometric model would not be available until FY 2004. After exhaustive negotiations with the senior White House staff, I was able to secure an agreement to accelerate their use of the model retroactive to October 1, 2002, the beginning of FY 2003. The bill before us today is designed to waive a key provision of the Federal Credit Reform Act that prohibits the Congress from changing a credit subsidy rate estimate once it has been transmitted to the Congress as part of the President's annual budget submission. This may be the first time this provision has been waived since implementation of the Act in FY 1992.

We would not be where we are today resolving this important matter without the tireless efforts of my colleagues in the Senate and the House of Representatives. Mr. MANZULLO, Chairman of the House Committee on Small Business, fought for this change every step of the way. The Ranking Member, Ms. VELÁZQUEZ, was especially vigilant in her efforts. In the Senate, my colleague from Massachusetts and Chairman of the Committee on Small Business and Entrepreneurship, JOHN KERRY, has kept the Committee focused on resolving this issue for the past year and has insisted that we resolve the credit subsidy rate controversy for FY 2003.

Resolving the 7(a) credit subsidy rate issue is good for small businesses. It will mean more jobs and economic fuel to grow start-up and growing small businesses. I urge each of my colleagues to vote a resounding "Aye" for this important bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid on the table with no intervening action or debate, and that any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3172) was read three times and passed, as follows:

S. 3172

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SUBSIDY RATE FOR SMALL BUSINESS LOANS.

Notwithstanding section 502(5)(F) of the Federal Credit Reform Act of 1990 and section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985, the Director of the Office of Management and Budget, in calculating the Federal cost for guaranteeing loans during fiscal year 2003 under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) may use the most recently approved subsidy cost model and methodology in conjunction with the program and economic assumptions, and historical data which were included in the fiscal year 2003 budget. After written notification to Congress, the Small Business Administration shall implement the validated, OMB-approved subsidy rate for fiscal year 2003, using this model and methodology. Such rate shall be deemed to have been effective on October 1, 2002.

SEC. 2. USE OF EMERGENCY FUNDS FOR SMALL BUSINESS LOANS.

Chapter 2 of division B of the Department of Defense and Emergency Supplemental Appropriations for Recovery from and Response to Terrorist Attacks on the United States Act, 2002 is amended by striking "For emergency expenses" after "BUSINESS LOANS PROGRAM ACCOUNT" and inserting the following: "For loan guarantee subsidies under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or for emergency expenses".

CONGRATULATING THE PEOPLE OF MOZAMBIQUE

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to the consideration of S. Res. 358 submitted earlier today by Senator BIDEN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 358) congratulating the people of Mozambique on their successful efforts to establish, build, and maintain peace in their country for the past ten years, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements in relation to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 358) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 358

Whereas, on October 4, 1992, having overcome the hardships of a colonial struggle, decolonization, and armed regional and national conflict, the people of Mozambique, the parties to the civil war in Mozambique, and the leadership of Mozambique reached a peaceful settlement to the devastating 16-year civil war;

Whereas this peace was facilitated by the good offices of the Comunita di Sant' Egidio in Rome and supported by regional friends and the international community;

Whereas in 1994 and 1999 Mozambique held multi-party elections deemed free and fair by the international community;

Whereas this peace has been consolidated and strengthened by Mozambique civil society, helping to keep the Government of Mozambique on a course of political and economic reforms despite the challenges currently presented by HIV/AIDS, floods, droughts, and regional instability;

Whereas the Government of Mozambique has initiated sound economic reforms, including the privatization of state-run enterprises, the reduction and simplification of import tariffs, and the liberalization of agricultural markets, resulting in extraordinary economic growth;

Whereas the resources that have become available by Mozambique's participation in the Highly Indebted Poor Countries Initiative have been responsibly channeled by the Government of Mozambique into anti-poverty programs;

Whereas, despite the progress that Mozambique has made, more than one-half of the people of Mozambique over 15 years of age are illiterate, twenty-eight percent of the children under five are malnourished, infant mortality stands at more than 12 percent, and life expectancy is only 42 years;

Whereas the United States values democratic principles, the rule of law, peace, and stability in all nations that comprise the community of states; and

Whereas Mozambique has been transformed from a war-torn country to one where political disputes are settled through peaceful means: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the people of Mozambique on ten years of continued peace and growing democracy and commends the Government of Mozambique for continued economic and political reforms;

(2) salutes the Comunita di Sant' Egidio for using its good offices to facilitate and mediate the peace process that led to the October 4, 1992, agreement;

(3) recognizes the indispensable role that civil society in Mozambique has played in both achieving peace and deepening democratic reforms; and

(4) stands ready to assist the Government of Mozambique on a variety of programs, including humanitarian and development assistance, HIV/AIDS prevention, and technical assistance to fight corruption.

MENTAL HEALTH EQUITABLE TREATMENT ACT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to H.R. 5716, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5716) to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements in relation thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5716) was read the third time and passed.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr. KENNEDY. Mr. President, we have passed tonight a bill to extend for one year the current provisions of the 1986 Mental Health Equitable Treatment Act which provides limited parity for insurance coverage of mental illness.

But today is not a day to celebrate. Instead, it is a call to arms—a call to pass the full and meaningful mental health parity bill that Paul Wellstone and PETE DOMENICI have fought for so tirelessly. It is a day to sound the battle cry for finally ensuring that no American is discriminated against because they suffer from a mental illness.

Mental illness is a pervasive problem in our society, and too often it is a problem that is swept under the rug with an immense human cost. One out of five Americans will suffer from some form of mental illness this year—but only one-third of them will receive treatment.

The fight against discrimination is not new—it is as old as the Republic and as fresh as today's headlines. All Americans deserve equality of opportunity and fundamental fairness.

Next year this fight begins anew. All of us are saddened that Paul Wellstone is no longer with us to carry on this fight. But we intend to honor his memory and continue to fight for the cause for which he worked so hard. We will not rest until we enact legislation that ends the cruel discrimination that burdens so many Americans suffering from mental illness.●

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 107-21

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on November 15, 2002, by the President of the United States:

Convention on Supplementary Compensation for Nuclear Damage, Treaty Document No. 107-21; I further ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, with a declaration, the Convention on Supplementary Compensation for Nuclear Damage done at Vienna on September 12, 1997. This Convention was adopted by a Diplomatic Conference convened by the International Atomic Energy Agency (IAEA) and was opened for signature at Vienna on September 29, 1997, during the IAEA General Conference. Then-Secretary of Energy Federico Pêna signed the Convention for the United States on that date, subject to ratification. Also transmitted for the information of the Senate is the report of the Department of State concerning the Convention.

The Convention establishes a legal framework for defining, adjudicating, and compensating civil liability for nuclear damage that results from an incident in the territory of a Party, or in certain circumstances in international waters, and creates a contingent international supplementary compensation fund. This fund would be activated in the event of an incident with damage so extensive that it exhausts the compensation funds that the Party where the incident occurs is obligated under the Convention to make available.

The international supplementary fund would be made up largely of contributions from Parties that operate nuclear power plants. The improved legal certainty and uniformity provided under the Convention combined with the availability of additional resources provided by the international supplementary fund create a balanced package appealing both to countries that operate nuclear power plants and those that do not. The Convention thus creates for the first time the potential for a nuclear civil liability convention with global application.

Prompt U.S. ratification of the Convention is important for two reasons. First, U.S. suppliers of nuclear technology now face potentially unlimited third-party civil liability arising from their activities in foreign markets because the United States is not currently party to any international nuclear civil liability convention. In addition to limiting commercial opportunities, lack of liability protection afforded by treaty obligations has limited the scope of participation by major U.S. companies in the provision of safety assistance to Soviet-designed nuclear power plants, increasing the risk of future accidents in these plants. Once widely applied, the Convention will create for suppliers of U.S. nuclear equipment and technology substantially the same legal environment in foreign markets that they now experience domestically under the Price-Anderson Act. It will level the playing field on which they meet foreign competitors and eliminate the liability concerns that have inhibited them from providing the fullest range of safety assistance.

Second, under existing nuclear liability conventions many potential victims outside the United States generally have no assurance that they will be adequately or promptly compensated in the event they are harmed by a civil nuclear incident, especially if that incident occurs outside their borders or damages their environment. The Convention, once widely accepted, will provide that assurance.

United States leadership is essential in order to bring the Convention into force soon. With the United States as an initial Party, other countries will find the Convention attractive and the number of Parties is likely to grow quickly. Without U.S. leadership, the Convention could take many years to enter into force. The creation of a global civil liability regime will play a critical role in allowing nuclear power to achieve its full potential in the diverse and environmentally responsible world energy structure we need to build in the coming decades.

The Convention is consistent with the primary existing U.S. statute governing nuclear civil liability, the Price-Anderson Act of 1957. Adoption of the Convention would require virtually no substantive changes in that Act. Moreover, under legislation that is being submitted separately to implement the Convention, the U.S. contingent liability to contribute to the international supplementary fund would be completely covered, either by funds generated under the Price-Anderson Act in the event of an accident covered by both that Act and the Convention, or by funds contributed to a retrospective pool by U.S. suppliers of nuclear equipment and technology in the event of an accident covered by the Convention but falling outside the Price-Anderson system. In either case, U.S. taxpayers would not have to bear the burden of the U.S. contribution to the international supplementary fund.

The Convention allows nations that are party to existing nuclear liability conventions to join the new global regime easily, without giving up their participation in those conventions. It also permits nations that do not belong to an existing convention to join the new regime easily and rapidly. The United States in particular benefits from a grandfather clause that allows it to join the Convention without being required to change certain aspects of the Price-Anderson system that would otherwise be inconsistent with its requirements.

The Convention, without relying on taxpayer funds, will increase the compensation available to potential victims of a civil nuclear incident, strengthen the position of U.S. exporters of nuclear equipment and technology, and permit us to provide safety assistance to the world's least-safe reactors more effectively.

I urge the Senate to act expeditiously in giving its advice and consent to ratification of the Convention on Supplementary Compensation for Nuclear Damage, with a declaration as set forth in the accompanying report of the Department of State.

TO REDUCE PREEXISTING PAYGO BALANCES

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5708, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5708) to reduce preexisting PAYGO balances, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5708) was read the third time and passed.

GILA RIVER INDIAN COMMUNITY JUDGMENT FUND DISTRIBUTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 635, S. 2799.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2799) to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill which has been reported from the Committee on Indian Affairs with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 2799

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

[(a) SHORT TITLE.—This Act may be cited as the "Gila River Indian Community Judgment Fund Distribution Act of 2002".

[(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

[Sec. 1. Short title; table of contents.
[Sec. 2. Findings.
[Sec. 3. Definitions.

[TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

[Sec. 101. Distribution of judgment funds.
[Sec. 102. Responsibility of Secretary; applicable law.

[TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

[Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.
[Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236–N.

[TITLE III—EXPERT ASSISTANCE LOANS

[Sec. 301. Waiver of repayment of expert assistance loans to certain Indian tribes.

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in Gila River Pima-Maricopa Indian Community v. United States, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

[(2) except for Docket Nos. 236–C and 236–D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

[(3) in Gila River Pima-Maricopa Indian Community v. United States, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–C;

[(4) in Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–D;

[(5) with the approval of the Community under Community Resolution GR–98–98, the Community entered into a settlement with the United States on April 27, 1999, for claims made under Dockets Nos. 236–C and 236–D for an aggregate total of $7,000,000;

[(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236–C and 236–D for $7,000,000 in favor of the Community and against the United States;

[(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of $7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

[(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

[(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) ADULT.—The term "adult" means an individual who—

[(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

[(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.

[(2) COMMUNITY.—The term "Community" means the Gila River Indian Community.

[(3) COMMUNITY-OWNED FUNDS.—The term "Community-owned funds" means—

[(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 101; or

[(B) revenues held by the Community that are derived from Community-owned enterprises.

[(4) IIM ACCOUNT.—The term "IIM account" means an individual Indian money account.

[(5) JUDGMENT FUNDS.—The term "judgment funds" means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236–C and 236–D.

[(6) LEGALLY INCOMPETENT INDIVIDUAL.—The term "legally incompetent individual" means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.

[(7) MINOR.—The term "minor" means an individual who is not an adult.

[(8) PAYMENT ROLL.—The term "payment roll" means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 101(a), as prepared by the Community under section 101(b).

[(9) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

[TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

[SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.

[(a) PER CAPITA PAYMENTS.—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236–C and 236–D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.

[(b) PREPARATION OF PAYMENT ROLL.—

[(1) IN GENERAL.—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).

[(2) CRITERIA.—

[(A) INDIVIDUALS ELIGIBLE TO RECEIVE PAYMENTS.—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

[(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236–N (including any individual who was inadvertently omitted from that roll).

[(ii) All enrolled Community members who are living on the date of enactment of this Act.

[(iii) All enrolled Community members who died—

[(I) after the effective date of the payment plan for Docket No. 236–N; but

[(II) on or before the date of enactment of this Act.

[(B) INDIVIDUALS INELIGIBLE TO RECEIVE PAYMENTS.—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

[(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.

[(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

[(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

[(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

[(I) awarded to another community, Indian tribe, or tribal entity; and

[(II) appropriated on or before the date of enactment of this Act.

[(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.

[(c) NOTICE TO SECRETARY.—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

[(1) the number of shares that are attributable to eligible living adult Community members; and

[(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.

[(d) INFORMATION PROVIDED TO SECRETARY.—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

[(1) estate accounts for deceased individuals described in subsection (c)(2); and

[(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).

[(e) DISBURSEMENT OF FUNDS.—

[(1) IN GENERAL.—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

[(2) ADMINISTRATION AND DISTRIBUTION.—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

[(f) SHARES OF DECEASED INDIVIDUALS.—

[(1) IN GENERAL.—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

[(2) ABSENCE OF HEIRS AND LEGATEES.—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

[(A) revert to the Community; and

[(B) be deposited into the general fund of the Community.

[(g) SHARES OF LEGALLY INCOMPETENT INDIVIDUALS.—

[(1) IN GENERAL.—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

[(2) ADMINISTRATION.—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

[(h) SHARES OF MINORS.—

[(1) IN GENERAL.—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

[(2) ADMINISTRATION.—

[(A) IN GENERAL.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

[(B) NONAPPLICABLE LAW.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this Act.

[(C) DISBURSEMENT.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

[(i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LISTED ON PAYMENT ROLL.—

[(1) In general.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this Act, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

[(A) the Community makes the per capita distribution under subsection (a); and

[(B) all appropriate IIM accounts are established under subsections (g) and (h).

[(2) Insufficient funds.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

[(3) Minors, legally incompetent individuals, and deceased individuals.—In a case in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

[(A) is authorized to accept and deposit funds from the payment in an IIM account or estate account established for the minor, legally incompetent individual, or deceased individual; and

[(B) shall invest those funds in accordance with applicable law.

[(j) Use of Residual Funds.—On request by the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (i) shall be disbursed to, and deposited in the general fund of, the Community.

[(k) Nonapplicability of Certain Law.—Notwithstanding any other provision of law, the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall not apply to Community-owned funds used by the Community to make payments under subsection (i).

[SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.

[(a) Responsibility for Funds—After the date on which funds are disbursed to the Community under section 101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

[(b) Deceased and Legally Incompetent Individuals.—Funds subject to subsections (f) and (g) of section 101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this Act.

[(c) Applicability of Other Law.—Except as otherwise provided in this Act, all funds distributed under this Act shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

[TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

[SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.

[(a) Definition of Plan.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99–493 (100 Stat. 1241).

[(b) Conditions.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

[(1) Applicability of other law relating to minors.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

[(2) Share of minors in trust.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

[(3) Disbursal of funds for minors.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

[(4) Use of remaining judgment funds.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

[SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236–N.

[(a) Definition of Plan.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236–N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

[(b) Conditions.—

[(1) Per capita aspect.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading "Per Capita Aspect" in the plan to read as follows: "Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.".

[(2) General provisions.—Notwithstanding any other provision of law, the Community shall—

[(A) modify the third sentence of the first paragraph under the heading "General Provisions" of the plan to strike the word "minors"; and

[(B) insert between the first and second paragraphs under that heading the following:

["Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2002, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.".

[TITLE III—EXPERT ASSISTANCE LOANS

[SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO CERTAIN INDIAN TRIBES.

[(a) Gila River Indian Community.—Notwithstanding any other provision of law—

[(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88–168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

[(2) the Secretary shall take such action as is necessary—

[(A) to document the cancellation of loans under paragraph (1); and

[(B) to release the Community from any liability associated with those loans.

[(b) Oglala Sioux Tribe.—Notwithstanding any other provision of law—

[(1) the balances of all outstanding expert assistance loans made to the Oglala Sioux Tribe under Public Law 88–168 (77 Stat. 301) and relating to Oglala Sioux Tribe v. United States (United States Court of Federal Claims Docket No. 117 and associated subdockets) are canceled; and

[(2) the Secretary shall take such action as is necessary—

[(A) to document the cancellation of loans under paragraph (1); and

[(B) to release the Oglala Sioux Tribe from any liability associated with those loans.

[(c) Seminole Nation of Oklahoma.—Notwithstanding any other provision of law—

[(1) the balances of all outstanding expert assistance loans made to the Seminole Nation of Oklahoma under Public Law 88–168 (77 Stat. 301) and relating to Seminole Nation v. United States (United States Court of Federal Claims Docket No. 247) are canceled; and

[(2) the Secretary shall take such action as is necessary—

[(A) to document the cancellation of loans under paragraph (1); and

[(B) to release the Seminole Nation of Oklahoma from any liability associated with those loans.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Gila River Indian Community Judgment Fund Distribution Act of 2002".

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

Sec. 101. Distribution of judgment funds.
Sec. 102. Responsibility of Secretary; applicable law.

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

Sec. 201. Plan for use and distribution of judgment funds awarded in Docket No. 228.
Sec. 202. Plan for use and distribution of judgment funds awarded in Docket No. 236–N.

TITLE III—EXPERT ASSISTANCE LOANS

Sec. 301. Waiver of repayment of expert assistance loans to Gila River Indian Community.

SEC. 2. FINDINGS.

Congress finds that—

(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in Gila River Pima-Maricopa Indian Community v. United States, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

(2) except for Docket Nos. 236–C and 236–D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

(3) in Gila River Pima-Maricopa Indian Community v. United States, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–C;

(4) in Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community

with respect to the claims made in Docket No. 236–D;

(5) with the approval of the Community under Community Resolution GR-98-98, the Community entered into a settlement with the United States on April 27, 1999, for claims made under Dockets Nos. 236–C and 236–D for an aggregate total of $7,000,000;

(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236–C and 236–D for $7,000,000 in favor of the Community and against the United States;

(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of $7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADULT.—The term "adult" means an individual who—

(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.

(2) COMMUNITY.—The term "Community" means the Gila River Indian Community.

(3) COMMUNITY-OWNED FUNDS.—The term "Community-owned funds" means—

(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 101; or

(B) revenues held by the Community that—

(i) are derived from trust resources; and

(ii) qualify for an exemption under section 7 or 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

(4) IIM ACCOUNT.—The term "IIM account" means an individual Indian money account.

(5) JUDGMENT FUNDS.—The term "judgment funds" means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236–C and 236–D.

(6) LEGALLY INCOMPETENT INDIVIDUAL.—The term "legally incompetent individual" means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.

(7) MINOR.—The term "minor" means an individual who is not an adult.

(8) PAYMENT ROLL.—The term "payment roll" means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 101(a), as prepared by the Community under section 101(b).

(9) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

TITLE I—GILA RIVER JUDGMENT FUND DISTRIBUTION

SEC. 101. DISTRIBUTION OF JUDGMENT FUNDS.

(a) PER CAPITA PAYMENTS.—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236–C and 236–D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.

(b) PREPARATION OF PAYMENT ROLL.—

(1) IN GENERAL.—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).

(2) CRITERIA.—

(A) INDIVIDUALS ELIGIBLE TO RECEIVE PAYMENTS.—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236–N (including any individual who was inadvertently omitted from that roll).

(ii) All enrolled Community members who are living on the date of enactment of this Act.

(iii) All enrolled Community members who died—

(I) after the effective date of the payment plan for Docket No. 236–N; but

(II) on or before the date of enactment of this Act.

(B) INDIVIDUALS INELIGIBLE TO RECEIVE PAYMENTS.—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.

(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

(I) awarded to another community, Indian tribe, or tribal entity; and

(II) appropriated on or before the date of enactment of this Act.

(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.

(c) NOTICE TO SECRETARY.—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

(1) the number of shares that are attributable to eligible living adult Community members; and

(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.

(d) INFORMATION PROVIDED TO SECRETARY.—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

(1) estate accounts for deceased individuals described in subsection (c)(2); and

(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).

(e) DISBURSEMENT OF FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

(2) ADMINISTRATION AND DISTRIBUTION.—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

(f) SHARES OF DECEASED INDIVIDUALS.—

(1) IN GENERAL.—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

(2) ABSENCE OF HEIRS AND LEGATEES.—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

(A) revert to the Community; and

(B) be deposited into the general fund of the Community.

(g) SHARES OF LEGALLY INCOMPETENT INDIVIDUALS.—

(1) IN GENERAL.—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

(2) ADMINISTRATION.—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

(h) SHARES OF MINORS.—

(1) IN GENERAL.—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

(2) ADMINISTRATION.—

(A) IN GENERAL.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

(B) NONAPPLICABLE LAW.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this Act.

(C) DISBURSEMENT.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

(i) PAYMENT OF ELIGIBLE INDIVIDUALS NOT LISTED ON PAYMENT ROLL.—

(1) IN GENERAL.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this Act, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

(A) the Community makes the per capita distribution under subsection (a); and

(B) all appropriate IIM accounts are established under subsections (g) and (h).

(2) INSUFFICIENT FUNDS.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

(3) MINORS, LEGALLY INCOMPETENT INDIVIDUALS, AND DECEASED INDIVIDUALS.—In a case in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

(A) is authorized to accept and deposit funds from the payment in an IIM account or estate account established for the minor, legally incompetent individual, or deceased individual; and

(B) shall invest those funds in accordance with applicable law.

(j) USE OF RESIDUAL FUNDS.—On request by the governing body of the Community to the Secretary, and after passage by the governing body of the Community of a tribal council resolution affirming the intention of the governing body to have judgment funds disbursed to, and deposited in the general fund of, the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (i) shall be disbursed to, and deposited in the general fund of, the Community.

(k) REVERSION OF PER-CAPITA SHARES TO TRIBAL OWNERSHIP.—

(1) IN GENERAL.—In accordance with the first section of Public Law 87–283 (25 U.S.C. 164), the share for an individual eligible to receive a per-capita share under subsection (a) that is held in trust by the Secretary, and any interest earned on that share, shall be restored to Community ownership if, for any reason—

(A) subject to subsection (i), the share cannot be paid to the individual entitled to receive the share; and

(B) the share remains unclaimed for the 6-year period beginning on the date on which the individual became eligible to receive the share.

(2) REQUEST BY COMMUNITY.—In accordance with subsection (j), the Community may request that unclaimed funds described in paragraph (1)(B) be disbursed to, and deposited in the general fund of, the Community.

SEC. 102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.

(a) RESPONSIBILITY FOR FUNDS.—After the date on which funds are disbursed to the Community under section 101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

(b) DECEASED AND LEGALLY INCOMPETENT INDIVIDUALS.—Funds subject to subsections (f) and (g) of section 101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this Act.

(c) APPLICABILITY OF OTHER LAW.—Except as otherwise provided in this Act, all funds distributed under this Act shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

TITLE II—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

SEC. 201. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.

(a) DEFINITION OF PLAN.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99–493 (100 Stat. 1241).

(b) CONDITIONS.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

(1) APPLICABILITY OF OTHER LAW RELATING TO MINORS.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

(2) SHARE OF MINORS IN TRUST.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

(3) DISBURSAL OF FUNDS FOR MINORS.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

(4) USE OF REMAINING JUDGMENT FUNDS.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 101(a) shall be disbursed to, and deposited in the general fund of, the Community.

SEC. 202. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236–N.

(a) DEFINITION OF PLAN.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236–N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

(b) CONDITIONS.—

(1) PER CAPITA ASPECT.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading "Per Capita Aspect" in the plan to read as follows: "Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.".

(2) GENERAL PROVISIONS.—Notwithstanding any other provision of law, the Community shall—

(A) modify the third sentence of the first paragraph under the heading "General Provisions" of the plan to strike the word "minors"; and

(B) insert between the first and second paragraphs under that heading the following: "Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2002, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.".

TITLE III—EXPERT ASSISTANCE LOANS

SEC. 301. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO GILA RIVER INDIAN COMMUNITY.

Notwithstanding any other provision of law—

(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88–168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Community from any liability associated with those loans.

Mr. REID. Mr. President, I ask unanimous consent that the committee substitute, as reported, be agreed to; that the bill, as amended, be read a third time and passed and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment in the nature of a substitute was agreed to.

The bill (S. 2799), as amended, was read the third time and passed.

ENHANCING THE MANAGEMENT AND PROMOTION OF ELECTRONIC GOVERNMENT SERVICES AND PROCESSES

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 2458, which is now at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

> A bill (H.R. 2458) to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. LIEBERMAN. Mr. President, I rise to applaud passage by the House and Senate today of the E-Government Act of 2002. The E-Government Act is strong, bipartisan legislation that will help bring the Federal Government into the electronic age by improving the access of all citizens to the government services and information they rely on every day in their work and personal lives.

The bill that we are passing today, H.R. 2458, represents a consensus between Democrats and Republicans in the Senate and the House, and with the administration. It is the product of more than a year of negotiations and cooperation between Senators FRED THOMPSON, CONRAD BURNS and me, and Congressmen TOM DAVIS, JIM TURNER, DAN BURTON, and HENRY WAXMAN. It is also the result of important input from a range of constituencies who support electronic government. This bill has won the support of the IT industry, of the public access community, of privacy advocates, and of non-profit groups interested in good government. There are many others who have contributed to the legislation, too many to name here. The bill demonstrates what can happen when we put aside partisan interests and work together to improve the performance of our Government.

I introduced the E-Government Act, S. 803, on May 1, 2001, with Senator BURNS as chief co-cosponsor, and many original co-sponsors from both parties. This March after months of negotiations with the White House and with the help of my friend Senator THOMPSON, an amended version of the bill was reported out of the Governmental Affairs Committee. The committee filed Report No. 107–174 with the bill; this report provides important explanations and background on key concepts and terms in the legislation and should be referred to as relevant legislative history. The E-Government Act first passed the Senate on June 27 of this year. This fall, the House Government Reform Committee took up H.R. 2458, companion legislation to S. 803 that had been introduced by Rep. JIM TURNER on July 11, 2001. The House Government Reform Committee incorporated virtually all of the amended S. 803. It also expanded upon several provisions and added new ones, some of them initiatives that had been worked on for some time by Congressman DAVIS, TURNER, BURTON and WAXMAN. The revised E-government legislation was passed by the House by unanimous consent early this morning.

In less than a decade the tremendous growth of the Internet has transformed the way industry and the public conduct their business and gain access to needed information. This, in turn, has spawned a growing public expectation that government will make use of new information technologies, and a growing support for electronic government. Information technology, and the Internet in particular, provide a unique opportunity to re-package government information and services, so they are offered to the public according to the needs of individual customers. They can also facilitate interagency cooperation without requiring a major reorganization of government agencies. Ultimately, e-government can transform the way government operates, essentially effecting a "virtual" reengineering of government. This paradigm shift requires systems based on function and the needs of the citizen rather than agency jurisdiction. If the government integrates processes across agency boundaries, the public will experience government as a seamless web of offerings. Federal services and information on the Internet can even be consolidated with those of state and local governments.

The "E-Government Act of 2002" will facilitate this transformation to a government organized more appropriately according to the needs of the public. The bill requires agencies to link their e-government initiatives to key customer segments, and to work collectively in doing so. The E-Government Fund provides necessary funding for inter-agency projects, overcoming the difficulty in securing appropriations for cooperative endeavors. The Federal Internet Portal provides "one-stop shopping" for citizens, businesses, and other governments: information and services will be integrated according to the needs of all users, all of it accessible from a single point on the Internet. The Administrator of the Office of Electronic Government will oversee and promote this vital transformation.

Among its many provisions, the E-Government Act would: establish an Office of Electronic Government, headed by a Presidentially-appointed Administrator within the Office of Management and Budget; authorize $345 million over four years for an E-Government Fund to support interagency e-government projects; improve upon the centralized Federal Government online portal that now exists so that it is more user friendly and establish an online directory of Federal web sites, organized by subject matter; require Federal courts to post opinions and other information online, and regulatory agencies to conduct rule-making over the Internet; improve recruitment and training of information technology professionals in Federal agencies; and encourage electronic interoperability so that different agencies can communicate with one another more efficiently.

We have taken care to include significant privacy protections and we extend and improve successful information security provisions due to expire this month. The Thompson-Lieberman Government Information Security Reform Act, which was enacted at the end of the last Congress, has provided a sturdy management framework for protecting the security of government computers. Congressman DAVIS has authored a new version of the legislation, updating it and improving it.

As we are also in the process of debating homeland security legislation, it is worth noting that the E-Government Act is directly relevant to the goal of ensuring improved homeland security. The E-Government Act will give the Federal Government the tools and structure to transform its IT systems, one of the greatest vulnerabilities of agencies now tasked with homeland security missions. As we've seen through dozens of depressing revelations over the last year, we have desperate need for more effective information systems at agencies like the FBI, CIA, Department of State, the INS, and state and local authorities. The E-Government Act will help the Federal Government get that job done, by establishing more effective IT management, establishing mandates for action, and authorizing funding.

The bill will also substantially enhance the ability of the Federal Government to quickly provide information and services to citizens to help them prepare for, and respond to, terrorism, natural disasters, and other homeland threats. In the hours and days after the terrorist attacks of September 11, Americans flooded government websites in record numbers, seeking information more targeted than what the media was providing: what was happening; how they should respond to protect themselves from possible future attacks; how they could help victims; and how people who were victims themselves could seek assistance. The E-Government Act will substantially enhance the ability of the Federal Government to quickly provide information and services to citizens to help them prepare for, and respond to, terrorism, natural disasters, and other homeland threats.

Mr. President, Congress's passage of this legislation will result in a better Government and a stronger America.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2458) was read the third time and passed.

UNANIMOUS CONSENT AGREEMENT—H.J. RES. 124

Mr. REID. Mr. President, I ask unanimous consent that the majority leader, with the concurrence of the Republican leader, may at any time proceed to the consideration of Calendar No. 762, H.J. Res. 124, the continuing resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT AGREEMENT—AUTHORIZATION TO FILE

Mr. REID. Mr. President, I ask unanimous consent that following the sine die adjournment of the 107th Congress, the Select Committee on Intelligence be authorized to file, and the Secretary of the Senate be authorized to receive, a report in either classified or unclassified form, or both, solely on the committee's investigation into the intelligence community's activities before and after the September 11, 2001, terrorist attacks on the United States, on one of the following days: Friday, December 20, 2002, or Thursday, January 2, 2003, from 10 a.m. to 12 noon.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDERS FOR MONDAY, NOVEMBER 18, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business tonight, it stand in adjournment until 11 a.m., Monday, November 18; that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period of morning business until 12 noon, with Senators permitted to speak for up to 10 minutes each regarding retiring Members; and at 12 noon the Senate proceed to executive session under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, NOVEMBER 18, 2002, AT 11 A.M.

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:21 p.m., adjourned until Monday, November 18, 2002, at 11 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 15, 2002:

DEPARTMENT OF STATE

MARY CARLIN YATES, OF OREGON, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF GHANA.

THE JUDICIARY

MICHAEL W. MCCONNELL, OF UTAH, TO BE UNITED STATES CIRCUIT JUDGE FOR THE TENTH CIRCUIT.

DEPARTMENT OF JUSTICE

KEVIN J. O'CONNOR, OF CONNECTICUT, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF CONNECTICUT FOR THE TERM OF FOUR YEARS.

EXTENSIONS OF REMARKS

TRIBUTE TO CONGRESSMAN SONNY CALLAHAN

HON. TERRY EVERETT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. EVERETT. Mr. Speaker, after nine terms and 18 years in this chamber, Congressman SONNY CALLAHAN of Alabama's First District is saying goodbye to this institution and will retire to life along the Dog River on the beautiful Alabama Gulf Coast.

SONNY certainly deserves a chance to enjoy life with his family, but I don't mind telling you that I will miss him. When I came to Washington ten years ago, I looked to SONNY for guidance as I sought to run my office and seek committee assignments. I leaned on him pretty heavy in my early days up here and I will be forever grateful for his sound advice.

SONNY's reputation of fairness to all is respected and admired on both sides of the aisle and his garnered him plenty of friends of all political stripes. A good example of this was the close friendship he had with the late Rep. Joe Moakley. Politically, they were a world apart, but you could not find two better friends and I personally enjoyed their company at dinner on many an evening after we concluded legislative business.

For those of us in the Alabama delegation, SONNY has been an invaluable ally in obtaining vital federal project funding for our districts. His chairmanship of the House Appropriations Energy and Water Subcommittee has been beneficial to our state.

I personally owe him a debt of gratitude for his help in securing Army Corps funds to rebuild a life-saving levee residents in the flood-prone town Elba in my congressional district. SONNY was always there for us, no matter our personal politics and he never failed to put the needs of Alabama first.

SONNY's impact was not only felt in Alabama, but also in the Oval Office, where he was continually leaned upon for support of foreign operations funding. As past chairman of House Appropriations Foreign Operations subcommittee, SONNY helped to shape America's foreign aid budget and to some degree our foreign policy. For that reason, it was not uncommon to find as many dignitaries in his office as constituents from Mobile.

For many up here, such power and responsibility would go to their heads. But not SONNY's. He was a cardinal, but foremost he was and is a gentleman, a statesman, and a very good friend.

I want to thank SONNY for his exemplary service to this House, to Alabama and to America. We're going to miss him.

THANKING MY STAFF

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. GEKAS. Mr. Speaker, as I leave the Congress for the last time, I want to especially thank the many staff who have worked so hard for me over these last 20 years that I have been privileged to serve the people of the 17th District of Pennsylvania.

But I want to especially thank my chief of staff, Allan Cagnoli. Allan has worked his entire career for the people of central Pennsylvania. Low pay, long hours, incredible stress and responsibilities are the hallmark burdens of all legislative staff. But Allan Cagnoli was and is one of the best of the best. He kept my Washington, DC, and district staff and offices running smoothly and efficiently, even under the most difficult of times. Whether it was serving in the minority party in the 1980s, dealing with the Clinton Impeachment in which I was a House Manager, or spending the last 5 years working for passage of my bankruptcy reform legislation or any of the several hundred other measures I introduced or projects I undertook, Allan was there. He was there through thick and thin. And we all know how thin it can get around here.

For the past 25 years I and the people of central Pennsylvania and the Nation have been lucky to have a trusted, competent, and intelligent aide like Allan Cagnoli. Regardless of what he does in the future, be it to remain here in Washington, DC, to further the cause of good government and a better America, or return to his home in Hershey, PA, to help where it is needed, I will always treasure and thank him and all my staff, both current and past, for their service to me and to our great country.

TRIBUTE TO ROBERT MICHAEL HERNANDEZ

HON. SCOTT McINNIS

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. McINNIS. Mr. Speaker, it is a great honor to pay tribute today to a man who has embodied the spirit of the state of Colorado through his life-long dedication to serving his state. A member of the Colorado State Legislature, the hard work and dedication of Robert Michael Hernandez, known as Rob, is a testament to the Western pride and character of my state and its citizens. Rob is now leaving the Colorado State Legislature after selflessly serving since 1991, and I can think of no better way to celebrate Rob's retirement than to honor his many achievements before this body of Congress and this nation.

Born in Pueblo, Colorado, and educated in Denver, Rob not only experienced the best the state has to offer but also has been inspired to give back to the state and its people. He has served in both the House and the Senate as both an appointee and an elected official. During his time in the State legislature he served on countless committees and dedicated countless hours to improving the lives of Coloradans. Most notably he has served as chair of the Health Committee, a member of the Appropriations, Judiciary, and the Children and Family and Environmental Committees. He has passionately approached the issues of juvenile crime prevention and intervention, senior citizens issues, housing, and education.

Rob's dedication and hard work is appreciated by his colleagues and he will surely be missed in his absence. Robert Michael Hernandez has given his time and his energy to bettering the State of Colorado and it is this dedication and hard work that I wish to bring to the attention of this body of Congress. His service as a civil servant serves as a true example for the people of Colorado and indeed the entire nation. Thank you, Rob, for all that you have done and good luck in your future endeavors.

HONORING THE LIFE OF JAMES (JIM) C. BENFIELD

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. KOLBE. Mr. Speaker, it is with great sorrow that I rise today to offer my condolences to the family and friends of James (Jim) C. Benfield, who passed away on November 2, 2002. I would ask for unanimous consent that his obituary appearing in the Washington Post on November 3 be included in the RECORD.

For over 12 years, I have worked closely with Jim on an issue that I have spearheaded, and I have been consistently impressed with his selfless and tireless advocacy. His ability to organize diverse grassroots coalitions and deal honestly with me and my colleagues impressed me beyond words. His efforts and ethics will be remembered and we will long recognize the trails he blazed on behalf of his clients, his community, and the underprivileged that he served in his spare time.

I have had a picture that Jim took hanging in my office for many years. It is a photo of the Statute of Freedom being lifted from the Capitol dome as that she could be refurbished. What an appropriate subject. Jim loved and appreciated the institution she oversees. He strived to see issues and seek solutions from an elevated viewpoint like she does. Moreover, he embraced everyone like she symbolically does.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

I will miss my friend Jim. Please join me in expressing the condolences of the House to his family.

[From the Washington Post, Nov. 3, 2002]

JAMES C. BENFIELD, 59; ORGANIZER, ACTIVIST

(By Richard Pearson)

James C. Benfield, 59, a lobbyist since about 1980 who was chief financial officer and a partner at Bracy Tucker Brown, the Washington government and public affairs consulting concern, died of a brain tumor Nov. 2 at his home in Takoma Park.

Mr. Benfield, an authority on grass-roots organizing and advocacy, had corporate clients and was often involved in consumer issues, as well as causes including coinage, daylight savings time reform and help for the poor.

He had done work for such clients as the Continental Group, the Clorox Co. and McDonald's. But he made headlines locally for his advocacy efforts, often as a volunteer, managing the Daylight Savings Time Coalition, which he founded, and directing the Coin Coalition and the Campaign for Home Energy Assistance.

Mr. Benfield, who joined what became Bracy Tucker in 1980, was a master at organizing coalitions. In his successful efforts to extend daylight savings time in April, he trumpeted the belief that daylight savings, with its longer hours of afternoon daylight, extended hours of outdoor activity. This helped him secure the support of associations representing amateur softball, barbecue makers, convenience stores, service station dealers, chain restaurants and sporting goods.

His efforts to reform coinage featured drives to replace the dollar bill with a dollar coin, which he pointed out would save the government more than $450 million annually because coins last longer than bills. It helped lead to the Sacagawea dollar coin. Groups that came on board for that campaign included vending businesses and mass transit and amusement park associations.

Another of his great efforts was the Home Energy Assistance Campaign he started in 1993. It now helps 4.3 million households and has secured annual congressional appropriations of $2 billion. His partners in this effort included the American Red Cross and the Salvation Army.

Over the years, Mr. Benfield explained his views on these issues on ABC's "Good Morning America," CNN's "Larry King Live" and on National Public Radio. He wrote for The Washington Post, Chicago Tribune and Des Moines Register. He also lectured at Harvard University and conducted workshops for the Energy Department.

Mr. Benfield, who was born in Philadelphia, was a 1965 economics graduate of Drake University in Iowa. He was an Army photographer in South Korea in 1967 and 1968. He came to the Washington area in the 1970s. Before becoming a professional lobbyist, he held a variety of jobs.

In fact, the collection of jobs he held led to a 1977 profile in The Post. The jobs included public relations director of the National Symphony Orchestra, freelance photographer, and apartment manager and part-time janitor. He also had managed a local chamber music group, had played classical guitar at restaurants and had given guitar lessons.

He assisted the homeless, both with contributions and helping to obtain government aid and secure medical care. He worked with area churches to raise corporate aid for the homeless. The Post wrote about his efforts to raise funds for a sick street musician and after the musician's death, to place a plaque on the wall where he most often performed.

His neighbors remembered him as the guy who hosted community Fourth of July picnics that included the firing of a Civil War canon and pruning trees along railroad rights of way. He also improved a muddy shortcut that commuters took to the local Metro by laying a bed of garbage can lid-size stones. He also was known for always giving a hand, forever taking people into his home who had suffered a tragedy.

His first marriage ended in divorce.

Survivors include his wife of 17 years, Susan Storing Benfield, and two children, Anna Corinne Benfield and Michael Storing Benfield, all of Takoma Park; his mother, Corinne Benfield of Lombard, Ill.; and a sister.

CONVERSION BAN IN INDIA SHOWS IT IS NOT A DEMOCRACY

HON. CYNTHIA A. McKINNEY

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. MCKINNEY. Mr. Speaker, the party that controls the national government in India, the BJP, has enacted a ban on religious conversions in Tamil Nadu, a state which it controls. The law prohibits anyone from converting to any religion except Hinduism. Anyone who converts to a religion other than Hinduism can be imprisoned and can face a heavy fine. It officially targets conversions "by force, allurement, or fraudulent means," but aren't all conversions by "allurement," that ism, by persuasion presented by another person?

Effectively, the new law prevents all conversions, except conversions to Hinduism. This is part of the fundamentalist Hindu nationalists' drive for Hindutva—a totally Hindu-dominated culture. "Even if one converts of one's own free will, those involved in the conversion can be punished on the grounds that it's a forced conversion," said former Tamil Nadu Chief Minister M. Karunanidhi. Yet the BJP and other groups under the umbrella of its parent organization, the RSS, have been forcibly reconverting people to Hinduism after they have converted to other religions of their own free will.

According to the Washington Times of November 11, a Dalit group, the Dalit Panthers of India, is planning to have 25,000 of its members convert to Christianity. Another group of 10,000 Dalits in Chennai plan to convert to Buddhism on December 6 if this unjustified law is not repealed by then. Dalits, or "Untouchables," are the lowest caste in Hinduism and their continuing oppression is essential to the preservation of the repressive Hindu social order.

It is clear once again that there is no religious freedom in India. India's claims to be democratic are a lie if people cannot freely choose something as basic as their religion.

This is more evidence that India is not the democracy it claims to be. America must speak up for the rights of all people in South Asia by cutting off our aid and trade to India, by imposing the sanctions the law mandates for violators of religious freedom, and by declaring openly our support for self-determination. Why can't the country that proudly claims to be the world's largest democracy settle its minority issues through a free and fair vote? That is the way that democratic countries do it, and it is the way world powers do it. As long as India refuses to do it, it will not be a member of either category.

Mr. Speaker, I would like to place the article I referred to before into the RECORD at this time for additional information about the conversion ban.

[From the Washington Times, Nov. 11, 2002]

A SAWDUST TRAIL FOR LOW-CASTE HINDUS?

(By Shaikh Azizur Rahman)

NEW DELHI.—Low-caste Hindus in the southern Indian state of Tamil Nadu are threatening to embrace Christianity, Buddhism, or Islam to protest a new law that outlaws religious conversion.

A bill passed into law by the state legislature last month penalizes those who convert to a religion other than Hinduism with imprisonment and a hefty fine.

While religious minorities in Tamil Nadu plan to challenge the law in court, many Hindus from so-called "untouchable castes," known as Dalits, are threatening to publicly defy the new law.

One group of Dalit Hindus in the state capital, Chennai, said that a group of 10,000 will convert to Buddhism on Dec. 6 if the law is not revoked.

Another group, known as the Dalit Panthers of India [DPI], pledged that 25,000 of its members would become Christians to protest what they called an "unjustified" decree. "The upper class has been torturing the Dalits for centuries, and now, by passing the bill, the government has decided to shackle us in a society where we are denied even our basic democratic rights," said one Dalit activist, who identified himself by the Christian name Emmanuel. On Oct. 31, Tamil Nadu became the first—but probably not the last—Indian state to outlaw religious conversions. Though the law targets conversions "by force, allurement or fraudulent means," opponents say the language offers the means to challenge all conversions to faiths other than Hinduism.

"Even if one changes one's religion of one's own free will, those involved in the conversion can be punished on the ground that it's a case of forced conversion," said M. Karunanidhi a former chief minister of Tamil Nadu. The new law was welcomed by Hindu fundamentalists, who govern the nation in a coalition led by the Hindu nationalist Bharatiya Janata Party (BJP).

"The BJP is strongly of the view that this law is most necessary for the whole country. Lots of money is coming into the country from Islamic organizations to aid conversions," said BJP President M. Venkaiah Naidu. Ashok Singhal, leader of the World Hindu Council (VHP), hailed the law as a "timely and bold step" and he urged other states to pass similar laws.

The issue of religious conversion has long been a source of strife in India. While federal law allows Indians to change their faith, the ruling BJP makes no secret of its dislike of the practice, while its ruling partner—the VHP party—views conversions as betrayal.

Opponents of the new law warn it will only trigger an even larger exodus of Hindus to other faiths.

The Global Council of Indian Christians said it was "alarmed by the hurriedly promulgated ordinance," and called it "the most heinous violation of religious freedom aimed at targeting Christian missionaries engaged in poverty alleviation and spreading the light of education." The All-India Christian People's Forum said that it went against the core of the Constitution. "This ordinance is uncalled for, unwarranted and smacks of a pro-Hindu ideological bias of the government".

"The bill runs foul of Article 25 [25] of the Indian Constitution, which grants freedom of conscience and free profession, practice and propagation of religion to every Indian citizen," the group said.

Dominic Emmanuel, director of New Delhi Catholic Archdiocese, called the measure, "an assault as much on civil rights as on human dignity."

John Daya, secretary-general of the Christian Council in New Delhi, said: "In fact, the only inducements by fraud and fear are those being carried out by [Hindu organizations] in the tribal belt, where innocent tribals are being forced to become Hindus."

Muslims, too, are concerned. "How can conversions be prevented if an individual is attracted to another religion because of his or her faith in it? Force is never used to convert one to Islam because it is against the basic tenets of [Islam]," said Maolana Siddikullah Chowdhury, general secretary of the Jamiat-e-Ulema party in Calcutta.

He added that low-caste Hindus converted to Islam simply to "escape discrimination and ill treatment" and not under any coercion.

A TRIBUTE TO JOHN LAFALCE

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. FRANK. Mr. Speaker, for the past several years, I have had the privilege of working under the leadership of our colleague from New York (Mr. LAFALCE) in his role as Senior Democrat on the Committee on Financial Services (as it is now officially called, after our Republican colleagues gave a hint of their policy preferences by excising from the Committee's title any reference to cities, urban affairs or housing).

In his leadership of the minority on this important committee, Mr. LAFALCE has been a committed, creative, forceful advocate of policies that combined support for a strong free market with concern for fairness for consumers and social justice for people with low incomes. No opposition was strong enough to deter him from fighting for an America that was both prosperous and fair, and he helped people understand that these goals are mutually supportive, not exclusive.

Personally, I have been the beneficiary of his ability to lead in a cooperative spirit, and to perform both his partisan and bipartisan roles with great skill. That is, when possible, he worked constructively with the majority party to improve legislation, when necessary he led the minority in an effective and cohesive way.

The financial community, the House, and I personally will miss him. As an indication of this, I ask that the well-merited tribute contained in a recent editorial from the official publication of America's Community Bankers be printed here. And, I thank America's Community Bankers for this gracious—and entirely accurate—summation of JOHN LAFALCE's work.

THE LAFALCE LEGACY: THREE DECADES OF LEADERSHIP FOR BANKS

Congressman John J. LaFalce (D-N.Y.), who represented western New York's 29th Congressional District since he was elected to Congress in 1974, will retire at the end of the current Congress. His departure represents the end of an era.

Congressman LaFalce has been a good friend of the banking industry. In his years of service, from the U.S. Army Adjutant General Corps, to the New York State Senate and State Assembly, to the House of Representatives, John LaFalce personified the best in public service.

He listened to those on all sides of an issue, staking out his position and, as a pragmatist, using his skills as a politician to craft compromises on both sides of the aisle to move needed legislation.

In his leadership role as the ranking Democrat on the House Financial Services Committee, John LaFalce exercised extraordinary influence over the outcome of financial services and housing legislation. He contributed greatly to the historic Gramm-Leach-Bliley Act by first introducing his own bipartisan bill and then by helping to craft the final product. In his long career, Rep. LaFalce was involved in all of the major legislative initiatives on banking and financial services.

John LaFalce is a consumer and community advocate, and a staunch defender of the Community Reinvestment Act and financial privacy. And yet bankers also found him to be a champion of balance.

As chairman of the House Small Business Committee, John LaFalce paid special attention to the needs of women who are small business leaders and entrepreneurs. He wrote the Women's Business Ownership Act, which improves access to credit for women.

Rep. LaFalce's public service career was aptly summarized in a citation by Niagara University when it awarded him the honorary degree of Doctor of Laws. It read, in part, "Three qualities emerge as best describing the man: honesty, energy and conviction."

These qualities, along with his integrity, leadership, and good humor, will be missed in the halls of Congress. John LaFalce leaves behind a legacy of outstanding achievement. America's Community Bankers extends its best wishes for the future.

POLICE AGAIN ENTER GOLDEN TEMPLE COMPLEX

HON. DAN BURTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. BURTON of Indiana. Mr. Speaker, in June 1984, Indian forces invaded the Golden Temple, the most sacred Sikh shrine, and other Sikh Gurdwaras around Punjab, killing 20,000 people. As Sant Jarnail Singh Bhindranwale said, this helped lay the foundation of Khalistan, the Sikh homeland that declared its independence in 1987. Now the police have again invaded the Golden Temple complex on the pretext of searching the three buildings in the complex in connection with the upcoming elections for the Shiromani Gurdwara Prabandhak Committee (SGPC), which oversees all the Gurdwaras in India.

The police were accompanied by Indian political officials, including the Chemicals and Fertilizers Minister, Sukhdev Singh Dhindsa.

People of all religions and from all over the world have been welcomed to worship at the Golden Temple. Now even members of the SGPC may well be blocked from entering it. Some SGPC workers had a verbal altercation with two of the invading police officials, according to the Tribune newspaper out of Chandigarh. The article reports that SGPC members have already had to sneak into the Golden Temple complex.

Mr. Speaker, this is further proof that there is no religious freedom in "the world's largest democracy." India has already been added to our government's list of countries that violate religious freedom. Now sanctions should be implemented to help ensure real religious liberty in India.

This is just the latest chapter in a long history of repression of Sikhs by India. Over a quarter of a million Sikhs have been murdered since 1984. More than 52,000 are being held as political prisoners, according to a report by the Movement Against State Repression. Another 50,000 have simply been made to "disappear." The police picked up 50,000 Sikh youth, tortured them, murdered them, declared their bodies "unidentified" and secretly cremated them, and refused to hand the remains over to the families. Christians, Muslims, Dalits, and other minorities have seen similar atrocities committed against them, yet the world treats India as a respectable, democratic country.

Mr. Speaker, we must stop our aid to India now. We must declare our support for self-determination for the Sikhs of Khalistan, for predominantly Christian Nagaland, for Kashmir, and for everyone in South Asia. The cornerstone of democracy is the right to self-determination.

I would like to place the Tribune article on the police invasion of the Golden Temple complex into the RECORD at this time. I think my colleagues will find it very informative.

[From the Tribune (Chandigarh), Nov. 11, 2002]

POLICE ENTERS GOLDEN TEMPLE COMPLEX

(By Prabhjot Singh)

CHANDIGARH, Nov. 10.—Less than 24 hours before a five-member NDA team, led by union minister Sahib Singh Verma, could fly into the Holy City of Amritsar to oversee the conduct of next Tuesday's annual election to the SGPC executive committee, Punjab policemen in plain clothes entered the Golden Temple complex on the pretext of searching all three serais (inns) there.

Accompanying the team would be not only Union Chemicals and Fertilisers Minister, Sukhdev Singh Dhindsa, who is also a SAD General Secretary, but also 100-odd SGPC members owing allegiance to SAD chief Parkash Singh Badal.

Though preventive arrests continued throughout the state and Golden Temple complex was put under police siege with the deployment of hundreds of anti-riot policemen in anti-combat gear, some of the Akali leaders, including former Finance Minister Kanwaljit Singh managed to sneak into the sanctum sanctorum.

Talking to The Tribune over the telephone, Mr Sukhdev Singh Dhindsa said the names of four NDA observers—Mr Sahib Singh Verma, Mr Thomas (MP, Samata), Mrs D'Souza (MP, Samata), and Mrs Anita Arya (MP, BJP)—have already been cleared, the Union Civil Aviation Minister, Mr Shah Nawaz, is also expected to be a part of the special NDA team to oversee the SGPC elections. The observers and the SGPC members would take a chartered flight from New Delhi to Amritsar tomorrow afternoon.

Mr Dhindsa further said that on the basis of the complaint lodged by the Shiromani Akali Dal with the Union Home Minister yesterday, the Union Home Secretary today called Punjab Chief Secretary Y.S. Ratra on the telephone and expressed his "strong displeasure" over "politicalisation of the bureaucracy".

The Chief Secretary reportedly assured the Union Home Secretary that no SGPC member would be stopped from reaching the Golden Temple complex for attending the election meeting. Efforts would be made to facilitate those lodged in jails in one case or the other to attend and vote in the elections.

Meanwhile, reports indicate that so far the Punjab police has taken 1,222 Akali workers into custody. Of these 934 belong to Shiromani Akali Dal, 234 to Sarb Hind Shiromani Akali Dal, 50 to Shiromani Akali Dal (Amritsar) and one owes allegiance to Mr Ravi Inder Singh. The remaining three belong to the Mehta faction of the AISSF.

Of these, the maximum arrests of the Badal men were made in Sangrur (73), followed by Majitha (64), Tarn Taran (60) and Patiala (62). Rashmi Talwar and Ashok Sethi in their reports from Amritsar said the police in a pre-dawn swoop entered the Golden Temple complex on the pretext of searching all three serais—Guru Nanak Niwas, Guru Hargodbind Niwas and Mata Ganga Niwas.

When the police arrived to get the three serais vacated to ensure implementation of the orders, among those evicted were 50 schoolchildren in the age group of six to eight years from Lucknow. The police parties which were headed by Mr Jagdish Khera and Mr R.S. Ghuman, both DSPs, had a verbal altercation with the SGPC workers who resisted the attempts of the raiding party to get the serais vacated. Mr Harbant Singh and Mr Ajaib Singh, Secretary of the SGPC, and personal assistant to the SGPC chief, respectively, refused to budge holding that the orders were not specific to the SGPC and "devotees" could not be evicted from a religious complex.

The SGPC Chief, Prof Kirpal Singh Badungar, who had to rush to Amritsar from Bathinda, after the police entry into the complex, assailed the government action maintaining that it was a direct attack on the most sacred Sikh shrine and the Congress Government was bent upon disturbing communal peace and harmony.

The police officials managed to get computer printouts of the names and addresses of 2,000 devotees staying in the serais.

Hundreds of policemen in top anti-combat gear laid a siege to the Golden Temple complex. The mounted police has also been deployed around the complex.

Talking to The Tribune over the cellphone, Capt Kanwaljit Singh said that that action of the police in the morning and again in the evening of searching serais and evicting yatris was a serious "violation of the sanctity of the Golden Temple complex." The action of the government amounts to gross interference in the religious affairs of the Sikhs and could lead to serious complications besides disturbing communal harmony and peace in the state."

He said a number of SGPC members and dal workers had already managed to sneak into the complex.

Professor Badungar told newsmen that in case the police entered Teja Singh Samundari Hall on the day of the election meeting, the repercussions would be "drastic".

He said the government was gripped by a "fear psychosis" and its nervousness was evident from the desperate steps it was taking. He maintained that the national and international media would be permitted to cover the executive committee elections as he disapproved on any NDA observers to oversee the elections. No other SGPC employee would be allowed inside the meeting hall.

The SGPC chief said that non-bailable warrants issued against former SGPC chief Jagir Kaur by a Kapurthala court was an indication of the desperation of the state government.

Meanwhile, Mr. Sukhdev Singh Bhaur, General Secretary, SHSAD supported the orders issued by the District Magistrate but held that these orders should be applicable in case of "bad elements" and not the devotees.

The SHSAD was ready for a truce with Mr. Parkash Singh Badal provided he agreed to apologize at Akal Takht and accepted Bhai Ranjit Singh as Jathedar of Akal Takht. He claimed that 50 SGPC members were strongly behind the SHSAD.

Senior Akali leader and close aide of Mr. Parkash Singh Badal, Capt Kanwaljit Singh claimed that the SAD has formulated its secret strategy to bring all 120 SGPC members to Teja Singh Samundri Hall on November 12 to elect the President and the executive committee. Talking to newsmen this evening at Bhai Gurdas Hall after managing to enter the city in disguise. He said the reign of terror unleashed by the Amarinder Singh government on Akali leaders and workers were trampling upon their democratic rights.

Capt Kanwaljit Singh said Mr. Badal, along with all 120 members, would land at Rajasansi Airport tomorrow for the SGPC general house election meeting. Party leaders and workers would ensure that all SGPC members manage to enter the Golden Temple complex on that day.

He claimed that the ex-parte disqualification of SGPC members by the SGJC was likely to be set aside by the Punjab and Haryana High Court tomorrow.

Discounting the rumors of a patch-up between Mr. Badal and Mr. Tohra, Capt Kanwaljit Singh said there was no scope for any compromise. The Badal candidate would win hands down, he asserted.

The arrival of the Jathedar of Akal Takht, Giani Joginder Singh Vedanti, here this evening has raised speculation about an appeal being made by him for a patch-up between the two Akali stalwarts to avoid a confrontation even as the Congress Government has queered the pitch with heavy deployment of the police around the complex.

SELECTIVE SERVICE VOLUNTEERS

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to congratulate Mr. George C. Everett of Fort Collins, Colorado; Mr. Ralph L. Spellman of Yuma, Colorado; and Mr. Dale H. Shoemaker Sr. of La Junta, Colorado on their appointments to Selective Service Local Boards 006 and 024 in Greeley, Colorado, and 026 in Pueblo, Colorado respectively.

Local board members have the distinction of receiving an appointment by the Director of Selective Service in the name of President George W. Bush, and on the recommendation of Governor Bill Owens. Patriotic Americans, these board members serve their country by volunteering their time to assist the government in selecting men suitable for military service in the event of a draft. If a draft commences, these citizens would decide who would receive deferments, postponements, or exemption from military service based on the individual registrant's circumstances and beliefs.

The Selective Service System is America's defense manpower "insurance policy" in a still dangerous and uncertain world. The service performed by a Selective Service Board Member provides a vital link between the community and today's military. His hard work helps guarantee claims filed by young men for deferments and exemptions will receive fair and equitable consideration if a future crisis requires reinstatement of a draft.

Congratulations to these dedicated volunteers on their appointments. I urge the House to join me in extending its thanks to the three men for their commitment to their country.

THE LAND OF THE PLENTY

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mrs. MORELLA. Mr. Speaker, those of you who were with us last evening recall that I mentioned that this month is the two-year anniversary of the report that came out called "The Land of Plenty." This was a report of the Congressional Commission on Advancement of Women, Minorities, and Persons with Disabilities in Science Engineering and Technology Development. It is legislation that I introduced a number of years ago, and like so much of what we know, you have to be tenacious and diligent and patient and persevere. The legislation established a commission that looked comprehensively at the challenge of under-representation in America's science and engineering workforce and the educational pathway that feeds into it. The commission called for the establishment of a public/private partnership to take America into acting to redress the stunning imbalance in America's technical talent pool. In their report to Congress, BEST presented their findings on September 26, 2002 at 8:15 a.m. in the Cannon Caucus Room, 345 Cannon House Office Building, Washington, D.C., Representatives CONNIE MORELLA and EDDIE BERNICE JOHNSON, BEST National Leadership Council Co-Chairs, presiding. (Following are edited comments. The full testimony is available at www.bestworkforce.org.)

BUILDING ENGINEERING AND SCIENCE TALENT BLUE RIBBON PANELS, INTERIM PROGRESS REPORT: TO CONGRESS

September 26, 2002

Present: CONSTANCE A. MORELLA, (R–MD) National Leadership Council Co-Chair; EDDIE BERNICE JOHNSON, (D–TX) National Leadership Council Co-Chair, Allan Alson, superintendent, Evanston Township High School; Dan Arvizu, senior vice president, CH2M Hill; Earnestine R. Baker, Meyerhoff Program UMBC; Alfred Berkeley, vice chair, NASDAQ Stock Market, Inc.; Rita Colwell, director, National Science Foundation; Cinda-Sue Davis, director, WISE, University of Michigan; Marye Anne Fox, chancellor, North Carolina State University; Eugene Garcia, professor, Arizona State University; Shirley Malcom, head, Education Directorate, American Association for the Advancement of Science; Willie Pearson, Jr., professor, Georgia Institute of Technology; Anne Petersen, senior program director, W.K. Kellogg Foundation; Paula Rayman, professor, University of Massachusetts; Claibourne Smith, president, Delaware Foundation for Science and Math Education; Richard Tapia, professor, Rice University, Deborah Wince-Smith, president, Council on Competitiveness; also present, John Yochelson, BEST, testimony into RECORD: Shirley Ann Jackson, president, Rensselaer Polytechnic Institute.

PROCEEDINGS

MORELLA: Women, African-Americans, Hispanics, Native Americans, persons with disabilities make up two-thirds of our workforce but they hold only one-fourth of the jobs in science, engineering, and technology. We perceive this really as a vulnerability that threatens the living standards of all Americans. BEST is the partnership recommended by the congressional commission. Since incorporating one year ago, BEST has assembled an extraordinary array of talent, talent to assess what's working across the whole continuum of workforce development, pre K–12, higher education in the workforce. These panels will report their findings and recommendations next spring. The benchmarks they identify and the insights they develop into what works, why it works, under what conditions it works, is going to be of very great interest to Congress and to the nation. BEST's national assessment will provide a foundation for action both at the national level as well as in communities across the country. Now the purpose of todays progress report is to let policymakers know how the work of BEST is going; and first, we're going to get a perspective on the framing of a national action agenda to meet the challenge of under-representations, and then we're going to hear from leaders involved in BEST's assessments of the workplace, higher education and pre K–12. The progress report will wrap up with a discussion of BEST's plans to spur action in the field through community engagement. I have the honor of chairing this segment and EDDIE BERNICE JOHNSON will lead the workforce discussion and then I'll return to moderate the other segments.

TESTIMONY OF SHIRLEY ANN JACKSON, PRESIDENT, RENSSELAER POLYTECHNIC INSTITUTE AS READ IN HER ABSENCE BY ANNE PETERSEN, SENIOR VICE PRESIDENT, THE KELLOGG FOUNDATION

PETERSEN: Thank you. It's a great privilege this morning to be stepping in for Dr. Shirley Ann Jackson. When Dr. Jackson was chair of the U.S. Nuclear Regulatory Commission, she instituted policies for that agency that were based on the assessment of risk to the nation's nuclear power plants and vulnerability to that risk. The process is termed probabilistic risk assessment. Looking squarely at the vulnerability to risk determines clearly what action must be taken to reduce the risk of a particular threat. This is what BEST is doing. The work that BEST has done this past year has revealed that the United States faces serious risk of losing its economic preeminence, security, and its well-being as a nation without peer. That risk is embedded in the fact that while there is a growing need for scientists, engineers and other technologically skilled workers, the United States is simply not producing enough of them. That leaves the United States reliant upon scientists and engineers from other nations, a situation that bears its own inherent risk and curtailments as we know. Most of the numbers are included in the BEST paper, "The Quiet Crisis" which we present to you today, and I understand you have the series of charts as well * * *

TESTIMONY OF RITA COLWELL, DIRECTOR, NATIONAL SCIENCE FOUNDATION

COLWELL: Thank you. It is an honor to be part of todays panel on building the U.S. science, engineering and technology workforce by fully developing the nation's diverse human resources. The United States has become increasingly diverse in recent decades and will move steadily in the direction of greater diversity in the future. The Bureau of Labor Statistics projects, for the decade 1998—2008, that the general labor force growth rates of minorities will more than triple the overall growth rate. But, we're not making comparable progress in changing the composition of the science and engineering workforce. It looks the same as it has for generations. We need the talent of every worker in order to keep our nation competitive and prosperous now and in the future. And in the post-9/11 world, we need to also focus more of our talent on homeland security. We live in a unique time in which every citizen must "count" for opportunities and must be "counted" for contributions to our society's well being. The well being of individuals and of the nation will depend on knowledge and skills in science, engineering& and technology. How well we prepare our human resource in these areas will determine how well we are prepared as a nation in this new century * * *

TESTIMONY OF ALFRED BERKELEY, VICE-CHAIRMAN, NASDAQ STOCK MARKET, INC.

Mr. BERKELEY: Thank you, Chair MORELLA. I thank you for your persistence. I think persistence is a valuable, valuable attribute. We will not win this problem without staying focused and persistent. You might ask what does the stock market have to do with the education business? I will tell you: a constant theme of my conversations with the chief executive officers of the largest technology companies in the county) both in information technology and biotech, is where are they going to get enough technically trained workers and that handful of brilliant scientists that make the difference in breakthroughs? I think that this audience should know that the technology community has been shaken to its foundation by the loss of U.S. supremacy in supercomputing. Japan now has supercomputers 30 times more powerful than ours having followed a technology path that we abandoned about ten years ago * * * My goal this morning was to affirm to you that the business community is firmly interested in this endeavor and that we can bring substantial resources to bear on research-based solutions that are working and are proven to work * * *

TESTIMONY OF WILLIE PEARSON, JR., GEORGIA INSTITUTE OF TECHNOLOGY

PEARSON: Now I will briefly discuss the objectives of the higher education panel. First, we wanted to have a comprehensive examination of the challenge of increasing both the quantity and quality of university graduates from under-represented groups in science, engineering and technology. Our second goal was to identify and critically analyze exemplars whose design principles merit adaptation and replication across the country. The third was to further develop policy recommendations discussed in "The Quiet Crisis" paper. Because higher education provides a strategic bridge between pre K–12 and the workplace, the panel has focused on measurable outcomes reinforced by the earlier discussions. As you can see, at each segment beyond the high school level the science and engineering talent gets smaller and smaller for the whole population in particular but especially for African Americans, Hispanics, and Native Americans * * *

TESTIMONY OF MARYE ANNE FOX, CHANCELLOR, NORTH CAROLINA STATE UNIVERSITY

FOX: You know it's been over 50 years in which there's been an explicit compact between the research universities and the government of the United States that research universities would provide leadership in developing a workforce that is appropriate for the economic growth of this nation. That is research universities have pledge to create knowledge, to provide innovative leaders for developing the frontiers of science, for leading economic recovery and for providing a workforce that can sustain and create jobs and wealth for the United States. But over those 50 years, we've not had full participation as we've heard in the earlier discussions. If we go to K–12 to look at the roots for this difference in participation level, we're well aware of the digital divide which is a challenge. But to think of the digital divide as something that is related only to computer availability minimizes the real problem * * *

TESTIMONY OF RICHARD TAPIA, PROFESSOR, RICE UNIVERSITY

TAPIA: Thank you. My topic is university program leadership, producing women and under-represented minorities in science and engineering programs at research universities. I'll start with point one, everything i.e. success or failure depends on leadership, strong, forceful, respected, effective leadership. The second point, administration from top to bottom must support the activity. This is absolutely necessary to promote buy-in at the faculty level. If the administration doesn't support, then the faculty has a way out, extremely important to have the administration support but they don't do the activity, they support it. Success in promoting underrepresented minorities and women in science, engineering and mathematics, requires a champion. The champion must be a respected member of the faculty. The champion will serve as an advocate. We can't continue to have a two-tier or fragment our system. Minority-serving institutions do good jobs. Ph.D. producing at minority-serving institutions will not produce the scientific leaders of the community or the professional organizations. The outreach activity is not rewarded at research universities. Often this activity will jeopardize the university career of a young faculty member * * *

TESTIMONY OF CINDA-SUE DAVIS, DIRECTOR, WOMEN IN SCIENCE AND ENGINEERING, UNIVERSITY OF MICHIGAN

DAVIS: Good morning. The University of Michigan Women in Science and Engineering Residence Program, called the WISE–RP, is a living-learning community for 120 first year women and 33 sophomore or junior level women interested in science, mathematics, and engineering. The primary purpose of the WISE–RP is to provide academic and personal support to undergraduate women, including historically underrepresented minority women, by providing an academically and socially supportive community. WISE–RP provides contiguous living arrangements in a mid-size coed residence hall of 500 students * * *

TESTIMONY OF EARNESTINE BAKER, MEYERHOFF SCHOLARSHIP PROGRAM, UNIVERSITY OF MARYLAND, BALTIMORE CAMPUS

BAKER: The Meyerhoff Scholarship Program is designed to address the particular needs of African American students in science, mathematics, and engineering. Key components of the Program include: an indepth screening process that seeks students genuinely committed to a postgraduate research-based degree and career; a comprehensive four-year scholarship package; a mandatory academic Summer Bridge program for incoming freshmen; study groups; community living and regular "Meyerhoff Family" Meetings; personalized advising and counseling; tutoring summer research internships with companies, federal agencies, and other research universities; mentoring; faculty involvement; administrative involvement; family involvement; community service; and extensive program evaluation. Eighty-eight percent of participants are pursuing post-graduate degrees primarily doctorates in science, mathematics, and engineering or medical/ doctorate degrees, at institutions ranging from Harvard, Stanford, Berkeley, Yale, Duke, Johns Hopkins and Oxford * * *

TESTIMONY OF DAN ARVIZU, SENIOR VICE PRESIDENT, CH2M HILL

ARVIZU: It is established we have a serious problem. The questions before us are, what can be done about it? and, who should do it? Our Panel's work addresses these questions from the perspective of the workplace. Let me start by stating the two core objectives of the Panel. Number one, we are to identify and distill the success factors and best practices that create a more inclusive workplace spanning the private sector, including industry and academe, as well as, government. This distillation will form the foundational asset base that can be accessed by BEST's proposed test-bed community programs as they get underway. Number two, we are to develop an action agenda that moves the country forward toward the adoption of these best practices. Although the work of the panel is not yet complete, I can report on some of our initial findings on success factors and provide some of our early thinking as we move into the recommendations phase of our work. First, and perhaps most important, is what we will call "transformational" leadership. Leaders who believe in and value diversity as a business imperative invest time and effort to change the future of their organizations. They drive this change deep into the culture and management of the organization and do not simple espouse it only in the top layer of management. Second, a commitment to skills development that translates diversity into enhanced performance is also an important success factor. Third, the development of enabling programs and policies to encourage and support a diverse workplace is extremely important * * *

TESTIMONY OF PAULA RAYMAN, PROFESSOR, UNIVERSITY OF MASSACHUSETTS

RAYMAN: To build upon the rationale for diversity presented by my honored colleagues Dan Arvizu, and Dr. Shirley Jackson I will address the crisis we are facing in our nation's science and technology workplaces. We face a work world in the midst of an enormous change. Nothing is the same as it was 50 years ago or even 20 years ago. And more dramatic changes are anticipated over the coming decades. We face a crisis on three dimensions: Where will the new science jobs be? Who will fill the jobs? How the work will get done or, what is the changing nature of work? It is important to note that while we compete for science and technology workers within the context of a global economy, the diversity of our own nation's labor force provides a comparative advantage. Diversity is a key building block of economic competitiveness and scientific discovery and innovation. In addition to the change in skill sets, and demographics, the nature of work itself is undergoing significant transformation brought about by the changing business climate and technological advances. These changes include: companies organized so labor is a variable, not a fixed cost; a workforce built on the premise of teams that can be easily assembled and disassembled; a nimble workforce whereby workers hopscotch from job to job, even career to career, carrying their set of skills and abilities on their backs and desperately needing new policies in portability in health insurance, pension plans and other benefits * * *

TESTIMONY OF CLAIBOURNE SMITH, PRESIDENT, DELAWARE FOUNDATION FOR SCIENCE AND MATH EDUCATION

SMITH: I believe business/industry/government and the great educational institutions of this country must take the lead in defining the strategies necessary to maintain our leadership position in the world. From the intense discussions of our workforce panel, we are entertaining a two-pronged agenda to: Drive change within organizations and to drive change externally among industry, academe, and government as employers to promote a diverse workforce. Let's look at an example that comes to mind which illustrates an approach utilized by my former colleagues at duPont. We established a set of principles that are still effective in increasing our company's diversity internally. These principles are: (1) Leadership must come from the top echelons of the organization. Managers must "walk the talk." An institution must have highly visible, fully involved, visionary leaders in order to make valuing diversity efforts a success. (2) Accountability for personal and organizational behavior must exist. A system must be in place to motivate behavior change and that means diversity performance must be linked to compensation and advancement. (3) Valuing diversity must be perceived as a critical part to the success of the organization i.e., a business imperative. (4) Education around this issue must not only raise awareness, but more importantly, develop skills needed to work in and manage a multicultural organization. (5) Finally, effective mentoring programs for women and underrepresented minorities must be developed and implemented * * *

TESTIMONY OF SHIRLEY MALCOM, HEAD, EDUCATION DIRECTORATE AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE

MALCOM: When President Bush and the nation's governors met in Charlottesville in 1989, they established ambitious national education goals. These goals were affirmed and expanded upon by the Congress of the United States. The goals included that we would raise achievement levels in all academic fields and, even more ambitiously, that we would be first in the world in mathematics and science achievement by the year 2000. When in 1995, the results were announced from the Third International Mathematics and Science Study (TLMSS), there was good news and bad news about science and mathematics achievement of U.S. students when compared with the performance of students from other countries in the world. The results of TIMSS showed U.S. fourth grade students comparing quite favorably in their performance on tests of science, both scoring far above average and among the top tier of countries. Performance by fourth graders in mathematics was about at the average compared with other countries involved in TIMSS. When fourth grade students were tested in eighth grade in 1999, performance had fallen to the average levels in science and slipped in mathematics as well. The performance of 12th graders in science and mathematics was near the bottom. This underperformance by U.S. students was true even for our brightest and best performing students, such as those taking advanced placement courses in physics. The current structures provide neither equal chances nor a level playing field, and it is these circumstances that we must remedy if we are to maximally utilize the talents of all of our young people. These must include: Vigorous support for systemic reform efforts to improve the quality of the curriculum, teaching and support within our schools, with assurance that opportunities for study of science and mathematics will be extended to all students; specific interventions that allow students to explore STEM fields, such as through summer camps, research apprenticeships, after school science clubs, museum activities and media-reinforced learning opportunities; outreach to parents and communities to help them organize activities at home and in the community to support science, technology, engineering, and mathematics aspirations, to build demand for school reform, and to increase community-based opportunities for learning beyond school * * *

TESTIMONY OF EUGENE GARCIA, PROFESSOR, ARIZONA STATE UNIVERSITY

GARCIA: Clearly, in this endeavor, we know the pathway to science and technology of the future begins in the Pre K–12 sector, if not earlier. So our efforts at BEST are to look very carefully at the beginning pathway or the beginning steps into science, technology and mathematics. Our students depend heavily on the public school system and other alternatives to move forward to those futures that we believe should be available to all children in this country. BEST has a particular way in which we are striving to open the doors to the world of science, technology and mathematics for all children. First, the membership of BEST feels that we need to understand what is now working for students in this arena—particularly with our target populations in mind. BEST is attending to the strict notion that we need to understand empirically "what works". We need to have good research-based information, solid evidence, and clear knowledge about which program make a difference for whom, how they make a difference, and what are the actual results. The reason we are so attached to this notion of having solid evidence for what works is that if anyone needs to move forward and invest resources, whether they be in the public or in the private sector, we must be able to inform them as to whether their investments will pay off. It is only fair to those individuals who implement programs or systemic efforts to change systems in response to this need, to assure them that all children will be served by their interventions and/or changes. Thus, we need the absolute superior evidence. Therefore, BEST, in lending the text to the context that Shirley has presented, needs to understand in this area of urgency, what BEST programs, and what BEST systemic changes really do work * * *

TESTIMONY OF ALLAN ALSON, SUPERINTENDENT, EVANSTON TOWNSHIP HIGH SCHOOL

ALSON: I am in my eleventh year as superintendent of Evanston Township High School in Evanston, Illinois. This large comprehensive high school with a national reputation for excellence has 3200 students and is quite diverse—racially, socioeconomically and linguistically. Student achievement, despite impressive gains, continues to reveal racial and class achievement disparities. Yet, we have made significant strides, for example, in boosting female and minority enrollment in Calculus and Advanced Placement Science courses. A little over three years ago I founded an organization known as the Minority Student Achievement Network. We are 15 urban-suburban districts devoted to discovering, developing and implementing strategies to eliminate the racial achievement gap. Our strategies include conferences where we learn directly from students and teachers, and research where teachers are directly engaged in studies with university professors. My professional experience has revealed the extensive gap in education between research and practice. Quite frankly, it is the rare exception when districts or schools are able to successfully bridge that gap. Practitioners generally receive very little training in the interpretation or use of research findings. In fact, research methodology that meets the highest standards of reliability and validity are quite often written in language that is unfamiliar to the teacher or administrator. Our worlds usually do not overlap sufficiently for us to make timely use of significant findings. Simply put, while it would be far preferable to examine our practice from the vantage of current research, the barriers of time, language and politics often interfere * * *

TESTIMONY OF ANNE PETERSEN, SENIOR VICE PRESIDENT, KELLOG FOUNDATION

PETERSEN: Thank you for this opportunity to speak with you on a topic about which I am most passionate—not only because I am a scientist but also because I have seen individuals, families and communities transformed by opportunity that for some, has been unavailable. The opportunity to gain an education and pursue a career in engineering or the sciences is still precious in our society. Today, more than ever, we must support the interests in science and technology for all with talent and energy, and especially those who have been underrepresented. I'm here today as a scientist who is senior vice president for programs of the W.K Kellogg Foundation. In this role I've witnessed the kind of creative and energetic work that can open doors of opportunity for all—girls and boys, African Americans, Hispanics, and Native Americans, and those who are physically challenged. Engagement—real engagement—in which institutions of higher education and communities form lasting relationships that influence, shape, and promote success in both spheres is rare. More often we see evidence of unilateral outreach from colleges and universities rather than partnerships based on true mutual benefit mutual respect, and mutual accountability * * *

TESTIMONY OF DEBORAH WINCE-SMITH, PRESIDENT, COUNCIL ON COMPETITIVENESS

WINCE-SMITH: In 1986 the United States was facing one of its most dire economic challenges since the end of World War II: the country slid from being the world's largest creditor to its largest debtor; its position as a global leader in technology and innovation was declining and American industries were losing market share to international competitors. We know that long-term U.S. productivity growth and a subsequent rising standard of living depends on our ability to increase U.S. innovative capacity. This top tier policy issue was the focus of two national innovation summits hosted by Council that convened the nation's top business, government, academic and labor leaders. A key impediment to increasing innovation is our workforce, which comes as no surprise to anyone in this room. Yet, even as demand for science and engineering talent grows, the number of science and technology degrees at the undergraduate and graduate degrees has remained flat or declined in every field outside the life sciences. Boosting the national talent pool in science and engineering requires that the S&E workforce mirror the population at large; we must be able to engage more women and minorities in math and science to sustain our innovation economy. The Council has acted on its commitment to raise the standard of living by initiating programs that encourage excellence in math and science and diversity in the science and technology pipelines—namely getsmarter.org and BEST * * *

PAT SCOTT RECEIVES MISSOURI COMMUNITY BETTERMENT PROGRAM LEADERSHIP AWARD

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SKELTON. Mr. Speaker, it has come to my attention that Lexington, MO, native Pat Scott received an Adult Leadership award at the Missouri Community Betterment (MCB) Conference awards banquet September 28, 2002. Adult Leadership awards are presented to 10 outstanding leaders committed to community improvement.

Since 1964, Missourians who have dedicated their lives to community improvement have received acclaim through the MCB Program. This initiative, which is meant to spur economic growth and improve quality of life, has worked to empower communities with strengths that often go unnoticed.

Pat Scott, through her tireless community efforts, continues to make her friends, family and state very proud. I am certain that my colleagues will join me in wishing Pat all the best.

HONORING CONGRESSMAN BOB CLEMENT

HON. JOHN S. TANNER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. TANNER. Mr. Speaker, I would like to take this opportunity to honor our colleague, an outstanding statesman and my friend, Congressman BOB CLEMENT. I have known BOB for more than 30 years, having gone to school with him at the University of Tennessee.

He served his country with distinction in the United States Army and the Tennessee Air National Guard. He previously held positions as president of Cumberland University and TVA board director before being elected to represent Tennesseans as a member of the United States Congress.

BOB is a man of energy, intelligence and vision. I am certain that as he prepares to leave the House of Representatives, BOB will continue to serve his state and nation in a constructive capacity.

THE LEGACY OF MARLA BENNETT

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. FILNER. Mr. Speaker, in a region that has been racked with violence and acts of terror, the vicious bombing that took place on July 31, 2002 at Hebrew University stands out as a particularly heinous crime. This is a university that prides itself on its diversity, especially its ability to integrate students and faculty regardless of their ethnic or religious background. It is the oldest university in Israel and has established itself as one of the outstanding universities in the world, one that has gained renown for the quality of its students, teachers and researchers.

I feel compelled to comment on this attack for many reasons, not the least of which is that it hit my community, my Congressional district and my friends so personally. The bomb that was detonated in Hebrew University's Frank Sinatra International Student Center cafeteria killed nine young people, including five Americans. Over eighty were injured.

Marla Bennett, of San Diego, California, was one of the Americans killed in this senseless assault. Marla was only 24 when her life was taken. She had graduated in 2000 at the top of her class with a B.A. in Political Science from the University of California at Berkeley. At the time of her death, she was studying for her M.A. in Jewish Education at Hebrew University's Rothberg International School's Division of Graduate Studies. She was also jointly enrolled at the Pardes Institute for Jewish Studies. Her ambition was to be a teacher.

Marla was not new to Israel, nor even to the Hebrew University. She spent her junior year in college attending the Rothberg International School's One Year Program.

She had lived in Israel for a year, during which time she sent home frequent letters brimming with idealism, especially in her ardent belief in Israeli-Palestinian peace. Last

May, she wrote that "At least if I am here I can take an active role in attempting to put back together all that has broken. I can volunteer in the homes of Israelis affected by terrorism, I can put food in collection baskets for Palestinian families."

Bennett, whose exams were over, had a flight back to San Diego that was scheduled to leave only hours after the time of the attack.

Marla Bennett symbolized the goals and objectives of the university she grew to love. She symbolized the striving for academic excellence as well as the search for cooperation and peace that has typified this university since it opened its doors in the mid-1920's.

The University's President, Menachem Magidor, summarized this when he wrote in a letter to the New York Times that this was "an attack on understanding, tolerance and the quest for peace. [It] is a crime not only against Israel or the Jewish people, it is a crime against the free and enlightened world."

In the wake of this tragedy, President Magidor asked "whether it still makes sense to strive for a peaceful society based on reason and understanding." He concluded that "the answer came to me clearly, and it is summarized by the Hebrew word 'davka'—'despite everything.' We must not let them kill our drive of peace."

In this spirit, it is important to stress that Hebrew University is continuing its fine academic traditions. Its researchers and scientists are continuing their cutting edge work on projects that are designed to benefit all peoples. It is not surprising that Hebrew University's scientists apply for and receive so many grants from American government agencies including USAID, NIST, NIH and DARPA. Many of these projects are done in cooperation with American universities and research centers.

Other Members of Congress have complimented the high quality of research done at Hebrew University and I join in their commendations.

Rather than go through a long litany of all of these projects, especially those that have an Israeli, Palestinian and American component, it might be useful to mention just one as typical of the ethos of this special university.

The Kuvin Center for the Study of Infectious and Tropical Diseases functions within the University's Medical School, which is a world class institution established over 75 years ago. The Kuvin Center has been a leader in infectious disease and parasitological research for over 30 years. Its researchers and physicians have published extensively in the professional literature and it has trained many active scientists in the field.

For a number of years, the Kuvin Center has collaborated with Al-Quds University Medical School on a variety of scientific and medical projects. Al-Quds, the pre-eminent university in the West Bank, is located in Abudies, which is near Jerusalem and close to Palestinian hospitals, clinics and laboratories.

The two institutions are now proposing a joint project for "Regional Cooperation on Infectious Diseases" that will cover the study and control of diarrheal and respiratory diseases, brucellosis, tuberculosis, viral hepatitis, HIV infections and zoonotic diseases such as leishmaniasis, and rabies. Preventing and treating these diseases are of enormous importance to the welfare of the region as a whole.

The Congress fully recognizes and supports these types of cooperative Israeli-Palestinian health initiatives.

The Foreign Operations bill for Fiscal Year 2003, which has passed through the Appropriations Committee, includes language on the Kuvin Center/Al Quds cooperation. I am pleased that the Committee included the following paragraph in the report accompanying this bill:

> The Committee acknowledges that one of the primary objectives of the West Bank and Gaza program is to create viable infrastructure in Palestinian Authority-controlled areas to ensure the health and welfare of the Palestinian people. Al Quds University, in cooperation with the Kuvin Center for Infectious Diseases of the Hebrew University of Jerusalem, has proposed the establishment of a regional health and disease program, which would work to build an effective infrastructure to deal with serious health and disease problems among the Palestinian people. The Committee understands that cooperative programs of this nature are rare in the current environment, and urges AID to work, though the West Bank and Gaza program, to help Al Quds and the Kuvin Center begin this initiative.

This project is designed to enable the United States to provide $15 million over five years to this cooperative effort to deal with infectious diseases.

This program does not require any additional appropriations. The proposed expenditure of these funds is an indication of Congressional intent on just how American money that has already been allocated can best be used in a productive capacity for Israel, the West Bank and Gaza. Thus, the Kuvin Center-Hebrew University/Al Quds University cooperative effort will serve as a model of how the United States, Israel and the Palestinians can work together on projects that will benefit the entire region.

While Marla Bennett and the four other Americans who were killed, together with four Israelis, cannot ever come back to life, it is important to preserve their memory by continuing with projects such as this one. It is the very least we can do for them, for their ideals and for their dreams. Even more important, it will serve as a step toward a better future for the entire region.

RABBI SILVER'S 2002 VETERANS DAY ADDRESS

HON. JAMES H. MALONEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. MALONEY. Mr. Speaker, on behalf of Rabbi Eric A. Silver, it is my honor to share the text of his 2002 Veterans Day address with the Members of the House. Rabbi Silver is a retired naval officer who earned the Bronze Star Medal and Purple Heart Medal for wounds he received in combat. Rabbi Silver is a man most deserving of our praise and respect. His address reads as follows:

I am a veteran. This means that I wore the uniform of my country, and I served, together with millions of American men and women, defending America in various ways for the past two hundred and twenty-six years. I am proud to be a veteran, proud to stand before you this morning, at this solemn moment, which commemorates the moment the guns went silent in 1918, for what many earnestly hoped would be the last time. Alas, that dream was not to be.

But this day speaks about more than that—it speaks about every man and woman who served, and this morning I would like to speak to you about a man who is, in my judgment, the quintessential veteran—a man who embodies every ideal, every virtue of, and citizenship that every veteran aspires to emulate.

Nearly two hundred and three years ago, George Washington died, and in his eulogy, his friend Henry Lee dedicated his words: "To the memory of the Man, first in war, first in peace, and first in the hearts of his countrymen." It wasn't merely that Washington had become the first president of the United States, or that he was the victorious commanding general of the Revolution. Of course, by the time he was chosen to be President, the mythology which had grown up around this man was so large that it was difficult to separate between the man and the legend, but it was, in truth, his qualities as a veteran that set the pace for every American Armed Services who would wear the uniform—in his own time—and for all time to come. He set the pace for the kind of military we would have, and for the way it would function within the American system. And it is Washington, the veteran that I should like to speak about, because every one of us strove to emulate him.

Washington was not a philosopher—at least not in the sense that he was well-read in the classical works. In fact to some this made him somewhat less than he might have been in their eyes had he been able to quote from the works of the great thinkers. He was, however, a practical philosopher. He had an uncanny knack for learning on the job, and by his actions, establishing a paradigm that others might follow.

He was brave, to be sure. He was beyond brave. As a young officer serving with General Braddock, it was noted that Washington's uniform had several bullet holes in it. But he understood that his men would never face fire if he were unwilling to do so. That spirit would guide his actions throughout the long and dark days of the Revolution, when Washington was faced with troops who were frightened, who melted away at the first sign of the enemy, and it was his courage, his cool, calm demeanor that inspired his troops, and rallied them.

It was no accident that he was picked to lead the army of this nascent Republic. He was, after all, a veteran, someone who had already established himself by years of military service. But there were others who were considered for the post. John Hancock felt that he should have gotten the job, for he would have led his troops directly against the British and taught them a good lesson. And his army would quickly have been obliterated, and the Revolution would have died in its infancy. Charles Lee was highly regarded, and thought by many to have the qualities needed, but he was sometimes too cautious, and might have been willing to accept setbacks as defeats. But neither man had the one quality which Washington had which made him the best choice for an American commander, and this was Washington's understanding of the military's role in respect to the civilian authority, for this would determine the kind of America that would exist after the Revolution.

America has never had a military takeover. More to the point, America has never faced the threat of a military takeover. The various political factions which have guided this nation's destiny for two and a quarter centuries never once relied upon the strength of our military to place or keep them in power. If we had any indoctrination at all, it was this: that in America, every one of us who wore the uniform understood that we served under the authority of the civilian arm. We didn't always agree with them, we sometimes laughed at them, and we were sometimes angry with them, but it never once crossed our minds that we should use the power at our disposal to change things within this nation and make them right.

The inspiration for this ideal was General George Washington who, at various times, had to remind his senior officers that he—and they—were always under the control of the Continental Congress. When we tell stories today about how the military clashes with Congress, but how Congress always has the upper hand, we need to keep in mind that it was Washington who established that paradigm. He could have done something quite different. In fact, when it was all over, and it was realized that he was the general who had defeated the world's mightiest military force, there were more than mild suggestions that he should assume the royal purple himself. After all, historically this is what all conquering generals had done. The idea of a republic that would govern such a large stretch of territory was unheard of in history. The pattern was monarchy. Everyone understood this clearly, and who better to be the sovereign than the man who had so richly earned it. And we would go from one King George to another.

And so it seemed strange to many that, once the peace treaty was signed and America's independence assured, Washington made plain his intention to leave public life and become Citizen Washington. It was quite a shock to many. In fact, King George, when he learned of this said: "If he really intends to do this, then he is certainly the greatest man alive." And he was. Just a few years later, when Napoleon was defeated, he was asked why he had not—at the peak of his powers—having assured the safety of France, retired then to a well-earned and comfortable private life filled with honor, rather than assuming the crown for himself. He commented: "Everyone expected me to be Washington, and what they didn't understand is only Washington was Washington."

Well, he was wrong about that, because every one of us who has worn the uniform of America has a bit of Washington in us. That was drummed into us from the outset—career military or not, we are all citizen warriors. We wear the uniform, we do our job, and then when that job is done, we become once more the citizen. The dream of military conquest of our own nation has never occurred to any one of us. And so it is that those who have the weapons are the strongest protectors of the American way of life, rather than its most threatening force.

And today, America is at war once again. We need to understand that this time we face a threat to our existence more powerful than any we have encountered to date. This will truly be the Second War of American Independence, for upon the success of this endeavor will depend the survival not only of our nation, but of western civilization itself. It will be a long war, it will be a conflict that will be bitterly fought—not only on battlefields that will become increasingly more difficult to define, but in the halls of deliberative bodies around the world by those whose love of freedom and whose grasp of the reality of the situation is not yet equal to the task. And this war will produce veterans—men and women who will serve their country and who will bring us the victory that this nation and civilization demands—and who, once victory is assured, will—in the time honored tradition set forth by our first leader, return to private life as citizens.

And today, America honors its veterans, not always understanding what it is that they have accomplished, and not always comprehending how they think. But we know, and that is enough for us. So today—Veterans! Stand proud! For you have served, and today your country honors you. And for those of you who are not veterans, know what it is that these men and women have done. And give them honor, for they have earned it—not merely for their bravery, but for their willingness—indeed their eagerness that once having had power, they wanted only to return to their lives in their offices, their farms, their shops—for they are the quintessential veterans. They are Americans.

Mr. Speaker, on behalf of the 5th District of Connecticut and the United States House of Representatives, I commend Rabbi Eric A. Silver for his honorable years of military service, and thank him for his remarks this Veteran's Day.

SELECTIVE SERVICE VOLUNTEERS

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to congratulate Mr. Dean E. Schick of Cheyenne Wells, Colorado; Mr. Leslie M. Rittgers of Eads, Colorado; and Mr. C.P. Bryant, Jr. of Las Animas, Colorado on their appointments to the Selective Service Local Board 025 in Pueblo, Colorado.

Local board members have the distinction of receiving an appointment by the Director of Selective Service in the name of President George W. Bush, and on the recommendation of Governor Bill Owens. Patriotic Americans, these board members serve their country by volunteering their time to assist the government in selecting men suitable for military service in the event of a draft. If a draft commences, these gentlemen would decide who would receive deferments, postponements, or exemption from military service based on the individual registrant's circumstances and beliefs.

The Selective Service System is America's defense manpower "insurance policy" in a still dangerous and uncertain world. The service performed by a Selective Service Board Member provides a vital link between the community and today's military. His hard work helps guarantee claims filed by young men for deferments and exemptions will receive fair and equitable consideration if a future crisis requires reinstatement of a draft.

Congratulations to these dedicated volunteers on their appointments. I ask the House to join me in thanking these three men for their commitment to their country.

HONORING ASHLAND POLICE CHIEF FREDERIC PLEASANTS, JR. FOR HIS ROLE IN THE SNIPER ATTACKS

HON. ERIC CANTOR

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. CANTOR. Mr. Speaker, I rise today to honor Ashland Police Chief Frederic Pleasants, Jr. for his role during the sniper attacks that shook Virginia, Maryland, and the District of Columbia.

After the Ashland, Virginia shooting of October 19th, Chief Pleasants was on the scene in a matter of minutes and helped lead the quick and efficient response that ensued. It is known that Chief Pleasants can always be found hard at work behind the scenes, a characteristic that will certainly benefit the prosecution during the trial of the suspects. In fact, throughout the ordeal, Chief Pleasants and his dedicated staff logged 16-plus-hour days.

Chief Pleasants is an exceptional law enforcement officer who has served the Commonwealth of Virginia with distinction for over 32 years. His humility, professionalism, commitment to his team and community are truly deserving of special recognition. We are fortunate that he serves in our community.

Mr. Speaker, please join me in honoring Chief Pleasants.

SEPTEMBER 11, 2001

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mrs. MORELLA. Mr. Speaker, a year ago, on September 11th, 2001, Americans were faced with the horrible reality of that day's heinous attacks.

As we gather here today, in the building that served as our Nation's first Capitol and witnessed the inauguration of our first president, our blessed Nation stands firm and it stands strong.

Over the past year, Americans have shown those who wished to tear our country apart that their cowardly actions only brought our nation closer together. Here in the place where our democracy was born, we say to the world that these states of America remain united. We are united by our values, our communities, and our freedoms. Just as we will never forget what makes this nation great, we will never forget the hardships we have endured. We will always remember September 11th.

Even though America has had a year to mourn our losses, we still weep for the victims of that day. We continue to offer our prayers, our comfort, and our resolve to those who lost loved ones on that day.

Without question, the attacks of September 11th were a strike against all nations that value freedom and democracy. It was an act of war, but we were not to be intimidated. As a Congress, we remain steadfast with our nation in the fight against terrorism. American history has always been defined by the resiliency of our people and I stand here today to repeat our solemn pledge to defend freedom and liberty and show that we will remain resilient no matter the threat. The freedoms and values our forefathers gathered in this hall to protect are simply too sacrosanct to ever be compromised.

REGARDING THE RETIREMENT OF GEORGE O. WITHERS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SKELTON. Mr. Speaker, this is the time of year that we say farewell to some old friends. That's never easy. But it is even harder when the friend in question spent considerable time and energy helping make us all look good.

George Withers, who is leaving the Armed Services Committee staff at the end of this year, came to Capitol Hill in 1978. He had served his country in the Navy during Vietnam. But he has spent twenty-four years proving that national service doesn't end when you take off the uniform. As legislative director on a personal staff, then press secretary and a professional staff member of the committee, George has made America better every day.

A lot of young go-getters come to work on the Hill, Mr. Speaker. But George proved that you don't have to be obnoxious to get things done. His real sense of decency and values have provided a reference and example for not only the Armed Services Committee staff, but all of us who worked with him.

George has been the conscience of the committee staff. He is a devoted advocate for those Americans who most need and deserve Congress's protection. Discussions of national security can get pretty esoteric, but George makes sure that we keep our focus on people, both those in uniform and those our military exists to protect, As a former enlisted man and NCO, he never lets the former officers on the staff forget who the real troops are.

Mr. Speaker, while our staff works in a nonpartisan way, George is a determined, thoroughgoing, old-school Democrat. But look at the pictures on his office walls. Yes, he has photos of himself with our former colleagues Ron Dellums and Silvio Conte. But there's John Kasich, too, and President Bush. All of which speaks to the fairness and openmindedness with which George approached his job. He lets his political beliefs inform his work, but never get in the way of doing what was right for the country.

To my way of thinking, George has only one flaw. The B-2 bomber is the pride of Whiteman Air Force Base, in my district. George led the fight at the staff level against the B-2, and succeeded for quite some time. In gratitude for George's exemplary service, I promise not to have one named for him.

In recent years, George's primary duties have concerned the military construction budget. Every member of this body whose district has received military construction funds—and that's most of us—has George Withers to thank.

But he was also our committee's driving force on policies concerning Latin America. Whether the question was the naval bombing on Vieques or the United States' role in Colombia, George fought for a sensible, humble foreign policy.

George's decency doesn't stop at the Capitol door, either. When he isn't here—during the few hours each year we let the staff out—George actively supports charities. He loves riding his bike, and he loves it even more when he's getting contributions for every mile he rides.

While he will tell you that he loves his work here, just ask him about his children, Sam and Lizzie. You'll see what love really means by the sparkle in his eyes. And we were all thrilled when George married Donna earlier this year. His departure from our little world means that he will have even more opportunities to love and care for them, and even his cat, Tom. But I warn you, George, cats don't always love you back.

I will miss George Withers cheerful counsel personally. The Congress will be poorer for his departure. But the real accolade is that people around the world who will never know his name have better lives today because George Withers was part of this House.

I yield back the balance of my time, noting that the House should be honored that George O. Withers yielded so much of his time to us.

AMENDING TITLE VI OF PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. UDALL of New Mexico. Mr. Speaker, today, I introduce legislation that amends title VI of the Public Utility Regulatory Policies Act of 1978 to establish Federal renewable energy portfolio standard for certain retail electric utilities.

As we in Congress have attempted to develop a national energy policy, some say that a long-term sustainable energy plan is impossible. They say that renewable energy and energy efficiency are pipe dreams, and they say the U.S. will never be able to break its reliance on traditional energy sources like oil and coal. I disagree.

Now, in the post-September 11th world, the renewed conflict in the Middle East shows us that we cannot continue to rely on imported oil from that region. When my father, Stewart Udall, was Secretary of the Interior, the U.S. imported 20% of its oil. My father argued that we shouldn't import more than 20% of our oil on national security grounds. Today, we import 53% of our oil, 47% of which comes from OPEC countries; by 2020, the United States will import 62% of its oil.

Even more frightening, world production is expected to peak some time in the next few decades, possibly as early as 2007. That means that as energy demand increases more and more rapidly, the world's oil supply will be proportionally diminished.

While energy production has brought tremendous prosperity and allowed us to grow our economy at unprecedented rates, nonrenewable forms of energy are responsible for many of the greatest environmental threats to America's well-being.

Consider this, less than 2% of this nation's electricity is generated by non-traditional sources of power such as wind, solar, and geothermal energy. During the period from 1973–1991, smart investments were made to develop new technologies that made our energy use more efficient without affecting economic output. These investments curbed the projected growth rates of energy use in the United States by 18% from what they would have been without the investments.

Unfortunately, the U.S. spends only one-half of 1% of its energy bill on research and development. Sixty percent of that money is wasted on the country's failed experiment in nuclear energy. Less than one-third of the nation's tiny research and development budget is spent on renewable energy and energy efficiency technologies.

Mr. Speaker, I am particularly interested in Renewable Portfolio Standards (RPS), which I believe paves the road for the development and investment in clean energy technologies and local economic development. RPS, in my mind, clearly serves as model for tomorrow's small and medium businesses to draw a profit from their own environmental responsibility.

In the Senate version of H.R. 4 there is a provision, which proposes that retail electricity suppliers (except for municipal and cooperative utilities) be required to obtain a minimum percentage of their power production from a portfolio of new renewable energy resources. The minimum energy target or "standard" would start at 1% in 2005, rise at a rate of about 1.2% every two years, and peak at 10% in 2019.

I applaud the Senate for including an RPS provision in the Energy bill, which the House failed to include in our energy package. However, I believe that we are capable of going further than the 10% peak in 2020 and believe we should set the standard higher to around 20%. As I mentioned earlier, less than 2% of this nation's electricity is generated by non-traditional sources of power such as wind, solar, geothermal, etc.

My legislation would add an additional 10% on top of the 10% set to peak in 2020, and would achieve this goal within 5 years. Consequently, 20% of retail electricity supplier's power production would be from a portfolio of new renewable energy sources in 2025.

Consider the following:

Wind farms in the Pacific Northwest are producing energy at a price of 3 cents per kilowatt-hour. This is less than the current price of power from natural gas. With a little encouragement, wind energy could become economically viable around the country, and this means a tremendous level of energy self-sufficiency for the U.S. Using wind as an energy source, twelve Midwest states alone could generate three times the total U.S. electricity consumption.

Solar power, one of the most well known forms of renewable energy, also has potential for the future. The cost of solar energy has dropped by 90% since the early 1970s, and scientists and industry groups predict the price will drop another 66% by 2020. Solar energy, if properly developed, could go a long way towards freeing the U.S. from its dependence on coal. Just 10,000 square miles of solar panels would supply all of the nation's electricity needs.

And just a few weeks ago, the Public Service Company of New Mexico and FPL Energy LLC, based in Florida, signed an agreement to build in my congressional district one of the nation's largest wind generation fields near Fort Sumner in eastern New Mexico. Harnessed by 136 twirling turbines, wind will be used to create electricity in the first large-scale renewable energy operation in the state.

Wind will make up less than 4 percent of the power generated by PNM, and this project has the hope of becoming the first of many wind farms in the state and an example of using and developing new technologies for renewable energy use.

A RPS makes good economic sense to help states diversify their energy market, increase their work force, and help revitalize communities who have little to no economic development.

Currently, the New Mexico Public Regulation Commission is working on passing a Renewable Portfolio Standard for New Mexico that would require electric utilities to generate 10% of their electricity from renewable energy sources by 2007.

Mr. Speaker, our dependence on coal, oil and other traditional energy sources is unsustainable. To protect our environment and our economy, we must turn off the dead end street that our energy non-policy has been leading us down, and start down a path of energy productivity and sustainable, environmentally sound production.

ROCKY MOUNTAIN HIGHLIGHTER

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to congratulate the students and staff members involved with Rocky Mountain High School's student newspaper, Highlighter, for winning the 2002 Colorado High School Press Association Newspaper Sweepstakes for the second consecutive year on October 3, 2002.

Under the guidance of Rocky Mountain Highlighter newspaper advisor and language arts teacher Stephen Wahlfeldt, these dedicated and resourceful students worked tirelessly through the school year to create an informative and professional newspaper. The Lobos ultimately achieved victory over 63 other participating schools in the Sweepstakes, and kept the title of "Colorado's best high school newspaper" in Fort Collins for at least another year, through six first-place and three second-place awards.

Crucial wins in the individual categories came from Erin Ortmeier for Critical review writing; Leigh Pogue, Baker Machado, and Ortmeier for Sports Feature story; Joy Bloser and Brett Burnett for Feature Photograph; Kristen Frank and Burnett for Sports Photograph; and Jenny Ackerson, Carolyn Whitten and Burnett for Front Page Layout. The Rocky Mountain Highlighter also proved its superiority in the esteemed General Excellence category. Additionally, Jack Meiter, Kendall Miller and Burnett won second-place for Personal Opinion Column, as did Brent Barentine for Graphic Illustration. The entire staff collaborated to place second the Headlines category.

These journalists involved in Highlighter are commended for their achievements and praised for their pursuit of excellence. These young men and women are primary examples of the vast potential of future generations. Go Lobos!

HONORING HANOVER COUNTY SHERIFF V. STUART COOK FOR HIS LEADERSHIP DURING THE SNIPER ATTACKS

HON. ERIC CANTOR

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. CANTOR. Mr. Speaker, I rise today to honor Hanover County Sheriff V. Stuart Cook for his outstanding leadership during the sniper attacks that shook Virginia, Maryland, and the District of Columbia.

After the Ashland, Virginia shooting of October 19th, Sheriff Cook was instrumental in leading a quick and efficient response. In addition, he and his team performed a thorough investigation after the shooting that certainly aided in the capture of the suspects on October 24th and will prove vital to the incrimination of the suspects during trial. Furthermore, Sheriff Cook served as a strong voice of reason to many in the area who were terrified and anxious because of the attacks.

Sheriff Cook is an outstanding law enforcement officer who has served Hanover County, Richmond, and the Commonwealth of Virginia with distinction for over 37 years. His professionalism, commitment to his team, and dedication to duty are truly deserving of special recognition. He is a highly dedicated man who has faithfully contributed to his community and the Commonwealth of Virginia. We are fortunate that he serves in our community.

Mr. Speaker, please join me in honoring Sheriff Cook.

CONCURRENT RECEIPT: TOO LITTLE, TOO LATE

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. FILNER. Mr. Speaker and colleagues, I rise today to protest the "compromise" provision included in the Defense Authorization Act regarding the issue known as concurrent receipt.

As we all know, current law requires an offset between military retired pay and VA disability compensation. In effect, our disabled military retirees are paying for their own disability!

Both the House and the Senate, in their versions of the Defense Authorization Act, passed significant and appropriate provisions to address this inequity. The Senate bill provided concurrent receipt for all veterans who were qualified to receive both military retired pay and VA disability compensation. The House bill provided it for those veterans with a disability rating of 60 percent or more.

Now, we come to the so-called "compromise" before us. A compromise, to me, means that you meet somewhere in the middle. This compromise does no such thing. It would set up an alternative "special pay" for only military retirees who have combat-related disabilities. These are military retirees with 20 years of service who also:

1. Have a Purple Heart and a disability rating of 10 percent or more for the condition for which they received the Purple Heart, or

2. Have another "qualifying combat-related disability" rated at least 60 percent.

I have heard that this "compromise" is being sold as a good first step. It is not a good first step. It is hardly a step at all.

During my ten years in Congress, I cannot recall more than one or two other issues besides concurrent receipt on which I have received so many letters, e-mails, and calls. The expectations of our military retirees have been raised by the House and Senate versions of this bill. It is a disservice to give so little to so few at the last minute. While these veterans with combat-related disabilities are absolutely deserving of recognition, so are the others whom we have been fighting for!

I understand that it is expensive to pass concurrent receipt. But disabled veterans did not hesitate when called to serve. They returned home with disabilities they have had to live with ever since. How can we even doubt the need to keep our promises and give them what they deserve? They earned their military retired pay. They deserve their VA disability compensation. The "compromise" that is before us today is a disgrace.

KUNTU REPERTORY THEATRE

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. COYNE. Mr. Speaker, I rise today to call the House's attention to an important cultural resource in Pittsburgh, Pennsylvania.

The Kuntu Repertory Theatre of the University of Pittsburgh's Department of Africana Studies has been presenting the works of African, African-American, and Caribbean playwrights and poets since 1974. The Theatre was founded that year by Vernell A. Lillie to showcase the works of Rob Penny, the school's playwright in residence, as well as those of other authors whose works explore the Black experience. It plays an important role in Pittsburgh by providing an important voice in the region's cultural mix. In addition, the Kuntu Repertory Theatre is the only ongoing African American theater group in Pittsburgh; consequently, it provides African American actors, writers and technicians with opportunities that might not be available elsewhere.

Over the last 28 years, the KRT has produced more than 80 plays under the direction of Dr. Lillie, who has been a faculty member in the University of Pittsburgh's Department of Africana Studies since 1972. This year marks both Dr. Lillie's 70th birthday and her 30th anniversary at the University of Pittsburgh.

Mr. Speaker, on behalf of the people of Pennsylvania's 14th Congressional District, I want to commend Professor Lillie and the members of the Kuntu Repertory Theatre for their important cultural contributions and congratulate them as they begin their 28th season of high-quality, thought-provoking plays.

RECOGNIZING THE CONTRIBUTIONS AND ACHIEVEMENTS OF VINCE O'BRIEN

HON. JOHN S. TANNER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. TANNER. Mr. Speaker, I rise today to honor a World War II veteran, a successful businessman and family man, a true civic leader and my friend, Mr. Vincent O'Brien of Dyersburg, Tennessee.

Vince's life has always been marked by a desire to change the world he lives in for the better. That dedication is still proven by his continued work for the city of Dyersburg.

He has served for 30 years as a member of the Dyersburg Planning Commission and has chaired the commission for 20 years. During that time, the city of Dyersburg has experienced tremendous growth, including the development of many new businesses and a shopping mall that have become vital to the economy of West Tennessee.

Vince served in the Army Air Corps during World War II and received the distinguished Flying Cross.

A few months after the war, Vince married Virginia Marr of Dyersburg, and they eventually moved to Dyersburg and established Marr Cleaners, which operated successfully for more than half a century. Virginia passed away 10 years ago. Vince still enjoys spending time with their daughters and their families, eight grandchildren and six great-grandchildren.

Now, at 86 years old, Vince shows no signs of slowing down. While still continuing his work for Dyersburg, he splits his time between Dyersburg and Caruthersville, Missouri, home to his wife Dorothy.

Vince O'Brien is an example for us all. He has always lived a life of compassion, involvement and service. His accomplished leadership has been vital to our community, and I am proud to call Vince O'Brien my friend.

TRIBUTE IN HONOR OF OHIO SENATOR RICHARD H. FINAN

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. PORTMAN. Mr. Speaker, I rise today in recognition of Senator Dick Finan, a dear friend and leader in my home state of Ohio. Because of term limits, Dick will be completing his final term in the Ohio Senate this year.

Dick is a Cincinnati native. He graduated from the University of Dayton with a B.S. in Business Administration in 1954, and he earned his law degree from the University of Cincinnati College of Law in 1959. From 1954 to 1956, Dick served our country in the U.S. Army. Last year, he was appointed as Ohio's Civilian Aide to the Secretary of the Army.

Dick has been an outstanding public servant to the Cincinnati community and the people of Ohio. He was first elected as a Councilman of the Village of Evendale in 1963, and went on to serve as Mayor of Evendale from 1969 to 1973. He served in the Ohio House of Representatives from 1973 to 1978, and, since 1978, has served in the Ohio Senate. For the past 6 years Dick has been President of the Senate.

During his 29 years in the Ohio General Assembly, Dick has been an outstanding leader. He has been involved with some very difficult issues that have faced Ohio, which include workers compensation, school funding, and crafting legislation to rescue Ohio's state-chartered savings and loan institutions. He also is primarily responsible for the renovation of Ohio's historic Statehouse, which restored the Capitol to its 1861 magnificence.

Throughout his service, Dick has always stood firm on his principles, and he's earned the respect of Ohioans everywhere. His retirement from the Ohio Senate is a great loss to our state and the Cincinnati area, but I know he will continue to serve our local community, the State of Ohio and our country. I look forward to continuing to work with him.

Although he will greatly miss his public service in the Ohio Senate, Dick is looking forward to having more time with his family. He and his wife, Joan, have been married for over 40 years and have 4 children and 10 grandchildren.

Mr. Speaker, I hope my colleagues will join me in recognizing Dick's outstanding service. All of us in Southwestern Ohio are grateful for his many contributions to our community, and we wish him the very best as he steps down from the Ohio Senate.

HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. TOM UDALL

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 13, 2002

Mr. UDALL of New Mexico. Mr. Speaker, for the past year, Congress has debated legislation to establish a Department of Homeland Security. This has been an extremely important debate considering that any legislation we pass in this regard will result in the largest federal government reorganization since World War II. Yet, despite this fact, we are not only on the verge of passing flawed legislation, but in what seems to have become the norm for any vitally important legislation before us in the House, we are on the verge of passing it with little opportunity for deliberation, and no opportunity to amend it.

Several of my colleagues have come to the floor to highlight provisions that have been inserted into this legislation at the last minute. I share many of their concerns. It is unfortunate that we are not allowed an opportunity to offer amendments to a piece of legislation with such far-reaching implications for government reorganization, and more importantly, for the safety of our country.

In addition to the process, however, I have several concerns regarding the substance of the legislation. While I firmly support the President in the war against terror, I strongly believe that it must be achieved by striking a proper balance between cracking down on terrorists while simultaneously preserving many of the liberties and freedoms that we enjoy as citizens of the United States.

In securing our borders and preserving our way of life, it is imperative that we protect civil liberties, oppose efforts to gratuitously protect irresponsible corporations including those that incorporate offshore to avoid paying their fair share of the war on terrorism and those who knowingly make faulty products, and ensure that the new department will have the best possible workforce, while maintaining civil service protections. The majority has also slipped into this bill a provision to protect the pharmaceutical industry, The majority also has extended the deadline for our airports to have their security standards at the highest levels.

In these and many other areas, H.R. 5005 falls short. As a result, I will reluctantly vote against this bill. I still believe we can and must create an effective Department of Homeland Security that simultaneously protects us at home, protects workers, and protects our basic freedoms and civil liberties.

CONFERENCE REPORT ON H.R. 4546, BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

HON. JAMES H. MALONEY

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. MALONEY of Connecticut. Mr. Speaker, I rise in support of H.R. 4546, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, which contains an important provision I offered for the expansion of Civil Support Teams nationwide.

Civil Support Teams are National Guard units designed to provide support to civil authorities in response to Weapons of Mass Destruction (WMD) threats or attacks. The teams are expertly trained to provide a variety of services including coordination of rescue and recovery efforts, securing communications, and providing medical supplies. The teams are outfitted with the proper protective equipment for entering a contaminated site. These highly-skilled units, made up of 22 full-time National Guard members, are a critical part of the Department of Defense's (DODs) mix of local, state and federal resources for the Homeland Security plan.

Yet, currently a number of states, including Connecticut, do not have a Civil Support Team. At present, there are only two teams assigned to the entire Tri-State/Southern New England area. Those two teams are located in

Natick, Massachusetts and Scotia, New York, which leaves Connecticut, Rhode Island, and New Jersey without teams.

The National Defense Authorization for FY 2003 rectifies this by authorizing 23 additional teams, one for each state and territory in the United States. This initiative has been a concern of mine since well before the tragic events of September 11, 2001. On January 10, 2000, I sent a letter to the Honorable Louis Caldera, Secretary of the Army, urging that a team be deployed in Connecticut. I followed up that letter with a series of actions in support of expanding Civil Support Teams nationwide. I worked with the Connecticut Air/Army National Guard, the National Guard Bureau and the National Guard Association of the United States to address this issue of homeland security. On October 4, 2001, I sent a letter to the Honorable Donald Rumsfeld, Secretary of the Department of Defense, to ask his support for establishing additional Weapons of Mass Destruction Civil Support Teams.

The language in the bill before us is derived from legislation I introduced (H.R. 3154) on October 17, 2001, which attracted 49 cosponsors. On November 14, 2001, in response to these efforts Ellen Embry, Deputy Assistant Secretary of Defense for Military Assistance to Civilian Authorities briefed a small number of fellow Democratic Committee members of the House Armed Services Committee. At that meeting I reiterated my view that there should be at least one WMD–CST in every state and U.S. territory. On February 6, 2002, I again raised this issue with Secretary Rumsfeld when he testified before the House Armed Services Committee.

During the House Armed Services Committee's consideration of the FY 2003 Defense Authorization measure (H.R. 4546), my colleague, Congressman TAYLOR of Mississippi, and I successfully offered the amendment, based on my legislation (H.R. 3154), to include the provision for the additional Civil Support Teams.

Currently there are thirty-two Civil Support Teams across the country, authorized by Congress over the last three years. While 32 teams was a good start, it doesn't go far enough. H.R. 4546 will increase (from 32 to 55) the total number of Weapons of Mass Destruction Civil Support Teams (CSTs)—including a team for Connecticut.

My legislation (H.R. 3154) requires the Department of Defense to establish at least one team per state and territory. Federal emergency resources need to be properly and fully integrated with state and local emergency response operations. To do that, we need a team in each state. Establishing a team in every state ensures a quick response to a Weapons of Mass Destruction attack, and allows the Civil Support Teams to run practice scenarios with local and state authorities that would be involved in the event of a real attack. This will ensure high-quality coordination among all those involved.

A Connecticut-based Civil Support Team is vital to residents of Connecticut and the Northeast Corridor. The terrorist attacks of September 11th in New York City made this point clear, and necessitate addressing this regional national security concern as soon as possible. The Civil Support Team in New York helped assess the initial terrorist incident at the World Trade Center, and undertook chemical, biological and radiological sampling at Ground Zero. The team also provided a full range of communications support as well as air monitoring services. The attack in New York was a critical test for this Civil Support Team, and it proved to provide significant assistance to local and state authorities. Connecticut deserves to be equally well protected and prepared. I am delighted that my legislation to advance that goal has been incorporated in the National Defense Authorization for Fiscal Year 2003.

Mr. Speaker, for these reasons, and for the other strong national defense provisions authorized within, I strongly urge the House to vote in support of H.R. 4546, the Bob Stump National Defense Authorization for Fiscal Year 2003.

THE HONORABLE DAN NOBLE

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to memorialize the Honorable Dan Noble of Norwood, Colorado, who passed away on November 12, 2002. Dan Noble was an exceptional man who spent his life serving his community and his nation.

Dan was an Army veteran and served as a staff sergeant in a motor battalion in Korea from 1950 to 1952. When he returned from the military he married his wife, Donna, and attended the University of Colorado School of Banking from 1960 to 1962. He became the President and the Director of the San Miguel Basin State Bank in Norwood.

In 1970, Dan was appointed to fill a one-year vacancy in the Colorado State Senate. He continued to faithfully serve his constituents for a total of 17 years. He served seven of these years as the Majority Leader. Senator Noble was respected by all of his peers and his commitment to the people of Colorado is a great example for all who serve in the Colorado General Assembly.

Dan died of cancer at the age of 73, leaving behind his five children: Douglas Noble, Danette Christiansen, Darin Noble, DruAnn Nemecek, and Darcy Crotteau.

Dan Noble was truly a great man. It is with sadness that I inform the House of the loss of such an exceptional American. I ask the House to join me in extending its sincere sympathy to the family and friends of Mr. Noble.

TRIBUTE TO GENERAL JOHN N. ABRAMS

HON. IKE SKELTON

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SKELTON. Mr. Speaker, it has come to my attention that a long and exceptionally distinguished career has come to an end. General John N. Abrams' 36 years of service to the nation has been marked by meritorious service in increasingly demanding command and staff positions, culminating as Commanding General, United States Army Training and Doctrine Command (TRADOC), Fort Monroe, Virginia. Throughout, General Abrams demonstrated strong and inspiring leadership, unsurpassed executive ability, and an untiring dedication to the spirit and mission of the United States Army.

General Abrams was commissioned through Officer Candidate School at Fort Knox, Kentucky, on February 3, 1967, after enlisting in the United States Army on February 17, 1966. He is a graduate of Bowling Green State University in Ohio with a Bachelor of Science in Business Administration and Shippensburg State University of Pennsylvania with a Masters of Science in Public Administration. He is also a 1986 graduate of the Army War College.

General Abrams has served in command and staff positions over the last thirty-five years. He is a combat veteran of Vietnam from August 1967 to July 1969 where he served as an armored cavalry platoon leader and armored cavalry troop commander with the 2d Squadron, 1st Cavalry, which deployed from the 2d Armored Division, Fort Hood, Texas. He commanded the 11th Armored Cavalry Regiment in Fulda, Germany, from 1988 to 1990; the 2d Infantry Division, Uijongbu, Korea, from 1993 to 1995; and V Corps, Heidelberg, Germany, from 1995 to 1997. Prior to assuming command of TRADOC, he was the TRADOC Deputy Commanding General from August 1997 to September 1998.

His service includes staff assignments as Chief of Staff of the 3rd Armored Division in Germany; Military Science Instructor at the United States Military Academy at West Point; Army Staff Officer in War Plans and Deputy Director of Operations Directorate in the Office of the Deputy Chief of Staff of Operations and Plans.

His awards and decorations include the Distinguished Service Medal, Silver Star with oak leaf cluster, Legion of Merit with two oak leaf clusters, Bronze Star with three oak leaf clusters and Valor device, and the Purple Heart. He has also received the Knight Commander's Cross of the Order of Merit of the Federal Republic of Germany.

Throughout his career, General Abrams has made significant contributions at every level assigned. In his final assignment, he brought to bear the accumulated experience and dedication of a career spent serving the nation and our soldiers. He has provided continuity for the Profession of Arms—integrity, loyalty, dedication, mentorship, vision, and the willingness to take and stand behind the risks associated with implementing change in the Army. General Abrams' distinguished performance of duty will have far-reaching impacts on the future of the Army. I am certain that my colleagues will join me in wishing General Abrams all the best.

H.R. 1070: THE GREAT LAKES LEGACY ACT

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. KIRK. Mr. Speaker, the magnitude of the Great Lakes water system is difficult to appreciate, even for those who live within the basin. As the world's largest body of fresh water, the Great Lakes are sensitive to the effects of a wide range of pollutants. The sources of pollution include runoff from farm chemicals, waste from cities, and discharges from industrial areas and waste disposal sites. The large surface area of the lakes makes them vulnerable to direct atmospheric pollutants of all kinds, such as mercury.

H.R. 1070 amends the Clean Water Act to authorize $50 million a year for fiscal years 2004 through 2008 for the Environmental Protection Agency (EPA) to carry out remediation projects in Areas of Concern (AOCs) surrounding the Great Lakes to monitor or evaluate contaminated sediment, remediate contaminated sediment, or prevent further or renewed contamination of sediment.

Contamination of the Great Lakes is an issue that directly affects my district. The city of Waukegan in my district was home to what many have called the worst PCB (polychlorinated biphenyls) contaminated site in the U.S. Waukegan lies fifty miles north of Chicago directly on the shore of Lake Michigan. Waukegan Harbor was designated in the 1980's an Area of Concern (AOC) by the International Joint Commission on the Great Lakes, the United States EPA and the Illinois EPA.

The contamination of Waukegan Harbor took place over a 13-year period from 1959 to 1973. The U.S. EPA approximated that during that time 300,000 pounds of PCBs were discharged directly into the water of Lake Michigan and an additional 700,000 were discharged on the property by the Outboard Marine Corporation. An average 9–10 pounds of PCBs were discharged into Lake Michigan daily.

The cleanup of Waukegan Harbor has been successful thus far removing approximately 500 tons of PCB contaminated sediment from Waukegan Harbor. However, more corrective action is necessary before the harbor can be de-listed as an AOC. Passage of H.R. 1070 will go a long way in continuing the movement to de-list Waukegan Harbor and clean the remaining Great Lake AOCs.

I applaud the Congress for taking this important step addressing contaminated sediments in the Great Lakes basin. The time has come to protect the Great Lakes from the other dangers, such as mercury pollution and invasive species. Earlier this session I introduced H.R. 5261, the Great Lakes Mercury Reduction Act, which will prohibit the issuance of new permits under the Clean Air Act that would result in the deposition of any additional mercury into the Great Lakes.

Congress must also adopt a comprehensive plan to stop the introduction of alien species into the region. H.R. 5396 and 5397 seek to reauthorize the National Aquatic Invasive Species Act to address existing loopholes in our laws and authorize much needed funding to upgrade the fight against aquatic invasive species, along with expanding the Aquatic Nuisance Species Dispersal Barrier on the Chicago Ship and Sanitary Canal.

Mr. Speaker, I would like to take a moment and thank Mr. EHLERS for his tireless work on H.R. 1070. His work on this legislation, and other Great Lakes issues, has been remarkable. I would also like to thank the groups involved in the Waukegan Harbor cleanup effort, including the U.S. EPA, the Illinois EPA, and the Waukegan Harbor Citizens Advisory Group. Hopefully, the passage of H.R. 1070 will enable our community to celebrate the delisting of Waukegan Harbor.

AFRO-AMERICAN MUSIC INSTITUTE

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. COYNE. Mr. Speaker, I rise today to call my colleagues' attention to a milestone that was recently observed in Pittsburgh, Pennsylvania. On September 21, the Afro-American Music Institute celebrated its 20th anniversary.

The Afro-American Music Institute was established in 1982 by ethnomusicologist Dr. James T. Johnson, Jr. and his wife Pamela Johnson. Dr. Johnson has been the director of the AAMI since its founding, and Mrs. Johnson serves as manager of this non-profit organization. They have worked tirelessly over the last 20 years to expand and improve the programs offered by the AAMI.

For the past 20 years, the AAMI has trained musicians of all ages and backgrounds in jazz, gospel, and blues for voice and instruments. Over that period of time, the Afro-American Music Institute has trained thousands of students. In addition to vocal and instrumental instruction, the AAMI curriculum includes such subjects as directing, improvisation, song writing and arrangement, and music theory, as well as the technical and managerial aspects of musical performance. The AAMI sponsors several musical ensembles, including a youth jazz group, a sacred music choir, a boys' choir, and a faculty ensemble.

The Institute was originally located in St. James AME Church in Pittsburgh's East Liberty neighborhood, but in 1992, it incorporated and moved to its current location at 7227 Tioga Street. The AAMI has plans to relocate to a new building on Hamilton Avenue early next year.

Mr. Speaker, on behalf of the people of Pennsylvania's 14th Congressional District, I want to commend Dr. and Mrs. Johnson and the faculty and students of the Afro-American Music Institute for their educational and cultural contributions to our community and wish them continued success in the future.

PERSONAL EXPLANATION

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mrs. MORELLA. Mr. Speaker, on rollcall No. 477, final passage of H.R. 5710, The Homeland Security Act of 2002, I was detained in traffic from an event honoring federal employees. Had I been present, I would have voted "yes."

IN HONOR OF REPRESENTATIVE CARRIE MEEK

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SHAW. Mr. Speaker, I rise on behalf of my dear colleague, CARRIE MEEK, whom I have had the privilege of working with from the great state of Florida.

A freshman from the class of 1992, CARRIE represents Florida's 17th district, encompassing large portions of my hometown, Miami.

In her very first term, we were all impressed by her ability to win a seat on the Appropriations Committee, the only freshman Democrat to do so. She has also served admirably on the Treasury Postal Service and VA/HUD Committees, consistently advocating on behalf of African Americans, fighting for job creation and business development through Federal programs.

Always fighting for the underdog, CARRIE has served with an iron fist in a velvet glove. Although we sit on opposite sides of the aisle, I have always respected her work and welcome the arrival of her son, Kendrick, to the Congress. My office and the entire Florida Delegation look forward to working with him. We are certain he will carry on CARRIE's fine family tradition of lawmaking.

Mr. Speaker, the residents of Florida's 17th Congressional District have been better served for CARRIE's service in Congress. This body exists so that the people of our country have a voice in their government. The votes Floridians cast to send her to Washington brought this House reasoned judgment, energetic lawmaking and strong conviction, Today we honor her service to her country and wish her well.

IN RECOGNITION OF THE SERVICE AND CONTRIBUTIONS OF THE HONORABLE CHARLES ROSSOTTI

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. PORTMAN. Mr. Speaker, I rise today to recognize the service to our country that has been performed by our outgoing Internal Revenue Service Commissioner, Charles Rossotti.

Commissioner Rossotti was one of the longest serving Commissioners in the history of the Internal Revenue Service and the first to have a five-year term as recommended in the landmark IRS Restructuring and Reform Act of 1988. During his tenure, Commissioner Rossotti provided the IRS with the leadership it needed as it went through the most dramatic change in its history. The structural and cultural reforms he implemented will have a positive impact on both the IRS and taxpayers for many years to come.

Under Commissioner Rossotti's leadership, the IRS was reorganized into four divisions, each of which is responsible for a specific segment of taxpayers. This model allows taxpayers to receive expert and personalized service and permits the IRS to more efficiently use its resources. Another significant accomplishment under Commissioner Rossotti's watch is the expanded ability to exchange data electronically. During the last tax season, nearly one in three Form 1040s was filed electronically, and the IRS Web site has become one of the most popular sites on the Internet. Charles has managed the implementation of many taxpayer rights contained in the IRS restructuring law, such as the innocent spouse and collection due process protections, and has strengthened the role of the National Taxpayer Advocate.

Commissioner Rossotti's accomplishments have set the IRS on the right track to providing top-quality service and fairness to all taxpayers. He is to be commended for his efforts to transform the IRS into a performance-based organization, and dispel the belief that customer service and enforcement are mutually exclusive. Perhaps the broadest indicator of Commissioner Rossotti's impact on the IRS has been the steady rise in the public perception of the IRS in the last four years.

Mr. Speaker, Charles accomplished all of this at a time in his life when he was ready to leave full-time employment and enjoy a slower paced life. He and his wife, Barbara, put their personal plans on hold for the past five years while he served our country nobly and well. He is a true citizen servant in the great tradition of the Roman hero Cincinnatus. Our country owes him a debt of gratitude for his outstanding public service. We wish Charles and Barbara the very best.

FAMILY FRIENDLY ATMOSPHERE IN CONGRESS

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROEMER. Mr. Speaker, I rise today to reflect on my last 12 years here in United States Congress. I have enjoyed this experience and consider it to be one of the most gratifying opportunities of my life. I am grateful for the people of the Third District of Indiana who allowed me to serve with such intelligent, honorable and talented people. It is my hope that we have made some strides in making the lives of Americans better and more prosperous for the future. As I leave this body, one of my regrets will be that this institution did not set more of a priority on scheduling, which is essential to a balanced, family and professional life. With a quote, I would like to point to the following example of our colleagues across the Atlantic who have set a family-friendly precedent as part of their agenda.

Winston Churchill once said, "There is no doubt that it is around the family and the home that all the greatest virtues, the most dominating virtues of human society, are created, strengthened and maintained."

According to an article in the New York Times, Members of the British Parliament recently reaffirmed their commitment to this principle. The House of Commons voted to end a centuries old tradition of late-night sessions, moving the start of business up to 11:30 a.m. from 2:30 p.m., and declaring that the latest a session can go is 7:30 p.m. This is three hours earlier than the usual closing time. This vote apparently came after a nine-hour debate that ended at midnight.

This schedule is all too familiar to us here in the United States Congress. We have had more than our fair share of late nights. Some of these nights have been essential, especially when we are considering measures on how to combat the war on terrorism or balance the budget. Oftentimes, these sessions are indeed vital. However, more often than not, there was no compelling reason to be in session so late.

Mr. Speaker, I applaud the hard work of my colleagues during this 107th Congress and past Congresses. I am, however, concerned about the impact of inefficient scheduling on our spouses and children. This ritual has become a norm in this governing. We have struggled through many late nights only to accomplish very little at times and only to disappoint our families when we cannot get on a plane to get home or make it back in time to tuck our children into bed.

As Co-chairs of the Members and Family Committee, my friend, the gentleman from Mississippi, Mr. PICKERING, and I have worked with the Committee to make it possible to mesh family time with Congressional business. We have hosted dinners and movie nights and brought in speakers to make this body a more family-friendly atmosphere. The events have been a success but they are a far cry from the goal of having a family-friendly atmosphere in "The People's House."

A broader level of this concern in this body should be the importance of having representatives in the people's house who have family interests in mind. It is imperative to this body for all interests of the American people to be represented, particularly the issues that affect the family. We cannot allow those interests to be forgotten as we continue to set an agenda for the American people.

Mr. Speaker, as I leave Congress in the coming weeks, I hope that this body will work to improve the schedule so that members can meet their priorities in life: our families. Thomas Jefferson once said, "The happiest moments of my life have been the few which I have passed at home in the bosom of my family."

IN CELEBRATION OF NATIONAL BIBLE WEEK

HON. BOB ETHERIDGE

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ETHERIDGE. Mr. Speaker, I am honored and pleased to serve as Congressional Co-Chair for National Bible Week, November 24–December 1, 2002. National Bible Week has been an annual observance in this country since 1941. When the nation turned to the Holy Bible for strength, comfort, and guidance. On September 11, 2001, when terrorists destroyed the World Trade Center Towers in New York and attacked the Pentagon, another "day of infamy" took place in our nation's history. President Bush immediately called Americans to prayer, saying, "Our purpose as a nation is firm, yet our wounds as a people are recent and unhealed and lead us to pray. . . . We ask almighty God to watch over our nation." I strongly believe that one contribution every American can make in these troubling times is to pray for our nation, its leaders, and its people.

National Bible Week is celebrated every year from Sunday to Sunday during the week of Thanksgiving. It is a time of prayer, a time to confirm our values and a time to strengthen national resolve. As we gather at our dinner tables in remembrance, let us be thankful to be living in a country where our Constitution guarantees freedom of worship. I commend the National Bible Association for its leadership in promoting this worthy endeavor.

HONORING DOUGLAS McCLURG

HON. JIM DAVIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. DAVIS of Florida. Mr. Speaker, I rise in honor of my good friend Douglas McClurg, who will be remembered in the Tampa Bay community as a prominent and highly esteemed bankruptcy attorney, a Vietnam War hero and a man who was deeply devoted to his faith, family and community.

Since 1992, Doug worked as a bankruptcy lawyer for Hill, Ward & Henderson, and he was the founding director and former president and chairman of the Tampa Bay Bankruptcy Bar Association. Doug handled several high profile bankruptcy cases in the Tampa Bay area and was highly respected by his colleagues for the quality of his work and character.

But what was most impressive about Doug was his ability to successfully balance a demanding career with his responsibilities to his family and his community. Doug was very active in the lives of his children and committed to helping young people. He sat on the executive board of the Gulf Ridge Council of the Boy Scouts and was chairman of the board for Young Life, a Christian outreach program for middle and high school students. Doug also served as a trustee for the Tampa Museum of Art, past president of the Tampa Club and trustee of the University of Florida Law Center Association.

As a member of the U.S. Special Forces, Doug served a combat tour during the Vietnam War and earned a Purple Heart, Bronze star, Combat Infantry Badge and Air Medal.

On behalf of the Tampa Bay community, I would like to extend my heartfelt sympathies to Doug's family. Doug led a very full life in too short of a period of time, and we will never forget him, his contributions to many and the example he set for all of us to aspire to reach.

CORRECTION ON H.R. 4689

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. FRANK. Mr. Speaker, I signed the "Dissenting Views" to the Committee Report on H.R. 4689, the "Fairness in Sentencing Act of 2002," which included these two inaccurate statements:

> If enacted, the bill would prevent individuals who perform low-level drug trafficking functions from qualifying for a mitigating role adjustment under the United States Sentencing Guidelines.

and

> The bill prevents low-level, first-offense drug offenders from receiving a mitigating role adjustment under the sentencing guidelines.

H.R. Rep. No. 107–769 at 307–08 (Oct. 31, 2002) ("Dissenting Views"). The Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, Rep. LAMAR SMITH, has brought to my attention that these two statements are inaccurate because the bill does not in fact do this. I acknowledge and regret the error.

CHINA'S BALLISTIC MISSILE THREAT

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHAFFER. Mr. Speaker, as we prepare to invade Iraq and ponder North Korea's secret nuclear weapons program, America must not overlook the greater threat posed by China and the transformation of the People's Liberation Army into a modern technological force capable of lightning attacks.

Similar to how Germany used blitzkrieg or lightning warfare in World War II to demoralize its opponents, the People's Liberation Army (PLA) is ready to unleash a new form of warfare using advances in accurate ballistic missiles, high-energy lasers, and information warfare.

This transformation of the PLA has more than the capture of Taiwan in view. In December 1999 China's Defense Minister, General Chi Haotian, declared war between China and the United States "is inevitable." He noted, "The issue is that the Chinese armed forces must control the initiative in this war."

To control the initiative, the PLA plans to mount a surprise attack, counting on the weight of its initial blow to stun an opponent into submission. Ballistic missile strikes, high energy lasers used against satellites, and information warfare provide the means by which the PLA can launch a surprise attack with little or no warning.

Do we need to remind ourselves of the congressionally funded U.S.-China Security Review Commission that declared in August 2002, "Despite overwhelming U.S. military and technological superiority, China can still defeat the United States by transforming its weakness into strength and exploiting U.S. vulnerabilities through asymmetric warfare . . . deception, surprise and preemptive strikes".

China's mild reaction to our plans to invade Iraq may indicate deception, laying the groundwork for a surprise attack. Even as we engage China in diplomacy to call a halt to North Korea's nuclear weapons program, we deceive ourselves as to the role China played in the proliferation of nuclear weapons and ballistic missile technology to North Korea, where Pakistan served as an intermediary by assisting North Korea in its nuclear weapons program in exchange for North Korean assistance with its ballistic missile program.

Even our efforts to seek China's assistance in the war on terrorism contain an element of self-deception. We overlook how China supported the Taliban, signing a memorandum of understanding with Taliban leadership on September 11, 2001. Do we note how PLA military doctrine described in Unrestricted Warfare extolled Osama bin Laden as a new type of warrior to emulate?

We deceive ourselves if we believe the PLA is not capable of mounting a powerful blow at our armed forces. Our satellites are vulnerable to laser attacks and information warfare—a fact carefully noted by Donald Rumsfeld before he became Secretary of Defense while serving as Chairman of the Space Commission. Our forces and military bases are vulnerable to ballistic missile strikes—we have no defense against ballistic missiles except for the short-range Patriot.

TAIWAN

A picture of our vulnerability may be seen in Taiwan. For example, a Taiwanese defense ministry report concluded a PLA attack using ballistic missiles and cruise missiles supplemented by long-range artillery and other weapons aimed at nearly one hundred key targets such as airports, harbors, important highways, bridges and military command centers, missile bases and barracks would be successful within a very short time. Several dozen ballistic missiles could destroy over half its navy concentrated at the naval base of Tsuoying.

In 2002 computerized war simulations in Taiwan's Han Kuang Number 18 military exercise showed it could lose much of its air force in the first wave of ballistic missile strikes. The launch of hundreds of ballistic missiles aimed at major air bases around Taiwan would damage 75 percent of its air force fighters on the ground.

Furthermore, China has obtained technical information on the improved Patriot-2, enabling it to devise tactics for overwhelming the two hundred Patriot missiles guarding Taipei and its environs.

TRANSFORMATION

Transformation is a result of new strategy and new weapons that can convey a sense of overwhelming defeat, enabling conventional military forces to conduct mopping-up operations against a demoralized enemy. In other words, while the bulk of PLA forces are not as technologically sophisticated as U.S. forces, if PLA laser and ballistic missile forces can create a sense of overwhelming defeat, the once vaunted technological superiority of U.S. forces would be swept aside.

Similar to Taiwan, China's intermediate and long-range ballistic missiles could be used in a preemptive strike against U.S. air and naval forces, particularly in the Pacific. Indeed, China's intermediate-range ballistic missiles were developed for attacking U.S. forces in the Pacific and Indian Oceans. The effect would be the same as an attack on Taiwan. U.S. air and naval strength would be devastated.

The PLA is aware of the vulnerability of U.S. forces to ballistic missiles. The inability of U.S. forces to defend themselves against ballistic missiles can create a condition for intense psychological defeat, a feeling of utter helplessness against a foe that can strike at will. This is called asymmetric warfare—attacking an opponent's weakness.

We will find our weapons, doctrine, and leadership outdated. For example, we have no weapons to counter a high-energy laser used to attack our DSP early warning satellites, which could otherwise warn of a PLA ballistic missile strike. Other key military satellites, upon which depends our Revolution in Military Affairs, are at risk.

Our generals do not practice for war against an opponent that uses accurate ballistic missiles in a preemptive strike. China has developed accurate ballistic missiles. Its short-range M–11, which uses GPS guidance, is accurate to about 5 meters. Its DF–21 (CSS–5) intermediate-range ballistic missile is equipped with terminal, precision guidance and possibly GPS. China has the option of using ballistic missiles armed with non-nuclear warheads in a precision, long-distance strike.

Our navy has no defense against a DF–31 ICBM that could be fired at a naval battle group shortly after leaving Pearl Harbor. The PLA large-scale exercise called Liberation 2 simulated landing on Taiwan and attacking U.S. aircraft carriers, including strikes by DF–31 nuclear-capable ICBMS.

Our nuclear missiles are no defense against a preemptive ballistic-missile strike. The threat of retaliation under the doctrine of Mutual Assured Destruction is empty. Even though we possess a larger number of ICBMS, we have no defense against the PLA holding American cities hostage using a small number of missiles.

Unlike the Cold War where Soviet ballistic missile forces were targeted at U.S. ballistic missile forces as well as other defense installations and military bases, China has targeted U.S. conventional forces and bases, trusting that a small arsenal of ICBMs pointed at American cities could deter a U.S. nuclear retaliation.

Not only are U.S. forces undefended from ballistic missile attack, the use of air power in retaliation or suppression would be slower in comparison to another ballistic missile strike.

Air power alone is not decisive in the age of missiles.

EVIDENCE

Evidence of the PLA's transformation may be seen in the double-digit increases to its announced defense spending for over a decade; its purchase of advanced Russian arms such as Sovremenny destroyers, Kilo submarines, S–300 air defense missiles, supersonic cruise missiles, Su–27 and Su–30 aircraft; and, its buildup of ballistic missiles and new doctrine.

Once an army of peasants, the PLA has become an army of the technologically equipped with advanced degrees in science and engineering. To foster its acquisition of new weapons, the PLA has shrunk in numbers from approximately 3.5 million to 2.5 million while defense spending has increased. It has the world's second largest defense budget, amplified by the relatively low wages it pays.

U.S. FORCE DISPOSITION

The concentration of U.S. forces in the Middle East and Persian Gulf is creating a condition for strategic attack and maneuver by the PLA. After a surprise attack using lasers, ballistic missiles, and information warfare directed at U.S. satellites and air and naval forces, a PLA force as small as 50,000 well equipped troops could create havoc. U.S. forces rely heavily on air power.

Following a surprise attack there would be little to stop the PLA from invading other countries, including Taiwan and the island nations of the Pacific. PLA invasion forces against these tiny Pacific nations would not need to be large. The fractured nature of Indonesia could lead the PLA to extend its initiative to larger nations, perhaps focusing on oil and gas reserves. Guam and Hawaii would be at risk.

While the Navy should be commended for basing three attack submarines on Guam, have we considered the defense of that island from the PLA, which has extended its grasp into the Spratly Islands and South China Sea?

Guam is a strategic position for reinforcing U.S. defense commitments to Taiwan, Japan, Philippines, Australia, New Zealand, and the other island nations of the Pacific. Its use against the PLA as a base for the projection of air and naval power would call for a concentration of military strength.

This concentration of military strength on Guam should include theater missile defenses that can intercept intermediate-range ballistic missiles. Unfortunately, we have no theater missile defenses to deploy, although THAAD achieved successful interceptions several years ago. Yet Guam's strategic value would call for reinforcement, even with land forces presumably armed with tanks and mobile artillery such as the cancelled Crusader. The use of artillery has been proven in hundreds of years of warfare and should not be neglected against a heavily armed opponent such as the PLA.

Hawaii, the crossroads of the Pacific, has been a key U.S. military base for nearly a century. Considering how China plans to engulf the Pacific in island chains that would extend to the Aleutians and Hawaiian Islands, Hawaii's defense and use as a base for projecting air and naval power should be considered essential. What steps have we taken to reinforce that key position, including the deployment of ballistic missile defenses capable of intercepting ICBMS?

Preparation is key to a strong defense. Just as the PLA has engaged in an extensive and far-reaching military buildup for nearly fifteen years, we need to prepare and reinforce our defenses, especially against the PLA's weapon of choice, the ballistic missile. Without preparation in advance, the transportation of reinforcements may suffer, as well as the construction of defenses.

The buildup of forces in the Persian Gulf should not blind us to the need for defensive preparations against the PLA. Such preparations may include a buildup of naval forces to counterbalance China's acquisition of Russian Kilo submarines, Sovremenny destroyers, and cruise missiles in addition to its buildup of ballistic missiles. Ballistic missile defenses would play a key role, especially space-based and naval defenses that can provide widespread, flexible coverage over the Pacific. Our preparations may include new weapons and defenses against to offset the PLA's acquisition of supersonic cruise missiles, Shkval rocket torpedoes, and wake homing torpedoes.

CENTRAL AMERICA

In preparing defenses to counter the PLA, the southern approach to the continental United States from Central America, Mexico, Cuba, or other Caribbean nations deserves our attention. To be of military significance, our planning should include the deployment of U.S. ground forces in the event of a PLA intrusion through our southern border or through ports such as Houston or Mobile.

However unlikely it may seem to be, the southern approach is vulnerable, especially given the extensive nature of Chinese shipping interests. Commercial shipping could be used for the transport of military forces in the form of a Trojan horse. The PLA has conducted military exercises using freighters armed with artillery, similar to the German Q-ships used in World War II. While a small PLA invasion force would hardly be expected to conquer the United States, neither should we overlook the disruption and consternation that even a small PLA invasion force could cause.

With its commercial influence at the ports of San Cristobal and Colon in Panama and friendship with the Marxist learning President of Venezuela, Hugo Chavez, China's reach could well include our southern approach. Yet an opportunity could arise to renew our relationship with Panama, including the stationing of military forces along the Panama Canal, as a number of Panamanians would like to see the Yankees return.

This planning would need to include a sentry line and reserves. These reserves would need to be stationed within the United States, not the Middle East or Persian Gulf Reserves are for reserves. It is unreasonable to use Reserves and National Guard units in place of the regular armed forces, whether in scattered peacekeeping missions or the buildup for Iraq.

SUMMARY

The PLA has developed similar attack capabilities to Germany's lightning warfare, using surprise as the key for a sudden and powerful launch. The tools the PLA will use in the spearhead of its attack—ballistic missiles, high-energy lasers, and information warfare—are tools against which the United States have virtually no defense. For these reasons I wish to note for the record that we are woefully unprepared for a more serious and eminent war. I cannot stress enough the issues relating to the PLA's war threat. We must come to recognize the significant role our current actions in the Middle East play into China's aggressive military intentions. To further illustrate my points, I will offer subsequent remarks detailing the present danger China poses elsewhere in the RECORD.

A STANDING OVATION FOR RICHARD AND ELIZABETH HAYMAN

HON. JAMES A. BARCIA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. BARCIA. Mr. Speaker, I rise today to honor two very special friends, Richard and Elizabeth Hayman of Oscoda, Michigan, as they celebrate forty-five years of marriage and a loving commitment to each other and their family, including my Communications Director, Rik Hayman, and his sister, Deborah Westa. It is not often that a family and a community have the good fortune of having two such outstanding individuals as Dick and Betty Hayman to count on to willingly and generously give their time and talents to the commonweal.

Dick and Betty met while he was serving our nation in the U.S. Coast Guard and she was working at her father's grocery store in South Portland, Maine. They married in 1957 and were later blessed with two children. Betty graduated from Gorham State Teacher's College and also holds a master's degree from Central Michigan University. Dick has a bachelor's degree from Emerson College in Boston and a master's degree from Central Michigan University.

For many years, Dick and Betty were teachers in the Oscoda Area Schools until they both retired to pursue other interests. Former colleagues and students will recall Betty for her compassion and her uncompromising demand for excellence to the best of one's ability. A strong disciplinarian who often was referred to as the "Mother Superior," Betty has a well-deserved reputation for wielding both a kind heart and firm hand. She also has had the wisdom to know when to apply the former and when to rely on the latter. Dick will always be remembered as the director who gave so many students their first and perhaps only experience in the theater. In fact, if Dick were to meet a former student today, he would be far more likely to recall the role they played than their name.

Theater enthusiasts in the Oscoda area have many fond memories of Dick and Betty in the roles they've played on stage and of the performances they've directed and produced as leaders of the Shoreline Players. Betty also has done exemplary work on the Oscoda Area Schools Board of Education, serving as its Vice President, while Dick used his retirement to write a novel. Of course, the Haymans never lost sight of their family responsibilities and they have provided untold joy to each of their grandchildren: Ryan; Christopher; Katie; Kassie; Kevin; Meaghan; Brenna; and, Bridget.

Finally, Mr. Speaker, I ask my colleagues to join me in expressing the gratitude of the United States Congress to Richard and Elizabeth Hayman for their work in educating our youth and for their strong commitment to the arts. I am confident the spotlight will continue to shine on their work for many years to come.

HONORING EVERETT H. SHAPIRO

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. WOOLSEY. Mr. Speaker, I rise today to honor Everett H. Shapiro of Santa Rosa, CA, on the occasion of a tribute to his role as Trustee Emeritus of Social Advocates for Youth (SAY). SAY has focused services on children and their families since 1971, and Mr. Shapiro has been a trustee for 13 years.

SAY operates 25 programs in Sonoma County that assist 10,000 families per year in becoming caring, productive, and responsible members of the community. Mr. Shapiro's life embodies a spirit of dedication to children that makes him a perfect match for SAY's mission. In addition to his support of children's causes, he is well-known to thousands of young locals as the man who has handed out an estimated 250,000 Tootsie Rolls to them over 50 years.

As a fan of Don Quixote, Snoopy, and the Marx brothers, Mr. Shapiro's focus has always been on doing good deeds with a sense of humor as strong as his sense of caring. To many who have received his phone calls, he will always be known as "God" or "Robert Redford."

Mr. Shapiro is proud of having lived his entire life in Santa Rosa, the son of Russian Jewish emigrants. He and his wife Phyllis raised their two sons, Tad and David, in the community. After graduating from UC Berkeley and serving two years in the army, he joined the family wool buying business. He learned to value the diverse agriculture of Sonoma County and appreciate the ranching life style, but when Tad began kindergarten, Mr. Shapiro began law school. He graduated in 1967 just before his fortieth birthday and began practicing business, probate, and personal injury law. He has served in numerous professional organizations such as California Trial Lawyers Association, Sonoma County Bar Association, and American Arbitration Association. Tad and David, are now lawyers as well.

Always devoted to Santa Rosa and the community at large, some of his other community activities have included The Boy Scouts of America, Sonoma County Junior Achievement, B'nai Brith, Special Olympics, Red Cross, Kid's Street Theatre, Santa Rosa Human Rights Commission, Canine Companions, Rotary Club, Gray Foundation, and the Schulz Museum. He has received numerous awards including the Spirit of Santa Rosa Award from the Santa Rosa Chamber of Commerce and is recognized as a Paul Harris Fellow by the Rotary Foundation.

Mr. Speaker, Everett Shapiro's record of caring and leadership embodies the term he often uses to describe the folks in his home town—he's a "quality human being" whose life shows us how much this means to the community of Santa Rosa and Sonoma County.

HONORING BOB CLEMENT

HON. WILLIAM O. LIPINSKI

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. LIPINSKI. Mr. Speaker, I rise today to honor my good friend and colleague BOB CLEMENT, who is leaving Congress this month after 15 years of serving the people of the Fifth Congressional District of Tennessee in the House of Representatives.

Mr. CLEMENT served with me on the Transportation and Infrastructure Committee, where he has consistently supported improvements in mass and public transit, fought for funding for Amtrak, and helped establish federal highway funding for bike paths and greenways as alternative forms of transportation. He initiated funding for the first ever mass transit hub in Tennessee, and worked to change an antiquated gasoline tax formula to provide increased transportation dollars for the state of Tennessee.

Mr. CLEMENT is a veteran of the U.S. Army and a retired colonel in the Tennessee Army National Guard. Throughout his career he has consistently fought for veterans' health care, military, and national defense issues. Additionally, he has served as the co-chair of the House Education Caucus, indicative of his commitment to education policy issues such as early childhood education, K–12 education, literacy programs, and financial aid for higher education.

Mr. CLEMENT's dedication and energy are well known to the people of Tennessee whom he has served for the past three decades. It was an honor and a privilege to have served with BOB for his fifteen years in the U.S. House of Representatives and I extend my best wishes and sincerest gratitude for our years of friendship and cooperation.

HONORING W. IRVING OSBORNE, JR.

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. KIRK. Mr. Speaker, I rise today to pay tribute to a gentleman who lived a life of tremendous achievement in the world of business but for whom the first priority was always family and friends. W. Irving Osborne, Jr. passed away on November 1st at his home in Lake Forest, Illinois at the age of 97. In an area where many captains of industry reside, Mr. Osborne was seen as an elder statesman of business.

After his graduation from Yale University in 1926, Mr. Osborne soon embarked on a career with his family's business, Cornell Paperboard Products. He rose to serve as president and CEO of the company which was acquired by St. Regis Paper in 1957. His leadership and business acumen drew the attention of his peers, and in 1961, Mr. Osborne was named president of the legendary Pullman Car Company, becoming chairman of the board in 1966.

He believed in a consistent approach to business and proven management techniques that could be applied to very diverse companies. His expertise earned Mr. Osborne appointment to an advisory board of the National War Production Board which worked to maximize industrial output during World War II. During the course of his career, Mr. Osborne served on the board of directors of numerous major corporations such as Baxter International, the pharmaceutical and medical device producer, Pabst Brewing, one of the legendary Wisconsin breweries, Boulevard Bank of Chicago, the First National Bank of Lake Forest, and Belden Corporation, an international manufacturer of electronic equipment.

Following his tremendously successful career, Mr. Osborne chose to retire in 1974. He was free to pursue his love of golf and was an avid bridge and gin rummy player. But his greatest joy by far was his role as patriarch of a large and loving family. Over the years he proudly saw his family grow, first with his three daughters, Gwendolyn Lincoln, Adrienne Ives and Karen McGovern, then eight grandchildren and, ultimately fourteen great-grandchildren. And while he reveled in hosting his family at this home at holidays well into his 90's, his family had the blessing of learning from his wisdom and wealth of experience.

For 53 years, Mr. Osborne shared his life with his wife, Elsa Armour Osborne who passed away in 1985.

Our community has lost one of its true leaders; a role model for future generations of business leaders, and a respected man active in civic affairs. Most importantly, a proud and loving family has lost its patriarch. I join with his many friends in expressing my condolences to the Osborne family upon the passing of this remarkable man.

HOUSE RESOLUTION FOR 2002 PROFESSORS OF THE YEAR

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROEMER. Mr. Speaker, I rise today to honor four distinguished people who deserve to be recognized and applauded for their unfailing contribution to higher learning.

These four outstanding professors are being honored by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education.

Mr. Speaker, one of these distinguished individuals hails from my home district in Indiana. Professor Dennis Jacobs has received the award for Outstanding Research and Doctoral University Professor of the Year.

As a professor of chemistry at the University of Notre Dame in South Bend, Indiana, he has won several teaching awards and the Presidential Award for dedicated service to the university. One prestigious award he received was from the Carnegie Foundation for the Advancement of Teaching. The foundation named him a Carnegie Scholar in 1999 largely for completely redesigning an important introductory chemistry class. The redesign led to greater student success and engagement of the students, and the course is considered a leading example of the trend toward peer-led curricula.

Professor Jacobs has also combined the fields of chemistry and service learning. He created a course in which students and community partners evaluate lead contamination in area homes. He is a fellow with the Center for Social Concerns where he focuses on other methods of integrating community service into the curriculum. One of his colleagues has described him as "the kind of teacher who never stops growing, thinking, and changing." When community service has become essential to America's fabric, it is encouraging to know there are still important contributors from such a prestigious university contributing to this effort.

Another outstanding educator to receive this award is Alicia Juarrero who is being awarded the Outstanding Community College Professor of the Year award. She has been a professor of philosophy since 1975 at Prince George's Community College in Largo, Maryland. She has created an honors colloquium called "Minds, Brains, and Machines" at the college. She teaches a philosophy module in the National Endowment for The Humanities that uses a college-level humanities course to bring the poor out of poverty and into their communities.

The third distinguished professor from my home state of Indiana is James Adams for Outstanding Baccalaureate College Professor of the Year. He has served Manchester College in North Manchester, Indiana for forty-two years. He has been an exchange professor to Germany and Spain, and was instrumental in creating study-abroad programs on his campus.

Finally, another renowned professor being honored is Francisco Jimenez for Outstanding Master's University and College Professor of the Year. He is the Faye Boyle Professor in the Department of Modem Languages and Literatures at Santa Clara University and is the director of the university's Ethnic Studies Program. He has taught at Santa Clara University since 1973 where he has garnered teaching awards as well as honors for publication and special service to the campus and community.

He has also created an outreach program with a local high school called the Eastside Future Teachers Project to encourage historically under-represented students to become teachers.

Mr. Speaker, I commend these four professors for their incredible contribution to the world's most important profession: teaching. They have set an example which all educators should be proud to follow.

TRIBUTE TO DEDICATED MEMBERS OF THE WEST BOYLSTON FIRE DEPARTMENT

HON. JAMES P. McGOVERN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. McGOVERN. Mr. Speaker, I rise today to pay tribute to Chief Ron Goodale, Deputy Chief Alvin Barakian, Deputy Chief Thomas J. Welsh, Chief Duncan Gillies, Firefighter, Paul Henault, and Chief Aaron Goodale, III from the town of West Boylston, Massachusetts who have retired after many years of dedicated service with the West Boylston Fire Department.

These men put their lives on the line every day to protect the citizens of West Boylston. Because of their efforts through the years, many lives and a great deal of property have been saved. Countless times these brave men have entered burning buildings or responded as Emergency Medical Technicians in order to save lives.

The town of West Boylston is very fortunate to have an outstanding fire department. As we all know—and as the tragedies of September 11th reminded us—the job of a firefighter is not an easy one. It takes a special person to perform the duties required of firefighters. That duty involves one risking one's life every day. Through the years, these men and their colleagues have performed admirably. Their community is grateful for their work, and so am I.

Mr. Speaker, it is a pleasure to recognize these outstanding men, and I know the entire U.S House of Representatives joins me in extending our best wishes to them and their families for a happy and healthy retirement.

PAYING TRIBUTE TO DEPARTING FLORIDA CONGRESSMEN

HON. ILEANA ROS-LEHTINEN

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. ROS-LEHTINEN Mr. Speaker, it is with a mixture of sadness and enthusiasm that I bid farewell to friends and colleagues, CARRIE MEEK, DAN MILLER, and KAREN THURMAN as they prepare to end their service in the United States Congress.

I am sad because I have worked with these extraordinary individuals in Congress since 1992 when they were first elected to the House, but I am also excited for them as they embark on a new journey.

I have had the distinct pleasure of not only serving with Congressmen MEEK and THURMAN here in the House, but also in the Florida legislature. DAN MILLER then made the Florida Congressional delegation even stronger when he joined the House in 1992.

I believe that throughout their tenure in the House these Members have dutifully served their districts, the state of Florida, and indeed the nation by working on the myriad of issues that have faced us during these last ten years. CARRIE MEEK and DAN MILLER were an important boost to Florida with their service on the Appropriations Committee and KAREN THURMAN made her mark by being the sixth woman to serve on the Ways and Means Committee.

I am certain their leadership will be missed by the constituents of Florida's 5th, 13th , and 17th Congressional districts. For myself, I can certainly say that their friendship and accomplishments in the House will be sorely missed and I know that they will continue to succeed in their chosen paths after their distinguished service in the House.

I am proud to have known and worked with Congressmen CARRIE MEEK, DAN MILLER, and KAREN THURMAN, and I ask my Congressional colleagues to join me in paying tribute and saying goodbye to these dear friends. Godspeed to them.

FIX FLAWED MEDICARE PHYSICIAN REIMBURSEMENT RATE

HON. TODD TIAHRT

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. TIAHRT. Mr. Speaker, I rise today to encourage my fellow Members of Congress to act to fix the flawed Medicare physician reimbursement rate that is developing into a crisis for our nation's physicians and seniors. Last January, Medicare's flawed formula dictated a 5.4 percent cut in already inadequate reimbursement rates for physicians. Unless we do something today, a second cut of 4.4 percent will go into effect on January 1st. Many physicians around the country have already been forced to refuse new Medicare patients or face bankruptcy. In my state of Kansas—a rural state already medically underserved—physicians have lost money, but of more concern is that one survey of physicians in Kansas showed that 24 percent of them were not taking new Medicare patients. It bothers me to think of how high that number will rise if we do not act.

This problem is due to bureaucratic miscalculations when creating the payment formula. The formula needs to be fixed. and we should grant CMS the ability to do so before the second cut goes into effect.

355 of us, on both sides of the aisle, cosponsored Rep. MICHAEL BILIRAKIS' bill to fix this problem. The White House supports fixing the formula. CMS Director Scully has stated that fixing the formula is a top priority. We have strong support and a ready solution to fix this problem.

This is no "Chicken Little" story. Without Congressional action, the sky will fall in, doctors will be unable to participate in Medicare and our seniors will be left without care. I urge you not to close the 107th session of Congress without addressing this critical issue.

CHINA WILL ATTACK AMERICA

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHAFFER. Mr. Speaker, I previously submitted remarks concerning America's defense against China, North Korea and Iraq.

Given the eminent military action against Iraq by the United States and its allies, along with our outlook on North Korea's nuclear missile capabilities, we must also recognize China's capabilities to attack the U.S. and its national interests.

As mentioned in my previous remarks, in December 1999 China's Defense Minister, General Chi Haotian, declared war "is inevitable" between China and the United States. He noted, "The issue is that the Chinese armed forces must control the initiative in this war." Outlined in my remarks were considerations for the United States in recognizing China's threat and our ability to control initiative during battle. Yet there are several other matters of equal importance that must be considered by U.S. leaders and officials influencing policy regarding China and its oppressive People's Liberation Army (PLA).

OIL BELT STORM

Planning for PLA aggression as well as planning for an invasion of Iraq must consider the flow and supply of oil. From China's perspective, the flow of oil from Indonesia, the Middle East, and potentially Russia must be assured to support its continued economic growth, which is needed to maintain the legitimacy of its communist government. Without oil, China's economic growth may be compromised.

In this regard, U.S. diplomacy with Sudan may be cast in a new light. We may seek to supplant Chinese oil interests. While other considerations need to be factored into our diplomacy such as its civil war, it may be asked if a more humane treatment of the inhabitants of the south could be given to respect private property rights if a U.S.-led initiative were established. It is noteworthy how the Sudanese government did proffer cooperation for the capture of Al Qaeda terrorists, but its offer was turned down by the Clinton administration.

We should ask ourselves about our ability to defend the supply of oil from the Middle East and Persian Gulf, and the development of new supplies of oil, perhaps from equatorial Africa to develop alternatives to the problematic Middle East. In this light, our relationships with African countries, and Latin American neighbors and Mexico may be given a new impetus. In fact, I just returned yesterday from the Republic of Cote d'Ivoire where I held meetings with President Laurent Gbagbo, his Prime Minister and Members of Parliament. The recent discovery of significant off-shore oil fields there have the potential to dramatically reshape the economic strength of the region.

The question of foreign oil supplies should affect our planning for naval strength, especially escort vessels that could protect oil tankers and convoys in time of war. This planning may embrace domestic policy on oil and gas production and exploration, and the development of alternative energy sources as well as the efficient use of coal.

BALLISTIC MISSILE DEFENSE

One of the lessons of the 1991 Persian Gulf War was the need for more effective ballistic missile defenses. The success of the improved Patriot-2 was incomplete. Its range was limited. It was a single-layer defense. It could not intercept Scuds during their boost phase.

More than a decade has passed since the Gulf War ended. Since that time we have begun to field a new version of the Patriot, the Patriot-3, for use against short-range ballistic missiles. But we have yet to deploy a defense against intermediate or long-range ballistic missiles, or a defense capable of intercepting ballistic missiles in their boost phase.

While, for example, on October 14, 2002 we completed the fifth successful interception test of a ground-based interceptor against an ICBM target and decoys, we have yet to deploy a defense that can intercept ICBMs.

Instead, we have canceled several effective ballistic missile defense programs since the 1991 Persian Gulf War. In 1993 the Clinton administration canceled Brilliant Pebbles, a program for building space-based interceptors that could intercept theater and long-range ballistic missiles. In 2001 the younger Bush administration canceled Navy Area Wide, which would provide coverage similar to Patriot-3 but based on Aegis ships. In 2002 we all but canceled the Space-Based Laser, ending its existence as an active program when it could provide a very effective boost-phase defense with global coverage in contrast to the limited coverage of the Air Borne Laser.

For over a decade we have cut effective ballistic missile defense programs, especially restricting space-based defenses. This regressive policy continues today. The proposed ground-based interceptor for a national missile defense, while absorbing billions of dollars, will afford only a modest capability. It will, for example, be less capable and more expensive than Brilliant Pebbles, and be susceptible to decoys and countermeasures directed at its ground-based radar and centralized command and control center.

The deployment of Patriot-3, a very modest accomplishment for ten years of development, does not compensate for the proliferation of ballistic missiles that has occurred since the 1991 Persian Gulf War. Since 1991 North Korea has built and tested the long-range Taepo Dong ballistic missile that can reach the United States. Iran has developed the intermediate-range Shahab-3, and is developing the Shahab-4 with even longer range. China has engaged in a ballistic missile buildup of all types with improved accuracy. The proliferation of ballistic missiles has extended to India and Pakistan, creating conditions for a nuclear exchange. With the exception of the draw down of the former Soviet arsenal, the ballistic missile threat has increased, and Russia's missiles are still capable of massive destruction.

NEW WEAPONS

As the PLA began its transformation in the late 1980's, recognizing the technological impetus of President Reagan's Strategic Defense Initiative and the importance of technology in the 1991 Persian Gulf War, we began a procurement holiday, living off our forces from the Gulf War.

We reduced the acquisition of new weapons. We cut, for example, the number of B–2 bombers from 132 to 22. In ballistic missile defense, we denigrated Brilliant Pebbles from approval for acquisition in 1991 to a follow-on technology, leading to its termination in 1993. In 1995 or earlier, when we could have engaged major aerospace contractors to build a Space-Based Laser defense, we funded it at a nominal amount, leaving it as a future technological option instead of recognizing how the future was in our hands.

Today, as the Bush administration considers cutting the acquisition of F–22 stealth fighters and F–35 Joint Strike Fighters, China's surface-to-air missile (SAM) technology is advancing based on Russian SAMS, which are reportedly capable of intercepting stealth aircraft, and pose a difficult defense for F–15 and F–16 fighters.

We have yet to develop hypersonic aerospace vehicles even though they have been proposed since the 1960's. No small part of our failure to build aerospace vehicles—military space planes—may be attributed to a reluctance to embrace the Space Age, including its applications for ballistic missile defense and long-range strike vehicles.

TECHNOLOGY

Research and development has lagged for years, especially in physics, engineering, and aerospace. Our development and application of high-energy laser technology has been hindered by a lack of willingness to use this technology, whether for ballistic-missile defense or anti-satellite operations, although the Air Borne Laser program would be an exception—the Air Force sponsored its development for tactical air superiority as well as missile defense.

Our use of lasers—directed energy weapons—could be quickened. For example, instead of consigning the high-energy gas-chemical Alpha laser used in the Space-Based Laser program to a museum or trash bin, as is perhaps contemplated by the Missile Defense Agency, we should build such a defense. We should use advanced technology, not throw it away.

The use of medium-power lasers in aircraft, equipping them with another countermeasure against SAMs or air-to-air missiles could be hastened. Realizing the potential of lasers to irradiate the heat-seeking element of a SAM or air-to-air missile, Russia is planning to equip jet fighters with laser pods. China's use of laser technology for anti-satellite or air-defense applications should not be discounted. In July, 2002, a Department of Defense report on the PLA noted how it excels in lasers.

Other technological developments could be highlighted, including our reluctance to build military space vehicles with rapid launch access. Both NASA and the Air Force declined to finish development of the X–33, leaving behind another half-finished reusable rocket program like the DC–X/Delta Clipper. An emphasis on space technology and reusable launch vehicles is needed to counter the PLA, which recognizes the importance of establishing superiority in space.

SUMMARY

In World War II, Germany defeated France using blitzkrieg warfare. The French Army was demoralized by its lightning attacks while the British escaped at Dunkirk. The PLA has developed a similar but modem capability for lightning attacks, planning to seize and retain the initiative. Surprise is key to its planning to launch a sudden, powerful blow.

The tools the PLA will use in the spearhead of its attack—ballistic missiles, high-energy lasers, and information warfare—are tools against which we have virtually no defense, with information warfare being a possible exception. A preemptive ballistic-missile strike, aimed at our air and naval forces would cause widespread devastation, as would the use of high-energy lasers against our satellites.

Should China launch an attack—and the only plausible situation where we would engage China—the resulting depth of warfare would be the same magnitude as found in World War II. Not a minor skirmish as in Special Forces deployed in Afghanistan, or a replay of the 1991 Persian Gulf War, war with China would involve an all-out commitment to victory and the re-allocation of federal resources to achieve that victory.

For these reasons I wish to note for the record that we are woefully unprepared for the more serious and eminent war. As detestable as Saddam Hussein is, Iraq lacks the tools for a long-distance, preemptive strike as are possessed by the PLA.

TRIBUTE TO STATE SENATOR RICHARD H. FINAN

HON. DAVID L. HOBSON

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. HOBSON. Mr. Speaker, I rise today to pay tribute to Ohio State Senate President Richard H. Finan, who is retiring after 30 years of distinguished service to the people of the State of Ohio.

Whether it was managing the state's $45 billion two-year budget or restoring the Statehouse to its original grandeur, Dick Finan has always seen the big picture and been guided by his unwavering principles and love of his home state and its people.

Dick Finan was a key figure in passing landmark ethics reforms and was a tremendous help to me on health care reforms I was sponsoring in the Committee on Health, Human Services and the Aging. Dick also will be long remembered for his tireless work in the restoration of the Ohio Statehouse and its annex, and in creating a unified organization to preserve and maintain all the facilities on Capitol Square.

The Statehouse restoration had been discussed for years, but for one reason or another, the plans were always shelved. When Dick was put in charge of the project, he did what needed to be done to save the building for future generations while being a good steward of taxpayer money. Dick made sure that the project was done in the interest of historical accuracy, and not to create a palace for the comfort of state legislators.

In Columbus, Dick Finan has been guided by faith and family and never chosen the trappings of office over the importance of being at home with his family. Dick is a true gentleman and leader, and I am proud to call him my friend.

As Ohio's Seventh District Representative to the Congress of the United States, I take this opportunity to join with members of the Ohio delegation to honor the efforts and the many outstanding achievements of State Senator Richard H. Finan. His many contributions as a member of the Ohio State Legislature and leadership will be remembered.

IN RECOGNITION OF RON PACKARD AS THE RECIPIENT OF THE FIRST ANNUAL GLORIA McCLELLAN PUBLIC SERVICE AWARD

HON. DARRELL E. ISSA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ISSA. Mr. Speaker, I rise to share some news about our former colleague Ron Packard. On October 30, President Bush signed into law H.R. 4794, which designated the United States Postal Service located at 1895 Avenida Del Oro in Oceanside, California, as the Ronald C. Packard Post Office Building. I believe that naming this post office in honor of Mr. Packard's service and leadership is a fitting tribute to a dedicated public servant.

The San Diego Association of Governments (SANDAG) has joined the President and Congress in recognizing Ron's career by awarding Mr. Packard the first annual Gloria McClellan Public Service Award. The award, which will be presented annually, honors the local elected leader that best exemplifies Gloria McClellan's commitment and dedication to service. As the Mayor of my hometown, I can personally attest to the contributions Gloria McClellan has made to the community and the San Diego region.

The San Diego Association of Governments serves as a forum for decisionmaking on transportation, land use, the economy, environment, and criminal justice. Earlier this year the SANDAG Board of Directors, composed of mayors, council members, and supervisors from each of the San Diego region's 19 local governments, established an award to honor the 29-year public service legacy of Vista Mayor Gloria McClellan.

With over 30 years of public service, Mr. Packard was the perfect candidate to receive the Gloria McClellan Public Service Award. Ron Packard has been active in local civic and business affairs and his leadership brought him to the forefront of regional issues. Ron Packard's legacy as a public servant is characterized by hard work, honesty, leadership and patriotism.

Representative Packard began his public service in the United States Navy, which he entered upon graduation from dental school in 1957. Ron was elected to his first public post in 1962 and held various local government positions until he was elected to Congress on November 2, 1982. During Ron's 18 years on Capitol Hill he always made it a priority to support local projects that were important to his constituents.

Mr. Speaker, I commend SANDAG for establishing this award to honor Mayor Gloria McClellan's public service. I also join SANDAG in congratulating my friend, Ron Packard, for his faithful public service to the people of California and on winning this prestigious award.

"YOU ARE A SUSPECT"

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. PAUL. Mr. Speaker, I urge my colleagues to read "You are a Suspect" by William Safire in today's New York Times. Mr. Safire, who has been one of the media's most consistent defenders of personal privacy, details the Defense Department's plan to establish a system of "Total Information Awareness." According to Mr. Safire, once this system is implemented, no American will be able to use the internet to fill a prescription, subscribe to a magazine, buy a book, send or receive e-mail, or visit a web site free from the prying eyes of government bureaucrats. Furthermore, individual internet transactions will be recorded in "a virtual centralized grand database." Implementation of this project would shred the Fourth Amendment's requirement that the government establish probable cause and obtain a search warrant before snooping into the private affairs of its citizens. I hope my colleagues read Mr. Safire's article and support efforts to prevent the implementation of this program, including repealing any legislation weakening privacy protections that Congress may inadvertently have passed in the rush to complete legislative business this year.

[New York Times, Nov. 14, 2002]

YOU ARE A SUSPECT

(By William Safire)

Washington—If the Homeland Security Act is not amended before passage, here is what will happen to you: Every purchase you make with a credit card, every magazine subscription you buy and medical prescription you fill, every Web site you visit and e-mail you send or receive, every academic grade you receive, every bank deposit you make, every trip you book and every event you attend—all these transactions and communications will go into what the Defense Department describes as "a virtual, centralized grand database."

To this computerized dossier on your private life from commercial sources, add every piece of information that government has about you—passport application, driver's license and bridge toll records, judicial and divorce records, complaints from nosy neighbors to the F.B.I., your lifetime paper trail plus the latest hidden camera surveillance—and you have the supersnoop's dream: a "Total Information Awareness" about every U.S. citizen.

This is not some far-out Orwellian scenario. It is what will happen to your personal freedom in the next few weeks if John Poindexter gets the unprecedented power he seeks.

Remember Poindexter? Brilliant man, first in his class at the Naval Academy, later earned a doctorate in physics, rose to national security adviser under President Ronald Reagan. He had this brilliant idea of secretly selling missiles to Iran to pay ransom for hostages, and with the illicit proceeds to illegally support contras in Nicaragua.

A jury convicted Poindexter in 1990 on five felony counts of misleading Congress and making false statements, but an appeals court overturned the verdict because Congress had given him immunity for his testimony. He famously asserted, "The buck stops here," arguing that the White House staff, and not the president, was responsible for fateful decisions that might prove embarrassing.

This ring-knocking master of deceit is back again with a plan even more scandalous than Iran-contra. He heads the "Information Awareness Office" in the otherwise excellent Defense Advanced Research Projects Agency, which spawned the Internet and stealth aircraft technology. Poindexter is now realizing his 20-year dream: getting the "data-mining" power to snoop on every public and private act of every American.

Even the hastily passed U.S.A. Patriot Act, which widened the scope of the Foreign Intelligence Surveillance Act and weakened 15 privacy laws, raised requirements for the government to report secret eavesdropping to Congress and the courts. But Poindexter's assault on individual privacy rides roughshod over such oversight.

He is determined to break down the wall between commercial snooping and secret government intrusion. The disgraced admiral dismisses such necessary differentiation as bureaucratic "stovepiping." And he has been given a $200 million budget to create computer dossiers on 300 million Americans.

When George W. Bush was running for president, he stood foursquare in defense of each person's medical, financial and communications privacy. But Poindexter, whose contempt for the restraints of oversight drew the Reagan administration into its most serious blunder, is still operating on the presumption that on such a sweeping theft of privacy rights, the buck ends with him and not with the president.

This time, however, he has been seizing power in the open. In the past week John Markoff of The Times, followed by Robert O'Harrow of The Washington Post have revealed the extent of Poindexter's operation, but editorialists have not grasped its undermining of the Freedom of Information Act.

Political awareness can overcome "Total Information Awareness," the combined force of commercial and government snooping. In a similar overreach, Attorney General Ashcroft tried his Terrorism Information and Prevention System (TIPS), but public outrage at the use of gossips and postal workers as snoops caused the House to shoot it down. The Senate should now do the same to this other exploitation of fear.

The Latin motto over Poindexter's new Pentagon office reads "Scientia Est Potentia" "knowledge is power." Exactly: the government's infinite knowledge about you is its power over you. "We're just as concerned as the next person with protecting privacy," this brilliant mind blandly assured The Post. A jury found he spoke falsely before.

TRIBUTE TO JOHN D. GRAHAM

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. GEPHARDT. Mr. Speaker, I rise today to pay tribute to John D. Graham, a great business leader in St. Louis, and a pioneer in the communications industry. Over the years, I have been proud to see what was once a small St. Louis public relations firm grow to become what is now a widely respected international powerhouse—Fleishman-Hillard. One of the key reasons that this company has become a worldwide leader in the communications industry is the leadership provided by John Graham, its Chairman and CEO.

Recently, that leadership earned John some well-deserved recognition. John received one of my state's greatest honors, the Missouri Honor Medal for Distinguished Service in Journalism. He joins an impressive list of past recipients, which includes Winston Churchill, Walter Cronkite, Gordon Parks, George Gallup, and Tom Brokaw.

In presenting the award, it was noted that John has not only built Fleishman-Hillard into one of the largest agencies in the world, but that he has consistently sought to improve the ethics, integrity, and quality in the practice of his profession. John has always understood the responsibility that comes with communicating with the public, and his emphasis on professional, honest representation has made his company the gold standard for public relations firms.

There is no one more deserving of the Missouri Honor Medal for Distinguished Service in Journalism than John Graham. He will continue to do great things for both Fleishman-Hillard and the St. Louis community. I am proud to call him a friend, and salute his efforts.

TAIWAN RELATIONS ACT SHOULD BE CORNERSTONE OF OUR RELATIONSHIP WITH TAIWAN

HON. STEVE CHABOT

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. CHABOT. Mr. Speaker, I rise today to call attention to our "One China" policy and its inability to deal with the current situation in the Taiwan Strait. Since the adoption of the 1972 Shanghai Communique, the United States acknowledges that "all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China."

This "One China" policy, however, does not reflect the reality of Taiwan's maturation into a vibrant democracy. As the distinguished Majority Whip stated in March 2000 in an address to a Center for Strategic and International Studies forum, * * * We must discard old policies that no longer have credibility because they are no longer true * * * whatever utility the "One China" policy diplomatic fiction might have had twenty five years ago has been erased by the new reality. Currently there are two states: one being the free, democratic, and peace-loving state of Taiwan. The other is the authoritarian communist regime of the People's Republic of China."

The PRC, established in 1949, has not for a single day exercised sovereignty over Taiwan. And, in 1991, Taiwan's Kuomintang Party relinquished all claims to being the sole, legitimate government of China. Subsequently, former President Lee Teng Hui, in 1999, referred to cross-strait relations as a "state to state relationship." While this exemplifies a distinction of two separate governments, the U.S. position on this matter remains an influential factor in the peaceful resolution between both sides.

For the past twenty-five years, the U.S. has exercised a delicate diplomacy in which it fails to send consistent messages toward the East Asia region. Little progress has been achieved in our relations with both China and Taiwan because of the various interpretations regarding the "One China" policy.

The United States cannot under any circumstances allow the People's Republic of China to impose a communist future on Taiwan. The "One China" policy undermines our actions and commitments; rather than clinging to old relics of the cold war era, let us reaffirm our dedication to democratic ideals in the new millennium.

We must redirect our attention toward fulfilling our obligations to Taiwan, as spelled out in the 1979 Taiwan Relations Act. In the Taiwan Relations Act, the United States pledges a full commitment to the defense and security of Taiwan in the event of Chinese aggression. Clearly, the Taiwan Relations Act should be the cornerstone of our relationship with Taiwan—not the obsolete "One China" policy.

ACHIEVEMENT OF THE NATIONAL RENEWABLE ENERGY LABORATORY GOLDEN, COLORADO

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. UDALL of Colorado. Mr. Speaker, I rise to call attention to another achievement of the National Renewable Energy Laboratory, based in Golden, Colorado. It is appropriate that on its 25th anniversary, the National Renewable Energy Laboratory (NREL) has garnered yet another award recognizing its contributions to the development of clean energy technologies.

In its December issue, Scientific American magazine has named NREL one of the Scientific American 50—the magazine's first list recognizing annual contributions to science and technology that provide a vision of a better future.

NREL, along with Spectrolab Inc., was selected by the magazine for its work in increasing the efficiency of photovoltaic solar cells. NREL's research into multi-junction solar cells for more than a decade has led the way to ever more efficient cells, offering the potential of cheaper electricity from the sun.

The magazine noted that all the recipients of the Scientific American 50 have "demonstrated clear, progressive views of what our technological future could be, as well as the leadership, knowledge and expertise essential to realizing those visions."

I continue to be proud of the tremendous contributions that the National Renewable Energy Laboratory had made—to Colorado, our country, and our world. Congratulations to all at NREL on this important award.

IN HONOR OF REPRESENTATIVE DAN MILLER

HON. E. CLAY SHAW, JR.

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SHAW. Mr. Speaker, I rise on behalf of my dear friend and colleague, DAN MILLER, whom I have had the privilege of working with from the great state of Florida.

A member of the freshman class of 1992, DAN represents the Thirteenth Congressional District of Florida along the Gulf Coast areas of Sarasota and Bradenton. DAN never held public office before his election to Congress, but once here, fought for legislation critical to the future of our state. A man of his word, DAN took office with a pledge to term limit himself and has kept that promise, much to our personal dismay.

Looking back on his career, DAN has served his district and his country honorably in his roles on the Appropriations, Government Reform and Census committees. DAN has stood as a staunch fiscal conservative who is committed to reducing wasteful government spending. These beliefs have manifested themselves most notably through his efforts to curtail the government sugar program. DAN also did great things in his role as an appropriator. He was one of the original cheerleaders of doubling the National Institutes of Health budget, sensing its growing importance to the U.S. and the world health communities.

Beyond all of these accomplishments, DAN and his wife, Glenda are my neighbors here in Washington and dear friends. I will miss DAN's presence in this House as my wife, Emilie, and I will miss their presence in our home. Although the MILLERS leave Washington, I look forward to many years of continued friendship.

Mr. Speaker, all Floridians and all Americans have been better served for having DAN MILLER in Congress. This body exists so that the people of our country have a voice in their government. The votes Floridians cast to send him to Washington brought this House reasoned judgement, energetic lawmaking and strong conviction. Today we honor his service to his country and wish him well. God Bless DAN and Glenda MILLER.

* * *

FIGHTING FOR DISABLED MILITARY RETIREES

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. BILIRAKIS. Mr. Speaker, for more than 17 years, I have introduced legislation to repeal a 100 year old law that unfairly penalizes disabled military retirees. Some military retirees—individuals who are eligible for military retirement benefits as a result of a fall service career are also eligible for disability compensation from the VA based on a medical problem they incurred while in. the service. Under present law, these service-disabled retirees must surrender a portion of their retired pay if they want to receive the disability compensation to which they are entitled. This issue is commonly referred to as "concurrent receipt." Congress enacted this unjust law in 1891.

My legislation to completely eliminate the offset between military retired pay and VA disability compensation has received strong bipartisan support in both houses of Congress. In fact, more than 90 percent of Members of the House of Representatives and more than 80 percent of the Senate have cosponsored legislation to repeal the current offset.

The 106th Congress took the first steps toward addressing this inequity by authorizing the military to pay a monthly allowance to military retirees with severe service-connected disabilities rated by the Department of Veterans Affairs at 70 percent or greater. These provisions were expanded to include retirees with ratings of 60 percent.

For years, I have been told that I had to get the money included in the budget resolution before action would be taken on my legislation. So earlier this year, I worked very hard with Chairman NUSSLE and other members of the Budget Committee, like Representative CHARLIE BASS, to secure funding for a partial repeal of the offset in its Fiscal Year 2003 budget resolution. While the money in the budget resolution fell short of the funding needed to completely eliminate the current offset, it would have provided for a substantial concurrent receipt benefit.

For that reason, I was particularly pleased that the House Armed Services Committee incorporated the budget resolution proposal into its authorization bill. As initially approved by the House, H.R. 4546 included a provision to authorize military retirees who are 60 percent or greater disabled to receive their full retired pay and VA disability compensation benefit by Fiscal Year 2007. During its consideration of the authorization bill, the Senate approved an amendment to authorize full concurrent receipt immediately.

Given the overwhelming support that repeal of the current offset has received in both bodies of Congress and the fact that the money was included in the Fiscal Year 2003 budget resolution, I am extremely disappointed that the conference report for the Bob Stump National Defense Authorization Act does not contain at least the House-passed concurrent receipt language. While I appreciate the efforts of Chairman DUNCAN HUNTER and others to include a benefit for some disabled retirees in the final bill, I am frustrated that we have once again failed to address this issue for the majority of retirees who have been forced to fund their own retirement for years. I have already started to hear from disabled retirees who are angry that we did not do more on this issue in the defense bill.

At a time when our nation is calling upon our Armed Forces to defend democracy and freedom, I am afraid we are sending the wrong message to our men and women in uniform. I want to remind my colleagues of a quote by our first Commander-in-Chief George Washington: "The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive the veterans of earlier wars were treated and appreciated by their nation."

I will continue my efforts to eliminate the unjust offset that penalizes disabled military retirees in the 108th Congress. I hope my colleagues will join me in the fight to restore military retired pay to the men and women who earn it by serving in our Nation's Armed Forces.

* * *

OUR FLORIDA COLLEAGUES: CARRIE MEEK AND KAREN THURMAN AND DAN MILLER

HON. MARK FOLEY

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. FOLEY. Mr. Speaker, I want to join my colleagues in recognizing the contributions that three of our Florida colleagues—CARRIE MEEK and KAREN THURMAN and DAN MILLER—have made. Each brought invaluable gifts to this institution, and each are leaving with a legacy that any one of us would be proud to have.

I have known KAREN THURMAN since we both were elected state officials in the Florida Legislature. And both then and since, she worked hard and long for constituents in need. She has been a particularly strong champion of veterans' and senior citizen causes and of Florida's agricultural community. Both of us have served on the Agriculture Committee here and since then on the Ways and Means Committee. And while KAREN and I have found ourselves divided many times by partisan political issues, I have never known her once not to fight for what she believes deeply in. She's a fighter and a wonderful person, and while politics ultimately determines our fate here, there is no question KAREN will continue a strong role in making both Florida and this nation better.

The same can be said of CARRIE MEEK. CARRIE has dedicated her professional and personal life to the people of Florida, as a public servant, college administrator and educator. CARRIE has been a true champion to her constituents. She has been a person that would reach out to the neediest and be their strongest advocate. I will always admire her commitment and loyalty to her convictions. Surely, CARRIE's contributions to the lives of all Floridians will continue to pay dividends for generations to come.

With the retirement of DAN MILLER, I am not only losing a colleague but a longtime good neighbor of mine in Washington.

DAN's dedication to public service and his commitment to the idea of less government, of conservative government, has been unwavering and will be greatly missed. Even my own sigh of relief at losing a staunch opponent of the sugar program—a program vitally needed by many of my constituents—is a testament to DAN's doggedness when he is pursuing what he deeply believes is the right course.

The years of service by all three of these Florida members—KAREN THURMAN, CARRIE MEEK and DAN MILLER—are years of contributions. And I want to join all my colleagues in thanking them for that.

TRIBUTE TO THE HONORABLE JUSTICE WILLIAM COUSINS, JR.

HON. BOBBY L. RUSH

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. RUSH. Mr. Speaker, I rise to pay special tribute to the distinguished life and career of the Honorable William Cousins, Jr., Justice of the Illinois Appellate Court. A scholar, patriot, and gentleman, Justice Cousins has never rested in the ivory tower that his distinguished academic and professional achievements could afford him. Instead, he has chosen at every stage of his life, to use his tremendous gifts to engage and serve his country, city, and community in the pursuit of social justice. He is truly a source of inspiration not only for the residents of the 1st Illinois Congressional District, but for all Americans everywhere.

Born on October 6, 1927 in Swifton, Mississippi, Justice Cousins moved to Chicago where he graduated from DuSable High School in 1945. After graduating from the University of Illinois in 1945 with honors in Political Science, and Harvard Law School in 1951, Justice Cousins answered the patriotic call to duty and served in the United States Army from 1951 through 1948 as a combat Infantry 2d and 1st Lieutenant during the Korean conflict. He would continue on in his military service until 1975, when he retired from the United States Army Reserve Corps as a Lieutenant Colonel.

While serving his country in the military, Justice Cousins began to build an impressive, multifaceted legal career as an attorney with Chicago Title & Trust Company. He then went on to serve as an Assistant State Attorney of Cook County, Illinois before going into private practice. Justice Cousin was then elected Alderman for Chicago's 8th Ward. He served as a Circuit Court Judge of Cook County, Illinois from 1976 until his election in 1992 to the Illinois Appellate Court. His tenure on the Illinois Appellate Court includes service as Chairman of the Executive Committee, First Appellate District, Presiding Justice of the First District, 3d Division and 2d Division, and Chair for the Illinois Appellate Judges Annual Meeting. He was appointed by the Illinois Supreme Court as a member of the Executive Committee of the Illinois Judicial Conference since 1983 and was appointed Chairman of the Illinois Judicial Conference from 1989 to 1990. Justice Cousins is also a member of the Special Supreme Court Committee on Capital Cases.

Aside from his distinguished legal career, Justice Cousins has lent his immense talents to several civic organizations by serving as a board member of the Citizens' School Committee, Parkway House as well as the Chicago Area Planned Parenthood Association. He was also president of Chatham-Avalon Park Community Council, and is a founding member and former Board Member of PUSH. Justice Cousin is a Deacon at Lincoln Memorial Congregational United Church of Christ, and was an Assistant Moderator and former member of the Executive Council of the United Church of Christ. He is a member of Kappa Alpha Psi Fraternity and Sigma Pi Phi Fraternity.

Justice Cousins' status as a pillar of civic and professional responsibility has not gone unrecognized, as he has been honored by well over one dozen organizations. It is only fitting that Justice Cousins be recognized and honored by the United States Congress.

IN HONOR OF DR. SOPHIE C. WONG WHO WILL BE RETIRING AFTER 12 YEARS OF SERVICE AS AN ELECTED BOARD MEMBER OF THE ALHAMBRA SCHOOL DISTRICT

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to honor Sophie C. Wong.

Dr. Sophie C. Wong was the first Asian American to serve on the Alhambra School Board. Elected in 1990, Dr. Wong has held to her commitment to preserve and advance the quality of education for all students. Among her many achievements as a Board Member, Dr. Wong was the founder of the Alhambra School District Educational Foundation, cofounder of the Human Relations Advisory Committee, and founder of the Asian American Association of the Alhambra School District.

Immigrating to the United States in 1956, Dr. Wong has been a resident and homeowner in Monterey Park since 1961. Dr. Wong is married to Mr. Norman J. Wong and is the mother of two daughters, Cheryl and Debbi. Dr. Wong also has one granddaughter, Blythe.

Since 1996, Dr. Wong has been the President and Chief Executive Officer of Chinese for Christ Calvin Chao Theological Seminary in Alhambra, California. The seminary is a professional graduate school for Christian leaders, pastors and missionaries. On August 7, 1985, the Seminary received authorization from the State of California to grant M.A., M.Div., D.Min., and Ph.D. degrees, making it the first Chinese seminary to be authorized by the State to grant a Ph.D. degree.

In addition to being an active and important member of her community, Dr. Wong is a successful entrepreneur. She is the president of Sophie C. Wong & Associates, a business development, management, real estate, marketing and public relations firm, which matches people with business opportunities, She is also the co-founder, director, chief financial officer and past chairman of Golden Security Bank since 1982. Dr. Wong was named one of "ten Important Power Brokers and Emerging Leaders in the San Gabriel Valley of Southern California" in the December 1997 issue of the Los Angeles Business Journal. In 1986 and again in 1996, Dr. Wong was elected to the White House Conference on Small Businesses.

It is with pleasure that I ask all Members to join with me in congratulating the Honorable Sophie C. Wong for her accomplishments on behalf of the students and staff of the Alhambra School District as well as her leadership in numerous activities in the community.

CENTENNIAL ANNIVERSARY OF JAY, FLORIDA

HON. JEFF MILLER

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. JEFF MILLER of Florida. Mr. Speaker, I rise today to congratulate the residents of Jay, Florida.

On the 30th of November, Jay will celebrate its centennial anniversary. Named after its first postmaster, Mr. J.T. Nowling, this small, Northwest Florida town near the Florida/Alabama border was established one hundred years ago primarily as a farming community. Even today, many residents of this Santa Rosa County community follow in their ancestors' agrarian footsteps.

In 1940, a small group of farmers embarked on a venture to create a livestock market in the area. Sales brought revenues of up to $1 million by 1950 and the industry continues to thrive today. Jay boasts about their peanut buying and warehouse facility as well as Florida's only two cotton gins, making this one of Florida's finest and most progressive agricultural towns.

In the early 1970's, the discovery of oil changed the life of this small community. The Jay oil field has approximately 67 oil wells that have provided profits of more than $400 million. The revenues generated from Jay's entrepreneurial spirit have funded a new city hall, fire department and recreation complex.

In spite of its brisk development, Jay remains steadfast in its roots, distinctive in its identity, and carries on all that America cherishes about its small towns. Much like my nearby hometown of Chumuckla, these 700 residents live in a place where life centers on church, work and family. It is a place where the people are loving, friendly and neighbors help neighbors in times of need.

On behalf of the United States Congress, I would like to congratulate the people of Jay, Florida on their centennial and wish them the best as they continue to move and prosper through the 21st century.

TRIBUTE TO GREG LAURIE PASTOR AND FOUNDER OF HARVEST CHRISTIAN FELLOWSHIP EVANGELIST AND FOUNDER OF HARVEST CRUSADES

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. CALVERT. Mr. Speaker, I rise today to honor and pay tribute to an individual whose dedication to the community and to the spiritual well-being of Southern California, the nation and the world is exceptional. Southern California has been fortunate to have dynamic and dedicated community leaders who willingly and unselfishly give time and talent to making their communities a better place to live and work. Greg Laurie is one of these individuals. The week of November 24th will mark 30 years of dedicated service and Greg's work will be celebrated by his family, friends, colleagues, church members, and all those whose lives he has touched through his work.

Greg Laurie is a native of Southern California, born in Long Beach on December 10, 1952. His interest in the ministry began with a girl he followed into Bible study. At 19 he committed his life to Jesus Christ and grew a Bible study of 30 people into a church of more than 15,000 people. Greg is senior pastor of Harvest Christian Fellowship in Riverside, California, the eighth largest church in America. As a pastor, Greg has sought to meet the challenges and opportunities of religion in the 21st century. In his 30 years of faithful service to the Harvest Christian Fellowship he has provided unwavering spiritual support and guidance.

In addition to his work in the church, Greg sought out a way to present the gospel of Jesus Christ to Southern Californians in a non-traditional, non-church environment. With the help of a fellow colleague, Greg began the Harvest Crusades, a multi-night event of upbeat music, genuine worship, and a clear presentation of biblical messages. The first Harvest Crusades saw more than 90,000 people attend. Since that time, crowds totaling over 2.8 million people have attended Harvest Crusades in California, Oregon, Washington, Arizona, New Mexico, Hawaii, Colorado, New York, Pennsylvania, Florida and North Carolina. In May of 2000, Harvest Crusades ventured outside the U.S. for the first time to present Harvest 2000 in Wollongong, Australia. Tens of thousands more people have participated in the Harvest Crusades via the Internet.

Besides conducting evangelistic crusades, Harvest Ministries sponsors *A New Beginning*, an international daily radio program with messages by Greg Laurie, as well as a weekly television program, *Harvest: Greg Laurie*. Greg also serves as a board member of the Billy Graham Evangelistic Association and Samaritan's Purse. At the Billy Graham Atlanta Crusade in 1994, Dr. Graham stated "The media have been writing Greg Laurie up as the man who is going to be the evangelist of the future-and he is."

In recognition of Greg's exemplary work as a minister and evangelist, his 30th anniversary as pastor will be a week long celebration of programs, activities and ceremonies. Greg's tireless work has contributed unmeasurably to the spiritual well-being and betterment Southern California and the world. His outstanding involvement in the community makes me proud to call him a fellow community member, American and friend.

HONORING REPRESENTATIVE STEVE HORN

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. DREIER. Mr. Speaker, I am grateful for this opportunity to speak about a good friend and respected colleague, Congressman STEVE HORN, who is retiring from this body after 10 years of unwavering integrity in service. And though we wish our friend nothing but the absolute best as he leaves Washington, we will miss STEVE immensely, and are sad to see the parting of this true Californian.

Congressman HORN has served with diligence on the Transportation and Infrastructure Committee on behalf of his constituents in Southern California. His Congressional District benefitted greatly from his leadership, especially in the areas of environmental stewardship and infrastructure investment. He consistently championed projects critical to the Ports of Los Angeles and Long Beach, preserving local wetlands, and supported the need for new technologies to advance ocean water desalination.

Congressman HORN has been an unsung hero on federal government accountability for which I thank and commend him. Chairing the Government Reform Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Congressman HORN dedicated his committee's jurisdiction to making federal agencies more accountable to the taxpayer, ensuring that our government was open and accessible to the public, and demanding that red-tape and other bureaucratic excesses were eliminated.

Many of us can only look with awe at Congressman HORN's distinguished and vast public service career. He served in the Eisenhower Administration under Labor Secretary James P. Mitchell, and then got his legislative feet wet while working for California Senator Thomas Kuchel on historic legislation including the Civil Rights Act of 1964 and the Voting Rights Act of 1965. In addition, Congressman HORN dedicated 18 years to the California State University, Long Beach, where he was recognized as one of the most effective college presidents in the country.

There is no doubt that Congressman HORN has accomplished a great deal. However, I believe his greatest accomplishment lies in not just what he has been able to do, but in the person that he is. He is a man of character who never allowed partisan politics to triumph over personal integrity, who sought real answers to real problems for the benefit of strangers, and whose watchful gaze held us all to the same higher standard he set for himself.

I will miss seeing him in the halls of the Capitol, but will look forward to seeing him and his lovely wife, Nini, at home in California.

COMMITTEE REPORT TO H.R. 4689, THE "FAIRNESS IN SENTENCING ACT"

HON. ROBERT C. SCOTT

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCOTT. Mr. Speaker, as the Ranking Member of the Crime Subcommittee of the Judiciary Committee, I wish to address an aspect of H. Rep. 107–769, the Committee Report accompanying H.R. 4689. In that report, the Majority unjustifiably impugns the integrity of James M. Rosenbaum, a distinguished federal judge and former prosecutor who testified before our subcommittee on May 14, 2002.

Judge Rosenbaum serves as the Chief Judge of the United States District Court for the District of Minnesota. Prior to his appointment to the bench by President Reagan, he served as the United States Attorney for the District of Minnesota. Judge Rosenbaum did not seek to testify before Congress. Rather, he was invited to participate in the May 14 hearing by Chairman SENSENBRENNER at my request.

At the hearing, Judge Rosenbaum expressed support for an amendment to the federal sentencing guidelines that had been transmitted to Congress by a unanimous vote of the United States Sentencing Commission, and expressed opposition to H.R. 4689, a bill to block that guideline amendment. Judge Rosenbaum's position in favor of the amendment is shared by, among others, the three Republican members of the Sentencing Commission and the Judicial Conference of the United States. Moreover, Judge Rosenbaum's position is largely embodied in legislation (section 202 of S. 1874) introduced last year by Senators JEFF SESSIONS (R–AL) and ORRIN HATCH (R–UT).

The amendment in question would cap the base offense level established by the sentencing guidelines for low-level drug defendants who are classified as "minimal" or "minor" participants in the offense, as those terms are defined in the guidelines manual. In support of that policy, Judge Rosenbaum testified using fact patterns taken from actual cases in the District of Minnesota. He never testified about the actual sentences imposed; he simply demonstrated the differences between the presumptive sentencing range under the existing sentencing guidelines, and the presumptive sentencing range calculated under the proposed guideline amendment. His analysis was primarily based on pre-sentence reports, which describe in detail the roles of low-level defendants in actual rather than hypothetical cases.

The Committee's 22 page critique of Judge Rosenbaum's testimony is highly repetitious, but contains four major charges:

First, the Committee complains that Judge Rosenbaum did not cooperate in the Committee staffs attempts to learn more about the examples cited by Judge Rosenbaum.

This criticism is groundless. Judge Rosenbaum responded promptly to the Committee's requests and made the resources of his courthouse available to committee staff. This was true despite the vexatious nature of the Committee's inquiries. Chairman SMITH sent four letters to Judge Rosenbaum over the three month period following the hearing. The first letter, worded in the manner of litigation interrogatories, enumerated eleven separate categories of information sought by the Committee. One follow-up letter, four pages in length and densely footnoted in the form of an adversarial brief, posed six separate questions about a single case. The practice of propounding follow-up questions to congressional witnesses is common, but the intensity with which this subcommittee pursued Judge Rosenbaum is unprecedented.

Second, the Committee claims that Judge Rosenbaum "misstated" facts by not explaining that several defendants he described were awarded downward departures from the guideline range.

This criticism misunderstands the point of Judge Rosenbaum's testimony. In supporting the Sentencing Commission's proposed amendment, Judge Rosenbaum faulted the current sentencing guidelines that result in unjust sentencing ranges. The fact that judges possess statutory authority to "depart" from the guidelines in unusual cases is an insufficient objection to the proposed guideline amendment, because the guidelines themselves should result in a just sentencing range for a class of defendants. The fact that at least a half dozen drug defendants in a single federal district in a short period of time qualified for downward departures demonstrates a flaw in the guidelines. Moreover, a departure is subject to appeal while a sentence within the guidelines is not.

In any event, Judge Rosenbaum did not "misstate" facts as the report alleges. He made amply clear that he was presenting the sentence each defendant was "subject to" under the existing guidelines—guidelines which he, the seven members of the Sentencing Commission, Senator SESSIONS and Senator HATCH all believe should be amended.

Third, the Committee alleges that Judge Rosenbaum testified "falsely" when he stated that low-level drug defendants are sentenced "the same way" as more culpable defendants.

This is an absurd criticism. Judge Rosenbaum's basic point was that the current sentencing guidelines are flawed in that they utilize drug quantity to determine the base offense level for all drug trafficking defendants, even those who, although legally responsible for an amount of drugs, played no role in setting the quantity or sharing in the profits. In his prepared statement, Judge Rosenbaum described this problem clearly: "it is the quantity of drugs in the whole scheme that drives the sentence. The judge only looks at the defendant, after all the scheme's drugs have been accounted for." He did not contend that minor and major participants receive identical sentences; rather he stated that all drug defendants are sentenced "the same way," *i.e.*, using the same quantity-driven mechanism.

The Committee chooses to interpret the judge's words "the same way" to mean the same sentence. A full reading of his written and oral testimony makes clear that is not what Judge Rosenbaum meant. But the Committee then uses this misunderstanding to accuse Judge Rosenbaum of providing "unquestionably false," "inaccurate" and "utterly false" testimony to Congress. On this innocuous record it is inconceivable that any witness, least of all a federal judge, could be accused of testifying falsely.

Fourth, the Committee accuses Judge Rosenbaum of improper motives in closing a sentencing hearing and suggests that he may have acted "unlawfully."

There is no reasonable basis for this grave accusation. The Committee says Judge Rosenbaum may have "unlawfully" sealed the transcript of a sentencing hearing "to conceal from the public and from the Subcommittee" his actions. By definition, the facts involved in a sealed proceeding may not be revealed publicly, and the Committee's speculation is irresponsible. But if either the sentence itself or the decision to seal the proceeding were illegal, the United States could appeal. It has not done so.

CONCLUSION

By voting in favor of H.R. 4689, a majority of the House Judiciary Committee expressed its disagreement with the views of Judge Rosenbaum, all seven members of the Sentencing Commission, and Senators SESSIONS and HATCH. That is the Committee's prerogative. It is also the Committee's prerogative to rebut the arguments of any witness. However, the Committee exceeded the bounds of decency and fairness when it published a 22 page diatribe against a distinguished, respected federal judge and former United States Attorney.

RECOGNIZING AGENT DAVID F. CORRIGAN

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. SOLIS. Mr. Speaker, I rise to recognize the numerous contributions of Agent David F. Corrigan, one of Monterey Park's finest police officers. Agent Corrigan is retiring from active duty after 28 years of outstanding and selfless service.

Agent Corrigan graduated from the Los Angeles County Sheriff's Department Academy and joined the Monterey Park Police Department on September 9, 1974, as part of the Patrol Bureau. During his career, Agent Corrigan was assigned to the Patrol and Detective Bureaus and periodically to the Administration Bureau as a Background Investigator.

Agent Corrigan has received countless commendations from the Monterey Park Police Department. He was highly recognized for his role during the evacuation of a hospital emergency room that was held hostage in June of 1995 and for apprehending the gunman. Furthermore, he frequently received letters of appreciation from residents and other law enforcement agencies for his work as an investigator and a patrol officer.

In November 1998, Agent Corrigan was recognized as the Police Department Employee of the Month and in 1999, he was awarded the department's third highest honor, the Distinguished Service Medal, for outstanding performance throughout his career as an officer, detective, field training officer and field supervisor. Agent Corrigan is an integral member of the community and his church. He is a role model for the youth of Monterey Park and continues to participate in the Police Department's D.A.R.E. Camp and In-School Scouting programs.

Throughout his career, Agent Corrigan was known for his honesty, compassion and professionalism. He will be greatly missed by his co-workers and the community he greatly impacted. Mr. Speaker, I ask you to join me in expressing my gratitude to Agent Corrigan for his selfless dedication to our community.

TRIBUTE TO CONG. TIM ROEMER

HON. RUBÉN HINOJOSA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. HINOJOSA. Mr. Speaker, as the 107th Congress comes to a close, I wanted to take this opportunity to recognize my friend and colleague on the Education and Workforce Committee, Congressman TIM ROEMER. TIM has decided to leave Congress to pursue other avenues of service, but I want to thank him for his dedication to the education of America's children.

TIM was born and raised in Indiana and since 1990 he has ably represented the Third District. His constituents have recognized his outstanding service and in 1998 he was re-elected with the highest winning percentage for any Third District candidate in a quarter century.

While in Congress, TIM has been a strong supporter of students, teachers and school officials. He exercised great leadership during the development of the landmark legislation, "No Child Left Behind Act," our most recent reauthorization of the Elementary and Secondary Education Act. His contribution will be felt by thousands of children throughout our country.

As a Co-Chair of the New Democrat Coalition, of which I am a member, he has advocated for a fiscally responsible government that still compassionately meets the needs of individuals and institutions that require federal assistance.

I regret that TIM will not be with us as we work next year to reauthorize the Higher Education Act and Head Start. His thoughtful insights and his commitment to educational opportunities for every child will be sorely missed. I am confident that he will continue to serve the interests of our country in whatever future endeavors he may pursue. My colleagues and I are losing a very articulate champion for the issues promoted by our Democratic Party, but we all wish the very best for him and his family.

Indiana has been proud of her Native Son and we hope that the Great State of Indiana will send us another Democrat as gifted and committed as TIM ROEMER.

TRIBUTE TO JUDGE SID STEWART

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROGERS of Kentucky. Mr. Speaker, I rise today to pay tribute to a dedicated public servant, family man, friend, and all around great Kentuckian, Judge Sid Stewart. After 17 years of tirelessly serving as County Judge/Executive of Morgan County, Kentucky, he is retiring from public office. I want to express my deepest gratitude for his many contributions.

A native of Eastern Kentucky, Judge Stewart grew up on a hillside farm in Knott County. As a youth, he labored alongside his father in the log woods and lumber industry. Never one to shy away from hard work, he used his knowledge of the lumber industry to pay his way through college. After graduating from Morehead State University, he went on to lead a successful professional career that has included working as a Juvenile Probation Officer, Assistant Director of the Northeast Kentucky Area Development Council, Executive Director of Gateway Community Services, and President of a construction company. He also served as a member of a number of civic and professional boards and was a member of the Morgan County School Board for four years.

Sworn into office on January 6, 1986, Sid Stewart has worked tirelessly to improve the lives of the people in Morgan County. As a lifelong resident of Eastern Kentucky, he has a personal interest in the well being and prosperity of the region and understands the challenges and needs facing the residents of the area. During his time in office, Judge Stewart has focused his efforts on lifting up the people of his community. He has worked with local, state and federal officials on a variety of initiatives aiming to boost the local economy, create new jobs and enhance public services. Without the determination and vision of Judge Stewart, these initiatives would not be possible.

Mr. Speaker, on behalf of my colleagues and myself, I want to thank my friend Judge Stewart for the time and effort he has put into the lives of others. Although his time in public office is drawing to a close, I know the people of Morgan County will continue to benefit from his contributions for many years to come.

THE WAR IN CHECHNYA AND MOSCOW

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SMITH of New Jersey. Mr. Speaker, next week following the NATO conference in Prague, President Bush is scheduled to meet with President Putin in St. Petersburg, Russia. It is expected that the two leaders will discuss such vital issues as the war against terrorism, the policies in Iraq, safeguards against weapons of mass destruction, and expanded energy cooperation between the United States and Russia. I would urge Mr. Bush to include on the agenda the continuing conflict in Chechnya.

At this time, the Russian Government and its people are still recovering from the horrific events of last month, when a group of armed Chechen terrorists seized approximately 700 hostages in a Moscow theater and threatened them with execution if the Putin Administration did not withdraw its forces from Chechnya. After three days of terror, Russian special forces captured the theater, apparently killing all the terrorists. In the preliminary gas attack to neutralize the terrorists, over one hundred hostages lost their lives. This terrorist attack was appropriately condemned by the Bush Administration, and we all sympathize with the innocent victims of this attack.

But, Mr. Speaker, this does not mean that we should not step back and seriously examine the circumstances that have driven some elements of the Chechen resistance to such suicidal extremes.

Perhaps it is because the Russian military, in its drive to suppress Chechen separatism, has employed means which virtually guaranteed to drive a despairing civilian population into the arms of a radicalized resistance. In the three and a half years since the war reignited when Chechen militants invaded neighboring Dagestan, the Russian military has embarked on a campaign of carnage, destruction, and looting against the civilian population. There are credible and ongoing reports of atrocities committed by members of the Russian military—indiscriminate shelling and bombing, murder, assault, rape, torture, arrests "disappearances," kidnaping and holding civilians for ransom. It is imperative that military personnel who commit such egregious human rights violations face criminal charges but the Russian military and judicial system has yet to demonstrate its commitment to bring such criminal actions to account.

Nor should we have any illusions about some elements among the Chechen fighters, who have murdered hostages, kidnapped civilians for ransom and used them as shields during combat operations, and embarked on a campaign of assassination against fellow Chechens who work for the Russian civil government in Chechnya. And, as Deputy Assistant Secretary of State Steve Pifer testified before the Helsinki Commission, "We have seen evidence of individuals or certain factions in Chechnya who are linked to international terrorist elements including Al Qaeda." Without a doubt, war criminals and terrorists should be brought to justice, wherever they are and whomever they serve.

In the wake of the attack on the theater in Moscow, President Putin has hardened an already uncompromising position against the Chechen fighters. But, it should be clear that the Russian scorched-earth policy against Chechnya and the Chechen people is not bringing peace to the region. Rather, such policies are sowing the dragon's teeth of hatred and conflict for generations to come.

The distinguished Newsweek commentator Fareed Zakaria recently wrote: Terrorism is bad, but those fighting terror can be very nasty, too. And the manner in which they fight can make things much, much worse. It is a lesson we had better learn fast because from Egypt to Pakistan to Indonesia, governments around the world are heightening their repression and then selling it to Washington as part of the war on terror. Russian officials called the Chechen fighters "rebels" or "bandits" until recently. Now they are all "international Islamic terrorists."

Secretary of State Colin Powell continues to call for the observation of human rights and a political settlement in Chechnya, while consistently and properly supporting Russia's territorial integrity. But as the Danish Foreign Minister, Anders Fogh Rasmussen, recently summed up the issue, "We, of course, support Russia in the fight against terrorism ... but it is not a long-term solution to the Chechnya problem to launch a military action and bomb the country to pieces."

In addition, the war in Chechnya has affected thousands of refugees, who have fled the constant carnage. In September of this year, I and 10 other colleagues from both the House and Senate wrote President Putin regarding the plight of the internally displaced persons escaping Chechnya to the neighboring province of Ingushetia. We urged the president to resist the forcible return of internally displaced persons seeking refuge in Ingushetia, elsewhere in the Russian Federation, or to any location where the security situation is unstable and proper housing unavailable. However, I have recently learned of 300 Chechen families who are currently facing expulsion from Ingushetia and are seeking refugee status in Kazakhstan. I hope the Russian Government will not expel these individuals, but instead will take all possible actions to alleviate the situation for the many innocent victims of the brutal violence.

Mr. Speaker, I strongly urge President Bush to include these important issues in his talks with President Putin when they meet in St. Petersburg.

HONORING JOHN JORDAN "BUCK" O'NEIL ON HIS 91ST BIRTHDAY

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. McCARTHY of Missouri. Mr. Speaker, I rise today to honor Mr. John Jordan "Buck" O'Neil, a man some call "Mr. Kansas City." "Buck" is a man who has come to embody the ideals we share as a nation. As he celebrates his 91st birthday on November 13, 2002, I am proud and honored to celebrate his lifetime of achievement as our hometown hero.

John Jordan "Buck" O'Neil was born November 13, 1911 in Carrabelle, Florida. He developed a love of baseball at an early age and his father nicknamed him "Buck" after the coowner of the Miami Giants, Buck O'Neal. Though a segregated America denied Buck the opportunity to grace the diamonds of the Major Leagues as a player, he was able to showcase his unmatched talent with the Kansas City Monarchs of the Negro Leagues. He joined the Monarchs in 1938, and played for them until 1943, at which time he went to serve his country in World War II. Recognizing his patriotic responsibility to our country, he entered the United States Navy and was stationed in the Philippines from 1943 until his discharge in 1946. Buck was named player/manager for the Monarchs in 1948 and continued his association with the team through the end of the 1955 season.

As a player, Buck had a career batting average of .288, including four .300-plus seasons at the plate, and led the Kansas City Monarchs to victory in the 1942 Negro World Series. After 12 years as a player, Buck changed hats and managed the Monarchs to four more league titles in six years. Following his career with the Kansas City Monarchs, Buck joined the major leagues as a scout for the Chicago Cubs. In 1962 the Chicago Cubs made him the first African American to coach in the Majors. Buck is credited with signing Hall of Fame baseball greats Ernie Banks and Lou Brock to their first professional contracts, and is acknowledged to have sent more Negro League athletes to the all white major leagues than any other man in baseball history.

Today he serves as the Board Chairman for the Negro Leagues Baseball Museum in Kansas City and spends his time promoting the achievements of African American baseball players who played for the love of the game, despite the color barriers at that time that kept them out of the Majors. He is also actively involved in utilizing the Museum to assist in the education of youth in the community through programs such as "Reading Around the Bases" where elementary school students learn from community readers about the pioneers of the Negro Leagues. I was honored to be asked to read from "second base" to a group of students as part of celebrating Buck's 88th birthday party. Buck participates in the Negro Leagues Museum's "Night of the Harvest Moon" program on Halloween night. It provides area children a safe alternative from the traditional to door-to-door trick or treating. More than 16,000 children have participated in the event over the past five years.

Our "Hometown Hero" is very active in various charitable causes within the community. He lends his name and energy to sponsor the Buck O'Neil Golf Classic, a fundraiser for the Negro Leagues Baseball Museum and the Leukemia & Lymphoma Society. In the past four years, the event has raised nearly $400,000 for the organizations. For the past seven years, the Kansas City Securities Association, Inc. Educational Endowment Fund has given four-year scholarships to graduating high school students in honor of Negro Leagues players, one each year in honor of Buck O'Neil. And Buck still keeps on giving. This entire birthday week is dedicated to giving. Buck wants to fill the Negro Leagues Baseball Museum for his birthday, so the museum is trying to get 9,100 people to the museum in honor of Buck's 91st year. Yesterday, Buck's actual birthday, tickets to the museum were only a dollar all day, and the 91st person to walk through the door won an assortment of prizes. On Friday, November 15, Buck will get together with friends for "Givin' Buck the Blues", a star-studded celebrity roast in his honor and donate all of the nights proceeds to the Negro Leagues Baseball Museum, And there is no indication that Buck will ever slow down. He started his birthday on the radio, left to read to children, spoke at a news conference, and headlined a Project S.O.S. dinner to help kids get school supplies and clothes. The amazing thing about all of this is that he still finds time to give hugs, give autographs, speak to church groups, and throw baseballs to the small children who frequently walk up to him. Buck has risen to national prominence with his moving narration of the Negro Leagues as part of Ken Burns' PBS baseball documentary. He has been the source of countless national interviews including appearances on "Late Night with David Letterman," and "Late, Late Show with Tom Snyder," and being interviewed numerous times on the Jim Rome Show, a nationally syndicated sports radio program. Mr. Rome has talked to Buck so often because Buck had such rich experiences to share about various baseball players, and baseball in general. He states that Buck was one of the most interesting interviews he had ever had on his show.

On his 90th birthday, the City of Kansas City, Missouri named a street in his honor one block north of 18th and Vine, the area that houses the Negro Leagues Museum as well as the American Jazz Museum. The street's new name is John "Buck" O'Neil Way. I look forward to the day in the near future when the Baseball Hall of Fame Veterans Committee recognizes our hometown hero for his accomplishments on and off the baseball field and approve his induction into the Baseball Hall of Fame.

In addition to his work in Cooperstown and at the museum in Kansas City, Buck has found new and exciting ways to enjoy life and spread his infectious charm and warm spirit. He is a local hero whose recognition for service is recognized at home and nationally. Buck and the Negro Leagues are to be honored with an award from the "100 Black Men" in New York on November 14, 2002. He was given the Trumpet Award in 1999 by the Turner Broadcasting System saluting him for achievements to African Americans. The Rotary Foundation of Rotary International conferred on Buck its "Paul Harris Fellow" in appreciation of his "... furthering better understanding and friendly relations among peoples of the world." Kansas State University bestowed upon him the "Lifetime Leadership Award" in "recognition for leadership, community involvement, commitment to diversity, and life long record of contribution to the public." Buck has received numerous awards in recognition of his work in the community and assistance to various organizations. Some of these awards are: the United States Army Award for Outstanding Support of Army recruiting in Kansas City, the Kansas City Chamber of Commerce Centurion Leadership Award, the State Historical Society of Missouri Distinguished Service Award, and the 2001 Jewish Community Center Ewing Kauffman Outstanding Achievement Award. As an award winning baseball player, esteemed baseball manager and scout, decorated veteran, and humanitarian Buck exemplifies excellence in public service and his career serves as a beacon for generations to come. He symbolizes the spirit of American patriotism and is a role model for us all. With all that Buck has done and all that he continues to do for Kansas City and the nation, one might wonder what Kansas City will give Buck for his birthday. Buck simply says, "If I could just see that museum overflowing, it would make my heart sing. That's all I want for my birthday." Mr. Speaker, I am sure that the many lives Buck has touched will return the favor on this birthday and many more to come.

Mr. Speaker, please join me in saluting John Jordan "Buck" O'Neil. It is an honor and a privilege to join in the 91st birthday celebration of an American hero, a national treasure, a symbol of African American pride, and one of Kansas City's favorite sons. Buck's favorite song is "The Greatest Thing In All My Life, is Loving You." Buck, I love you, salute you and your heroic accomplishments, and am delighted and privileged to know such a patriot and to call you my friend. Thank you, Buck.

COMMENDING PRESIDENT BUSH'S LEADERSHIP

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. WILSON of South Carolina. Mr. Speaker, I rise today to commend President Bush's courageous leadership in securing bipartisan Congressional and unanimous U.N. support to disarm Iraq. The threat of nuclear, biological, and chemical weapons being transferred from Saddam Hussein to group like al Qaeda is a real threat to America and our allies.

I also want to praise President Bush's initiatives in strengthening our important relationship with India. Over the past 10 years, bilateral trade between the U.S. and India more than tripled from 6 billion to 19 billion per year. We have continued to engage in joint military exercises, and we share common goals and concerns.

One major goal is to dramatically increase bilateral trade. We have made significant advances in this area, but more remains to be done. We share the common threat of international terrorism from al Qaeda, and we must continue to share intelligence and coordinate counterterrorism strategies through our joint task force on terrorism.

U.S.-India security cooperation is helping to foster greater stability in Asia and to make for a safer world. U.S.-India joint military exercises were held in Alaska from September 29 to October 11, involving troops from the U.S. Army 1st Battalion 501st Para Infantry Regiment and from India's 50 (I) Para Brigade. These exercises followed a joint airborne military exercise between the two countries held at Agra, India, in May of this year. As reported in the Washington Times on October 9, India's Ambassador to the United States, Mr. Lalit Mansingh, traveled to Alaska to observe the exercises. The Ambassador was welcomed by Brigadier General John M. Brown 111, Commander of the U.S. Army Alaska at Fort Richardson, who expressed his appreciation for the professionalism, discipline and adaptability of the Indian armed forces.

Also last month, a major joint U.S.-India naval exercise, named "Malabar IV," was successfully completed in the Indian Ocean. The U.S. and Indian Navies have agreed to jointly patrol the Strait of Malacca to ensure the uninterrupted flow of vital oil supplies. The U.S.-India Defense Planning Group has been established to help coordinate ongoing joint activities, while the Executive Steering Groups of all the three defense services are scheduled to meet again later this year to plan future joint exercises, training and other areas of cooperation for the next year.

Earlier this fall, India once again demonstrated that it is indeed a democracy, where power is transferred by means of free and fair elections, with the conclusion on October 7th of a four-stage election for the Assembly in India's State of Jammu and Kashmir. Despite the ongoing threat of violence by terrorist elements—most of which come from outside of India's borders—to intimidate voters and candidates alike, the elections went—forward successfully, as judged by the United States and other independent observers. Turnout was approximately 45 percent, and the result was a defeat for the ruling party—itself an indication that the elections were truly democratic.

As the Washington Times reported on October 14 ("Embassy Row" column by James Morris), "The United States is praising the bravery of voters in Kashmir who defied threats from Islamic militants to vote in large numbers this month." The article quotes the U.S. Ambassador to India, Robert Blackwill, who said, "It was a successful election. The election commission did a very fine job. It was a credible election carried out by democratic means."

Other top U.S. officials have echoed these sentiments. The Assistant Secretary of State for South Asia, Christina Rocca, in a speech last month at the American Enterprise Institute, said that 'Indian Prime Minister Atal Bihari Vajpayee's "personal commitment to making them [the elections] transparent and open" was a critical factor in moving the democratic process forward."

Ambassador Blackwill did not mince words when it came to describing the guerrillas that used violence in an effort to disrupt the elections, calling them "terrorists." "Terrorists can call themselves many different things at different, places," our Ambassador said. "Sometimes they are called freedom fighters. Any person who kills civilians is a terrorist."

Mr. Speaker, America knows how it feels to be a democracy targeted by terrorists. India has for many years endured the same experience. In fact, the terrorist elements targeting India in Kashmir have links to the same Al Qaeda terrorist network that attacked America on 9/11 and was apparently responsible for the bombing in Indonesia last month. I have spoken out on several occasions this year about the terrorist attacks against Kashmiri civilians, and I have urged the leaders of Pakistan to stop allowing their country to be used as a base for terrorist training camps and extremist religious clerics who foment hate against both India and America.

Unfortunately, the opposite may be happening. On November 12, the Orlando Sentinel, and other publications, reported that, "U.S. intelligence says most of al-Qaeda's surviving leaders have relocated to Pakistan." The newspaper noted that U.S. forces cannot operate in Pakistan as they have in Afghanistan, due to concerns that an American military presence would anger Pakistan. Therefore, we must press President Musharraf to take control of this situation.

Assistant Secretary Rocca stated in her speech that the U.S. and India are allies in the struggle against terrorism, saying, "Counterterrorism cooperation is maturing rapidly, including intelligence sharing, training, finance and antimoney laundering cooperation, improving border security, fighting cyber-terrorism and increasing mutual legal assistance." In fact, a Treaty on Mutual Legal Assistance in Criminal Matters between the U.S. and India is awaiting approval by the full Senate, having been approved by the Foreign Relations Committee in the Other Body.

In closing, Mr. Speaker, I would like to quote from President Bush in his remarks welcoming Prime Minister Vajpayee to Washington on November 9, 2001. "My Administration is committed to developing a fundamentally different relationship with India, one based upon trust, one based upon mutual values. After all, the Prime Minister leads a nation that is the largest democratic nation in the world." I appreciate the commitment of our President, and I look forward to working with the Administration as the United States continues to improve and expand our relationship with India to the benefit of the people of both of our great nations.

I look forward to working with the Republican leadership and President George W. Bush to shape a new relationship between the U.S. and India in the 108th Congress.

HONORING THOMAS J. SCHILTGEN

HON. GRACE F. NAPOLITANO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. NAPOLITANO. Mr. Speaker, I am extremely proud to rise today to honor Mr. Thomas J. Schiltgen, District Director of the U.S. Immigration & Naturalization Service Office in Los Angeles, who will be retiring in December 2002 after 27 years of service to America's immigrant community.

Mr. Schiltgen is a very special individual, and my district is indebted to his unwavering passion and dedication for the immigrant community endeavoring to become U.S. citizens. The 605 Citizenship Project, a video series designed to help educate immigrants to become U.S. citizens, would not have been so successful if it were not for his willingness to personally work in our communities and go beyond the call of duty to provide comfort and patience to families often intimidated by the intricacies of the naturalization process. His willingness to educate and reach out to underserved communities puts him in a league of his own. He has responded to last minute calls of assistance to matters vital to my community's well being, and each time he has cooperated and provided much needed help.

In addition to his community involvement, Mr. Schiltgen has exercised outstanding management skills in the Los Angeles district I.N.S. office. He has achieved a dramatic reduction in the huge backlog of pending applications for naturalization. Today, citizenship cases in Los Angeles are processed in six to eight months, compared to an average of 24 months prior to his arrival. His energy and vision have made him one of the agency's most respected and valued leaders.

Mr. Speaker, I invite my colleagues to join me in saluting Mr. Thomas J. Schiltgen for his understanding leadership and devotion to his work. His devoted commitment to others has earned him praise from the immigrant community, I.N.S. employees, community leaders and advocates who have benefited from his commitment to public service. On the occasion of his retirement, we heartedly congratulate him on his extremely successful career, wish him much success on his future endeavors and thank him greatly for his outstanding efforts to make a difference in the lives and futures of many America's new citizens.

CELEBRATING ALBERT BURSTEIN'S 80TH BIRTHDAY

HON. STEVEN R. ROTHMAN

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROTHMAN. Mr. Speaker, I rise today to pay tribute to an extraordinary man and a great friend of mine—Albert Burstein, who turns 80 years-old on November 22.

Whether it is through his work as partner of his own law firm, his efforts throughout his 10 years as a member of the New Jersey General Assembly to improve our education system and our quality of life as a whole, his many roles in special posts and appointments throughout New Jersey aimed at raising our levels of education and making our society more just, or in his role as the loving husband of Ruth and father of three terrific children, Jeffrey, Diane, and Laura, Al Burstein is a man of great principle. He represents the best of New Jersey and deserves our highest level of praise.

I have had the wonderful opportunity to get to know Al Burstein very well. I first met him after graduating from law school and serving as the campaign coordinator in his race for the New Jersey General Assembly. In between stuffing envelopes, running phone banks, and helping with general campaign tasks, I got to see a man of the highest integrity in action working to make New Jersey a better place. In 1978, Al Burstein ran for the Ninth Congressional District of New Jersey, the seat which I now hold. Although he was not elected, Al Burstein always took the high road in the campaign and never lost focus of his goal of improving the lives of New Jersey residents.

I have great and abiding affection and respect for Al Burstein and I wish him the very best as he celebrates his 80th birthday later this month. I know that I join with his family and his many friends and coworkers in wishing him a year filled with happiness, good health, joyful moments, and time for reflection on all of his life's great accomplishments.

INTRODUCTION OF LEGISLATION

HON. DAVID WU

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. WU. Mr. Speaker, today I am introducing legislation that would allow states with waivers under the Temporary Assistance for Needy Families (TANF) program, that are set to expire in the next calendar year, to voluntarily extend the length of those waivers for an additional year.

As my colleagues know, the TANF program has been very successful in helping millions of Americans get through difficult times. It is important that Congress build on the success of TANF and reauthorize this program with important changes.

However, as my colleagues know, we have reached the close of the 107th Congress, and we have yet to complete action on a TANF reauthorization bill. TANF expired on September

30 of this year and has thus far been funded under continuing resolutions.

I seek not to criticize one party or another or one chamber of Congress or the other for this delay. The issues at heart in this debate are important and decisions should not be made in haste. However, inaction on TANF reauthorization this year has created the potential that several states will be unfairly penalized and my constituents, and those of many other Members, will pay a steep price.

Prior to 1996, welfare policy in the United States was administered through the Aid to Families with Dependent Children (AFDC) program. Under this program the Secretary of Health and Human Services had the authority to grant waivers to states to allow them to create innovative welfare programs that met the goals of welfare but not the specific requirements of AFDC.

In the early 1990's, as it became clear that AFDC was failing to meet its goal of helping to move impoverished Americans to self-sufficiency, the Clinton Administration greatly expanded the number and scope of these waivers and many states took advantage. Many provisions of the innovative state waiver programs were later incorporated into the legislation that created the TANF program.

My state of Oregon took advantage of a welfare waiver and over the past six years has created a highly successful program that has seen welfare caseload reduction above the national average. Oregon's waiver and the waivers of eight other states have expired, or will expire, between September 2002 and September 2003. Once they expire, the states will have to spend scarce resources reconfiguring their programs to meet the federal TANF standards.

This comes at a particularly inopportune time. With the fall off in the American economy, states around the nation are experiencing some of the largest budget deficits in history. Furthermore, rising unemployment rates have forced many out of work and back on to the welfare rolls. Scare resources should not be spent on programmatic changes to effective programs, particularly when it comes at the expense of our most needy constituents.

With work on TANF reauthorization uncompleted, states with expiring welfare waivers will not be able to adequately plan their welfare programs for the future. It makes little sense for them to begin transitioning to the current program with the knowledge that Congress intends to make substantive changes to TANF during the 108th Congress. But, under current law, this is exactly what they will have to do.

Mr. Speaker, it is irresponsible for Congress to force states to transition their programs twice and waste scarce resources on unnecessary programmatic changes, particularly in hard economic times.

Congress should correct this unintended consequence of its inaction by extending existing state waivers.

DAWSON FAMILY TRAGEDY

HON. ELIJAH E. CUMMINGS

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. CUMMINGS. Mr. Speaker, I rise to pay homage to our fallen "Front Line Soldiers". The soldiers that I speak of did not die thousands of miles away from our shores in a foreign land; they were executed in their own home as they slept. These soldiers were not trained in military combat or armed with the latest weapons technology can devise; they fought a life and death battle armed only with a strong voice and a determination that they would not surrender. If the City of Baltimore were to erect a monument to all the innocent lives lost because of the proliferation of drug violence in our community, tragically the most recent names to be added would be Carnell and Angela Dawson, along with their children; Keith and Kevin Dawson (9 year old twins); Carnell Dawson Jr., 10; Juan Ortiz, 12 and LaWanda Ortiz, 14.

On October 16th, while this family slept, a cold-blooded killer entered their home, spread gasoline throughout, and ignited a blaze that swept through the house in a few short minutes. Reportedly, this was done in retribution for the repeated efforts of Mrs. Dawson to stop these dealers from selling drugs in front of her home, in plain view of her young children. That night, Mrs. Dawson and five of her six children lost their lives. Mr. Dawson battled hard but perished a week later from the burns covering 80 percent of his body. We can not, and we will not walk away from the horrific acts of such cold-blooded killers.

Mr. Speaker, this Congress must take action to give the people of Baltimore and people around this country the tools they need to combat the proliferation of drug related violence in our communities.

As the Ranking Member on the House Criminal Justice, Drug Policy and Human Resources Subcommittee I am especially wounded that such a barbaric act could occur within a city in my own district. I will do everything in my power to ensure that the effort to fight terrorism does not drain the fight against drug terror at home. Baltimore City Mayor Martin O'Malley and Police Chief Ed Norris have used their limited resources to make a positive effect on reducing drug-related crimes in the city of Baltimore. With the help of citizens, the mayor and the police chief have achieved a 23 percent reduction in violent crime in just a few short years. Federal agencies also report that Baltimore City has achieved the largest reduction in drug-related emergency room admissions of any major city in America. However, the plague of drug abuse is not a local problem or a problem limited to people of color; it is a national problem that demands a federal response.

National statistics shows that this problem is not limited to Baltimore City. The Bureau of Justice Statistics reports that in 1998 an estimated 61,000 convicted jail inmates said they had committed their offenses to get money for drugs. The cost-effects of these statistics on Baltimore City and other communities throughout this nation are incalculable. That is why I am encouraged by the swift and decisive actions taken by Director John P. Walters of the Office of National Drug Control Policy (ONDCP) to arm our domestic front line soldiers with the tools they need to combat the bane of our communities.

I joined Director Walters on Oct. 23 of this year, as he announced the federal government response to this tragedy. Effective immediately, ONDCP will redirect existing funding resources within the Washington-Baltimore High Intensity Drug Trafficking Area Program (HIDTA) to better protect specified high-crime neighborhoods in Baltimore City. The federal funds will help to pay the cost of additional foot patrols, police overtime pay, surveillance cameras and improved street lighting. This is only a down payment on the debt owed to the Dawson family and the many other families around this nation who are the domestic front line soldiers in what some residents of Baltimore call "a killing ground."

More will be done; more must be done to protect families living in communities of fear. Drug gangs cannot be allowed to rule our court system through intimidation. Children should not fear stray bullets as they sit in front of their homes. Families await a day when they can sleep soundly knowing that the drug gangs are no longer lurking within their community. Baltimore City's fight against these drug gangs is not a war America can afford to ignore; and retreat is not an option.

SPECIAL JOINT SESSION OF CONGRESS

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. RANGEL. Mr. Speaker, for the benefit of my colleagues I rise to introduce the remarks that I delivered in connection with the Special Joint Session of Congress convened in New York City on September 6, 2002. Along with my remarks, I would like to introduce the remarks of Mrs. Susan Magazine, Assistant Commissioner of the Family Assistance Unit of the Fire Department of New York City, Senate Majority Leader TOM DASCHLE, and Speaker of the House DENNIS HASTERT.

I believe that the nature and occasion of the event necessitates that these remarks be entered into the RECORD, so that along with the events at the Special Joint Session, they can be recorded for posterity.

RANGEL. You people look beautiful. (Laughter.)

Thank you, Mr. Mayor and Governor.

On behalf of our New York delegation, and especially Ben Gilman, who has been my friend for over 30 years, who leave us—where are you, Ben? (Applause.)

... and our entire delegation, which I hope would rise at this time, the supporters of our resolution . . . (Laughter.)

... I want to thank the leadership in the House and the Senate for supporting this resolution, our mayor and governor for giving it its political support, Ms. Annenberg for giving us our financial support, and most importantly all of you who took time from your busy schedules, and indeed our legislative schedules, to come to our great city to give us an opportunity to say thank you. History is a strange thing when you're making it. You're just not aware of the courage you may have or the shortcomings that you may have. And as the mayor, in telling you about the attributes of New York, it could be perceived that most of us from New York City have a little more self-esteem than we really need to get by. (Laughter.)

RANGEL. But when we were hit, we were afraid, we were scared. We didn't know whether we were going to be hit again. And Jerry Nadler, who's district was hit, was one of the first to get there.

And as the mayor said and the governor said, people came from all over. Not just our heroic policemen and firemen and emergency workers, but kids came, flags were there, foods were there, doctors were there. Everyone wanted to help.

Most of the New York congressional delegation in the city, we were there because it was a primary day. And so when we got back to Washington, we didn't know what to expect. We went by car. We went by bus. We went by train. And when we saw our colleagues there, singing "God Bless America," we recognized that we were not just New Yorkers; that we were Americans. It wasn't just . . . (Applause.)

It wasn't just our great city that was hit, it was our great country that was attacked. And we did come together, not as Republicans and Democrats and liberals and conservatives, but we came together in support of our president and our legislative leaders to let all of our foes know that we were united in our resolve to make certain that we would do all that we could to see that this does not happen again.

And even now as we gather to praise those that fought so hard for our country, that became our heroes, we send a message to our enemies that it is our resolve to say once again: "Don't tread on the United States of America; that we are prepared to do whatever is necessary to seek out and to destroy those who seek to destroy our way of life."

RANGEL. And we come back to where the Congress has met over 200 years ago, and I cannot but be emotionally involved in believing how proud our forefathers should be of us, to come back after 200 years, and to see what we have done with their Constitution, how much we treasured it, how much we expanded it, and how much today as we meet are we prepared to protect it. How little did they know that those who picked cotton during those days, those that would come into our country to build our roads and our railroads, those that would come from foreign countries seeking religious and economic freedom, would be coming here as a part of the United States Congress 200 years later. (Applause.)

U.S. history is strange because not only are we living it, but to give New Yorkers an opportunity to say thank you to our colleagues in the House means that we're saying thank you to America. We are basically saying, as New Yorkers, "God bless this great country, that gives us an opportunity to have our diversity, and to continue to believe that a part of the legacy that we are going to leave to those to follow us, is that we're not going to allow terrorism to instill terror in our heart; that our basic commitment has to be that while we would not allow an enemy to intimidate us, we're not going to allow terror to take away our basic freedoms; that we're not going to strike any unknown country without knowing where the enemy actually is; and that the opportunities that we have been given as a people, of education, of Social Security, of health care, of opportunity that we're going to make certain that, as we protect this country, we protect those civil liberties that have been passed on to us so that when the next Congress meets, no matter where they meet, they will be saying that we protected the Constitution that was given to us over 200 years ago." (Applause.)

RANGEL. My mother, your mother, everyone always said that during times of pain, that you'd have to seek and you can find some good in it. But the truth of the matter is that when we were struck, it was hard to believe that we could find some good.

But there was good that we found out; that America gave us an opportunity to say thank you to each other. America gave us an opportunity to see how blessed we were; that we could look at each other without seeing color, without seeing party label, without seeing where we came from, and recognize that we had an obligation to protect what we have.

Mr. Governor, Mr. Mayor, thank you for giving us the support of bringing us together. And now we can say that we really owe a lot to each other, because we need each other. We hope this never happens again, but thank you, Congress, for helping us when you needed us, and not withstanding our attitude, we deeply appreciate the opportunity. (Applause.)

BLOOMBERG. More than 2,800 people lost their lives at the World Trade Center, but the toll could have been far, far worse if it were not for the valor and professionalism of our local and regional firefighters, police officers and emergency service personnel. (Applause.)

BLOOMBERG. Showing tremendous courage, they effected the rescue of more than 25,000 people from the World Trade Center, the largest and most successful emergency evacuation in modern history. Their heroism inspired the nation.

Three hundred and forty-three members of the Fire Department of New York City gave their lives for freedom on 9/11. We will never forget their bravery and their sacrifice.

It is now my privilege to introduce Susan Magazine. She is the assistant commissioner in charge of the fire department's Family Assistance Unit. She is also a woman who lost her husband Jay, who worked at the World Trade Center.

Susan? (Applause.)

MAGAZINE. Thank you, Mayor Bloomberg.

Mayor, Governor Pataki, distinguished members of Congress, honored guests, I am honored to have been asked to come here this afternoon to speak with you. I came here because I think it's very important that you, our nation's leaders, hear directly from someone who lost a loved one, a family member last September 11.

As the mayor said, my husband Jay was one of the more than 2,800 people who perished at the World Trade Center on that day. Jay and I spent our entire adult lives together. On October 17th of next month, we would have celebrated our 20th wedding anniversary.

We have two children. Melissa is 14 and Andrew is 11. Melissa starts high school next week, and Andrew starts middle school.

Jay was the catering sales manager at Windows on the World, the spectacular restaurant at the top of the north tower. One of our favorite shared family memories was all of us—Jay, me, Melissa and Andrew—going up to the restaurant all wearing hard hats during the construction work to reopen Windows on the World.

MAGAZINE. What a beautiful restaurant it was. When you were up there you felt like you were on top of the world.

And Jay loved it. He loved working at Windows. He loved working in the Trade Center. He loved the vibrancy of downtown Manhattan.

I recently attended a dinner for a hunger relief organization that Jay was involved with to present the first annual Jay Magazine Award of Excellence. The recipient of the award was Jay's friend, Michael Lomonaco, who was the chef at Windows.

When Michael accepted the award he told a story about how he and Jay would meet almost every morning in the Windows cafeteria for coffee. And every morning as they were leaving, Jay would turn to Michael and say, "You know, we're the luckiest guys in the world to be working here."

When our kids went to visit Jay, which was often, they would look out of his office window. You felt like you could see all of New York City from there. And he would tell them that if they looked really, really hard uptown that they could see our apartment. It was so magical up there. Now, like thousands of other families, Melissa, Andrew and I are trying to figure out how to move on and how to live our lives. That doesn't mean that we will ever forget. It doesn't mean that we're trying to get back to normal. Normal does not exist anymore for any one of the families that lost someone that they loved on that day.

It means that each one of us has to find a new normal. We have no choice. And my family is doing that. We're surrounded by incredible family, wonderful friends and support of communities. And we're doing it with the assistance of our neighbors, of our communities and you, our policy-makers. And we are extremely thankful for all of the support that we have received from people everywhere.

Let me illustrate with a personal story. Our family held a memorial service for Jay at the end of September. Jay had always been in the catering and restaurant businesses and had many friends, colleagues and clients all over the country.

At that service blank cards were distributed with envelopes addressed to our children. People were asked to write down their memories of Jay, to tell us stories about the Jay that they knew. The response was unbelievable. Hundreds and hundreds of cards have come back from people who knew Jay. And then, we got cards and letters from people who didn't know Jay, but had heard about him and had heard about our family, and wanted to somehow try to connect and try and give some comfort to an individual family.

Experiences like that continue to be repeated every day for the families who have been affected by September 11th. As our nation's leaders, you should know that at the Family Assistance Unit of the fire department, we spent hours each day responding to letters and gifts from all over the country: from your states, and your districts. And we respond to each one of them. We received cartons of letters from schools, camps, houses of worships, individual people from all over the country, teddy bears, quilts, pictures, books, offers of weekends away for family members, paintings, scholarships for children, songs, poems, prayers. Whatever it is that people have to give, they want to reach out to individual family members and somehow try and make a difference to each family.

And these are the people that you represent. Please tell the men and the women and the families in your home districts and your states how much it means to us that so many Americans have offered us their generosity and their kindness.

The events of September 11th were an attack on our nation and they were attacks on individuals and individual families. Every one of the people who perished on that day was a husband, a father, a son, a wife, a mother, a daughter, a brother, a sister, a neighbor, a friend. Over 2,800 individual people were lost on that day.

And it's been remarkable to me how many Americans truly understand that each of us were real people, were real families who have experienced this enormous tragedy in very individual, very personal and very immediate ways.

Every day the people who work for the city of New York go to enormous lengths to do whatever they can for us, for the families. The city, the state and the entire nation have given us their support. Thank you.

And when you go home, thank your constituents for their kindness, for their generosity and for never, ever letting anyone forget. Thank you. (Applause.)

BLOOMBERG. Susan, thank you.

And to you and to all the families, all we can really say is, "Those we lost are in our prayers and God bless."

For the terrorists, the attack on the World Trade Center, as devastating as it was, was a failure. It did not accomplish what they hoped it would. It did not weaken us. Instead, it united us. It brought us together as a nation determined to defend our freedoms and to punish those responsible for this despicable act.

Ordinary Americans showed the goodness in their hearts. They responded to 9/11 as if their own home communities had been attacked. An unprecedented outpouring of support flooded into New York from across the nation.

The following video you're about to see is our way of saying, "Thank you, America."

(Videotape presentation).

BLOOMBERG. I want to thank the Interpublic Sports and Entertainment Group chairman, Mark Dowley, for producing that video and donating their services. (Applause.)

The power, majesty and proud heritage of the United States are expressed in our national symbol, the American bald eagle. On behalf of the people of New York City, I am pleased to memorialize this historic joint session of Congress in our city by presenting a commemorative Steuben glass eagle to the House of Representatives.

Minority Leader Gephardt? (Applause.)

Thank you on behalf of all New Yorkers.

GEPHARDT. Thank you so much. I accept this on behalf of all of our members. And, Charlie, I don't think you have an attitude at all. (Laughter.)

Thank you. (Applause.)

BLOOMBERG. The city is also proud to present a commemorative eagle to the Senate. Minority Leader Lott, would you come up to the podium, please? (Applause.)

BLOOMBERG. On behalf of all New Yorkers, thank you, sir.

LOTT. Thank you very much, Mr. Mayor. On behalf of the United States Senate, we express to you our appreciation for all you've done, and for this. Senator Daschle and I will find a special place for this great eagle. Thank you. (Applause.)

BLOOMBERG. Thank you.

Speaker? (Applause.)

And Tom Daschle. (Applause.)

HASTERT. On behalf of the U.S. Congress, we have a unique gift: a token of that day, and a token of the strength of this nation. Over the Capitol of the United States flew the flag of the United States of America. And on September 11th, we took that flag down. We kept it. We weren't sure exactly how we were going to use that flag. But we think it's very appropriate today to give it to the city of New York as a memento of what this Congress believes in: the ability and strength of the people of New York, the spirit of the people of New York is truly the spirit of America. Thank you. (Applause.)

DASCHLE. On September 11th, when the people of South Dakota saw what happened, they dropped everything. One ranch couple, themselves struggling right now, sold 100 head of cattle, and donated the proceeds to the victims and their families. A class of second graders collected pennies, thinking that they might be able to collect or raise a couple of hundred dollars. They raised $1,776.05.

I'm sure you could find similar stories from Speaker Hastert's constituents in Illinois, Senator Lott's in Mississippi, Congressman Gephardt's in Missouri.

But in reaching out to help the people of New York, we realized it was the people of New York who were helping us. Your courage helped steady a wounded nation.

So today, I join Speaker Hastert, on behalf of all of those you inspired, to present you this flag. We hope it'll find a home in the memorial you build to the victims of September 11th, to let all New Yorkers know that they didn't just inspire a city, they inspired a nation. (Applause.)

BLOOMBERG. Dick, would you come up? And, Trent, and if you could come up here as well. (Applause.)

BLOOMBERG. Thank you.

Earlier, I proudly, perhaps boastfully but accurately, referred to New York City as the nation's cultural capital. I will now demonstrate that this was not an idol boast.

It is my great pleasure to introduce a great composer, arranger, conductor, musician, and in my book most importantly an educator. The winner of the Pulitzer Prize for music, and the artistic director of jazz, at Lincoln Center, Winton Marsalis. (Applause)

(Musical presentation.) (Applause.)

BLOOMBERG. As to my boast about culture, I will rest my case. (Laughter.)

Thank you.

Well, thank you for joining us for this historic event. The members of Congress will now exit, en masse to visit ground zero and to pay their personal respects to the more than 2,800 people who died for freedom. Governor Pataki and I will go with them.

But to facilitate their orderly departure, I would ask that all other guests please remain seated until the members have left for the ballroom.

Thank you for your cooperation. And thank you for showing your support for the greatest city on Earth.

EXPRESSING SORROW OF THE HOUSE AT THE DEATH OF THE HONORABLE PAUL D. WELLSTONE, SENATOR FROM THE STATE OF MINNESOTA

SPEECH OF

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November, 12 2002

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise in support of the resolution honoring Senator Paul Wellstone and to express my deep sadness at his unexpected death, and that of his wife Sheila, their daughter Marcia, members of his campaign staff, and the two pilots of the plane.

Senator Paul Wellstone was a man of conviction and passion who worked tirelessly on behalf of America's families. He was dedicated to making the American dream a reality for all—including the most marginalized among us. Senator Wellstone always stood firmly by his principles, consistently representing the people of Minnesota with honor and courage.

I had the privilege of knowing Senator Wellstone and working with him and his wife Sheila on the issue of domestic abuse. Senator Wellstone was a vigorous champion for reform. He was a driving force behind enactment of the Violence Against Women Act—the most important domestic violence law in our nation's history. He also authored and helped pass legislation that provides services and support to children who grow up in violent homes and fought for legislation that helps health care providers do more to stop domestic violence.

During the past three Congresses, I was honored to partner with Senator Wellstone in introducing legislation that helps provide employment stability and security to victims of domestic violence. And most recently, to have partnered with him to secure $5 million dollars for the Department of Defense to fund confidential victim advocates to address the problem of domestic violence among our military personnel.

Senator Wellstone will be remembered as one of this nation's most dedicated and nationally recognized advocates on domestic abuse. All of us who partnered with him to put an end to this horrific crime know that this movement has lost an irreplaceable leader. His lifelong efforts to make our communities safer and more just will serve as a model for all of us who will continue to fight against the cycle of violence that plagues so many American families.

Mr. Speaker, Senator Wellstone will be sorely missed by all of us here in Congress, and fondly remembered as the Senator from Minnesota who brought a message of social justice and equality to the people of this great Nation. My sincere condolences go out to the Wellstone family, families of all those aboard the plane and to all the residents of Minnesota.

PERSONAL EXPLANATION

HON. STEPHANIE TUBBS JONES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mrs. JONES of Ohio. Mr. Speaker, I support the recently enacted steel tariffs and urge support for the domestic steel industry, however, I ask that my name be removed from H. Con. Res. 507, a bill urging the President to request the United States International Trade Commission to conduct an expedited review of the temporary safeguards on imports of certain steel products.

CONGRATULATING THE ANAHEIM ANGELS 2002 WORLD SERIES CHAMPIONS

HON. EDWARD R. ROYCE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROYCE. Mr. Speaker, I wish to congratulate the Anaheim Angels on their tremendous achievement. I am pleased to join my fellow colleagues from Orange County as we congratulate the Anaheim Angels on their miraculous World Series win.

For those of us who grew-up in Orange County, this is a tremendous moment. Gene Autry formed the team in 1961. Now, after more than 40 years, the Angels have won their first World Series Championship.

The Angels' victory was far from predicted. They were the underdog all the way. After all, the previous season, the Angels finished 41 games out of first place.

Anaheim was the wild card team—most gave them little chance of knocking off the perennial favorite New York Yankees for the American League Division Series. The Angels then went on to defeat the Minnesota Twins to win the American League pennant. And then finally, defeated the San Francisco Giants in the World Series in seven hard-fought games.

The atmosphere in the stadium was electrifying. Fans across Orange County came equipped with their rally monkeys and thunder sticks to cheer our team to victory.

The Angels' victory over the Giants was truly amazing. The Angels had never won a playoff series before beating the Yankees. Anaheim is the first team since 1912 to win the World Series without having any player who had ever played for a World Series winner previously.

The victory is a testament to the teamwork and abilities of the Anaheim players.

They were led by manager Mike Scioscia; Tim "the Kingfish" Salmon, who has played his entire career for the Angels; Pitcher John Lackey—who was the first rookie to win a Game 7 in 93 years; and I think it is fitting that third baseman Troy Glaus—a native of Orange County—was named most valuable player of the World Series.

Mr. Speaker, I congratulate the Angels' players, coaches, staff, and the fans, who were instrumental in bringing the World Series Championship to Anaheim.

HONORING ROHM AND HAAS LONE STAR PLANT

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. BENTSEN. Mr. Speaker, I rise to congratulate the Rohm and Haas Lone Star Plant as they are saluted by the Deer Park Chamber of Commerce as the 2002 Industry of the Year. The Rohm and Haas Lone Star Plant is being recognized for providing critical industrial services, while continuing to make a positive impact in the Deer Park community.

Located on a thirteen acre site in Deer Park, construction of the Lone Star Plant began in 1995, with its first batch created in June of 1996 and its first shipment dispatched soon after. One of the plant's main activities is the production of polymeric emulsions, which are used in various other product applications. In addition, the Rohm and Haas Lone Star Plant manufactures approximately twenty substances that are used in the production of water-based paints, traffic paint, adhesives, caulk, as well as other household and industrial commodities.

Although the Rohm and Haas Lone Star Plant has excelled in its industrial production and processes, its presence in the community has been invaluable. The Lone Star Plant is an active member of the Deer Park Community Advisory Council, the Deer Park Local Emergency Planning Committee, and the Channel Industrial Mutual Aid Organization. Two of its management team members serve in prominent community leadership positions as Director of the Deer Park Chamber of Commerce and Deer Park Educational Foundation. Additionally, many of its employees are active in the PALS mentoring program at San Jacinto Elementary School, as well as the promotion of youth sports and education in the Deer Park area.

Mr. Speaker, I applaud the Rohm and Haas Lone Star Plant for its many contributions made in both industry and community. I also commend the Deer Park Chamber of Commerce for their continued efforts to recognize such businesses that use their strengths and successes to better their communities.

HONORING REPRESENTATIVE STEPHEN HORN

HON. LUCILLE ROYBAL-ALLARD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. ROYBAL-ALLARD. Mr. Speaker, I rise to join my colleagues in paying tribute to one of our retiring members, STEVE HORN. STEVE HORN's departure from this House is a significant loss. Many of us on the Democratic side looked to STEVE as an honest and effective advocate who worked across party lines to advance the best interests of the Los Angeles region, our state of California, and the United States.

STEVE's loss to the House perhaps is overshadowed only by the loss we will feel within the Los Angeles County delegation. Republicans and Democrats alike have come to rely on STEVE's expertise and help as a member of both the Transportation and Government Reform Committees. He is always there to help us meet the common interests of the citizens of the Los Angeles area.

STEVE and I were classmates, elected in 1992, and we have worked together on a variety of important issues during our five terms in the House. Together, we advocated to both Democratic and Republican Administrations to ensure an effective health care safety net for Los Angeles County. We worked on transportation and economic development projects affecting the Ports of Los Angeles and Long Beach, the largest port complex in the nation. Just this year, we worked successfully for environmental funding to solve a wastewater runoff problem affecting two of our municipalities. We haven't always been successful, but our successes have far outnumbered our defeats. Southern California and Los Angeles County have benefited greatly from STEVE's willingness to work as part of a bipartisan team for the good of our constituents.

STEVE's hard work and commitment to his district have been made very evident, as I have worked this year to introduce myself to my new constituents. Everywhere I've gone I've heard nothing but praise for STEVE's representation. I have heard constantly how respected STEVE is, and how people appreciate his commitment to his district. I owe STEVE a personal debt because of the enormous assistance he has been to my staff and me as I inherit part of his congressional district, the cities of Downey and Bellflower. STEVE has explained the many issues he has worked on during his tenure in Congress. He has introduced me to local officials, business people and key community groups. He has gone the extra mile to make sure that my staff and I understand his district. STEVE didn't have to do that, and I am very grateful for his willingness to work with me.

In short, STEVE HORN's service in the House of Representatives has been distinguished and effective. I have enjoyed working with him on issues of importance of the Los Angeles area, and my respect for his work and personal integrity continues to grow as I learn more about him and the wonderful people I now have the privilege of representing.

STEVE is a class act, and he will be a hard act to follow. But I will do my best to continue the high level of representation that he has achieved and the legacy of good government that I now inherit from him. We will miss STEVE in the Los Angeles delegation, and we will miss him in the House.

Based on my experience in Downey and Bellflower, STEVE retires with the greatest reward that can be presented to him—the adulation of the constituents he has represented so ably for 10 years.

I thank STEVE HORN and commend him for his service to his district and to our nation. Ed and I wish him and Nini well in their next undertaking.

HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. W.J. "BILLY" TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 13, 2002

Mr. TAUZIN. Mr. Speaker, I rise in support of H.R. 5710, which embodies the President's ambitious and historic proposal to create a new Department of Homeland Security. At the outset, I want to thank the Majority Leader and the Chairman of the Select Committee on Homeland Security—the gentleman from Texas, Mr. ARMEY—for taking the President's bold framework and creating a much stronger bill in close consultation with the committees of jurisdiction, including the committee I chair, the Energy and Commerce Committee, which has and will continue to have jurisdiction over many aspects of this new department and the difficult challenges it will face.

I also want to praise Governor Ridge and the White House for their flexibility and consideration of our concerns, and I think we all owe the Governor and the President a large debt of gratitude for the protection that they have given our country since 9/11.

Ever since the anthrax attacks of last year, the threat of bioterrorism has become much more of a reality, and the importance of biomedical research activities at the Department of Health and Human Services and NIH and the CDC has never been greater. This bill builds upon those great research agencies. Rather than destroying their work and taking it over and redoing it, the bill makes it clear that NIH and CDC will retain primary responsibility over human health-related research, and that the new Department itself will not engage in such R&D efforts. Rather, it will collaborate and coordinate with these two agencies in setting priorities for research on terrorist agents.

The Committee on Energy and Commerce recommended this approach because the terrorism-related research currently being performed at NIH and at the CDC is really dual-purpose in nature. It serves the priority and needs of both counterterrorism and the traditional public health system. So I want to thank the gentleman from Texas and the administration for working with us on this important change.

We also want to make clear that the bill adopts recommendations that our Committee made with respect to the public health emergency and bioterrorism grant programs run by CDC and HHS for state and local governments, leaving them where they are now so that this important work of upgrading our public health infrastructure is not interrupted.

The bill also will improve the efforts by our country's top scientists at national laboratories to develop new methods of detecting and preventing terrorist attacks, such as improved sensors to detect radiological devices and new scanners to screen luggage and cargo, a critical need as we move forward. Our current ability to screen for radiological and nuclear materials entering our ports is woefully inadequate. We are going to do something about it with this bill.

A key provision in the bill that our Committee recommended will establish a central technology clearinghouse that will assist Federal agencies, State and local governments and, even more importantly, the private sector in evaluating, implementing, and disseminating information about key homeland security technologies such as radiation and bio-weapon detectors.

Finally, the provisions in this bill dealing with the protection of our nation's critical infrastructures—most of which fall within our Committee's jurisdiction and are under the control of the private sector—are vitally important to ensure that progress in this area continues to be made. There will be a strong, cooperative program between the new Department and state and local governments and the private sector to enhance such protection, without micromanagement of security from Washington, D.C., or new regulatory mandates that will serve only to foster distrust and delay.

Mr. Speaker, I urge my colleagues to support this bill, and once again thank the President, Governor Ridge, and Majority Leader ARMEY for their tremendous efforts in bringing this matter to a favorable resolution for the American people.

IN MEMORY OF JUSTIN ULRICH

HON. PETER T. KING

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. KING. Mr. Speaker, I rise today to honor the life of Justin Ulrich who passed away suddenly on November 10th. Justin, a twenty-three year-old senior at New York University's Tisch School of the Arts, embodied the spirit of young people who participate in the political arena while serving causes greater than their own. This past summer, Justin completed an internship in my congressional office in Washington, DC where I was able to see first-hand the energy, dedication, and initiative he possessed.

Justin carried a passionate appetite for politics as chair of the External Affairs Committee of the University Committee on Student Life and as a senator on the Tisch Undergraduate Student Council. Most recently, he worked for congressional candidate Jim Farrin's campaign and attended volunteer events promoting political candidates in Washington, DC. In addition, Justin was an active member of the College Republicans at NYU and served as its publicity director.

Mr. Speaker, no one will forget Justin's passion and cheerful smile. I join with his friends and schoolmates in offering my condolences to his family.

HONORING REPRESENTATIVE STEVE HORN

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. DREIER. Mr. Speaker, I am grateful for this opportunity to speak about a good friend and respected colleague, Congressman STEVE HORN, who is retiring from this body after 10 years of unwavering integrity in service. And though we wish our friend nothing but the absolute best as he leaves Washington, we will miss STEVE immensely, and are sad to see the parting of this true Californian.

Congressman HORN has served with diligence on the Transportation and Infrastructure Committee on behalf of his constituents in Southern California. His Congressional District benefitted greatly from his leadership, especially in the areas of environmental stewardship and infrastructure investment. He consistently championed projects critical to the Ports of Los Angeles and Long Beach, preserving local wetlands, and supported the need for new technologies to advance ocean water desalination.

Congressman HORN has been an unsung hero on federal government accountability for which I thank and commend him. Chairing the Government Reform Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Congressman HORN dedicated his committee's jurisdiction to making federal agencies more accountable to the taxpayer, ensuring that our government was open and accessible to the public, and demanding that red-tape and other bureaucratic excesses were eliminated.

Many of us can only look with awe at Congressman HORN's distinguished and vast public service career. He served in the Eisenhower Administration under Labor Secretary James P. Mitchell, and then got his legislative feet wet while working for California Senator Thomas Kuchel on historic legislation including the Civil Rights Act of 1964 and the Voting Rights Act of 1965. In addition, Congressman HORN dedicated 18 years to the California State University, Long Beach, where he was recognized as one of the most effective college presidents in the country.

There is no doubt that Congressman HORN has accomplished a great deal. However, I believe his greatest accomplishment lies in not just what he has been able to do, but in the person that he is. He is a man of character who never allowed partisan politics to triumph over personal integrity, who sought real answers to real problems for the benefit of strangers, and whose watchful gaze held us all to the same higher standard he set for himself.

I will miss seeing him in the halls of the Capitol, but will look forward to seeing him and his lovely wife, Nini, at home in California.

MARTHA THOMAS: A POINT-OF-LIGHT FOR ALL AMERICANS

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. OWENS. Mr. Speaker, recently Dr. John C. LaRosa, President of SUNY Downstate Medical Center announced the appointment of noted community leader and writer, Martha Thomas as Assistant Vice President for Community and Government Relations.

It is no secret in Brooklyn that Martha is a very skilled professional who, in her previous positions at SUNY Downstate Medical Center served as the Director of Community Relations in the Office of Institutional Advancement as well as Director of Media Relations. Since joining the staff in 1977, Martha has been instrumental in educating elected officials about the needs of the medical community as well as serving as a liaison to the community and its leadership.

I have known Martha for a number of years, and I know personally the level of her commitment to insuring that all people have access to quality health care. In her new position, she will continue to serve as the government relations manager in addition to advising the institution on legislative issues ranging from health care to education.

Prior to joining SUNY Downstate, Ms. Thomas was a Michelle Clarke Fellow at Columbia University and a television reporter at

Two Florida stations: WCTV in Tallahassee and WJXT in Jacksonville. She is also a playwright whose work has been produced on Manhattan's Theater Row and in Brooklyn, Harlem, Phoenix, Arizona and Fort Campbell, Kentucky.

Martha is the mother of two. Her son Eric is a teacher in Trenton, New Jersey, and her daughter, Dr. Cheryl Thomas is a graduate of Downstate's College of Medicine who practices in New Jersey.

Mr. Speaker, I am honored to recognize Central Brooklyn's Martha Thomas as a Point-of-Light for all Americans.

CORRECTION TO DISSENTING VIEWS TO COMMITTEE REPORT TO H.R. 4689

HON. ROBERT C. SCOTT

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SCOTT. Mr. Speaker, I signed the "Dissenting Views" to the Committee Report to H.R. 4689, the "Fairness in Sentencing Act of 2002," along with three other members of the Committee. The views included the following statements: "If enacted, the bill would prevent individuals who perform low-level drug trafficking functions from qualifying for a mitigating role adjustment under the United States Sentencing Guidelines." and "The bill prevents low-level, first-offense drug offenders from receiving a mitigating role adjustment under the sentencing guidelines.".

These statements do not precisely reflect their point. The bill would overturn a new U.S. Sentencing Commission guideline which establishes a 10-year cap on how much drug quantity can impact the guidelines. Without such a cap, the impact of drug quantity alone can result in a sentence that is in great disproportion to the relative role of the offender in a drug enterprise. Accordingly, although the statements may not be precise, the point remains that, under the bill, certain low-level offenders will be prevented from receiving any meaningful benefit from a mitigating role adjustment, so long as the quantity alone can require such a disproportionate sentence under the guidelines.

HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. RICHARD K. ARMEY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, November 13, 2002

Mr. ARMEY. Mr. Speaker, I rise today in strong support of Subtitle G of the Homeland Security bill, which is the Support Anti-terrorism by Fostering Effective Technologies Act of 2002—otherwise known as the "SAFETY Act." Briefly, the SAFETY Act ensures that U.S. companies will be able to develop and provide vital anti-terrorism technologies to help prevent or respond to terrorist attacks—without the threat of crippling lawsuits.

Many technologies already exist that could be used to provide the American public with greater protection against a range of terrorist threats. However, due to concerns about potential lawsuits and liability, these technologies are not being made available to federal, state or local governments or to other commercial entities. Under current law, companies can only provide these technologies to a limited number of agencies of the Federal Government—but not to other entities with front line responsibility for protecting the public, including state and local authorities.

The SAFETY Act ensures that these important technologies can be made available to help protect our cities, schools, hospitals, nuclear power plants, bridges, dams, and other critical areas.

This legislation accomplishes this objective by providing litigation reforms and insurance guidelines for companies that help to prosecute the global war on terrorism. Without these protections, each time a technology or defense company puts its anti-terrorism technology to use, it becomes vulnerable to potentially unlimited and uninsurable liability. Such an enormous risk has an understandably chilling effect on the willingness and ability to research, develop, and deploy critical homeland security technology. The SAFETY Act guarantees that the best companies with the best products will come forward with their technologies and will not sit on the sidelines.

The SAFETY Act helps to ensure that the most advanced anti-terrorism technology is put to use as soon as possible to protect American citizens through four mechanisms:

First of all, the Act limits non-economic damages to the percentage of responsibility and limits the award of punitive damages.

Second, the Act allows all providers of anti-terrorism technology to claim the "government contractor defense." If a contractor or company follows the strict specifications set forth by the government, then that company will have a government contractor defense as is commonplace in existing law.

Third, the Act applies to all providers of anti-terrorism technology, whether sold to the Federal government, state or local government, or a private sector entity that deals with the public safety. It also requires the companies to obtain liability insurance coverage. This provision balances the interests of potential plaintiffs and technology companies by requiring that the companies buy the maximum amount of reasonably available insurance without incurring unreasonable premiums. It is Congress' intent that the insurance that the contractor must obtain should be reasonably priced and the Act does not require the purchase of insurance that is priced at unreasonable or exorbitant levels which would distort the sales price of the technologies.

Fourth, because any act of terrorism presents unknowable risks, liability for all claims against companies that provide anti-terrorism technologies are capped at the amount of the companies' liability insurance coverage required under the Act. We must not allow the litigation fallout from one act of terrorism to bankrupt a company that otherwise could have developed technology that could prevent another act of terrorism. This section is modeled after a similar provision in the Air Transportation Safety and System Stabilization Act. It is the intent of Congress that this provision limit the liability for any and all claims as detailed in the Act.

Only those technologies designated by the Secretary of Homeland Security are covered under the SAFETY Act. Therefore, it is Congress's hope and intent that the Secretary will use the necessary latitude to make this list as broad and inclusive as possible, so as to insure that the maximum amount of protective technology and services become available. In addition, it is worth mentioning that the Act's anti-terrorism technology criteria are not intended to be exclusive, and in order for a technology to merit coverage by the Act, it needn't meet all criteria. For instance, though prior U.S. government use or demonstrated utility is the first criterion listed, products new to the market are certainly eligible for coverage.

Finally, all of the liability reforms and litigation measures of the SAFETY Act are intended to complement other government risk-sharing measures that some contractors can use such as Public Law 85–804. Thus, in those situations both types of measures could apply.

Through this Act, we want to give the appropriate incentives to companies to provide the technologies that can protect the American people.

KAZAKHSTAN'S REGIME SHOULD FREE JOURNALIST SERGEI DUVANOV

HON. DANA ROHRABACHER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROHRABACHER. Mr. Speaker, the despotic regime in Kazakhstan has imprisoned one of that country's best known journalists and human rights activists, Mr. Sergei Duvanov. I have joined a number of Members of the House International Relations Committee in writing a letter to President Bush urging the Administration to strongly speak to President Nursultan Nazarbayev and his regime to release Mr. Duvanov.

The campaign for the release of Mr. Duvanov, who has previously testified before our International Relations Committee on the need for human rights in Kazakhstan, has been joined by international human rights organizations, such as Human Rights Watch and Amnesty International, as well as by numerous Members of the European Parliament.

I am including for the RECORD a copy of an article titled, "Central Asia Resists Pressure From West To Improve Human Rights," that appeared in the November 11, 2002 Wall Street Journal. I join the many voices of advocates of democracy and human rights from around the world who strongly urge the immediate freedom of Sergei Duvanov.

CENTRAL ASIA RESISTS PRESSURE FROM WEST TO IMPROVE HUMAN RIGHTS

(By Steve Le Vine)

ALMATY, KAZAKHSTAN—Several recent steps taken by Central Asian republics suggest an increasing boldness against Western pressure by the region's autocratic leaders, most of whom are key U.S. allies in its war against terrorism, Western officials say.

Following the Sept. 11, 2001, terrorist attacks, the U.S. began using Central Asia as a jumping-off point for its war to dislodge the Taliban in neighboring Afghanistan. The U.S. established military bases in three of the countries, Uzbekistan, Kyrgyzstan and Tajikistan, and obtained Air Force landing rights in Kazakhstan. U.S. aid to the region more than doubled.

In recent months, however, the U.S. and Europe have been increasingly outspoken about the region's poor human-rights record, and in response, the region's leaders have begun to publicly resist those pressures.

The Kazakh government says it officially charged a well-known opposition journalist with raping a 14-year-old girl, an accusation Western officials suggest may be politically motivated. The journalist, 49-year-old Sergei Duvanov, had been planning a trip to the U.S. for speaking engagements on Kazakhstan's human-rights record. He says the charges against him are fabricated.

It is the third time Mr. Duvanov has accused the government of harassment since he wrote a story earlier this year for an Internet site about Swiss bank accounts allegedly belonging to President Nursultan Nazarbayev. The accounts are part of separate money-laundering investigations by the U.S. and Switzerland. In July, the Kazkah government charged Mr. Duvanov with criminal libel for the story, and in August—two weeks before he was to attend a human-rights conference in Warsaw—he was beaten and a cross carved into his chest by unidentified men.

In a statement last week, the Organization for Security and Cooperation in Europe said, "The pattern of incidents involving Mr. Duvanov, their coincidence with his planned trips abroad to discuss publicly the situation in Kazakhstan, and the disputed circumstances of the latest case trigger concerns that these incidents may be politically motivated."

The U.S. and Europe are increasingly critical of President Nazarbayev, particularly regarding a series of attacks on journalists. Mr. Duvanov's beating was the eighth unexplained assault on a local reporter in the country this year. The government has denied any role in the attacks, and last week Mr. Nazarbayev admonished diplomats in a yearly meeting that he "categorically rejects recommendations and advice aimed at unnaturally speeding up democratic processes."

Mr. Nazarbayev's neighbors also appear increasingly brash, some analysts say. In Kyrgyzstan, President Askar Akayev has faced a drawn-out test of wills with his political opposition since police shot dead six demonstrators last March. More recently, Mr. Akayev said it is time for deeper democratic changes, yet critics complain that a Kyrgyz judge recently overturned an election victory by an opposition figure, saying his papers weren't in order, and gave the triumph to a challenger who received just 19% of the vote.

Uzbekistan President Islam Karimov recently used a news conference with United Nations Secretary-General Kofi Annan to assail critics of his human-rights record. And in Turkmenistan, the European Bank for Reconstruction and Development has blocked new loans for public projects because of President Saparmurat Niyazov's poor record on political and economic change.

"The key question is whether Washington's new relationship with these countries has increased its leverage with them. The tenor of the leaders in the region seems to indicate it hasn't," said Anthony Richter, director of the Central Eurasia Project at the New York-based Open Society Institute.

SUPPORT OF THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS AND THE CITY OF EDWARDSVILLE, KANSAS, FOR H.R. 5561

HON. DENNIS MOORE

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. MOORE. Mr. Speaker, I recently received from Carol Marinovich, the mayor/CEO of the Unified Government of Wyandotte County/Kansas City, Kansas, a letter in which she expresses the strong support of their governing body for H.R. 5561, legislation I have introduced that would settle pending land claims of the Wyandotte Nation in Wyandotte County, Kansas. Additionally, I received today correspondence from Edwardsville, Kansas, Mayor Luther Pickell strongly supporting H.R. 5561. I hope all Members of the House and the Senate will review the correspondence from Mayor Marinovich and Mayor Pickell, along with the resolutions unanimously adopted by the Unified Government's governing council and the city of Edwardsville in support of this measure, and join with me in endorsing this proposal.

UNIFIED GOVERNMENT OF
WYANDOTTE COUNTY/KANSAS CITY,
KS,
CAROL MARINOVICH, MAYOR/CEO,
November 14, 2002.

Hon. DENNIS MOORE,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN MOORE: On November 5, 2002, the governing body of the Unified Government of Wyandotte County/Kansas City, Kansas ("Unified Government") unanimously approved Resolution No. R–95–02 fully and completely endorsing Congressional approval of H.R. 5561 or similar legislation, permanently settling and releasing all rights and land claims asserted by the Wyandotte Nation ("Nation") to approximately 1900 acres of real estate within our county. The terms of the Resolution, here attached, are the clearest expression of the governing body's collective endorsement in support of this legislation. The Unified Government respectfully requests your affirmative action in expediting this important legislation.

During the last ten years, the Nation and the Unified Government have struggled together to create an opportunity that mutually benefits the citizens of both our communities. Despite our best efforts in the Kansas Legislature and with the Kansas Governor, our actions to date have proven fruitless. Federal intervention remains the best and only viable solution to our problem.

The lawsuit, *Wyandotte Nation* v. *Unified Government of Kansas City and Wyandotte County*. Kansas, Case No. 012303–CM (U.S.D.C., Kan.), now pending before the United States District Court for the District of Kansas asserts a claim to 1900 acres of land in the Northeast area of our County. This realty includes the Fairfax Industrial area, with major industries such as General Motors, Owens-Corning and International Paper Corporation, as well as numerous other industries, large and small. Equally important and perhaps more compelling, the lawsuit's boundaries include many individual homeowners who have expressed fear at the prospect of losing their homes. The titles to all these properties are encumbered by this lawsuit. The cloud on their ownership affects the ability to purchase and sell, refinance, borrow and enjoy the security found in owning their home free and clear of any encumbrances.

The role of the Federal government in this matter is worthy of note. the land claim stems from an alleged failure of the Federal Government in the Treaty of 1855 with the Nation to properly require the sale or ceding of all rights in the now disputed 1900 acres. The merits of the claim are before the Court, and the course of litigation, at a minimum, will be tortuous, lengthy and very expensive before the final chapter is written. The United States was a party to this case at its inception. However, a motion to dismiss asserting an immunity defense was quickly filed and granted, removing the Federal Government from the case. The individual homeowners, small business and industrial businesses were left to absorb the costs of litigation and endure the fear and uncertainty that remains. Except for the legislation introduced by Congressman Dennis Moore, no other representative of the people of Wyandotte County has taken steps to alleviate this burden. The United States government simply fled from this problem by the most expedient means.

The people of Wyandotte County overwhelmingly support the concept of Class III gaming in our community. In a referendum held several years ago on the question of whether casino-style gaming should be conducted on the grounds of a local pari-mutuel racing facility, 80% of the voters approved. The reasons for this are as varied as the individuals within our community, but would include generally economic development and entertainment. This vote, by the way, occurred several years before the litigation was filed and was not a factor in anyone's thinking.

The Nation and Unified Government have, through the years, held each other in high regard and esteem. This relationship has, however, no doubt been strained by the litigation. Criticism that has found its way into the media neither reflects the entire story nor all that has been said. The Unified Government has consistently voiced criticism of the litigation as a means to resolve the underlying issues. Nevertheless, our community and our governing body has just as consistently supported Class III gaming in our county. We have sought the assistance of our Governor and the Kansas Legislature, which have turned away from us on this issue. Congressional intervention remains the best solution to this complicated problem.

Our county takes its name from the Nation. The long standing historical connection between us lies no farther than the Huron Cemetery across the street from our three principal government buildings. Their ancestors and ours lay buried together. Many of our current residents claim a common lineage from tribal members that resided here before 1855. Notwithstanding the litigation, resolution of this matter will allow the parties to work cooperatively to see this project to conclusion.

For the reasons stated above, I, as Mayor/CEO of the Unified Government, respectfully urge Congress to approve H.R. 5561 or similar legislation to resolve the current litigation.

Sincerely

CAROL MARINOVICH,
Mayor/CEO.

City of Edwardsville,
Edwardsville, KS,
November 14, 2002.

Hon. Dennis Moore,
U.S. House of Representatives,
Washington, DC.

Dear Congressman Moore: Congratulations on your successful re-election to the third District of Kansas. As you know during the last ten years the Wyandotte Nation has struggled to successfully defend their rights to land which was wrongly taken from them over a century ago by the United States Government. We are aware of the generous support that you have marshaled in Congress and applaud your efforts on behalf of our citizens, businesses and local units of government.

As elected leaders from Wyandotte County, the Edwardsville City Council unanimously endorsed the proposed Congressional Act to permanently settle this matter and avoid a certain litigation strategy which will be both costly to taxpayers and the Wyandotte Nation. The clouded land title will prevent existing corporations and businesses from expanding in the Fairfax Industrial District costing The State of Kansas and Local Units of government millions in revenue. The litigation has already prevented one major corporation from expanding in the Fairfax District and forced the relocation of over 350 employees. We cannot sustain economic growth in this area without the settlement of the land claim.

Your legislation provides for a federal legislative solution that protects over $2 billion in taxable real estate investment, saves over 4000 high salaried jobs for the State of Kansas and finally settles a century old land claim which badly needs to be ended. We wish you luck in the closing days of Congress and will assist you by any means necessary to gain passage of this important act.

Please notify us if we may be of assistance in explaining this to any other member of the United State Congress.

Sincerely,
Luther Pickell, *Mayor.*

CONFERENCE REPORT ON H.R. 4546, BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

SPEECH OF

HON. KEN BENTSEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 12, 2002

Mr. BENTSEN. Mr. Speaker, I rise in support of the Fiscal Year 2003 Defense Authorization Conference Report, legislation which will provide our military forces with the resources needed to counter threats abroad while strengthening the security of our homeland.

This conference report provides crucial funding in several critical areas, among them: weapons procurement, research and development, operations and maintenance, and efforts against the proliferation of weapons of mass destruction. At $393 billion, the conference report matches the President's request, and represents a 13 percent increase over current spending levels. As the largest national defense budget in inflation-adjusted terms since fiscal year 1990, this conference report confronts the changing security environment faced by our country and helps our armed services in coping with the new challenges facing them. I believe this legislation will provide the appropriate budgetary foundation to allow the President and Congress to pay for the war on terrorism as well as fulfill critical military needs that may arise.

Our military forces are today called upon to confront a host of wide-ranging challenges across every continent and hemisphere of the world. This conference report will ensure that our military remains the best-trained, best-equipped, and best prepared force to continue confronting these evolving challenges. To that end, I am pleased that this legislation authorizes an across-the-board 4.1 percent pay increase, along with targeted increases of up to 6.5 percent for N.C.O.s and officers. This represents the fourth largest increase for military personnel since 1982. In addition, this legislation also includes provisions for improvements to health care and education for our service members, provisions I consider crucial to increasing the recruiting and retention rates of highly qualified military personnel.

As a member of the House Budget Committee, I have fought to recognize the immeasurable contributions of America's disabled veterans by being a strong proponent for concurrent receipt. I believe disabled military retirees deserve both disability and retirement benefits, therefore I am pleased that this defense authorization changes current law to allow veterans who earned a Purple Heart or who suffered a severe injury in a combat-related incident to receive both retirement and disability benefits. Although this provision targets only those specific veterans who are 60 percent disabled and I believe this benefit should be extended to additional veterans, I find this legislation a good first step in the right direction and urge my colleagues to continue supporting further efforts expanding concurrent receipt coverage in the future.

This conference report provides $7.3 billion to support DoD efforts to combat global terrorism, including funds for counterterrorism, force protection, counter-intelligence, and antiterrorism programs. To guard against the threat weapons of mass destruction pose to the United States, this report authorizes $993 million for advanced chemical-biological detection, protection, and decontamination programs, $148.2 million for biowarfare defense technology, and $416.7 million funding efforts securing weapons of mass destruction and dismantling their facilities in the former Soviet Union. With respect to homeland defense, this legislation will require the DoD to work with the Department of Homeland Security and other federal agencies to share promising new technology, as well as assist local "first responders" improve their ability to respond to domestic terrorist actions.

While I will vote in support of this legislation, I have concerns regarding the process of base closures. With regard to base closures, I am concerned that language contained in this defense authorization would allow base closures to take place without adequate consultation with Members of Congress and affected communities. While I have a consistent record of supporting cost-savings in all areas of the federal budget, I do not believe another round of base closures should be conducted until the DoD makes a thorough evaluation as to whether its current infrastructure is in a position to cope with the changing security environment. The threats facing our nation require that infrastructure on the local, state, and certainly the federal level be prepared and adequate to confront any possible scenarios. Due to language that would require 7 of 9 members of the Defense Base Closure and Realignment Commission (BRAC) approve any base closure, I strongly encourage the DoD to consult closely with Members of Congress. I believe the concerns of potentially affected areas must be closely considered. The loss of a military base can prove potentially devastating for defense-dependent local economies, such is the case in my home state of Texas. Not only that, but in many cases, the additional level of disaster and emergency assistance provided by nearby military facilities can prove extremely helpful to local communities. As such, I believe the DoD and Congress should be cautious and prudent in planning the closure of bases that will be carrying our military's mission in the coming months and years.

While I have concerns about these provisions, I strongly support this Conference Report because it is important Congress speak with one voice in support of our armed services. On balance, the initiatives included in this bipartisan legislation are appropriate, and will provide our dedicated men and women in uniform with the necessary resources to cope with the demanding security challenges facing our nation. I urge my colleagues to vote in support of this important legislation.

HONORING THE OPENING OF THE EAGLE ROCK ART MUSEUM IN IDAHO FALLS, ID

HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. SIMPSON. Mr. Speaker, I rise today to honor the beauty and value of persistence. Ten years ago, a group of artists along with the Mayor and City Council of Idaho Falls had the idea of creating an area art museum. This huge undertaking would take thousands of volunteer hours and many fundraising efforts to become a reality. Today, I'm proud to say through the hard work of those dedicated volunteers and public servants, the Eagle Rock Art Museum opened its doors.

The Eagle Rock Art Museum showcases eastern Idaho artists. As someone who occasionally dabbles in artistic endeavors, I value the cultural significance art plays in our society. Visitors to this wonderful facility can now marvel at stone sculptures, oil and watercolor pictures, tiles painted by children and other compelling works of art. Children can enter the doors of the Eagle Rock Art Museum and be inspired by the work it showcases. There's even a children's art gallery to display the work of our youngest citizens.

In civilization, art transcends age. The works of Michelangelo, Leonardo DaVinci, Claude Monet and modern day artists like Norman

Rockwell breathe light into culture. The works of artists live on forever through museums like the Eagle Rock Art Museum. I'm proud of the community of Idaho Falls for working to make the Eagle Rock Art Museum a reality. The selfless efforts of many illustrate the powerful principle of working together for a common cause. I compliment Idaho Falls Mayor Linda Milam, Council members Ida Hardcastle and Mel Erickson, artists Gloria Miller Allen and John Griffith and the hundreds of other artists, individuals, and businesses that helped create the art museum. Thanks to their efforts generations of Idahoans will have a lasting appreciation for the importance of art in our world.

CELEBRATING 30 YEARS OF QUALITY IN FEDERAL PROCUREMENT

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. TOM DAVIS of Virginia. Mr. Speaker, on Sunday, October 27, a milestone in Federal procurement was observed. That day marked the 30th anniversary of President Nixon's signing of the "Brooks Act" qualifications based selection (QBS) process into law as Public Law 92–582.

This law, which prescribes the process by which Federal agencies select contractors for architecture, engineering and related services ("A/E services"), is codified in 40 USC 541 et. sq. for civilian agencies and, by reference, also applies to military agencies (10 USC 2855). Regulations implementing the law are found in part 36 of the Federal Acquisition Regulations.

Named for its sponsor, our respected former colleague, the Honorable Jack Brooks of Texas, the Brooks Act provides for selection of firms for A/E services on the basis of demonstrated competence and qualifications, with negotiation of a fee that is fair and reasonable to the government.

Agencies publicly announce their requirements for A/E services, firms submit their qualifications (including resumes of personnel, past performance, experience and background), agencies review the competing firms' qualifications, a short list of most qualified firms is established and agencies conduct interviews, and the most qualified firm is selected for specific contract negotiations of the precise scope of services to be performed and negotiation of a fee that is "fair and reasonable to the government" based on the government's own estimate of the project cost.

QBS has been a trendsetter. When it was enacted in 1972, the QBS law was a radical exception to the government's overwhelming reliance on awarding contracts based on the lowest bidder. Indeed, QBS was a precursor to the trend that came in the 1990s to migrate from lowest bid to best value procurement. Moreover, contractors' past performance is a major factor in the evaluation and selection process—again something used in A/E contracting since 1972, but which became commonplace in other areas of Federal procurement in the 1990s.

The Federal government annually spends billions of dollars on construction of facilities and has capital assets of hundreds of billions. This investment is highly dependent on A/E services for feasibility studies, design, operation and maintenance. It has been said that A/E services accounts for less than 1/10th of 1 percent of the life-cycle cost of a facility, but the quality of the A/E services performed determine what the life cycle cost will be.

The wisdom of Congress in passing, and President Nixon in signing, the "Brooks Act", and of Congress in preserving this law for the past 30 years, has provide the American public with quality, cost effective and efficient A/E services on projects that stand the test of time.

The wisdom of the law is also demonstrated by the degree to which it has been emulated. The QBS process is included in the Model Procurement Code for State and Local Government written, published, endorsed and advocated by the American Bar Association, and the process has been enacted in "min-Brooks Act" statutes by more than 30 State Legislatures. As a local government official, I can personally attest to the value of this process in projects ranging from design of schools to hazardous waste site remediation, from water and wastewater facilities to geographic information systems (GIS) for growth management and transportation planning.

Today, Americans have the cleanest water, the safest and most attractive and functional public buildings, the most accurate maps, the safest roads, and many other aspects of the quality of life and our built environment because of the work of professional architects, engineers, surveyors and mappers who have worked on Brooks Act contracts. It is improtant that Congress pause at this moment to reflect on the success of this law. It has provided enormous benefits and effectiveness, and paid huge dividends to the taxpayers of our Nation.

Mr. Speaker, the Brooks Act has enjoyed wide bipartisan support over the years. This is a law that works. I congratulate our Nation's architects, engineers, surveyors and mapping professionals who have completed millions of dollars worth of projects as contractors to government agencies, as well as the dedicated public servants in the design professions who have been responsible for awarding these contracts and performing the inherently governmental responsibilities for oversight of that work. The Brooks Act fosters a true public-private partnership that should stand as a model for how government and the private sector can work together to build a better America.

CONGRATULATING DONALD EUGENE ARCHEY AND REVEL (MOORE) ARCHEY ON THE OCCASION OF THEIR 50TH WEDDING ANNIVERSARY

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. TIBERI. Mr. Speaker, I rise today to honor Mr. Donald Eugene Archey and Mrs. Revel (Moore) Archey. Don and Revel met when Don accompanied his father to deliver a wagonload of firewood to the Moores. They were married on November 27, 1952 in Catlettsburg, Kentucky and shortly after moved to Columbus, Ohio. Since 1977, Don and Revel have lived in Delaware County, Ohio.

Don recently retired from his sole-proprietorship corporation, Don's Road Oiling. For more than 40 years he was the owner, president, and often the only employee. Revel and Don have seven children: Deborah, Stanley, Libby, Elisa, Gayla, Tawnya, and Jonathan. They are the proud grandparents of Jason, Zachary, Joel, Jairica, and Eli.

Fifty years of marriage is certainly an occasion worthy of celebration and recognition. I congratulate Revel and Don for this wonderful achievement, and wish them many more years of happiness together.

NATIONAL GUARD TROOPS

HON. GIL GUTKNECHT

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. GUTKNECHT. Mr. Speaker, on September 11, 2001, our generation met its challenge. The attacks against innocent Americans were acts of war. We are still fighting that war. Carl von Clausewitz said that the goal of any military encounter is to destroy the enemy's will to fight. We still have work to do.

But at home we have come far. We have buried our dead. We have comforted our wounded. We have rebuilt the Pentagon. New York is being rebuilt. We have gained a resolve and determination to go on. We will continue to be the shining beacon of liberty. We are willing to bear the price of defending the principles of freedom, justice and honor. We are Americans, and proud to be so.

Generations of Americans have followed the wisdom of President Theodore Roosevelt when he said, "In any moment of decision, the best thing you can do is the right thing. The worst thing you can do is nothing."

From the Barbary Coast to the streets of Kabul, Americans have always sought to do what is right. We have never given way to despots and madmen in the name of artificial peace. More than 48 million men and women have served in our armed forces to do the right thing.

The sacrifice of Americans who left their homes and lives for the cause of justice across the globe is a testament to what is good and right about our great nation. Because of Americans, Europe was liberated from a madman. Because of Americans, Communism is left to the ash heap of history. Because of Americans, little girls are going to school in Afghanistan.

Today I honor those Americans who stepped in to secure our domestic defenses during a time of great uncertainty. The brave men and women of the National Guard. As active duty troops were deployed, the men and women of the National Guard dropped what they were doing and answered their call to duty. Careers were put on hold, families parted with a loved one, sacrifices were made to secure our nation.

Guard members from Minnesota have served in every major conflict since its inception more than 360 years ago. More than 150

Minnesota National Guard soldiers were called to duty following the September 11 attacks.

I am especially grateful to the National Guard soldiers of Company B, Second Battalion of the 135th Infantry. These soldiers performed special duties at the Rochester International Airport. During a time of crisis, they stepped up to join that long grey line. That line that has never failed us.

Thank you First Sergeant Thomas L. Butterfield, Sergeant Samuel M. Adjei, Sergeant First Class Jason R. Schweitzer, Specialist Jason A. Cox, Specialist Benjamin R. Jech, Specialist Jacob R. King, Staff Sergeant Troy D. Landsverk, Sergeant William M. Olson, Sergeant Timothy A. Patterson, Sergeant Daniel J. Prescher, Specialist Brandon L. Riggs, Sergeant Scott J. Saltou, Sergeant Matthew Swiger, and Specialist Benjamin W. Teed.

These soldiers deserve our respect and our gratitude.

As William Jennings Bryan said, "Destiny is not a matter of chance, it is a matter of choice. It is not a thing to be waited for, it is a thing to be achieved." Americans have a history of choosing their destiny. We will continue to do so, because that is who we are.

We must, and we will, continue to achieve this victory for the people of the United States and for all civilized, peace-loving people around the world. There will be a price. The blood and treasure of our nation will be invested. The leadership, resources and unwavering courage of the United States are critical in this struggle. We shall not falter, we will rise to the challenges. And, in the end, we will leave to future generations a safer planet because we never failed to defend the freedom we cherish. We will continue to practice what we preach.

God Bless America.

UNINTENDED CONSEQUENCES

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. PAUL. Mr. Speaker, government efforts at benevolence always backfire. Inevitably, unintended consequences overwhelm the short-term and narrow benefits of authoritarian programs designed to make the economic system fair, the people morally better, and the world safe for democracy. One hundred years of intense government "benevolence" in the United States has brought us to the brink of economic collapse, a domestic police state, and perpetual war overseas. And now our obsession with conquering and occupying Iraq is about to unleash consequences that no one can accurately foresee. The negative possibilities are unlimited and the benefits negligible.

Some have warned that the planned preemptive invasion of Iraq could prove so destabilizing to the region and the world that it literally could ignite a worldwide conflict big enough to be called World War III. Nuclear exchanges are perhaps even more likely to occur under the conditions of an expanded Middle East war than they were at the height of the Cold War, when the Soviets and U.S. had literally thousands of nuclear weapons pointed at each other. If we carry out our threats to invade and occupy Iraq, especially if we do so unilaterally, the odds are at least 50–50 that this worst case scenario will result.

The best-case scenario would be a short war, limited to weeks and involving few American and Iraqi civilian casualties. This, in combination with a unified Iraqi welcome, the placing into power of a stable popular government that is long lasting, contributing to regional stability and prosperity, and free elections, just is what our planners are hoping for. The odds of achieving this miraculous result are probably one in 10,000.

More likely, the consequences will be severe and surprising and not what anyone planned for or intended. It will likely fall somewhere between the two extremes, but closer to the worst scenario than the best.

There are numerous other possible consequences. Here are a few worth contemplating:

No local Iraqi or regional Arab support materializes. Instead of a spontaneous uprising as is hope, the opposite occurs. The Iraqi citizens anxious to get rid of Hussien join in his defense, believing foreign occupation and control of their oil is far worse than living under the current dictator. Already we see that sanctions have done precisely that. Instead of blaming Saddam Hussien and his dictatorial regime for the suffering of the past decade, the Iraqi people blame the U.S.-led sanctions and the constant bombing by the U.S. and British. Hussien has increased his power and the people have suffered from the war against Iraq since 1991. There are a lot of reasons to believe this same reaction will occur with an escalation of our military attacks. Training dissidents like the Iraqi National Congress will prove no more reliable than the training and the military assistance we provided in the 70's and the 80's for Osama bin Laden and Saddam Hussien when they qualified as U.S. "allies."

Pre-emptive war against Iraq may well prompt traditional enemies in the regions to create new alliances, as the hatred for America comes to exceed age-old hatreds that caused regional conflicts. Iraq already has made overtures and concessions to Iran and Kuwait, with some signs of conciliation being shown by both sides. Total domination of the entire Persian Gulf and Caspian Sea regions by the U.S. will surely stir survival instincts in these countries as well as in Russia. As the balance of power continues to shift in the U.S.'s favor, there will be even more reasons for countries like China and Pakistan to secretly support the nations that are being subjected to U.S. domination in the region. The U.S. will never have a free ride in its effort to control the entire world's oil supply. Antagonisms are bound to build, and our ability to finance the multiple military conflicts that are bound to come is self-limited.

The Kurds may jump at the chance, if chaos ensues, to fulfill their dream of an independent Kurdish homeland. This, of course, will stir ire of the Turks and the Iranians. Instead of stability for northern Iraq, the war likely will precipitate more fighting than the war planners ever imagined. Delivering Kurdish Iraq to Turkey as a prize for its cooperation with our war plans will not occur without a heated and deadly struggle. Turkey is already deeply concerned about the prospect for Kurdish independence, and only remains loyal to America because U.S. taxpayers are forced to subsidize an already depressed Turkish economy caused by our Iraqi policies. More money will pacify for a while, but either frustration with the perpetual nature of the problem or our inability to continue the financial bailout will lead Turkey to have second thoughts about its obedience to our demands to wage war from their country. All of this raises the odds that Islamic radicals will once more take control of the Turkish government. These developing conditions increase the odds of civil strife erupting in Turkey.

Islamic fundamentalism in the entire region will get a shot in the arm once the invasion of Iraq begins, especially in Saudi Arabia, Yemen, and Turkey. Our placing the Shah in power in Iran in the 1950's was a major reason that the Ayatollah eventually made it to power in the late 1970's—a delayed but nevertheless direct consequence of our policy. Balance of power in this area of the world has always been delicate, and outside interference serves only to destabilize. There's no evidence that our current efforts will lead to more stability. Promoting democracy, as it's said we're doing, is a farce. If elections were to occur in most of the Arab countries today, Osama bin Laden and his key allies would win. Besides, it seems we adapt quite well to working with military dictators that have ousted elected leaders, as we do in Pakistan by rewarding their cooperation with huge subsidies and future promises.

In the chaos that may erupt, several countries might see an opportunity to move on their neighbors. Already we have been warned that cooperation from Russia means no American criticism or resistance to its moves in Georgia or Chechnya. China could attack Taiwan. North Korea could renew its struggle against South Korea. India may see this as an opportunity to settle the Kasmir dispute with Pakistan—with the real risk of nuclear war breaking out. It seems the obsession about Iraq's improbable possession of nuclear weapons far exceeds the more realistic possibility that our pre-emptive strike against Iraq may precipitate a nuclear exchange between these two countries, or even a first strike with nuclear weapons by Israel against Iraq.

Expect Israel to use the chaos to further promote their occupation and settlements in the Palestinian homeland and possibly even in Lebanon. Israel's possession of nuclear weapons in a period of outright war will surely serve to intimidate her neighbors and intensify her efforts to further expand the Israeli homeland.

If massive Iraqi civilian casualties result, as indeed is possible though not deliberate, expect more worldwide condemnation and even a U.N. resolution condemning what others will call American War Crimes. Our refusal to be subject to the International Criminal Court, while demanding others be tried in the court, will never sit well with the world community. Our position is a far cry from what it ought to be—demanding national sovereignty while promoting neutrality and friendship with all nations.

Our own CIA has warned that war with Iraq will more likely cause Saddam Hussien to use any massively lethal weapons that he might have than if we don't attack him. Also, they warned that the likelihood of al Qaeda attacks on our own soil will increase once an invasion begins. This, of course, could a wave of well-placed snipers around the United States.

It is now admitted that over 150,000 U.S. servicemen are suffering from Persian Gulf War Syndrome as a result of the first Persian Gulf War. Our government would like to ignore this fact, but a new war literally could create an epidemic of casualties of the same sort, since the exact etiology is not completely understood. The number of deaths and injuries that might occur from an occupation of Iraq is unknown, but conceivably could be much higher than anyone wants to imagine.

Anti Americanism now seeping the world will significantly increase once we launch our attack. Already we have seen elections swayed in Europe, Turkey, and Pakistan by those unfriendly to the United States. The attitude that the world's "King of the Hill" must be brought down will escalate, especially if the war goes poorly and does not end quickly with minimal civilian deaths.

Al Qaeda likely will get a real boost in membership once the war breaks out. Membership is already pervasive throughout the world without any centralized control. We should expect this to continue, with an explosion in membership and a negative impact around the world. Our attack will confirm to the doubters that bin Laden was right in assessing our desire to control the Middle Eastern resources and dictate policy to the entire region while giving support to Israel over the Palestinians.

Our very weak economy could easily collapse with the additional burden of a costly war. War is never a way to make the people of a country better off. It does not end recessions, and is much more likely to cause one or make one much worse. A significant war will cause revenues to decrease, taxes to increase, inflation to jump, encourage trade wars, and balloon the deficit. Oil prices will soar and the dollar will retreat ever further.

Already we're hearing demands for a military draft to be instituted for both men and women. I see that coming, and it will serve as another source of domestic friction as our economy deteriorates and unemployment rises. Under these conditions the standard of living for all Americans is destined to go down.

This war, if of any significant duration, in time will be seen as a Republican war plain and simple. Along with a weak economy, it could easily usher in a "regime change" here in the United states. The conditions may justify a change in leadership, but the return of control to the opposition party will allow them to use the opportunity to promote their domestic liberal agenda and socialize the entire economy.

The net result, regardless of the size and duration of the coming war, will be that the people of the United States will be less free and much poorer. The bigger the war, the greater will be the suffering.

IN HONOR OF THE CONGRESSIONAL CAREER OF CONGRESSMAN BOB CLEMENT

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. COSTELLO. Mr. Speaker, I rise today to pay tribute to a great friend, our colleague Bob Clement, who is completing a distinguished 14-year career in the House of Representatives. Bob and I both began our service after special elections in 1988, and we have served together on the Transportation and Infrastructure Committee. I have had the chance to get to know his wife Mary and their children, and I wish them all the best as they begin this new phase of their lives.

Bob Clement has upheld a fine family tradition of public service, following the example of his father, who served as Governor of Tennessee. Bob served in the Army and the Tennessee Army National guard, was elected to the Public Service Commission and later appointed by President Carter to the Tennessee Valley Authority Board of Directors. After success in the private sector, he became president of Cumberland University. Bob carried all of these experiences to Congress, working hard on behalf of our nation's veterans, particularly on Gulf War Syndrome issues, and focusing on the transportation needs of the country. He served as co-chair of the House Education Caucus and passed legislation dealing with the increasing problem of identity theft.

While his legislative accomplishments are substantial, Bob may be best remembered for the manner in which he achieved them. Ever the southern gentleman, Bob Clement has defined comity during an increasingly partisan era. He worked well across the aisle and I hope we can keep his collegial spirit alive despite his absence. In this way, Bob has truly left his mark on this institution, and it is without doubt a better place for his having been here.

Mr. Speaker, I know all of our colleagues will join me in thanking Bob Clement for his friendship and his dedicated service to the United States of America. Knowing Bob, his long, exemplary career will not end here. I look forward to the next chapter.

HERB YASSKY

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. OWENS. Mr. Speaker, during the 106th Congress, the following statement was submitted for entry into the Record but was inadvertently lost. It is imperative that I re-submit this tribute to an outstanding American Point-of-Light.

Herb Yassky: A Point-of-Light for All Americans

Herb Yassky sometimes seems to be climbing perpetually uphill with his efforts to bring medical supplies and equipment to Haiti and other underdeveloped countries. The problems multiply and the disappointments mushroom but Herb toils on in his almost singlehanded effort. He refuses to surrender when a container of hospital supplies is stuck on the docks of Port-au-Prince because there is no money to pay for transportation and the added cost of storage. Because he is quietly stubborn and intensely compassionate about his mission, Herb finds a way to deliver his vitally needed goods. In his spare time, as a volunteer, Herb has sent more than fourteen forty-foot containers of supplies to not-for-profit institutions overseas. This represents just one of many causes in the mosaic of Herb Yassky's Lifetime Struggle and Achievement.

A New Yorker by birth, Herb Yassky attended Stuyvesant High School, earned a Bachelor of Arts degree from New York University, studied Business Administration at Columbia University and became an executive in the electronics industry. He has served on the Board of the Shorefront YM-YWHA, the Board of Brooklyn Jewish Hospital and many civic organizations. Presently he serves as a Trustee of the Kingsbrook Jewish Medical Center and as President of the Rutland Nursing Home. Joining him in his generous contributions to the community is his wife, Paula.

Moved by the plight of poverty in Haiti, as well as other third world nations, Mr. Yassky founded "Medical Aid for Haiti" and for years worked closely with the New York Consul General, Phillipe Wilson Desir. The two of them teamed up for radio and television programs to make the public aware of the vital need for help in Haiti.

Herb Yassky presently serves as Chairman of the 11th Congressional District Health Care Advisory Committee where he works with Congressman Owens to expand his quest for adequate health care for all. Under Herb's leadership the hospitals of the Central Brooklyn Medical Complex-Kingsbrook, Kingsboro, Kings County, Brookdale and SUNY Downstate Medical Center have collectively become an important developable site in the Brooklyn Federal Empowerment Zone Plan. With Owens, Herb shares the dream of a Clarkson Avenue area where the threat of homeless shelters and detention centers will cease to exist because all available space is occupied by health care related organizations. Facilities for computer related health occupations training; a high school for health care careers; a medical supply shopping mall; offices for doctors and therapists; these are a few of the dreams that may be turned into brick and mortar realities. Yassky is an advocate and a planner who attends to the details and makes great things happen.

Because he is a tireless Champion for Health Care and Human Life, the people of Central Brooklyn are proud to salute Herb Yassky for his Lifetime Struggle and Achievement.

CONGRATULATING THE SOUTHWEST GEORGIA REGIONAL PUBLIC LIBRARY SYSTEM

HON. SANFORD D. BISHOP, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

November 14, 2002

Mr. BISHOP. Mr. Speaker, the Southwest Georgia Regional Public Library System, the sole library provider for the 44,000 residents of

Decatur, Miller and Seminole counties, is a recipient of the National Award for Museum and Library Services, which is recognized as the highest honor that can be earned for community service by the nation's 122,000 libraries and 15,000 museums.

The Institute of Museum and Library Services, which sponsors the award program, could not have made a more worthy choice.

The Southwest Georgia Regional System, often partnering with other community organizations, reaches out in innovative ways to serve a widely dispersed population in the cities and rural areas it serves, including initiatives to raise the educational levels of low-income families. The system sponsors literacy programs, provides full access to the World Wide Web, and maintains close, ongoing support for schools and social service organizations. Utilizing a state-of-the-art bookmobile, the system makes books available to schools, nursing homes, and community centers. It provides special services for the handicapped. It sponsors historic projects and programs. In many different ways, it is helping raise the quality of life throughout a widespread area of southwest Georgia.

Mr. Speaker, I rise to congratulate the people who make the Southwest Georgia Regional Library System one of the country's very best.

THE VILLAGE OF OAK PARK'S CENTENNIAL ANNIVERSARY

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to pay tribute to the Community of Oak Park, Illinois. I take great pride in expressing my delight and heart felt congratulations as we commemorate the 100th Anniversary of the Village of Oak Park.

Historically, Oak Park is a community in the Chicago area that has made significant contributions to diversity and is a model for other emerging American communities. Since the 1960's Oak Parkers have seriously planned for the evolution and development of their community. The Village of Oak Park has refused to maintain itself as a status quo neighborhood in the Chicago area. The integration of black and white residents has been a key component in the development of this unique neighborhood. As the community began to change, the Village government took action by enacting an Open Housing Ordinance in 1968, a statement supporting integrated housing. In 1973 Village Trustees created a policy statement, "Maintaining Diversity in Oak Park." These policies created the building blocks for a community now designated an "All American City."

Revolutionary action was taken by the Village and initiated during a time when visible racial transformation was needed throughout Chicago neighborhoods. Based on the initiatives of the Village of Oak Park, it has become the home of people from various occupations, professions, ages, and income levels.

Oak Park has produced a number of notable people who have made significant contributions to our world in their receptive fields of endeavor. To name just a few, in literature, Ernest Hemingway, and Carol Shields who is one of the finalists for the Man Booker Prize for literature this year. Percy Lavon Julian, an African American Research Chemist whose research led to discoveries in drug manufacturing, hormones, vitamins, amino acids, paint, and paper, Carl Rogers in psychotherapy, other of its better known have been Edgar Rice Burroughs of Tarzan fame, residents are Ray Kroc in fast food restaurants, and Frank Lloyd Wright an architectural genius, who has designed many of the world's most famous structures and buildings, many of which are a part of Oak Park's visible legacy. There is great need to maintain and commemorate the cultural richness and diversity of this unique village.

The Gale Research Center of the Historical Society is a research center, which is a repository of photos, publication, and artifacts that highlight the community's history. Complimented by this are exhibits and special programs that assist in public education. Oak Park can proudly boasts of the Oak Forest River Forest Public H.S. and Fenwick H.S. an outstanding Catholic Parochial School. Centennial celebrations mark the communities effort to proclaim and instill the historical legacy of the Village of Oak Park. The advocacy of community members has been instrumental in nurturing the excellence of Oak Park and in helping to shape public policy. There is virtually no issue that I don't hear from someone in Oak Park about. Mr. Speaker, I believe that the Village of Oak Park is one of the most fascinating communities in our country and I commend them as they celebrate their centennial anniversary.

COMMEMORATING THE RETIREMENT OF CONGRESSMAN STEVE HORN, CALIFORNIA 38TH DISTRICT

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. MILLENDER-McDONALD. Mr. Speaker, I rise this evening to pay tribute to a dynamic Member of this institution who will be retiring at the end of the 107th Congress.

STEVE HORN came to Congress with a distinguished record. First serving as a political appointee in the Eisenhower Administration, and then working for Senator Thomas P. Kuchel, he came to this body with keen political savvy and a mind focused on service to the American people.

During his tenure as a legislative assistant in the Senate, he made valuable contributions to the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

Shortly after being named in 1986 as "one of the 100 most effective college presidents in the United States" given his work at California State University, Long Beach, he began his tenure as the Trustee Professor of Political Science at the same university.

I have had the pleasure of working with Congressman HORN for over six years as a member of the Committee on Transportation and Infrastructure, where I always found his insights thoughtful, his skills as a legislator focused and effective, and his care for his constituents genuine.

In 1998, the Congressman and I worked together on the Transportation Equity Act for the 21st Century)—also known as TEA–21. Since then, we have worked together to integrate the interests of our nation's ports with the surrounding communities, made steps to address air quality concerns in these facilities, and most recently, worked together in a bi-partisan fashion to ensure the security of the Ports of Long Beach and Los Angeles.

Congressman HORN will be missed in these halls, and I will miss his friendship, and his warm, congenial manner in approaching each challenge. Thank you, STEVE, for your dedicated hard work and service.

CONGRESSMAN TIM ROEMER

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. VISCLOSKY. Mr. Speaker, Congressman TIM ROEMER, the Ranking Member of the Subcommittee on Select Education of the House Committee on Education and Workforce and proud member of the House Select Committee on Intelligence, will be retiring after 12 years of dedicated service to his constituents in Northern Indiana and to our country.

I rise today to acknowledge and applaud the interests and service of TIM ROEMER during his productive career in public service, and to wish him the very best in his future endeavors.

By way of background, TIM ROEMER was first elected to Congress from the 3rd Congressional District of Indiana in 1990. TIM grew up in South Bend, and though he went to college in San Diego, he returned home and received a masters and Ph.D. from the University of Notre Dame. He has dedicated his life to public service not only through his term as a U.S. Representative, but also through his time with former 3d District Representative John Brademas and Arizona Senator Dennis DeConcini.

In his tenure in Congress, TIM served as Co-Chairman of the New Democratic Coalition. While being a staunch believer in balancing the federal budget, he fought endlessly to support legislation that would improve the quality of education received by all children in our country. TIM was a strong advocate of federal special education funding and supported innovative programs like Ameri-Corp, Transition to Teaching, and charter schools. As a strong supporter of the war on terrorism, through his work on the Select Intelligence Committee, he called for efforts to better secure the American homeland and prevent future terrorist attacks.

I have had the pleasure and privilege of knowing and working with TIM for just over a decade. I do not expect his retirement from elective office to end either his public service or his significant contributions to our Nation. In fact, I have every expectation that TIM ROEMER will continue to be an active, thoughtful, and valuable contributor to public debate on critical national issues. I wish him and his family the best.

HONORING REPRESENTATIVE DAN MILLER OF FLORIDA UPON THE OCCASION OF HIS RETIREMENT FROM CONGRESS

HON. ADAM H. PUTNAM

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. PUTNAM. Mr. Speaker, I rise today to honor my retiring friend and colleague on the Government Reform Committee Congressman DAN MILLER, the distinguished Representative of Florida's 13th District.

Representative MILLER was elected to Congress in 1992 and in his five terms has accumulated a record of accomplishment as an advocate for his district and as a guardian of the hard earned tax dollars of all Americans.

Representative MILLER was born in Highland Park, Michigan. However, like so many of our State's citizens, he came to Florida as soon as he heard about it and, having graduated from high school in our great State, he thereby attained the status of "semi-native" Floridian.

As Congressman MILLER proudly told the voters throughout his five terms he is not a professional politician, in fact the only office he ever ran for was Congress. After winning a crowded primary his appeal as a candidate who focused on substance, not rhetoric, crossed party lines and he was routinely reelected with 60 percent plus margins. Through his background as a successful entrepreneur and as a university professor he brought a unique skill-set to Congress, which will be sorely missed next session.

As I complete my first term in Congress I wish to thank Representative MILLER for his kindness and courtesy during my freshman year, he is a consummate gentleman. In addition to always maintaining an open door to a freshman DAN MILLER and I share the unique bond of having been together on Air Force One on September 11, 2001. I shall always remember and cherish his encouragement, fortitude and calm in the face of the terrorist attacks that shook our country that day.

God bless you DAN and Glenda, I want to assure you that, while you may be retiring from Congress, your friends and colleagues recognize that the good work you have done here and for our great State of Florida will continue.

IN RECOGNITION OF A LIFETIME OF DEDICATION

HON. MIKE ROSS

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. ROSS. Mr. Speaker, I rise today to recognize an individual from my district who provides quite an inspiration for each and every one of us on how to live, and how to work.

J.E. Dunlap, Jr. is editor, publisher, and reporter for the Harrison Daily Times. At age 80, he continues to cover sports and other events and writes weekly articles for the paper. According to co-workers, he has an uncanny ability to just glance at a page of the paper before it is printed, and locate errors immediately.

Mr. Dunlap knows how to change with the times. He was instrumental in converting early typeset and printing facilities to modern press and computer equipment. He continues to work today with modern typeset computers, a laptop, and email.

He has received numerous journalism awards including the Distinguished Service Award presented by the Arkansas Press Association and he was nominated for the Pulitzer Prize, twice. In addition, he was cited by the Social Security Administration for effective and continued public service for keeping the public fully informed on Social Security issues. He says the honor he is most proud of was earning his wings as a Second Lieutenant during his service in the U.S. Army Air Corps in the 1940's.

About working at age 80, Mr. Dunlap says "there is great satisfaction in knowing that I can continue doing my job after 64 years." His advice to young people entering the workforce is, "be sure the job is something that you truly want to do and make every effort to fulfill the job requirements."

I would like to congratulate him on being named this year's Outstanding Older Worker of Arkansas.

AGAINST H.R. 4163—PROHIBIT AFTER 2006 THE INTRODUCTION INTO INTERSTATE COMMERCE OF MERCURY INTENDED FOR USE IN A DENTAL FILLING AND FOR OTHER PURPOSES

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I would like to thank you for holding this hearing concerning the risk of mercury poisoning from the dental amalgam, which has been used for more than 150 years. According to the Food and Drug Administration (FDA) there is "more significant human experience with dental amalgam than any other restorative material." Any adverse outcomes of mercury in amalgam would have first manifested in Dentists and their staff due to their daily exposure. The American Dental Association Health Foundation (ADAHF) has done research regarding the mean urinary mercury levels of dentists from 1975 to 2001 and have found that dentist urinary mercury levels are well below established limits for occupational exposure. Furthermore the American Dental Association (ADA) investigators have done studies and research to find any possible correlation between kidney dysfunction and urinary mercury levels and found none.

In addition, the FDA through various U.S. Public Health Services (PHS) agencies reviewed claims of mercury exposure measurements and fetal mercury exposure and concluded that dental amalgam do not share the same toxicity characteristics of mercury and there is no evidence that individuals with dental amalgam restorations will experience adverse health effects from these restorations. Various disease organizations like The Alzheimer's Association, the Autism Society of America, the National Multiple Sclerosis Society and the American Academy of Pediatrics have stated that there is no scientific evidence linking dental amalgam with any known disease or syndrome that the groups track. Other organizations like the Center for Disease Control and Prevention, the World Health Organization, U.S. Federal Agencies and International Organizations and expert groups from Sweden, New Zealand, Canada and the European Commission have concluded that there is no direct evidence that dental amalgam has an adverse effect on patient's health except with isolated cases of allergic reactions. Also it is safe and cost effective.

Banning dental amalgam and using alternative types of fillings will only place additional financial burden on low-income individuals and the special needs population. Most insurance programs, whether private or Medicaid, pay for the lowest dental cost restorative material and would not pay for alternative dental options. This will only result in an even higher dental disease rate and dental need among low-income and special needs populations.

In conclusion, dental amalgam is deemed as a serviceable, safe, cost effective restorative material, which is backed by scientific evidence and research approved by the ADA and FDA.

MOURNING THE DEATH OF DR. JEANNE LAVETA NOBLE

HON. SANFORD D. BISHOP, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. BISHOP. Mr. Speaker, when Dr. Jeanne Laveta Noble passed away on October 17, 2002, in New York City, the state of Georgia—and especially the city of Albany and the southwest Georgia region where she was born and raised—lost one of our great native citizens.

While Dr. Noble always remained close to her home town, returning often to visit with friends and family, she made contributions that were national and even international in scope as a noted educator, a fighter for human rights and against poverty, a scholar and writer who published three books and countless articles, an Emmy Award-winning media commentator, and a Presidential appointee in three Administrations.

Dr. Noble was the eldest child of Floyd G. and Aurelia P. Noble of Albany, Georgia. She earned her undergraduate, Masters and doctoral degrees from Howard University and Columbia University, and completed further studies at the University of Birmingham in England. She first taught at Albany State University, and later served as dean of students at Langston University in Oklahoma, as the first black woman to serve as a tenured professor at New York University, and as professor emeritus of the graduate school at the City University of New York.

She was named by President Johnson to head the Women's Job Corps of the President's Task Force on the War Against Poverty, and served on commissions named by President Nixon and President Ford. In addition to her prolife writing, she moderated and co-wrote an acclaimed show called "The Learning Experience."

Dr. Noble was involved in many civic and charitable activities, including serving as the 12th national president of Delta Sigma Theta Sorority, the 200,000-member public service sorority that supports education, provides scholarships, boosts programs for young people, and promotes economic opportunities for all.

Mr. Speaker, Dr. Noble's devotion to education and her service to humanity inspired everyone who knew her or knew about her. Our thoughts and prayers are with her family and many friends.

SENATE—*Monday, November 18, 2002*

The Senate met at 11 a.m. and was called to order by the President pro tempore (Mr. BYRD).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Jehovah-Shalom, You have promised us a peace that passes all understanding. That is the quality of peace we need today. It is beyond our understanding that You can produce serenity in our souls when there is so much that is unfinished, unresolved, and unforgiven in us, in our relationships, in our work, and in our society. Sometimes we even deny ourselves the calm confidence of Your peace because we are so aware of what denies Your peace in us. Take from us strain and stress as our anxious hearts confess our need for You. Grant us Your incomprehensible, but indispensable, palpable peace so that we can be peacemakers. Give the Senators a fresh infusion of Your peace so that they may deal with disagreements and discord in the legislative process. Help them overcome problems and endure the pressure of these days. In the name of the Prince of Peace. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The majority whip, the Senator from Nevada, is recognized.

SCHEDULE

Mr. REID. The Chair will shortly announce that we will be in a period of morning business until 12 noon today, under a previous order issued by the Senate. At noon, the Senate will consider the nomination of Dennis Shedd to be a circuit judge. The time on that debate is 6 hours. Upon the use or yielding back of that time, but not before 5:15 p.m., the Senate will vote on or in relation to that nomination.

Following disposition of that nomination, the Senate will resume consideration of the Homeland Security Act.

I don't know if there will be used the full 6 hours on the Shedd nomination. I really doubt it. I would hope that people would have the opportunity, if they choose, to come and talk about this most important vote we will have tomorrow on the amendment pending on H.R. 5005. This is very important. And of course, after the judge is voted on, there will be time this evening. There will be a very limited amount of time in the morning for people to speak.

As the Presiding Officer has educated the entire country, including the Senate, this next series of votes is extremely important.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, as the Democratic whip has already stated, there will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon, with Senators permitted to speak therein for up to 10 minutes each.

Mr. REID. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, my understanding is that we are now in a period of morning business. I wanted to come to the floor to spend a couple of minutes speaking about those Senators who are leaving the Senate at the end of this session.

The PRESIDENT pro tempore. The Senator is correct. The Senate is in morning business, and the Senator is recognized for not to exceed 10 minutes.

TRIBUTE TO DEPARTING SENATORS

Mr. DORGAN. Mr. President, the Senate, for all of the notice it gets in the national press, is nonetheless still a family of sorts. We are 100 men and women who come to this fashion of public service from different points on the compass, from all across the country, and from different backgrounds—Republicans and Democrats, conservatives and liberals. We work together a great part of the year in this Chamber, and we spend a lot of time in our respective States. We have become friends. Republicans and Democrats, liberals and conservatives, nonetheless, are close personal friends in many cases.

We are going to be saying good-bye to a number of Senators this year. I wish to, before we complete our work this week, say a word about a number of those who will be leaving. I actually threatened last week, I say to the Senator from Texas, Mr. GRAMM, for example, to say a word about him. I will do that today in a moment.

I will start with Senator JEAN CARNAHAN, if I may. I went to Missouri to campaign with JEAN CARNAHAN. She was here a relatively short time because she filled a seat that was then filled by a special election in the State of Missouri. But I believe the first moment I met JEAN was at the organizing session. She had suffered a great tragedy. The State of Missouri had suffered a great tragedy. The incumbent Governor of the State of Missouri had died in a plane crash. The Governor, his son, and others perished in that crash relatively close to the election. His name remained on the ballot. The folks from the State of Missouri, nonetheless, voted for his name on the ballot, and the Governor appointed JEAN CARNAHAN, his widow, to come to the Senate.

JEAN stood up at the organizing session—and I am sure she would not mind if I indicated this publicly because she did it in an organizing session—and she said to members of our caucus and to the new Members coming into the Senate:

> You come here because of your win. I have arrived here because of my loss.

She, of course, was speaking about the tragedy that had occurred in the State of Missouri, her having lost a husband, then a candidate for the Senate, and her son in that plane crash.

I watched JEAN CARNAHAN as she worked in the Senate. She did a remarkable job. She is someone with great courage. She is someone who has the capability to stand up in a very significant way and explain quickly what it is she has a passion about in public policy.

I deeply admire JEAN CARNAHAN, not only for aspiring to carry out that mission of public service that was begun by her husband, the Governor of Missouri, but also because she played a significant role and contributed in a significant way in the Senate.

We all will miss JEAN CARNAHAN as she moves on to other challenges and other opportunities.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

My colleague, MAX CLELAND from Georgia, will not be with us in the next session. He will be leaving at the end of this session as well. MAX CLELAND is one of those heroes of mine. MAX CLELAND is a brave, remarkable American. He left three of his limbs on a battlefield fighting for this country. He is a person of great personal courage.

I say to anyone who has not yet done so, read his book, "Going to the Max." It is a story of great inspiration. MAX CLELAND has been a terrific legislator, a great representative of the State of Georgia in the Senate. More than that, he has been an inspiration to virtually all America.

Our country owes him a great debt of gratitude for his service. Our colleagues owe him a great debt of gratitude for his companionship and service in the Senate.

We also will not be joined next year by Senator TORRICELLI who indicated his decision not to seek reelection. Let me say about BOB TORRICELLI, I served with him in the U.S. House of Representatives. He is a passionate fighter, articulate, strong, assertive for the issues in which he believes and for the issues he feels are important to his home State of New Jersey and for our country.

On the Republican side, I came here not knowing JESSE HELMS. I only knew of him by reputation. His reputation was he was a hard-edged, tough guy who asked no quarter, gave no quarter, and never stopped fighting for the issues about which he cared. He planted himself sometimes far off the political spectrum and said: Here is where I stand. That was my impression of him as I came to the Senate.

What I discovered in the Senate is he is quite a remarkable gentleman, and I use the term "gentleman" in every respect. He is one of the most courteous, kind people with whom I have had the opportunity to serve. I have on occasion gone over and sat with him in the Chamber of the Senate and talked about the house he will retire to and the front porch on which he will spend some time.

While we might disagree on some issues very strongly, he is a legislator who contributed substantially to the public debate in this country and often with great courage on his part. I certainly thank him for his service to our country.

Senator STROM THURMOND will be leaving the Senate. If you know his personal story, you just are almost out of breath when you understand what he has done over his lifetime. He not only has served with great distinction in public service in many venues—as a judge in his home State, in the Senate, running for President, and so many other positions—he also volunteered for service during wartime at age 42 and volunteered to climb into a glider to crash land at night behind enemy lines.

This is a man of great personal courage and a man who served this country with great distinction in many ways. I have had the opportunity over the years I have been in the Senate to serve with him as well and visit with him about his public service. I deeply admire what Senator STROM THURMOND has given to this country, and we wish him well.

Senator MURKOWSKI is someone with whom I have worked on the Energy Committee, both as a chairman of the Energy Committee and ranking member. He is now off to become Governor of the State of Alaska. He is someone with great passion for his State. Almost every amendment coming from Senator MURKOWSKI has something to do with Alaska.

I have enjoyed the opportunity to get to know Senator MURKOWSKI. He is a man of good humor, but also someone who feels very strongly and passionately about issues.

Senator HUTCHINSON I have not known quite as well, but Senator HUTCHINSON and his brother Asa, who served in the House of Representatives while TIM served in the Senate—their family, obviously, has a great passion for public service. I have enjoyed the opportunity to know him, although not quite as well as others.

Senator SMITH from New Hampshire is one with whom I had the opportunity to serve on the Ethics Committee. I have grown very fond of BOB SMITH. He is a big, tall man with a great passion to serve his State and country. One of the qualities I discovered about him on issues that are very important, such as the issues we confronted on the Ethics Committee, is there was not a partisan bone in his body. But BOB SMITH was about fairness and doing things the right way.

I have become a friend of BOB SMITH's. I like him a great deal. I wish him very well as he moves on from the Senate.

Finally, Senator GRAMM from Texas. I mentioned the other day he is someone who, if you are going to be in a big fight—a really big fight—you want with you. He not only is smart and shrewd, but he does not ever quit, no matter what the time is on the clock.

While we have had our differences from time to time with regard to public policy, I have never had a difference with him on personal issues. He is someone I deeply admire. His service to our country through the Senate and the House is substantial. In fact, early on in our career, I sat next to him on the Veterans Affairs Committee in the U.S. House. That is when he was a Democrat, as a matter of fact. That is eons ago.

Senator GRAMM is one of those people who makes a significant contribution in this Chamber because he is determined to make that contribution and he knows the rules, he is shrewd, and he is tough. If you are in a fight, you want someone like Senator GRAMM with you in a fight.

Mr. President, having said all that about those who are leaving, let me say again the reason I came today to speak is because I care very deeply about this institution. I still pinch myself every day after 10 years serving in the Senate. When I drive to this Capitol Building, I pinch myself that a man from a town of 400 people and a high school class of 9 had the opportunity to be elected to the Senate.

This is an extraordinary honor. This body of 100 men and women who come with different passions and different visions for our country offer America the patchwork quilt of what America is about in its deliberations and the development of ideas and the approaches by which we try to move America forward.

I know from time to time, as do all of my colleagues, I leave this Chamber perhaps despondent about what happened that day, despondent that we did not get something done which I thought we should have done, or despondent that we did something I thought we should not have done. But over a long time, I remain enormously proud of the opportunities to serve in the Senate.

It is a remarkable, unusual, distinct privilege to serve in the Senate. This institution is still the greatest deliberative body in the world, and my colleague, Senator BYRD, the Presiding Officer, the President pro tempore, reminds us always of the place in history this Senate occupies.

I wish to say to all of those who are leaving this institution: It has been a great privilege to serve with each and every single one of them. Their presence has contributed to this institution in a very significant way.

Mr. President, I yield the floor.

PHIL GRAMM

Mr. THOMPSON. Mr. President, I rise today to pay tribute to my good friend and distinguished colleague, the senior Senator from Texas, Senator PHIL GRAMM. Senator GRAMM was first elected to public office in 1978. He served in the U.S. House of Representatives as a Democrat for 4 years. After becoming disenchanted with the Democratic party, he resigned his seat in January of 1983 and ran again in a special election as a Republican. He won back his seat and earned a new found respect for the honorable way in which he changed parties. In 1984, Senator GRAMM was elected to the United States Senate.

An economist by training, Senator GRAMM has spent his entire public career fighting for the principles of freedom, particularly economic freedom, individual choice and limited government. We all know well of his "Dickey Flatt" test. Dickey Flatt is a small businessman in Texas who has served as Senator GRAMM's bell-weather on the Federal Government's tax and regulatory policies. It is for the Dickey Flatts of this country that Senator GRAMM has fought to cut Federal tax rates, repeal the death tax and reduce the government's regulatory burden on small businesses. We also have heard often of Senator GRAMM's "momma." It is for her and the other senior citizens of our country that Senator GRAMM has worked hard to strengthen and modernize the Medicare and Social Security programs. Perhaps Senator GRAMM's most important legislative accomplishments are the 1981 "Gramm-Latta" tax cut, the Gramm-Rudman-Hollings balanced budget bill and the Gramm-Leach-Bliley Financial Services Act.

Equally as important as the legislation he has supported is the legislation that Senator GRAMM has chosen to fight over the years. If a bill did not pass the Dickey Flatt test, you could be assured that Senator GRAMM would oppose it. He is probably most famous for successfully leading the opposition in 1994 to then-President Clinton's proposal for a Federal takeover of the Nation's health care system.

I have had the privilege of serving with the Senator from Texas on the Senate Finance Committee for the past 4 years. I have learned much from him and enjoyed listening to him debate the important issues before the Committee. Senator GRAMM has a plain-spoken, common sense way of explaining issues that will be sorely missed in this body.

Senator GRAMM has served his State of Texas and this country with great distinction. He is a skilled debater and legislator, who has held true to his conservative principles over the years. I feel privileged to have had the opportunity to work with him during my tenure in the Senate, and to call him my friend. I wish him and his lovely wife Wendy the best in their future endeavors.

Mr. FEINGOLD. Mr. President, today I pay tribute to my friend and colleague PHIL GRAMM, who retires from the Senate, but will not soon fade from the memories of all those who worked with him in this body. Very simply, Senator GRAMM is a straight shooter, a man who has a strong grasp of the issues, and who never fails to speak his mind. While we disagreed a good deal on the issues, I have always had the utmost respect for Senator GRAMM's opinion, and for the way that he has conducted himself throughout his service in the Senate.

There have also been many times when we have seen eye to eye, and when we have it has been a pleasure to work with the Senator from Texas. Together we have fought to reform our budget process and cut wasteful spending. Now as my colleagues know, cutting spending or reforming the way that the government spends Federal tax dollars is never easy. But Senator GRAMM and I share the belief that only by reforming our budget process will we ensure the kind of fiscal discipline in Congress that the American people deserve.

While we were never able to bring our budget process reform bill to introduction, we stood shoulder-to-shoulder on many votes to cut pork-barrel spending and apply fiscal discipline. I thank Senator GRAMM for his tremendous leadership on these critical issues, and I wish him all the best as he ends his distinguished career in the U.S. Senate.

TRIBUTE TO SENATOR JESSE HELMS

Mr. FEINGOLD. Mr. President, with the end of the 107th Congress, we wish the best to Senator JESSE HELMS, who retires after serving five terms here in the U.S. Senate. Senator HELMS will be long remembered, by his colleagues and by history, for his legendary service to the people of North Carolina.

From the day I arrived in the Senate, and throughout our service together on the Senate Foreign Relations Committee, Senator HELMS has been unfailingly cordial to me, and that is something I have always greatly appreciated. While Senator HELMS and I more often than not disagreed on the issues of the day, I appreciated the chance to work with him on issues where we were able to find common ground. Together we fought against unnecessary fast-track procedures that bind Congress's hands on trade legislation. I also joined with Senator HELMS to try to ensure that the export laws took national security sufficiently into account, rather than merely bend to the largest business interests. Finally, I have been proud to work with Senator HELMS to call attention to human rights abuses in China.

So as he leaves the Senate, I thank Senator HELMS for the chance to work together on these important issues. I join my colleagues in paying tribute to him, and in wishing him all the best for his retirement.

TRIBUTE TO SENATOR FRED THOMPSON

Mr. FEINGOLD. Mr. President, today I would like to pay tribute to FRED THOMPSON, a colleague and friend who has left a lasting legacy here in the Senate. Senator THOMPSON has served the people of Tennessee well, standing on principle time and time again. He has been a champion of campaign finance reform since he first came to the Senate in 1994. He was among the original co-sponsors of the first McCain-Feingold legislation, and he has been an invaluable ally ever since.

I am deeply grateful to him for his longstanding and steadfast support for reform. FRED THOMPSON was a central part of our effort, from the first days, when gaining the support of such a fair-minded and well-respected member gave a tremendous boost to our efforts, through to some of our most critical moments, as when he skillfully negotiated an agreement on hard money limits that the vast majority of this body could support. Without that agreement, we simply could not have moved the McCain-Feingold bill through the Senate. I also want to pay special tribute to Senator THOMPSON for the work he did investigating the 1996 campaign finance scandals. Senator THOMPSON cut his political teeth on another great scandal in our Nation's history, but his work in 1997 showed the Nation that the campaign finance is truly a bipartisan problem with a bipartisan solution. I will greatly miss his leadership on these issues.

I also joined with Senator THOMPSON to try to ensure that the export laws took national security sufficiently into account, rather than merely bend to the largest business interests. And finally, I want to thank FRED THOMPSON for his leadership on States' rights. Senator THOMPSON has consistently spoken out against Federal mandates that hinder, rather than help, States and localities as they work to serve America's communities.

These are just a few of the many reasons that FRED THOMPSON's presence in this body will be missed. He has been a true champion on many important issues, and a champion for the people of his state. I thank him for his leadership and his friendship, and I wish him all the best as he ends this chapter of his career.

TIM HUTCHINSON

Mr. COCHRAN. Mr. President, the election campaign in Arkansas this year which involved TIM HUTCHINSON and Mark Pryor put me in an awkward position. Former Senator David Pryor was one of my best friends when he was in the Senate.

TIM HUTCHINSON has been a hard working, successful Senator who deserved to be reelected. The voters of Arkansas made their decision and TIM HUTCHINSON was not reelected.

During his 6 years in the Senate, TIM was a forceful, articulate, and effective spokesman for the interests of his State. I observed him at close range, as a fellow member of the Agriculture Committee, speak out for the farmers of his State. He made sure the best programs possible were included in the farm bill last year for the rice, cotton, and soybean producers of his State.

He gave particular attention to the interests of the aquaculture industry and the unfair efforts of the Vietnamese basa fish exporters to undermine years of catfish promotion efforts and market development success.

In every instance when TIM HUTCHINSON argued for the interest of the citizens of his State, he did so with conviction and a seriousness of purpose that was very impressive to me.

Another example which I recall that made me sit up and take notice was in a nationally televised debate of the William Buckley show which was broadcast from the law school at the University of Mississippi. The subject was the United States-China relationship. The panel included Henry Kissinger, Jim Barksdale, my colleague TRENT LOTT, and the new Senator from Arkansas, TIM HUTCHINSON.

I was surprised that the young Arkansas Senator not only held his own during this program, but he was the star. He made compelling arguments for his points of view; he knew the facts; and he expressed them in an articulate and persuasive manner.

TIM HUTCHINSON has been a very fine Senator for the State of Arkansas. He has upheld the finest traditions of this body, and we will miss him.

I wish him much success in the years ahead.

MAX CLELAND

Ms. STABENOW. Mr. President, I rise today to pay tribute to my dear friend and departing colleague Senator MAX CLELAND.

Thomas Jefferson once said that "a nation that rests on the will of the people must also depend on individuals to support its institutions if it is to flourish. Persons qualified for public office should feel an obligation to make that contribution."

MAX CLELAND heard that centuries old call to duty and answered with a lifetime of service.

Senator CLELAND's dedication to his country stretches from the battlefields of Vietnam to the floor of this Senate. And the families of Georgia, and our entire Nation, are better for his leadership.

Senator CLELAND nearly lost his life serving his country in Vietnam. He returned home with injuries so grave that he spent a year and a half in various Veterans Administration Hospitals recovering.

But Senator CLELAND then battled and beat a depression so deep that it would have broken the spirit of many others and embarked on a remarkable 30-year career of public service.

He began by speaking out for better treatment for veterans, a cause he would champion throughout his career.

Then at the age of 28, he was elected to become Georgia's youngest State Senator.

In 1977, Senator CLELAND was appointed head of the Veterans Administration by President Carter, making him the youngest Administrator in the agency's history.

In 1982, Georgia voters elected him Secretary of State, again, the youngest ever.

And in 1996, Senator CLELAND was elected to the United States Senate where he became a champion on issues like veteran affairs, health care and protecting our Nation's parks and natural treasures.

I think Jefferson would be proud to see that our Nation still produces such leaders as Senator CLELAND whose entire life embodies the spirit of patriotism, civic duty and self-sacrifice that has shaped our Nation since its very founding.

I hope Senator CLELAND will continue to speak out on the issues he cares about so deeply because his voice is still needed.

JEAN CARNAHAN

Mr. President, I rise to express my admiration and respect for my departing colleague, Senator JEAN CARNAHAN.

Senator CARNAHAN and I entered the Senate in the same freshman class and we served together on the Special Committee on Aging.

I quickly came to appreciate Senator CARNAHAN's hard work on behalf of the people of Missouri and our Nation.

Senator CARNAHAN was a leader in the fight to make prescription drugs more affordable.

Senator CARNAHAN authored the "Classroom Quality" provision of the "Leave No Child Behind Act", which will give our local schools the ability to offer qualified teaching specialists to all students who need them.

Senator CARNAHAN worked to save thousands of airline jobs in Missouri and across the Nation also provide relief for those workers who lost their jobs in the wake of the travel slowdown after 9-11.

Senator CARNAHAN was one of the first legislators to go to Afghanistan to see for herself that our troops had all they needed in the fight against terrorism.

And Senator CARNAHAN fought tirelessly to make sure Social Security and Medicare remain strong for our present seniors and the generations to come.

While her tenure was brief, her legacy will be long.

But, beyond admiring her skills as a legislator, I came to appreciate Senator CARNAHAN's sincere warmth, quiet humor and inner strength.

We are all too keenly aware that Senator CARNAHAN came to the Senate in the wake of the tragic plane crash that killed her husband, Governor Mel Carnahan, and her oldest son Randy.

But Senator CARNAHAN turned the grief over her family's loss into a legacy of gains for families in Missouri and our Nation.

Senator CARNAHAN was truly a fitting heir to the Senate seat once held by Harry Truman and I hope she will continue to speak out on the issues she cared about so deeply.

Her voice will still be needed.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I rise for the purpose of paying tribute to our colleagues who are leaving the Senate. There are some 10 of our colleagues who are leaving under various circumstances. I would like to speak about them and to express my deep appreciation for their friendship, for the years we have worked together, or opposed each other, as the case may be, on various matters that have come before this body.

Mr. President, of course, we all have great affection for Senator THURMOND, who has served here for 54 years and is on the brink of celebrating his 100th birthday—a remarkable achievement in and of itself. As someone once said, if they had known they would have lived that long, they would have taken better care of themselves. And STROM THURMOND took very good care of himself over the years.

Senator MAX CLELAND, a remarkable person, has served here for only 6 years, representing the State of Georgia. He has done a remarkable job during his years here. But he has had a distinguished record, of course, that has accumulated prior to his arrival in the Senate.

Senator JESSE HELMS, with whom I have served on the Foreign Relations Committee for my entire service, my 22 years in the Senate. He has served for 30 years here. We have been the best of colleagues serving together.

Senator BOB TORRICELLI of New Jersey; Senator PHIL GRAMM of Texas, with whom I have served on the Banking Committee; Senator JEAN CARNAHAN, who has had a brief service here but has done a wonderful job representing the State of Missouri; Senator FRANK MURKOWSKI, with whom I was elected to the Senate 22 years ago; Senator FRED THOMPSON from the State of Tennessee; Senator BOB SMITH; Senator TIM HUTCHINSON—these are the 10 Members who are leaving.

STROM THURMOND

Mr. President, regarding Senator THURMOND, I spoke back a number of weeks ago about Senator THURMOND in our wonderful tribute to him. He is truly an institution within this institution.

I have known Senator THURMOND since I was very young. My father and he served together here for 12 years. I have served with him for 22 years. So for 34 years Senator THURMOND has had to serve with a Dodd in the U.S. Senate of his 54 years.

I know of no one who has had as varied and as distinguished a career in public service. When you think of his contribution as an educator, as a Governor, as a combat war veteran—and not young at the time of D-Day, I might add, but nonetheless showed great heroism—and serving, as I mentioned, as a Governor of his State, and, of course, in the Senate for so many years, and as a judge—truly a remarkable individual—and elected to the Senate under various banners over the years—as a Democrat, as a Dixiecrat, as a Republican, as a write-in candidate—truly a remarkable achievement.

I've heard it suggested that they might have to rename the State of

South Carolina; there have been so many monuments to his public service. There are schools, roads, bridges, parks all through the State of South Carolina that bear the name of STROM THURMOND. That is because, of course, he is held with such incredible affection by the people of that State.

We have had our differences on substantive matters, but he has always been a tremendous gentleman and a wonderful friend. He is a good friend to my family as well. I wanted to take a couple minutes to say thank you to a remarkable individual, a remarkable American. I know that he has great affection for this institution and its Members. I wish him the very best of health and, I want him to know we will all miss him very much.

MAX CLELAND

I also want to pay tribute to our colleague from Georgia, MAX CLELAND. I know very few people who have as many heroic qualities as MAX CLELAND does. It is not by pure circumstance that I mention STROM THURMOND and MAX CLELAND next to each other. I mentioned the fact that STROM THURMOND served his country with great distinction in military service during World War II. MAX CLELAND, of course, served his Nation with great distinction during the Vietnam conflict and, of course, paid a terrible price for that service. Just a month shy of completing his tour of duty, he suffered the terrible loss of both legs and an arm.

Yet despite those physical injuries, and the obstacles they presented, MAX CLELAND has made a remarkable contribution to this institution, to the people of his home state of Georgia. MAX CLELAND is truly an American hero, not just because he wore the uniform of the United States and served in combat and suffered a terrible loss. He is an American hero because of his willingness and desire to serve the people of his country in a continuing fashion beyond that of a military uniform. He has done so in the State of Georgia, holding office there as well as here in the Senate. I don't know of anyone who is held in such a high regard and with such respect by all of us as MAX CLELAND.

One of Senator CLELAND's favorite poets, William Butler Yeats, once wrote: "Too long a sacrifice can make a stone of the heart."

In the case of MAX CLELAND, his enormous sacrifice to his country only emboldened his golden nature, and increased his desire to dedicate himself to improving the lives of others.

I will miss him very much. When the 108th Congress convenes, it just won't seem quite right that MAX CLELAND is not among us—he has a wonderful sense of humor, a great sense of history, a great love of his country. I deeply regret the people of Georgia didn't see fit to send him back to serve with us. I don't know his successor. I am sure he is a fine person. I am sure he won't mind if I say I am going to miss Max very much, but I know I have a lifelong friend in MAX CLELAND.

Just prior to coming back to Washington, it was announced that MAX and Nancy are going to be wed. My wife Jackie and I wish both of them the best in the years ahead.

JESSE HELMS

I also want to pay tribute to my friend and colleague from North Carolina, Senator JESSE HELMS. I don't know of anyone here I probably disagreed with more over the past 22 years than JESSE HELMS. But I also don't know of anyone with whom I have had a better relationship over the last 22 years. I know that sounds somewhat of a contradiction to people who watch this institution, that people with whom you can have profound and significant disagreements can also be people you hold in high regard and respect.

Senator JESSE HELMS and I have fought tooth and nail on almost every issue I can think of. But I don't know of a finer gentleman, a more decent human being than JESSE HELMS. And we have disagreed on policy matters over and over again—he is a passionate conservative, his voting record has scored a 100 percent rating from American Conservative Union throughout his 30 years here, and he is deeply proud of the fact that during those years he has one of the highest voting records of loyalty to the Republican Party, in excess of 95 percent.

It is that passion which I admire. We don't have enough of it in politics today, in my view. And while I wish we had more of it on our side, I respect it when I see it in anyone. JESSE HELMS certainly brings it to his public service. I will miss his service here. I will miss working with him. There were many occasions when we actually did find common ground, as we do so frequently here, on matters that don't achieve the high profile status as matters of disagreement do. He served his State of North Carolina well. He served and represented a point of view embraced by many.

I will miss him on a personal level as a kind and thoughtful individual. Jackie and I wish he and Dot the very best in the years to come.

BOB TORRICELLI

Mr. President, ROBERT TORRICELLI is leaving the Senate. He made the decision this fall not to seek reelection in the midst of his election. A lot of attention has been focused on that decision, but for those us of who have known BOB TORRICELLI over his 20 years of public service—14 years in the House, 6 years in the Senate—BOB TORRICELLI is a lot more than an individual who decided to pull out of a race in New Jersey this year. He is a passionate fighter for things he believes and he has compiled a wonderful record of public service.

I want the RECORD to reflect that BOB TORRICELLI was a fine Senator, a fine Member of Congress. He fought very hard on behalf of his constituents, fought very hard on the issues he cared deeply about. We had our disagreements over Cuban policy frequently. I always used to say, when BOB TORRICELLI came to the floor to take the other side, he was a formidable opponent.

He was an excellent debater, one who embraced his views with a great deal of knowledge and a great deal of passion and feeling. He became active in Democratic Party politics at an early age. His passion for politics is something all of us came to appreciate in the Senate during his years. He was elected to the House at age 31 in 1982. He did a tremendous job there, serving on the House International Relations Committee, and rose to prominence as a House member, as a leading voice for advancing and expanding democracy and human rights worldwide.

In 1996, he came to the Senate. His efforts on behalf of tax, employment, environmental, education, and health issues are things we are all well aware of. He has wonderful legislative skills and was a great battler on behalf of the Democratic Party.

He led the Senate Democratic campaign committee during his first term in a cycle during which he raised a lot of money to support Democratic candidates across the country. It is a thankless job. But for those of us who stand for election or reelection, you have to have someone who will head up these committees and do so with a great deal of energy. BOB TORRICELLI certainly did that for a lot of people whose careers might have been terminated more briefly had it not been for his dedication to seeing to it that Democratic candidates would have a good chance to be heard.

I would not want this session to end without expressing my gratitude to BOB TORRICELLI for his service in this body and his service to the people of New Jersey.

PHIL GRAMM

Mr. President, PHIL GRAMM is also leaving the Senate, going to work for UBS Warburg. Their offices are in Connecticut, so I will be looking forward, very carefully, at what PHIL GRAMM does as a new part-time constituent of mine. I say that somewhat facetiously of course.

PHIL GRAMM has had a very distinguished career in public life. We have served together on the Banking Committee during his entire time in the Senate. We have worked together very closely on matters affecting the securities industry. We coauthored a number of bills together during our joint service. We were elected to the House together. PHIL was a Democrat in those days, then became a Republican, was elected to the Senate as a Republican.

He has authored major pieces of legislation during his career.

In fact, the Brookings Institution listed three of the bills that PHIL GRAMM authored or coauthored as among a handful of the most significant pieces of legislation in the 20th century, including the Gramm-Rudman-Hollings balanced budget proposal which attracted a wide degree of attention during the 1980s. He made a mark here as a tenacious fighter for what he believes in. One of the most difficult opponents you could have on an issue is PHIL GRAMM. He doesn't take many prisoners, and he fights very hard for the matters in which he believes. I thank him for his service and wish him well in the years ahead.

JEAN CARNAHAN

Mr. President, I want to mention JEAN CARNAHAN, who had a short service in this body. All of us have a deep appreciation for the circumstances under which she arrived—one of the most tragic set of circumstances any of us can imagine. She did a remarkable job, coming in under difficult circumstances, and we owe her a debt of gratitude for the courageous and selfless service that she provided to the people of Missouri, the American public, and the sense of silent grace with which she handled those personal difficulties.

She didn't just simply show up in the Senate—she thrived here. All of our colleagues would agree when I say that learning to navigate the ways of the Senate can be difficult for anybody, but for somebody who never served in public office, having, of course, been the first lady of her State of Missouri for 8 years, JEAN CARNAHAN did a remarkable job during her time here. She made a difference on numerous pieces of legislation in which she helped to forge compromises. While her tenure may have been brief, she left a mark worthy of those with much longer service. All of us express nothing but our very best wishes to JEAN CARNAHAN and to her family in the coming years. She has become a good friend to us here. I thank her for her service, and I am sure she will find other ways to contribute and provide services for the people of this country.

FRANK MURKOWSKI

FRANK MURKOWSKI and I were elected to the Senate together in 1980. He has now been elected Governor to the State of Alaska. He is moving on to other areas of public service. He has done a very fine job here and has made a significant contribution representing the people of Alaska. He had a successful career as a businessman in Alaska before coming to the Senate. He was President of the Alaska National Bank from 1970 to 1980.

Since his arrival here, he has kept Alaska first and foremost in his mind. He has been an extraordinary defender of Alaska's interests. But he made many contributions, as well, to the national agenda.

In fact, many of his biggest fights have greatly benefitted our Nation as a whole. In 1996, for example, FRANK MURKOWSKI led the congressional effort to pass the omnibus parks bill, which created or improved more than 100 national parks, forests, preserves and historic sites nationwide, including two in Alaska.

And, for more than 25 years, FRANK and his wife, Nancy, have been leaders in the fight against breast cancer in rural Alaska, and other areas where access to early testing is severely lacking. He also led a national effort against breast cancer here in Washington, and has been an integral part of securing increased Federal funding for breast cancer research and treatment nationwide.

He has been a passionate advocate of oil and gas exploration in Alaska—one of the major debates in this body. I disagreed with FRANK MURKOWSKI about allowing drilling in the Arctic National Wildlife Refuge, but he certainly fought very hard on behalf of his beliefs, showing up with charts and graphs and pictures of wildlife and the like, day after day during that debate.

The people of Alaska have now elected him as their Governor. I know all of us wish he and his wife Nancy well as they assume new responsibilities in Juneau, Alaska.

FRED THOMPSON

Mr. President, I pay tribute to and express my gratitude to Senator FRED THOMPSON of Tennessee, as well, for his service here. He has made a significant contribution to public life during his years here in the Senate, as well as prior to arriving here. FRED's career in politics has truly been one of life imitating art imitating life.

How else can you describe a man who can be seen on the Senate floor debating, only to see him later that evening playing a district attorney on the television show "Law and Order"? On just about any given Sunday, you can catch FRED THOMPSON on cable in a rerun of "Die Hard II," or "The Hunt for Red October." So he has had a distinguished career in film and television, also.

But to suggest that was the sum total of FRED THOMPSON's life would be a tragic mistake. There is a lot more to it. He has made significant contributions in real life for over 30 years. He did serve as an assistant U.S. attorney at one point in his life. He has been a prominent public figure during some of the most critical moments in our Nation's history—not only as chairman of the Governmental Relations Committee, but also during the Watergate crisis in the early 1970s.

FRED THOMPSON was just a few years out of Vanderbilt Law School when he was named minority counsel to the Senate Watergate Committee in 1973. He has been commended on many occasions for his role in the public disclosure of the Oval Office audio tapes, and that deserves mention here again today.

FRED THOMPSON's early impact on the American political scene foreshadowed his later career and success in the Senate, and his ever-growing popularity in Tennessee. In 1994, he was elected by the people of that State to fill the seat left vacant by the election of Senator Al Gore as Vice-President. When he was voted in for a full Senate term in 1996, he received the highest number of votes cast for any candidate for any office in Tennessee history.

FRED THOMPSON has compiled a distinguished career over the years, as I mentioned earlier, as an assistant U.S. attorney, as Watergate counsel and, of course, during his years in the Senate. We are going to miss him here. He and his wife Geri, I am sure, are going to have a bright future, and I have a feeling we will be hearing more about FRED THOMPSON in the years to come.

ROBERT SMITH

Mr. President, BOB SMITH from New Hampshire is also leaving the Senate. While, again, we have been on not only different sides of the aisle but on the different sides of many, if not most, issues that come before the Senate, I thank BOB SMITH for his service to his State of New Hampshire and to the causes which he embraced very firmly.

BOB SMITH is a very conservative Member of this body. He has also become a leading advocate, during his latter years of service, on environmental questions affecting not only the State of New Hampshire, but also environmental issues across the country, including his work on helping to clean up and restore the Florida Everglades. He opposed drilling in the Arctic National Wildlife Refuge despite strong support from the Bush administration and Senator FRANK MURKOWSKI.

So BOB SMITH was more diverse in his views than some might have otherwise believed. Again, I thank him for his service. We didn't agree on many substantive issues that came before this body, but he was a passionate fighter for views he held. My wife Jackie and I wish him and his wife Jo Ann all the best in the future.

TIM HUTCHINSON

Mr. President, I rise today to pay tribute to my friend and colleague, Senator TIM HUTCHINSON, who will be leaving the United States Senate at the conclusion of the 107th Congress.

Although Senator HUTCHINSON and I have not agreed on every issue that has come before us, I have always considered him a friend, and I have always respected his convictions. He has certainly served as a capable and loyal advocate for the people of his home state of Arkansas.

Mr. President, I had the good fortune of getting to know TIM HUTCHINSON very well during his six years in the Senate. We served together on the Health, Education, Labor, and Pensions Committee. And, in 2000, Senator HUTCHINSON and I co-founded the Senate Biotechnology Caucus, which has played an important role in educating Members of Congress and the public about recent developments in medical and genetic research.

Throughout his 10 years in Washington—4 years in the House of Representatives and 6 here in the Senate—TIM HUTCHINSON has shown a deep commitment to improving the education of America's children, strengthening our national security, increasing access to healthcare, and safeguarding the often overlooked interests of rural America.

Given his background, these priorities are not surprising. TIM HUTCHINSON himself was born on a small farm in rural Gravette, Arkansas. And he was educated as a minister at Bob Jones University in South Carolina.

After graduating from college, he returned to Gravette, where he opened a Christian day school and taught history at nearby John Brown University. I have always believed that his background as an educator made Senator HUTCHINSON one of the most thoughtful and well-spoken members of this body.

TIM HUTCHINSON's election to the Senate in 1996 was the culmination of a 10-year political evolution, which began with his election to the Arkansas Statehouse in 1985. While there, he gained a state-wide reputation as a tireless advocate of law enforcement.

TIM HUTCHINSON was elected to the United States House of Representatives in 1993, and in 1996 he became the first Republican in Arkansas history to win a popular election to the Senate.

As a Senator TIM HUTCHINSON remained a committed advocate for conservative causes—consistently scoring over 90 percent for his voting record by the American Conservative Union.

However, there were also several instances when Senator HUTCHINSON took the lead on important issues that crossed party lines. For example, he has always had an interest in improving public education in America, and was an integral part of the effort to create tax free education savings accounts.

And, during the 107th Congress, Senator HUTCHINSON introduced the Nurse Employment and Education Development Act—a landmark piece of bi-partisan legislation to address the critical nursing shortage affecting rural Arkansas and the country as a whole.

This year, the NEED Act was incorporated into the Nurse Reinvestment Act, which President Bush recently signed into law. This legislation stands as a fitting coda to TIM HUTCHINSON's tenure in the U.S. Senate—its positive impact will be felt across America for years to come.

Mr. President, I will miss having TIM HUTCHINSON as a colleague. My wife Jackie and I wish him and his wife Randy, all the best in future year.

I thank all 10 of these Members for their friendship. I look forward to seeing them in the years ahead, and I wish them and their families the very best in the years that come down the road.

FRED THOMPSON

Mr. HAGEL. Mr. President, I rise to recognize my friend the Senior Senator from Tennessee. FRED THOMPSON will retire this year after eight distinguished years in the Senate. He has packed a great deal in those eight years. He has been a forceful leader who has made significant contributions to our country in a short amount time.

Senator THOMPSON was born and raised in Lawrenceburg, TN, a little town sited by the great frontiersman and Congressman Davy Crockett. Like Crockett, Senator THOMPSON charted a path in life that has allowed him to use his character and great abilities for interests larger than himself. He received his undergraduate degree from Memphis State University and completed his law degree at Vanderbilt University in 1967. In 1973 and '74, Senator THOMPSON served as minority counsel to the vice chairman of the Senate Watergate Committee, his mentor, Senator, now Ambassador, Howard Baker. He served as Special Counsel to both the Senate Select Committee on Intelligence and the Senate Committee on Foreign Relations. Senator THOMPSON is among the most junior Senators in the history of the Senate to have ever served as Chairman of a Standing Senate Committee.

But Senator THOMPSON's skills and talents go far beyond his contributions to the Senate. He is also a very fine actor, not withstanding Senator MCCAIN's critiques of his performances. He has an expansive list of movie and television roles that highlight his commanding presence and impressive style. We will continue to enjoy seeing him shine in his renewed acting career. He's had excellent real life practice in the Senate.

We will miss FRED THOMPSON. We will miss his common sense, sharp wit and decency. All of his friends in the Senate wish FRED and his new bride, Jeri, all the best in their new lives together. I am proud to have served with him.

PHIL GRAMM

Mr. President, I rise to recognize the Senior Senator from Texas. Senator PHIL GRAMM will retire this year after 24 distinguished years in the U.S. Congress, three terms in the House and three terms in the Senate. He will be missed.

Thirty-five years ago Senator GRAMM received his Ph.D in Economics from the University of Georgia. After his time in Georgia, Senator GRAMM began his college teaching career at Texas A&M University as an Assistant Professor of Economics in 1967. By 1973, he became the youngest Full Professor in the history of the Texas A&M Economics Department. His grasp and understanding of economics have been important factors in our Congressional debate and government policy over the last twenty-four years.

I have had the privilege to serve with Senator GRAMM on both the Senate Banking and Budget Committees. I have seen first hand the power of his intellect and grasp of the issues that have advanced free trade and strengthened our economy and the foundation of our democracy. His contributions to our country are many. He authored numerous major pieces of legislation during his career—and none more important than the Gramm/Rudman/Hollings Balanced Budget and Emergency Deficit Control Act and the Gramm/Leach/Bliley Financial Services Modernization Act.

All of his friends in the Senate wish Wendy and PHIL much success as he takes on new responsibilities. He will now have more time to help R.C. Slocum coach the A&M Aggies. The Congress and America are stronger today for Senator GRAMM having served in Congress. I am proud to have served with him.

MAX CLELAND

Mr. President, I rise to recognize my longtime friend the Senior Senator from Georgia. MAX CLELAND and I arrived in the Senate together in 1997. He quickly became a respected U.S. Senator. MAX CLELAND has been a role model for many people over the years. And, his years of selfless public service have made America a better and stronger nation.

Senator CLELAND joined the Army ROTC program at Stetson University in Florida and went on to earn a Masters Degree in American History from Emory University as a commissioned Second Lieutenant in the U.S. Army. In 1967 he volunteered for service in Vietnam. The next year he was promoted to the rank of Captain and soon after he was seriously wounded losing both his legs and his right arm. Senator CLELAND's determination and spirit turned his experience in Vietnam into a continuing passion for interests greater than his own. His service in Vietnam further motivated him to continue to help shape America.

At the age of 28, he won a seat in the Georgia State Senate making him the youngest member and the only Vietnam veteran in that legislative body at that time. Seven years later, President Jimmy Carter appointed him Administrator of the U.S. Veterans' Administration. He was the youngest VA Administrator ever and the first veteran of Vietnam in that post. In 1982, he became the youngest Georgia Secretary of State and held that position for three terms until he began his campaign for the United States Senate in 1995.

Senator CLELAND is an inspiration to all of us. We will miss his honesty, integrity, spirit and leadership in this body. We wish him well and thank him for his service and contributions to our country. I am privileged and proud to have served in the Senate with my friend and colleague MAX CLELAND. I salute you, Captain. You will be missed.

The PRESIDING OFFICER (Mr. JEFFORDS). Who seeks recognition? The Senator from Missouri, Mrs. CARNAHAN.

Mrs. CARNAHAN. Mr. President, I thank my colleague for his kind and generous remarks.

FAREWELL TO THE SENATE

Mrs. CARNAHAN. Mr. President, today I am reminded that 2 years ago when I came to the Senate, it was with a heavy heart. Life had not turned out the way it was supposed to. My husband, not I, was supposed to have been sworn in to the Senate, and I was to be seated in the gallery, beaming with delight at the shared victory we had won.

As someone has pointed out, life is not the way it is supposed to be. Life is the way it is, and it is the way we cope with it that makes a difference. I had some difficult lessons to learn in that regard.

It was not by chance when I stepped down from the dais, after being sworn in, that the first to welcome me was Senator JOE BIDEN. He had come to this Chamber many years ago after a tragic loss in his own life. He told me the story of having been greeted by Senator McClellan of Arkansas, who looked him in the eye and said: Work, hard work, it is the sure path to healing.

Senator BIDEN said: I thought at the time how callous that advice was; he just does not understand the hurt I am feeling. He later found out Senator McClellan spoke from having experienced a family tragedy of overwhelming proportion. JOE BIDEN took the advice to heart and he passed it on to me. You were right, JOE, and I thank you for that wisdom.

There has been much work to throw ourselves into during the 107th Congress. It has been a monumental period in our Nation's history, a time marred by unprecedented national tragedy, deep political divisions, economic upheavals, corporate corruption, continued threats to our national security, and now the gathering clouds of war. Through all of these disasters, we have seen the triumph of the American spirit. Yes, Americans have taken to heart the advice Louis Pasteur once gave to a group of young people. He said: Do not let yourselves be discouraged by the sadness of certain hours which passes over nations.

Thankfully, the Congress has refused to be discouraged. We have endured anthrax attacks, dismantled offices, tighter security measures, major alterations to the Capitol complex, not to mention three shifts in legislative leadership. Through it all, we have managed to address a number of important issues. We passed a historic tax cut, reformed education, overhauled campaign finance laws, called corporate America to a higher standard, and prepared our Nation to respond to global terrorism. We have found that being the guardian of freedom is a relentless and consuming work. The immensity of our task would cripple a lesser people. Rather than be cowered by events, America and her institutions have always been emboldened during times of crisis. I am convinced the Author of Liberty, who has blessed and protected our Nation in the past, will enable us to meet the stern responsibilities of the present.

As the 108th Congress takes on this new burden, I will not be among them but my prayers will be with them. I leave realizing that to have served in the Senate for even a short while is an honor afforded very few in their lifetime. I am forever grateful to the people of Missouri who have allowed me and my family to serve them for three generations. Reporters often ask me to reflect on those years. Most recently, I was asked what impressed me most during my time in the Senate. And I replied it was the diligence beyond duty shown by all who are part of this Chamber—Democrats, Republicans, and independents. Staff, parliamentarians, clerks, pages, security officers, maintenance workers, elevator operators, all spend long hours serving America. For the most part, their names, their selfless deeds will go unrecorded, but their life and work demonstrate a deep devotion to duty.

In recognition of the loyalty and exemplary work of my own staff, I ask unanimous consent to have their names printed in the RECORD at the close of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mrs. CARNAHAN. At this time I recognize sadly that two great towers of strength will be missed in this Chamber. My friend and colleague, MAX CLELAND, from his wheelchair stands taller than most men ever will. The Senate will be greatly diminished by his absence. And that we will no longer hear the spirited voice of Paul Wellstone summoning us to stand up and fight will likewise diminish the fervor of this body.

Our Nation and my party have been further blessed by the courageous leadership of Senator DASCHLE and Senator HARRY REID. They have shown the grace under pressure that marks true greatness.

I would be remiss if I did not mention the women of the Senate whose friendship has blessed and brightened my life. I am grateful, too, for the wholehearted and unwavering support of my Democratic colleagues in my every endeavor, and I especially appreciate those from the other side of the aisle, though far fewer in number, who graciously encouraged me as well.

Tradition affords those of us who leave the Senate, either by our own will or the will of the electorate, the opportunity to reflect on the time in this historic Chamber, to perhaps even engage in some unsolicited advice. I could not pass up that opportunity. My advice comes not as a seasoned insider but as one who came for a season to serve among my colleagues. Mine are simple maxims that spring from the heart, a heart filled with love for the Senate and for my country.

First, when my colleagues think on the role of government, seek a balance. Seek a balance between one that does everything and one that does nothing. And where there is talk of war, let there be the free and open debate that becomes our great Nation. And when there are judges to be appointed, let them be selected for their temperament and jurisprudence and not for political ideology that satisfies a special interest group.

When we lay out our energy and environment policy, let it not be for short-term gain but for the well-being of our grandchildren and the survival of our planet. And when my colleagues speak of leaving no child behind, let that not be a mantra but a mission, fervent and funded. When health care is thought about, the health care needs of children, family, and seniors—and I hope that will be often—I urge my colleagues to lay aside partisanship and heed the plight of the hurting and the helpless in our society.

I will vote for the homeland bill, as I have each step of the way, for we must make certain the information disconnect that allowed a 9/11 to occur never happens again.

During an earlier global conflict, President Roosevelt called for stout hearts and strong arms with which to strike mighty blows for freedom and truth. Well, that is what I am hoping this consolidation and coordination of effort will help us to accomplish.

As I vote for this bill, I do so with a caution. The pursuit of terrorists and the protection of basic freedoms will be our greatest challenge in the years ahead. In the quest to uproot terrorism, let us take care to preserve those precious liberties upon which our Nation is founded and upon which democracy depends. I have no doubt that in this good and godly work we will ultimately succeed.

Let me conclude by saying that this farewell to the Senate is a bittersweet moment for me, one that churns up a mixture of memories and emotions. One such memory was of a visit I made to the Corcoran Art Gallery to see the Jackie Kennedy exhibit. One of the displays was a handwritten letter that Mrs. Kennedy sent to a friend after completing an extensive project at the White House.

She wrote:

> How sad it is . . . when a work we love doing . . . is finally finished.

I know how she felt.

I still believe, as did my husband, that public service is a good and noble work worthy of our lives. Perhaps a former Member of this Chamber said it best. He was not of my party, but he certainly was of my principles. Senator Lowell Weicker wrote:

> For all the licks anyone takes by choosing public service,
>
> . . . there is the elation of having achieved for good purpose what none thought possible.
>
> And such feelings far exceed . . . whatever the hurt . . . for having tasted the battle.

I yield the floor.

Exhibit 1

Current Staff of Senator Jean Carnahan:
Isiah Akin, Legislative Aide
Amy Barber, Legislative Assistant
John Beakley, Special Assistant to the Senator
Ann Bickel, Assistant to the State Director
Todd Britt, Director, Eastern Missouri
Michael Carrasco, Office Manager
Chad Chitwood, Southwest Area Regional Coordinator
Qiana Combs, Deputy Director, Western Region
Sonja Cureton, Constituent Services Representative
Julie Egermayer, Constituent Services Representative
Sarah Elmore, Staff Assistant
Bradley Epperson, Special Advisor
Alex Formuzis, Press Secretary
Sandy Fried, Legislative Assistant
Rosie Haertling, Casework Supervisor
Stacy Henry, Assistant Scheduler
Margaret Hsiang, Legislative Correspondent
Lisa Jaworski, Legislative Aide
Amy Jordan-Wooden, State Director
Michele Ludeman, Caseworker/Administrative Assistant
Bryan Mitchell, Legislative Correspondent
Jeff Morrison, System Administrator
Stephen Neuman, Legislative Assistant
Tom Neumeyer, Southeast Area Regional Coordinator
Neal Orringer, Military Legislative Assistant
Alison Paul, Staff Assistant
Caroline Pelot, Deputy Director, Eastern Missouri
Jason Ramsey, Director, Central Missouri
Ryan Rhodes, Scheduler/Executive Assistant
Garon Robinnett, Staff Assistant
David Schanzer, Legislative Director
Raymond Schrock, Special Projects Coordinator
Vance Serchuk, Legislative Correspondent
Jan Singlemann, Regional Aide
Rachel Storch, Deputy Chief of Staff
Stephen Sugg, Legislative Assistant
Roy Temple, Chief of Staff
Cindy Townes, Data Entry Clerk
Pam Townsend, Staff Assistant
Courtney Weiner, Legislative Correspondent
Rogerick Wilson, Constituent Services Representative

The PRESIDING OFFICER. The Senator gave the most eloquent statement. I can't say how much I appreciated being here.

The Senator from West Virginia.

Mr. BYRD. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I have a series of parliamentary inquiries. As I understand the situation on tomorrow, Tuesday, there will be 90 minutes of debate before a vote occurs at 10:30; during that 90 minutes of debate there will be 30 minutes under the control of Mr. Lott, 30 minutes under the control of Mr. Daschle, and 30 minutes under the control of Mr. Byrd; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, at 10:30 it is my understanding—and I would like to inquire if I am correct in my understanding—the first vote will occur on the Daschle-Lieberman second-degree amendment No. 4953; a second vote will occur on the Daschle-Lieberman first-degree amendment No. 4911; a third vote will occur on the Thompson substitute, House bill No. 4901; the fourth vote will occur on cloture on H.R. 5005; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, I thank the Chair but let me continue.

As I understand it, the Thompson substitute, House bill No. 4901, that is the substitute which was passed by the House of Representatives, sent to the Senate, and called up and laid before the Senate. That is the bill which first saw the light of day in the Senate, as I understand it, on or about the early morning hours of this last Wednesday, this past Wednesday of last week. Is that the amendment, the Thompson substitute amendment, that is the House bill which I, on a number of occasions, have referred to as being a bill of 484 pages?

The PRESIDING OFFICER. The amendment does contain that number of pages.

Mr. BYRD. I just wanted to be sure to establish in my own mind and call to the Senate's attention that that will be the third vote, then, on that bill as we come to tomorrow morning, Tuesday of this week.

Now, Mr. President, a further parliamentary inquiry: Am I correct in stating that cloture on the bill, H.R. 5005, is not vitiated by question of the adoption of the substitute?

The PRESIDING OFFICER. Cloture on the bill is not vitiated by that action.

Mr. BYRD. I thank the Chair.

Further parliamentary inquiry: Is it not a fact that if cloture is invoked on H.R. 5005, under the rule, 30 hours then will ensue under that cloture measure?

If cloture is invoked, there will be 30 hours on H.R. 5005, am I correct?

The PRESIDING OFFICER. Cloture under this consideration is 30 hours.

Mr. BYRD. I thank the Chair. In this instance, if the Thompson substitute, the House bill No. 4901, if that substitute is adopted and cloture then is invoked on H.R. 5005, will amendments be in order during those 30 hours?

The PRESIDING OFFICER. The adoption of the Thompson substitute precludes amendments.

Mr. BYRD. I thought that was the case.

The adoption of the Thompson substitute means as far as further amendments are concerned, the ball game is over; am I correct in putting it in that form?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I say all that, Mr. President, to say this: On last Friday when the Senate invoked cloture, what was cloture invoked on, may I ask of the Chair? On what did the Senate then invoke cloture?

I see my loss of memory is not too bad after all. It seems to be shared by others. Of course, I am 85—almost.

The PRESIDING OFFICER. We are checking the record.

Mr. BYRD. I say that with all respect, due respect and ample respect to the Chair, the Parliamentarian, and others.

The PRESIDING OFFICER. Cloture has been invoked on amendment No. 4901, the Thompson amendment.

Mr. BYRD. I thank the Chair.

Now, Mr. President, the point I am trying to make here is—and I wanted it in the Record, and I wanted Senators to be aware of what they did when they voted to invoke cloture on last Friday. The distinguished occupant of the chair did not vote to invoke cloture, nor did this Senator, who now is speaking.

There were 29 Democrats who voted against cloture last Friday. There were 17 Democrats who voted for cloture last Friday. As I note—and this may have been a cursory examination I have made—but I have noted, in a cursory examination, I believe two Republicans who were absent would have voted with me against cloture and I believe four Democrats who were absent would have voted with me against cloture.

In any event, had 6 of the 17 Democrats who voted for cloture voted against cloture last Friday, we would not be under cloture at this point because the number of Senators voting for cloture on last Friday would have been only 59 and the number, therefore, would have fallen 1 vote short of cloture.

Now, I tried to get my fellow Democrats to vote against cloture because I felt that we ought to have more time to discuss this homeland security bill, which had been dropped on our desks virtually out of the shades of the early morning as they were lifting and the golden fingers of dawn were streaking across the land. I tried to get several Senators to vote against cloture, my plea being: "Don't vote for cloture today. Give us a little more time. If we don't vote for cloture today, it will be voted next week"—meaning this week, which we have now started. "Don't vote for cloture today."

One or two Senators listened to my importunings and voted against cloture.

Mr. President, I ask for an additional 3 minutes.

The PRESIDING OFFICER. Without objection, the Senator is granted an additional 3 minutes.

Mr. BYRD. Mr. President, one or two Senators listened and voted against cloture. Some others listened and didn't vote against cloture but voted for cloture, which was their right to do. But let me just show what happened there.

They voted for cloture. Cloture was invoked. Some of those Senators with whom I talked said: "You have 30 hours in which amendments can be offered, and some of the problems that you outlined, you can get a vote on them, and possibly those can be amended and corrected."

As we have seen, only one amendment—one amendment—was offered. It filled up that particular tree, so that no other amendments could be offered while that amendment was pending. But our good friends on the other side said: This far, no farther. You have offered an amendment—meaning Mr. DASCHLE had offered an amendment on behalf of Mr. LIEBERMAN; that amendment was pending—you have offered this amendment. That's the amendment we are going to vote on. You are not going to get to to offer any more amendments. The 30 hours will be run on that one amendment.

So I hope Senators in the future will remember. Of course, I knew that could be done. But I have to say I think that is the first time in my memory—and I have been here during the great civil rights debates of the 1960s—I believe that is the first time—and I don't say it critically of the Republicans; they had that right, they played by the rules. Our problem is we don't all know the rules. But they played by the rules. We have one amendment. The 30 hours will be gone Tuesday morning, and that one amendment is it, and I mean "it."

Now, when cloture is invoked on H.R. 5005, as amended, if amended, we won't be able to offer any amendments. We can talk, but the ball game is over when we adopt the Thompson substitute. That substitute wipes out everything. It wipes out H.R. 5005, as far as that is concerned.

So the point is, we voted cloture on ourselves. We did it to ourselves on this side. I knew every Republican would vote for cloture, but I hoped that at least enough Democrats would vote against cloture—we only needed six more votes in opposition. But we did it. We did it to ourselves. We have had a chance to offer only one amendment. That is it. The Republicans say: That is it, no more amendments, and we will vote on Tuesday.

I just say this so that our friends on my side of the aisle in particular will know what their vote for cloture on Friday has done to defeat our chances to have other amendments voted on.

I thank the Chair and I yield the floor.

Mr. REID. Mr. President, I have spoken to the two leaders. There will be no cloture vote this afternoon, and likely no other votes this afternoon. Members will have all the opportunity they want to debate the Shedd nomination or, of course, the homeland security matter.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Texas.

Mr. GRAMM. Mr. President, what is the pending business?

The PRESIDING OFFICER. We have 1 minute and a half left in morning business.

Mr. GRAMM. Mr. President, I ask unanimous consent that I might have 10 additional minutes in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY

Mr. GRAMM. Mr. President, I wish to talk for just a moment about where we are on the homeland security bill. I wish to talk about the amendment on which we will be voting tomorrow morning because I think it is important for people to look at the issue, in terms of understanding the full picture, at least given each of our abilities to see the full picture.

We now have debated homeland security, I think, for seven or even eight weeks. It is obviously an important issue. When you are creating a new Department that will have 170,000 members—the largest reorganization of Government since the creation of the Defense Department—I think having a pretty extended debate is justified.

I say to people who are opposed to the bill that I hope they will recognize that the debate has had an effect. The distinguished Senator from West Virginia, who has been perhaps the most outspoken opponent of the bill, I think would agree that a major problem with the bill has been changed—that being, it would have transferred to the President a substantial ability to change the appropriation levels set by Congress, and as such would have redistributed power from the legislative branch to the executive branch.

Mr. BYRD. Mr. President, will the Senator yield? I ask that 2 minutes of my inquiry not be charged against his 10.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, may I say right at that point that the Senator is correct. That was the major constitutional flaw. That was a major constitutional flaw. It dealt with the power over the purse which under the Constitution is vested here in Congress. Senator STEVENS, I would have to say, was himself the foremost proponent of a change, backed by some degree of constitutionality. He is the major proponent on that side of the aisle of our veering away from that precipice and bringing us back to leaving control in the hands of the appropriations committees, and in the hands of Congress in large part.

Second, I would say one of the foremost proponents of recognizing that constitutional flaw was the distinguished Senator from Texas, Mr. GRAMM. I am convinced in my own mind—although I was not a little fly on the wall down at the White House listening in—that the Senator from Texas was a major, major proponent of bringing us back to our senses—or at least the administration back to its senses—with respect to that constitutional flaw. I have to believe in my own mind that he argued with them to that effect.

Listen, that is at least the one—that is the one in the Senator's mind, I would guess—unassailable point that the Senators from West Virginia and the Senator from Alaska make; that is, with respect to the power of the purse. You had better back off.

Those are my own words. But I have reason to believe the Senator from Texas is responsible in great measure for what occurred down at the White House with respect to its backing off on that point.

I thank the Senator.

If I am correct, or if I have failed and my guesswork is incorrect, please say so.

I thank the Senator for yielding.

Mr. GRAMM. Mr. President, the point I want to make—and I think it is a specific lesson of how government works—is that those who have followed this long debate, who have listened to the Senator from West Virginia, and know he has been on the losing side of vote after vote may say: What effect does he have?

He has had a profound effect. Even though he is not a supporter of the bill today and won't be at the end of the day—and I have been in a similar position on many issues, as the distinguished Senator from West Virginia knows—his major concern about the bill has been resolved. The debate and the clarity of the argument we have had on the issue of the power of the purse has had a profound effect on the bill. So you can be on the losing side of the votes and yet have a profound effect on the end product.

That is the point I wanted to make. The Senator is right. I thought it was a change that should be made, and it is a change that has been made. I think it represents an improvement.

I want to talk very briefly about the bill. I think I have a copy of it right here. Let me remind people what happened. I think everybody will understand the dilemma we were in.

We adjourned for the election with this issue unfinished. The President came back from the election with what I believe and what I think the public perceives to be a strong mandate that this is the important issue that should be dealt with.

The President could have said: Well, I will wait until the new Congress when my party will be in control, and I will write this bill exactly like I want to write it. He could have done that. He did not do that. And I believe that is wise. Instead, he sat down with three members of the opposition party and negotiated out additional clarifications in the bill. These clarifications are not profound, but they are important.

As this reorganization process goes forward, and as 170,000 people are moved into one agency, these changes the President agreed to will assure that these workers and their representatives will have an opportunity to give input. They will have a due process procedure, but in the end the reorganization will go forward. The President will have the right to exercise the same national security waiver that every President—first through executive order, and from the Carter administration forward under law—since John Kennedy has been able to exercise.

The next thing we had to do to get into a position to pass this bill is make clear what the final version of the bill would look like. We didn't want to end up with a week or two weeks of a conference with the House during this session where Congress is meeting after the election—sometimes referred to as a lame duck session. Many Democrats who are supportive of the bill wanted to be sure in negotiating with the President and in negotiating with the authors of the bill that they wouldn't end up having to negotiate again with Republican leaders in the House. Over the weekend—not this weekend, but the weekend before—we sat down with the House leaders on this issue, and we negotiated out a final product.

I would say of this 484 page bill, 98 percent of it is the Gramm-Miller substitute which we debated for weeks. There were several changes made that have been much discussed. I believe there is a more efficient way of characterizing those changes than the way they have been characterized. I want to try to explain them.

Let me just first start by saying when the House writes a bill and the Senate writes a bill, there are often differences in the bill, and there is always give and take. Some have talked about extraneous material in the bill. I would have to say that in my 24 years in Congress, there are almost always issues dealt with in a bill that some people view as extraneous. I would say there are relatively few in this bill. But let me talk about the issues that are subject to the amendment Senator LIEBERMAN has offered. This amendment strikes provisions in the compromise—I think there are seven of them. I don't have my notes with me, but I remember them well enough to talk about them.

Three of these provisions have to do with liability. Let me remind my colleagues that since the Civil War, we have had provisions of law that have dealt with liability for people who were producing new products for war efforts. One of the ways of encouraging people to be innovative and one of the ways to get products from the drawing board to the battlefield quickly is to protect people from liability.

There was a provision in the original Senate amendment, the Gramm-Miller amendment, that the Senators from Virginia were responsible for. That was a provision whereby the Federal Government would indemnify manufacturers of products that would be used in the war on terrorism, so that if a liability issue arose, the Federal Government would step in and basically cover the liability. I would have to say that was not my preferred option, but in putting the amendment together we accepted it.

The House had another approach, which was to basically limit liability, require that lawsuits occur in Federal court, and set up a procedure to deal with liability that arose in these issues.

In putting together the compromise with the House, we took something between the two that did not have the liability limits the House adopted but was a movement toward reducing runaway liability and removing the taxpayer from the line of fire.

That accounts for three of the criticisms made. I want to address the one that is most discussed, and that is the one that has to do with mercury-based injections and smallpox vaccine.

Under the bill, as it is now written, we are treating smallpox vaccine as an instrument of the war on terrorism. Before, we had dealt with it as a response to a disease. We had a liability fund for vaccines in the past, but now that we have eradicated smallpox, the only fear we have of it is the reintroduction by terrorist elements. So we bring smallpox vaccine under this liability limit.

Those of my age will remember, if you get a smallpox shot, you get a skin reaction which produces a permanent scar. I say to my colleagues that this is pretty terrorism specific because no one would take a smallpox vaccination except for the terrorist threat because there are risks involved. Some small percentage of people have very negative reactions, some people die, and almost everybody has a scar from smallpox.

This bill would require people who sue to enter into a negotiation with the Justice Department before they file suit, and to negotiate the possibility of a payment out of an indemnity fund.

Some of our colleagues have said: Why did you make it retroactive? Wasn't that some kind of benefit to some vaccine producer? I remind my colleagues that nobody is taking smallpox vaccine now, nor would anybody take it unless there was an imminent threat. But we do have some of the vaccine stockpiled.

Why would you make it retroactive to cover that stockpile that has already been produced? The reason you do that is, if you give a protection against liability for all vaccine produced in the future but not for what we have stockpiled, the manufacturers will destroy the stockpile and produce more vaccine. And if we had a sudden threat, we would not have the stockpile.

So if this were a vaccine that was routinely taken, then I think the criticism would be well founded. But I think it is a total mischaracterization to say this is some kind of pharmaceutical bailout when it is targeted toward smallpox vaccine and the stockpile now has relevance only in terms of terrorism.

In terms of manufactured products to use in the war on terrorism, I simply say, in every major conflict in modern history, we have had some liability limits for the people producing things for wartime use.

The fourth provision that would be stricken has to do with the Wellstone amendment. Senator Wellstone offered an amendment to the bill that said, if you had a company that had ever been domiciled in the United States, and it was now domiciled anywhere else in the world, that company could not participate in contracts for the war on terrorism. In the bill that is before us, a couple of provisions were added to the Wellstone amendment that allows the President some flexibility in cases where the application of the Wellstone amendment would actually cost American jobs, where it might leave only a sole bidder, or where the absence of competition could drive up costs.

You might say, how could it cost America jobs? Well, let's say you have a company that was once based in

America and still has very heavy presence in America but has its headquarters in France. Many companies are now international companies and where their home office is has ceased to have a lot of relevance, in my mind. In any case, the product made by the French-headquartered company might actually be produced in America. We could not buy it because the company is now domiciled in France but once was domiciled in America—maybe in 1812—but yet we could buy a product that was produced in another country by a company that never had an American presence.

There might be national security reasons or job reasons to have a waiver. The amendment before us would strike that waiver. I think it is a good waiver. I think it is a good government provision. And I think it is one we should have.

Another amendment has to do with advisory committees. I couldn't care less about advisory committees. I think sometimes they serve a productive purpose. I think in most cases they do not. But I think we are foolish to be striking advisory committees when the House has adjourned and may not come back to agree to the change if we make it. I do not think we ought to jeopardize this bill.

Finally, there is a provision that establishes a broad authorization outline. No funds are appropriated for participating in the management of research. There is a definition that is written into the law that, as I understand it, would cover roughly 12 major research universities.

I just ask my colleagues to look at these overall seven provisions, and to ask themselves a question: Would the bill be better off without all seven, because they are all stricken in one amendment? I think the answer is no. I think there is a logical justification for the amendments in general. And I urge my colleagues to get the whole story before they cast their vote.

Finally—and I think this is of equal importance—this is an important bill. We are getting toward the end. This has been progress that has been hard coming. And I think we take a risk, one that we should not take, by making these changes. I do not think they are good changes.

I think, overall, we are better off with these seven provisions in the bill than we are without them. I think, overall, they are defensible. Any changes you get in bringing the two Houses together in negotiation often are subject to criticism, but I think these are defensible.

I think we would be taking an unnecessary risk by changing the bill. I hope we will not do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that morning business be extended until the hour of 1 o'clock today.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that the cloture vote on the Shedd nomination be vitiated and that following today's debate on the nomination, the nomination be laid aside, and that upon the disposition of H.R. 5005, the homeland defense bill, the Senate proceed to executive session and vote, with no intervening action or debate, on confirmation of Dennis Shedd to be a United States Circuit Judge; further, that if the nomination is confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate return to legislative session; that if the nomination is not confirmed, the Senate return to legislative session with no intervening action or debate.

I extend my appreciation to the Presiding Officer with whom we worked for several hours Friday and this morning. I have spoken personally with the minority leader, and he has acknowledged that this is the best way to proceed. I ask that the consent be granted.

The PRESIDING OFFICER. Is there objection? The Senator from West Virginia.

Mr. BYRD. Reserving the right to object, I did not understand the distinguished whip's request with respect to H.R. 5005.

Mr. REID. What I said is that when that debate is completed, we would move forward to vote on the Shedd nomination.

Mr. BYRD. Even if that debate entails 30 hours in the train of a favorable vote on cloture on H.R. 5005?

Mr. REID. That is right.

Mr. BYRD. So that, indeed, the request has no impact whatsoever on H.R. 5005.

Mr. REID. I would also ask that the previous order with respect to terrorism insurance remain in effect following the Shedd vote. The order in effect now is that we would do the terrorism bill immediately following homeland security. Now what we would like to do is dispose of the Shedd nomination and then finish terrorism.

Mr. BYRD. Very well. I have no reservation.

The PRESIDING OFFICER. Is there objection? The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding that our staffs are talking. Someone just handed me this. If the Senator could wait for about 2 minutes, I think we are trying to run one more trap. I believe this is acceptable, and I am sorry to inconvenience him.

Mr. REID. Mr. President, I am happy to do that. I withdraw the unanimous consent request.

The PRESIDING OFFICER. The request is withdrawn at this time. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I understand we are still in morning business.

The PRESIDING OFFICER. The Senator is correct.

HOMELAND SECURITY

Mr. THOMAS. Mr. President, I just listened to the two Senators who are probably most involved with the details of this homeland security bill—very interesting comments. I have been, frankly, disappointed that it has taken us as long as it has. We have been on this measure, I understand, now for about 7 weeks, and we are still not finished—a bill that needs to be finished. It needs to be there for security. Yet we continue to debate and worry over issues that are not as significant as the passage of this bill.

I hope we are getting closer to passing a homeland security bill. It is our responsibility to do that. I am almost embarrassed that we are not.

I am pleased that cloture was invoked and that we can move forward on this bill that gives the President the tools he needs to protect our homeland.

We have talked about the details. That is good. On the other hand, there are provisions in there that generally most everyone would agree we ought to be moving forward with: Immigration, to change the reorganization of that department so that you have more emphasis on the immigration aspect with regard to terrorism; reorganization of the Bureau of Alcohol, Tobacco, and Firearms so that it can work better in terms of terrorism as opposed to law enforcement activities.

Personnel flexibility has been one we have talked about for a very long time. Certainly, the President ought to have as much authority for flexibility as others have had and as he has in other departments.

We also need to have, obviously, some protection for the union representatives, and it is there; research and development, aiming it more toward terrorism, that is one of the amendments; critical infrastructure protection, of course, so that we get into helping with the private infrastructure such as dams, such as oil refineries, these kinds of things—important stuff to do—the Coast Guard, strengthening their position with respect to terrorism; the one on corporate inversion where there was concern about being offshore. The fact is it is only there to be used as long as it has specific economic security reasons to be used. I think that is reasonable. Airport security—all these things are there.

Again, I thought during the last month or so it became pretty clear that this session of the Congress has been exceptionally slow in moving forward. It has not accomplished many of the things we should have accomplished. I had hoped that with that in our background, we would be ready to move forward to accomplish this one that is so obvious in need. I hope we can do that.

I am glad we do have Members on both sides who recognize the importance of doing this. We have carefully crafted language that will be there. It is time for us to move forward. Whether there is anything else that we really need to do in this lame duck session, I wouldn't argue that. We obviously have to have a CR. Apparently there is movement toward doing something with terrorism liability. But this is the one. This is what we need to do, and we need to move forward.

I do appreciate the work that has been done. Particularly Senator THOMPSON and Senator GRAMM have worked tirelessly in putting something together that will ensure homeland security and a department that will be capable of moving forward to do the things that everybody understands we need to do. Frankly, there are no more excuses to delay this bill. I certainly urge my colleagues to oppose the amendment and pass the compromise bill so the President can sign this into law.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, is the Senate presently in a period for the transaction of morning business?

The PRESIDING OFFICER. The Senate is in morning business until 1 o'clock.

Mr. BYRD. I thank the Chair.

TRIBUTE TO SENATOR MAX CLELAND

Mr. BYRD. Mr. President, it is sad and unfortunate that I and this chamber must say farewell to Senator MAX CLELAND. As a student, a soldier, a public servant, and a U.S. Senator, MAX CLELAND has always personified the best of this country. His has been a life of patriotism and sacrifice, of struggle and of triumph.

After graduating from college, which included an internship on Capitol Hill, and receiving a master's degree in American history, MAX CLELAND volunteered for the Army and then volunteered for service in Vietnam. In that brutal conflict, he lost both of his legs and an arm in a grenade explosion. But MAX CLELAND never gave up. He refused to become simply a tragic symbol of an unwanted and unpopular war.

At the age of 28, MAX CLELAND became the youngest State Senator in Georgia. In 1977, President Jimmy Carter appointed him to head the Veterans' Administration, the youngest person ever to hold that post, and one of the best. In that position, among his many accomplishments, MAX CLELAND helped to improve the VA hospital system and reduce delays in paying veterans' benefits.

After that, he was elected to four terms as Secretary of State of Georgia.

In 1996, Senator CLELAND was elected to the U.S. Senate. After being sworn into office, he told supporters:

> Your dreams can come true if you continue to believe in them long enough, hard enough, and never give up on them.

What a role model MAX CLELAND is, not only for disabled Americans but for all Americans. His life demonstrates what overcoming adversity—probably adversity at its worst, or almost that, at least—really means.

As a triple amputee, life and work have not come easily. I have read it takes him 3 hours just to prepare for work each day. I would imagine it takes him longer than that, because it takes me that long many days. But I cannot imagine the amount of pure grit it takes for this man just to live. At times I get up from my bed at 1 o'clock in the morning, 3 o'clock in the morning, whatever, and adjust the temperature in my room. If it is a little too cold or a little too warm, I have to get up and go outside my room and adjust the temperature. I think of that poor man, MAX CLELAND, and how it is for him if he gets too cold or too warm and has to adjust the temperature in the room. He has to get out of bed with much more difficulty than I, and go to the thermostat and do that. So what grit it must take of him just to live.

Well, one of MAX CLELAND's heroes is the great Franklin Roosevelt who, confined to a wheelchair because of paralysis, encountered many of the same obstacles and challenges that face MAX. Still, Franklin Roosevelt was elected President four times and, as President, saw this country through the Great Depression and World War II.

I am proud to point out that another one of MAX CLELAND's heroes is one of my heroes, a Senator who is one of my mentors in this Chamber, Senator Richard B. Russell of Georgia. MAX CLELAND met Senator Russell while serving as a congressional intern. When MAX returned from Vietnam several years later, with both legs gone and only one arm, he met Senator Russell again. That grand old Senator was so impressed with the young soldier that he had his driver give the young man a tour of the Nation's capital.

During his tenure in the U.S. Senate, Senator CLELAND has used Senator Russell's old telephone number, and has often taken his visitors to see the statue of Senator Russell in the Russell Senate Office Building, telling them, "So much of me is tied up in Dick Russell."

MAX CLELAND truly knows the horrors of war. Knowing that "war is hell," he has been one of the Chamber's leading skeptics about the use of military force abroad and has always proved cautious when it comes to committing American troops overseas. In the 106th Congress, for example, he was the first Democrat to call for a halt to the U.S.-led bombing campaign in Kosovo. He introduced legislation to update and improve the War Powers Resolution by erecting more safeguards before the deployment of our fighting men and women into situations of hostility.

I must point out that I have not always been in agreement with Senator CLELAND. I strongly opposed a balanced budget constitutional amendment, and I think MAX CLELAND supported it. I opposed the line-item veto, and I believe that MAX supported the line-item veto. But I have never, never, not for a second, questioned his sincerity, his integrity, or his respect for our Government and his love of this country.

MAX CLELAND is an outstanding Senator, a great American. He lost his Senate seat, at least for the foreseeable future, but he will never lose his integrity. Senator CLELAND is a real winner. Just as his military buddies were proud to have served with MAX CLELAND in Vietnam, I am honored to have served with him in the Senate. MAX CLELAND is a hero. He will always remain so.

May God bless MAX CLELAND. I wish him nothing but happiness and success in the future.

God give us men!
A time like this demands strong minds,
great hearts, true faith, and ready hands.
Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honor; men who will not lie.
Men who can stand before a demagogue
And brave his treacherous flatteries without winking.
Tall men, sun-crowned;
Who live above the fog,
In public duty and in private thinking.
For while the rabble with its thumbworn creeds,
Its large professions and its little deeds, mingles in selfish strife,
Lo! Freedom weeps!
Wrong rules the land and waiting justice sleeps.
God give us men!
Men who serve not for selfish booty;
But real men, courageous, who flinch not at duty.
Men of dependable character;
Men of sterling worth;
Then wrongs will be redressed, and right will rule the earth.
God Give us Men!

Mr. President, MAX CLELAND is that kind of man.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I certainly confirm, underscore, and applaud the statement of the Senator from West

Virginia about MAX CLELAND. I don't know of anyone in my life who has given me more inspiration than MAX CLELAND. Whenever things seem a little bit dark and dreary, I always see that smiling face of MAX CLELAND. He is a tremendous man, a fine human being, and he has a lot more to contribute. His name will grow from where it is today. The people of Georgia and this country have not heard the last of MAX CLELAND.

UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I renew my unanimous consent request that was just asked a few minutes ago. I ask the Chair, do I need to restate that?

The PRESIDING OFFICER. It is not necessary.

Is there objection to the unanimous consent request previously stated by Senator REID?

Without objection, it is so ordered.

Mr. REID. Mr. President, the esteemed President pro tempore of the Senate, Senator BYRD, is going to speak for a while this morning. We are in morning business until 1 o'clock today.

For those wishing to speak on the Shedd nomination, the time has been running in spite of the fact we are in morning business. Senator HATCH is here, Senator LEAHY and his staff are here, and he is available to come at any time. I don't think they will need all the time.

I ask unanimous consent that morning business be extended until 2 p.m. today and that the Shedd time continue to run for Senators who wish to speak on that during morning business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from West Virginia.

Mr. BYRD. Mr. President, seeing no other Senator seeking recognition at this time, I again have sought recognition.

Mr. REID. Will the Senator yield? I failed to make one announcement.

Mr. BYRD. Absolutely, yes.

Mr. REID. I apologize. The cloakrooms have sent out an announcement that there will be no more votes, but the majority leader has asked me to announce there will be no rollcall votes today.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

TRIBUTE TO SENATOR JESSE HELMS

Mr. BYRD. Mr. President, the senior Senator from North Carolina, Mr. HELMS, is in some ways my Senator. I was born in North Carolina. I was born there before Senator HELMS was born there. My natural father and mother are buried there in North Wilkesboro, NC. One of my brothers, the only brother I have still living, still lives in Wilkes County.

Many years ago, before the senior Senator from North Carolina joined the Senate, he was a radio commentator on WRAL in Raleigh, NC. During one of his radio commentaries, it is my understanding that the future Senator from North Carolina—the future Senator then, Senator HELMS, not Senator at that point—spoke of me as a Senator whose "greatest strength is his dedicated independence of thought and action," as a Senator who is "neither easily frightened nor intimidated," as a Senator who "stands up for what he regards as important."

I have always appreciated those words, and over the many years, I have appreciated the friendship of the senior Senator from the State of North Carolina. So when JESSE HELMS was elected to the United States Senate in 1972, it seemed to me that we were already long-time friends, and we became even closer friends.

The more we came to know each other, the more at least I liked and respected him. I think he returned the compliment, but I cannot speak for that. I can only say for myself that I liked and I like JESSE HELMS and I respect him, and I have always respected him.

I found Senator JESSE HELMS to be a deeply religious man of immense integrity, indisputable honesty, unqualified patriotism, and absolute independence, a man who is absolutely fearless. He is a southern gentleman of the first order. He is a product of the old South and a product of his beloved North Carolina.

He has certainly made his presence felt in the Senate. During his years in the Senate, he served as chairman of the Senate Agriculture Committee, chairman of the Senate Foreign Relations Committee, and was made a grand duke by the country of Lithuania for his contributions to the reestablishing and strengthening of the independence of the Baltic nations.

He also acquired a powerful and widely recognized reputation for his strong independent stands, and I am here to verify that many of the stands he has taken have not only been strong stands and independent stands but, in some cases, Senator HELMS stood virtually alone.

Some of his positions have involved his standing, as I say, alone not only against Presidential administrations but against the remainder of the entire U.S. Senate, or at least most of the Senate. More than once, Senator HELMS has been the singular vote on a particular position, and I know that can be a bit lonely. But he has never wavered in the strength of his convictions or his votes.

"The paramount thing for political leaders," he once explained, "is whether a man believes in his principles and whether a man is willing to stand up for them, win or lose."

That was JESSE HELMS. Consequently, we always know where Senator JESSE HELMS stands. Take an issue—abortion, prayer in school, Presidential nominations, reducing the deficit, taxes, Government waste, the future of the country— if one did not already know where JESSE HELMS stood, JESSE HELMS was always ready to tell you where he stood.

Some of his positions have been unpopular. Some of them may have seemed out of step with the march of history, but he has contributed to the great debates that from time to time have been heard over and throughout the land. JESSE HELMS has made a major contribution to those debates.

In volume 2 of my own "History of the Senate," I express the concern "ours is becoming a nation of hardened cynics." I went on to point out that we ought to return to our beginnings. Go back to the hills—the hills of West Virginia or the hills of North Carolina—look up at the treetops and into the open sky and gain a renewed sense of God's presence in our personal lives and in the life of the Nation. As Senators, we especially need to remember the old values, such as faith in God, obedience to law, respect for the flag, honesty, and thrift. How very well Senator HELMS has reflected those values.

I close, Mr. President, by repeating the words Senator HELMS spoke of me 40 years ago, words I remember so well, words I think so aptly tell the story of Senator JESSE HELMS:

> He is a Senator whose greatest strength is his dedicated independence of thought and action. He is a Senator who is neither easily frightened nor intimidated.

And foremost—

> He is a Senator who has always stood up for what he regards as important.

Mr. President, my wife Erma, who is an old-fashioned girl who married an old-fashioned guy, and I wish the very best for JESSE HELMS and his lovely wife Dorothy Jane Coble as they enter the next phase of their lives.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, I ask unanimous consent to speak as in morning business.

The PRESIDING OFFICER. The Senate is in morning business.

TRIBUTE TO ED HADEN

Mr. SESSIONS. Mr. President, I rise today to recognize a member of my judiciary staff, my chief counsel on Judiciary, Ed Haden. Ed will be leaving the Senate at the end of this session, returning to private practice at the outstanding Alabama law firm of Balch & Bingham in Birmingham, AL, where he will work in that firm's appellate litigation department. I will say this: My loss and the Senate's loss will be a great gain to Balch & Bingham.

Before joining the Senate, Ed had a distinguished legal career, having served as a staff attorney on the Alabama Supreme Court and as a law clerk for the Fifth Circuit Court of Appeals. He came to the Judiciary Committee in 1999, first serving as counsel to Senator ORRIN HATCH on the nominations and constitutional law unit. In 2000, he became my chief counsel for the Subcommittee on Youth Violence and is currently chief counsel for the Subcommittee on Administrative Oversight and the Courts.

Ed's work ethic is beyond reproach. From the moment he joined my staff, his legal analysis has been unmatched and his commitment to the rule of law unwavering. His attention to detail and his ability to be thorough but brief at the same time has helped me enormously. I know I can trust his judgment, and I thank him for dutifully managing our staff and our issues since the day he arrived on our team.

During his tenure on the committee, Ed has proven what I knew when I hired him, that he would always carry himself in a professional manner, and even though he might not agree with those on the other side of the aisle, he could work with them and gain their respect.

Ed is truly a man of utmost character. Senator SCHUMER, chairman of the Administrative Oversight and the Courts Subcommittee, commented at a recent executive committee meeting that:

> [Ed] . . . represents the best of what we are about. He is bright and diligent and honorable. His word is his bond. . . . [Ed] has done a great job, with great distinction. He is really an admirable lesson of what public service is all about.

This is one time I could not agree with Senator SCHUMER more. Ed is a man of honor and integrity. His intellect is unmatched. Most importantly, his commitment to fairness and getting the job done distinguishes him. He has certainly provided extraordinary assistance to me, but I believe he has enriched the entire debate on the Senate Judiciary Committee. He is indeed an extraordinary worker with a prodigious capacity to produce high-quality work, almost unbelievably so. He works long hours and is committed to producing the absolutely most accurate answer for any question we are debating.

Ed has not only been a great manager of the complex issues that have passed through our committee, he also has been a good manager of the people I hired to work on the committee. His ability to lead is without question, and the respect he has garnered during his service has been expressed by those who worked closely with him.

Makan Delrahim, chief counsel to Senator HATCH, comments:

> Ed is a close friend and an indispensable colleague. I worked with Ed when he first came to Washington and began his career as Nominations Counsel on Sen. Hatch's Judiciary staff. Our friendship has continued as he moved to serve Senator SESSIONS. Ed's intellect and integrity are second to none. The committee will miss him.

Rita Lari Jochum, chief counsel to Senator GRASSLEY, comments:

> Ed Haden is an excellent lawyer and a great American. He will be sorely missed by the Judiciary Committee.

Stephen Higgins, chief counsel to Senator KYL, comments:

> Ed Haden was an invaluable asset to the Judiciary Committee. He is a superb lawyer and has both a tremendous respect for the Constitution and a great love for this Republic. We will all miss him.

Scott Frick, chief counsel to Senator THURMOND, comments:

> Ed Haden possesses a unique combination of intelligence, work ethic, and the ability to communicate his ideas clearly. These qualities have served Senator SESSIONS and the State of Alabama well. And in addition, he is a truly nice guy. When I first joined the Judiciary Committee staff, Ed selflessly offered his time and advice, and I remain appreciative of his willingness to lend a hand.

John Abegg, Judiciary counsel to Senator MCCONNELL, comments:

> Ed Haden has been an invaluable asset to the United States Senate and to its Judiciary Committee. His intellect, resourcefulness, and work ethic are recognized and respected by both sides of the aisle, as is his always courteous and modest demeanor. Ed is the embodiment of the principle that one can disagree with others, even passionately so, about the most important of matters without being personally disagreeable. He is a credit to the country, his state, and his family.

Sean Woo, counsel to Senator BROWNBACK, comments:

> In many ways and especially in matters dealing with judicial nominations, Ed Haden was the conscience of the Republican judiciary staff. His commitment, enthusiasm and intellect—applied with the Southern charm of an Alabamian—will be sorely missed.

Mr. President, Ed has given me and his country an extraordinary effort, and I am grateful for that, as well as his loyalty and dedication, always having my best interest in mind and not his own, never seeking credit for his great work, doing what was best for this country and Alabama. Ed is an exceedingly hard worker, a man of integrity and ability, who has dedicated himself to reaching a just result on every issue assigned to him, ranging from bankruptcy, where he was extraordinarily engaged in a most complex bit of legislation, to judicial nominations. I could not have been successful without his leadership and assistance.

Ed's greatest strength, I believe, is that he has a remarkably developed and rich set of core principles that guide him in his daily work. He does not go in for flash or show, but for substance. He, to a remarkable degree, understands the glory and uniqueness of the American Government. He loves America. He works constantly to enrich her and strengthen her—especially the rule of law, which has been the foundation of this country's strength.

Ed Haden is more than just an outstanding chief counsel, he is a great friend and a great American. I thank him for his service to me, to the people of Alabama, and to the people of the United States. He typifies what we so often see and too little hear about in this body—the great work of our staffs. They give us loyalty into the night, preparing work for us so we can shine the next day before the TV cameras. I think Ed is the epitome of excellence in staff, the kind of person I have valued greatly and will miss greatly.

I thank the Chair and yield the floor.

Mr. HATCH. Mr. President, I rise to join in Senator SESSIONS' comments earlier today regarding the departure of Ed Haden, a staffer who has given a great deal to the Judiciary Committee during the past three years. Ed has made his influence felt, and he will be missed.

Ed came to the Judiciary Committee in 1999 to work as my counsel in the Nominations and Constitutional Law unit. He served me admirably in that position. The next year, Ed became chief counsel to Senator SESSIONS' subcommittee, and he continued to contribute substantively to many issues handled by the full committee. Ed's reputation as a smart, creative, and effective lawyer is well-earned.

As Senator SESSIONS said, the Senate's loss is someone else's gain. Ed will be joining the Birmingham, AL, law firm of Balch & Bingham, which will no doubt benefit greatly from the association.

I want my colleagues to know that, as Senator SCHUMER said in a recent Judiciary meeting, I have found Ed Haden to represent the best of what we are about. He is honorable and hardworking and someone who can be taken at his word. I thank Ed for his great service to me and the Judiciary Committee, and I wish him all the best in his future endeavors.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is in morning business until 2 p.m.

Mr. LEAHY. Mr. President, I will be speaking on a number of things at appropriate times this afternoon. I ask the distinguished Presiding Officer, at what time do we turn to the Shedd nomination?

The PRESIDING OFFICER. At 2 o'clock.

Mr. LEAHY. I thank the Chair. I commend the Chair for his interest in the proceedings here—something he always demonstrates when he is there. He has had the ability to serve in both bodies and we have what might be a little bit more of a leisurely technique over here. The Senator from Vermont is delighted to have the Senator from Florida as a Member of this body.

HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2002

Mr. LEAHY. Mr. President, I rise to encourage the Senate to pass today the Hometown Heroes Survivors Benefits Act of 2002, H.R. 5334.

This multipartisan legislation is to improve the Department of Justice's Public Safety Officers' Benefit Program. This bill allows the families of public safety officers who suffer fatal heart attacks or strokes to qualify for Federal survivor benefits.

I commend those in the other body, including Congressmen ETHERIDGE, WELDON, HOYER, and OXLEY, for their leadership and, I might also say, their fortitude on this important legislation. On the last night the other body was in session, Congressman ETHERIDGE stood as a sentry on the bridge and said nothing else is going forward until this goes through. And it did pass in the House. I am proud to be the original sponsor of the Senate version of the Hometown Heroes bill, S. 3114. I thank Senators COLLINS, JEFFORDS, LANDRIEU, and DURBIN for joining me as cosponsors.

This legislation should not be in any way controversial. It is supported by the Fraternal Order of Police; National Association of Police Organizations; Congressional Fire Services Institute; International Association of Arson Investigators; International Association of Fire Chiefs; International Association of Fire Fighters; National Fire Protection Association; National Volunteer Fire Council; North American Fire Training Directors; International Fire Buff Association; National Association of Emergency Medical Technicians; American Ambulance Association; American Federation of State, County Municipal Employees. Actually, I will not list them all, but there are 50 additional national organizations.

Public safety officers act with an unwavering commitment to the safety and protection of their fellow citizens, and it is always the case that they are willing to selflessly sacrifice their lives to provide safe and reliable emergency services to their communities. Hundreds of public safety officers nationwide lose their lives, and thousands more are injured while performing duties that put them at great physical risk.

Although we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes should be eligible to collect these funds.

The PSOB program authorizes a one-time financial payment to the eligible survivors of Federal, State, and local public safety officers for all line-of-duty deaths. A number of other things are in the bill. We have improved this PSOB program on numerous occasions—we did it in the Patriot Act—but, unfortunately, the inclusion of on-duty heart attack and stroke victims in the program has not been addressed.

This bill fixes that loophole to ensure that the survivors of public safety officers who die of heart attacks and other cardiac-related deaths in the line of duty, or within 24 hours of a triggering effect while on duty—regardless of whether or not a traumatic injury occurs at the time of the heart attack or stroke—are eligible to receive financial assistance. Heart attack and cardiac-related deaths account for almost half of all firefighter fatalities and an average of 13 police officer deaths each year.

It is time for the Senate to show its support and appreciation for these extraordinarily brave and heroic public safety officers by joining the House and passing the Hometown Heroes Survivors Benefits Act.

Mr. President, I understand it has been cleared on this side of the aisle. I hope that my friends on the other side of the aisle will let this bill pass. We are willing on this side of the aisle to pass it, but there has been objection on the other side. I hope that objection will be withdrawn and this will pass so that we can join what has been already done in the other body.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LEAHY). Without objection, it is so ordered.

Mr. NELSON of Florida. Mr. President, I rise to speak in favor of the legislation just referred to by the distinguished Senator from Vermont. I have a particular interest in this legislation because in my former governmental capacity as the State treasurer, insurance commissioner, and State fire marshal of Florida, I had the occasion to come to a great appreciation of the role of the firefighter, the extraordinary courage that firefighters display, and the extraordinary amount of property and life they save.

Fortunately, that was etched into the consciousness of America as a result of what we saw on September 11—not only the police, the firemen, but so many public service personnel who responded under those conditions. So I want to add my voice in support of the legislation referred to by Senator LEAHY and to those on the other side of the aisle who might be putting a hold on this legislation.

There is an extreme risk to the occupation of firefighter. We understand that risk more clearly based on what we saw of the bravery and the devotion to duty expressed on September 11. But that bravery and devotion to duty goes on day in and day out in the firehouses in communities across this Nation. These firefighters should be appropriately compensated when infirmity and disaster strikes them.

Mr. President, I wanted to add my name in support of the distinguished Senator from Vermont and his bill.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BINGAMAN). Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to proceed to the consideration of Executive Order No. 1178, which the clerk will report.

The legislative clerk read the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is under the control of the Senator from Vermont?

The PRESIDING OFFICER. Three hours.

Mr. LEAHY. Mr. President, I have discussed this with the distinguished senior Senator from Utah. I am going to speak on another matter prior to going to the Shedd nomination, although I have no objection to the time coming out of the 3 hours.

INNOCENCE PROTECTION ACT

Mr. LEAHY. Mr. President, for more than 2 years, I have been working hard with Members on both sides of the aisle, in both Houses of Congress, to address the horrendous problem of innocent people being condemned to death within our judicial system. This is not a question of whether you are for or against the death penalty. Many of the House Members and Senate Members who have joined this effort are in favor of the death penalty. I suspect the majority of them are in favor of it. It goes to the question of what happens if you have an innocent person who is condemned to death.

Our bill, the Innocence Protection Act, proposes a number of basic commonsense reforms to our criminal justice system; reforms that are aimed at reducing the risk that innocent people will be put to death.

We have come a long way since I first introduced the IPA in February 2000. At that time, we had four Democratic cosponsors. Now there is a broad consensus across the country among Democrats and Republicans, supporters and opponents of the death penalty, liberals, conservatives, and moderates, that our death penalty machinery is broken. We know that putting an innocent person on death row is not just a nightmare, it is not just a dream, it is a frequently recurring reality.

Since the 1970s, more than 100 people who were sentenced to death have been released, not because of some technicality, but because they were innocent, because they had been sentenced to death by mistake. One wonders how many others were not discovered and how many innocent people were executed.

These are not just numbers, these are real people. Their lives are ruined. Let me give an example: Anthony Porter. Anthony Porter was 2 days from execution in 1998 when he was exonerated and released from prison. Why? Not because the criminal justice system worked. He was exonerated and released because a class of journalism students, who had taken on an investigation of his case, found that did he not commit the crime. They also found the real killer. A group of students from a journalism class did what should have been done by the criminal justice system in the first place.

Ray Krone spent 10 years in prison. Three of those ten years were on death row waiting for the news that he was about to be executed. Then, earlier this year, through DNA testing, he was exculpated and the real killer was identified. These are two of the many tragedies we learn about each year.

These situations result not only in the tragedy of putting an innocent person on death row, but they also leave the person who committed the crime free. Everything fails. We have the wrong person in prison. But we have not protected society or the criminal justice system because the real criminal is still out running free. Often times, the actual perpetrator is a serial criminal.

Today, Federal judges are voicing concerns about the death penalty. Justice Sandra Day O'Connor has warned that "the system may well be allowing some innocent defendants to be executed." Justice Ginsburg has supported a State moratorium on the death penalty. Another respected jurist, Sixth Circuit Judge Gilbert Merritt, referred to the capital punishment system as "broken," and two district court judges have found constitutional problems with the Federal death penalty.

We can agree there is a grave problem. The good news is that there is also a broad consensus on one important step we have to take—we must pass the Innocence Protection Act.

That is why I wanted to let my colleagues know what is happening. As the 107th Congress draws to a close, the IPA is cosponsored by a substantial bipartisan majority of the House and by 32 Senators from both sides of the aisle, including, most recently, Senator BOB SMITH of New Hampshire. A version of the bill has been reported by a bipartisan majority of the Senate Judiciary Committee. And the bill enjoys the support of ordinary Americans across the political spectrum.

What would the Innocence Protection Act do? As reported by the committee, the bill proposes two minimum steps that we need to take—not to make the system perfect, but simply to reduce what is currently an unacceptably high risk of error. First, we need to make good on the promise of modern technology in the form of DNA testing. Second, we need to make good on the constitutional promise of competent counsel.

DNA testing comes first because it is proven and effective. We all know that DNA testing is an extraordinary tool for uncovering the truth, whatever the truth may be. It is the fingerprint of the 21st Century. Prosecutors across the country rightly use it to prove guilt. By the same token, it should also be used to do what it is equally scientifically reliable to do: to establish innocence.

Just like fingerprints, in many crimes there are no fingerprints; in many crimes there is no DNA evidence.

Where there is DNA evidence, it can show us conclusively, even years after a conviction, where mistakes have been made. And there is no good reason not to use it.

Allowing testing does not deprive the State of its ability to present its case, and under a reasonable scheme for the preservation and testing of DNA evidence, it should be possible to preserve the evidence.

The Innocence Protection Act would therefore provide improved access to DNA testing for people who claim that they have been wrongfully convicted.

Just last week, prosecutors in St. Paul, MN, vacated a 1985 rape conviction after a review of old cases led to DNA testing that showed they had the wrong man—and also identified the actual rapist. Think how much better society would have been had they caught the real rapist 17 years ago. The district attorney wanted to conduct DNA testing in two other cases, but the evidence in those cases had already been destroyed. She has called on law enforcement agencies to adopt policies requiring retention of such evidence, and that is what our bill would call for.

Many cases have no DNA evidence to be tested, just as in most cases there are no fingerprints. In the vast majority of death row exonerations, no DNA testing has or could have been involved.

So the broad and growing consensus on death penalty reform has another top priority. All the statistics and evidence show that the single most frequent cause of wrongful convictions is inadequate defense representation at trial. The biggest thing we can do is to guarantee at least minimum competency for the defense in a capital case.

This bill offers States extra money for quality and accountability.

They can decline the money but then the money will be spent on one or more organizations that provide capital representation in that State. One way or another, the system is improved.

More money is good for the states. More openness and accountability is good for everyone. And better lawyering makes the trial process far less prone to error.

When I was a State's Attorney in Vermont, I wanted those I prosecuted to have competent defense counsel. I wanted to reach the right result in my trails, whatever that was, and I wanted a clean record, not a record riddled with error. Any prosecutor worth his or her salt will tell you the same; any prosecutor who is afraid of trying his cases against competent defense counsel ought to try a new line of work, because the whole system works better if both prosecutor and defense counsel are competent. That is what I wanted when I was prosecuting cases because I wanted to make sure justice was done.

The Constitution requires the Government to provide an attorney for any defendant who cannot afford one. The unfortunate fact is that in some parts of the country, it is better to be rich and guilty than poor and innocent, because the rich will get their competent counsel, but those who are not rich often find their lives placed in the hands of underpaid court-appointed lawyers who are inexperienced, inept, uninterested, or worse.

We have seen case after case of sleeping lawyers, drunk lawyers, lawyers who meet with their clients for the first time on the eve of trial, and lawyers who refer to their own clients with racial slurs.

Part of the problem, I think, lies with some state court judges who do not appear to expect much of anything from criminal defense attorneys, even when they are representing people who are on trial for their lives. Good judges, like good prosecutors, want competent lawyering for both sides. But some judges run for reelection touting the number and speed of death sentences they have handed down. For them, the adversary system is a hindrance.

The problem of low standards is not confined to elected State judges. Earlier this year, a bare majority of the Supreme Court held that it was okay for the defendant in a capital murder trial to be represented by the same lawyer who represented the murder victim. Most law students would automatically say that is a conflict of interest, but our Supreme Court said that was all right. And last year, a Federal appeals court struggled with the question whether a defense lawyer who slept through most of his client's capital murder trial provided effective assistance of counsel.

Fortunately, a majority of the court eventually came to the sensible conclusion that "unconscious counsel equates to no counsel at all," basically reversing what a State court said when it said the Constitution guarantees a person counsel. It does not guarantee they will stay awake.

No law can guarantee that no innocent person will be convicted. But surely we can do better than this. Surely we can demand more of defense counsel than that they simply show up for the trial and remain awake. When people in this country are put on trial for their lives, they should be defended by lawyers who meet reasonable standards of competence and who have sufficient funds to investigate the facts and prepare thoroughly for trial. As citizens, we expect that of our prosecutors. We ought to expect the same thing of our defense attorneys. That is all we ask for in the IPA.

I have heard four arguments against the bill. One wonders, with all these people from the right to the left, all these editorial writers and Members of Congress from both parties supporting the IPA, what that tells us.

First, critics claim that the bill is an affront to States' rights. As a Vermonter, and as a former State prosecutor, I agree that States' rights are very important. States should have the right to set their own laws, free of Federal preemption at the behest of special interests. They should have the right to set their own budgets, free of unfunded mandates. And their reasonable expectations of Federal funding for criminal justice and other essential programs should be met, rather than bankrupting State governments because of Federal tax policy.

The IPA is entirely consistent with these principles of State sovereignty. It leaves State laws, including the death penalty laws, in place. It offers States new funding for their criminal justice systems. And there was a provision added during the committee process establishing a student loan forgiveness program for prosecutors and public defenders, something that a lot of State governments say would help recruit and retain competent young lawyers.

This is one of those cases, like in the civil rights era, where the rhetoric of States rights is being abused as a code for the denial of basic justice and accountability. Some States have made meaningful reforms, but many have not. They have had more than a quarter of a century and 100 death row exonerations to get their act together, but they have failed. As many in this body argued in 1996, when promoting legislation to speed up executions, justice delayed is justice denied. I agree with that. We cannot wait forever while innocent lives are in peril.

I have heard a second argument against the IPA, which is that society cannot afford to pay for these reforms. The truth, however, is that we cannot afford to do otherwise if we want to maintain confidence in our criminal justice system. The costs of providing DNA testing and competent counsel are relatively small, especially when you compare them to the costs of retrials that are necessitated by the lack of adequate counsel at trial, or the cost of locking up innocent people for years or even decades. I am all for efficiency, but the greatest nation on Earth should not be skimping on justice in matters of life or death.

I have heard a third argument from a vocal minority of State prosecutors. They claim the bill would make it unduly difficult, if not impossible, to seek the death penalty. That is a shocking claim. When I prosecuted cases, I felt very comfortable prosecuting those cases under the laws of our State because of two things: I knew that all the evidence we had, including potentially exonerating evidence, had been given to the defendant. And I knew I was working in a well-functioning adversarial system with effective representation on the other side. That is the way it is supposed to work.

When I hear a prosecutor say that the IPA reforms—enabling DNA testing and securing adequate defense representation—would make it almost impossible for him to do his job, it makes me wonder what he thinks that job is.

Finally, there is one more argument against the bill which is rarely stated out loud. I call it the "innocence denial" argument. We saw this in the Earl Washington case in Virginia where, despite conclusive DNA evidence to the contrary, the Commonwealth for years clung to the hopelessly unreliable and implausible confession of a mentally retarded man. We see it in claims that "the system is working" when an innocent man is released after years on death row due to the work of journalism students. And we see it in the often-repeated insistence that, no matter how many people have been exonerated, no one can prove that an innocent person has actually been executed.

The innocence deniers will never concede there is a problem. But with 100 known instances of the system failing—and those are only the ones we know about—it would be surprising if there were not more unknown cases of innocent people being sentenced to death.

The IPA was passed out of committee in the Senate and is supported by a majority of the House. We ought to pass it before more lives are ruined.

As a prosecutor, I never had any hesitation to seek the severest penalties our State could provide for people who committed serious crimes. When I look at some of the cases I have reviewed over recent years, when I see shoddy evidence, or when I see evidence that was not looked at because it might have pointed to someone else, I wonder, why wouldn't society want a better system? Passing the IPA will help fix these problems and give greater credibility to our criminal justice system.

I yield the floor.

I suggest the absence of a quorum and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR STROM THURMOND

Mr. DEWINE. Mr. President, I rise today to recognize the accomplishments of our friend and colleague, Senator STROM THURMOND, an individual who has devoted his entire life to the service of the American people and who now stands before us as one of the most accomplished U.S. Senators in our nation's history.

I must say that I am saddened that I am making these comments on the heels of a controversy over the nomination of a highly qualified judicial nominee, Dennis Shedd, who was a longtime member of Senator THURMOND's staff and who was recommended to the President for this appointment by Senator THURMOND. While I won't go into the specifics of these hollow arguments against Judge Shedd, I cannot make these comments in praise of Senator THURMOND without mentioning my disappointment about the handling of Judge Shedd's nomination.

As our colleagues know, Senator THURMOND's nearly 50 years of service within this body make him the longest serving member since the Senate's inception, yet his contributions to public service and our Nation extend well beyond the United States Senate. From the time he served as Superintendent of Education in Edgefield, SC, STROM THURMOND placed the good of the Nation ahead of his personal career. He served over 36 years on active and reserve duty within the U.S. Army, while simultaneously holding many other public service positions.

Throughout, he was prepared to abandon his professional career on a moment's notice—ready to fight to preserve democracy and freedom. He was awarded five battle stars, as well as 18 decorations, medals, and awards, including the Bronze Star for Valor and the Purple Heart.

I have only—I say "only"—been in the Senate for 8 years, but in the relatively short time I have had the pleasure of serving in the Senate alongside Senator THURMOND, we have worked together as sponsors or co-sponsors of dozens of bills, including legislation enhancing local law enforcement efforts to protect the elderly and child victims of violent crime, drug interdiction efforts designed to stem the tide of drugs flowing into our cities and schools, laws to end the practice of partial-birth abortion, and constitutional amendments to protect victims of violence. All of these collaborative efforts have benefited a great deal from the insight STROM THURMOND developed during his 12-year tenure as either chairman or ranking member of the Judiciary Committee and also, of course, his 50 years of service in this body.

While Senator THURMOND's Senate career speaks volumes about his commitment to this nation and to the people of South Carolina and to all Americans, I also must mention what a pleasure it has been for me to know Strom Thurmond as a person.

Over the years, he has shown great kindness and generosity to me and to my family. In particular, I would like to thank him for the hospitality he has shown my son, Brian, who recently graduated from South Carolina's Clemson University.

When I told STROM my son Brian was going to go to Clemson, he beamed. I could tell he was delighted. He said, "You know, I went to Clemson." Of course I knew that. He said, "I went to Clemson." I asked, "STROM, What year did you graduate?"

He said, "I graduated from Clemson in 1923."

I looked at him. I said, "STROM, my dad was born in 1923."

STROM THURMOND has had quite an unbelievable career. I have had the opportunity, as well, to listen to many of his stories. I asked him about his tenure at Clemson. He told me about the different times he would run barefooted from town to town. He was a long distance runner when he was there.

The great Athenian general Pericles once noted that:

> Where the rewards of virtue are greatest, there the noblest citizens are enlisted in the service of the state.

Our American democracy, like that of the Athenians, is designed to reward virtue with the opportunity to represent and defend fellow citizens. Certainly there is no man of our time better fit for and dedicated to these difficult tasks than STROM THURMOND. Indeed, he is a tribute to the American ethic of public service that the framers of our nation envisioned over two centuries ago.

It should come, then, as no surprise to my colleagues in the Senate, to the citizens of South Carolina, and to the American public that STROM THURMOND has left an indelible mark on our nation through his service—a mark that surely will never be forgotten or held in anything less than the highest regard.

We thank STROM for his service to our country, to South Carolina, and to the people who will miss his kindness and his friendship. But we look forward to seeing him, as we are sure we will, for a long time because he is a man of great courage and great integrity. We will miss him.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague for his kind remarks about our great friend, Senator THURMOND. I have been around here 26 years, and Senator THURMOND was the leader on the Judiciary Committee for most of that time. He has been a tremendous mentor and adviser to me.

He is a wonderful man. He has gone through so many changes in his life, and he has had many different experiences in his life. He is truly a war hero and truly one of the people I think everybody in this body has to admire. There is no question about it. He is one of the all-time great Senators. He has represented the State of South Carolina for all of these years very well.

I can remember traveling through the State with him. Just about everybody knew STROM, and he knew just about everybody in his State. It was absolutely amazing to me that a person could be so revered as STROM THURMOND was—and he deserved it.

He is not only a great man, but he has done great things in his life. He has done great things having come from the Old South, which has been highly criticized by many of us in this Chamber.

But let me just take a moment to pay tribute to my good friend and our distinguished colleague on this committee, the senior Senator from South Carolina, STROM THURMOND.

From the moment STROM THURMOND set foot in the Senate Chamber in 1954, he has been setting records. He was the only person ever elected to the U.S. Senate on a write-in-vote. That is a remarkable achievement. He is the longest serving Senator in the history of the U.S. Senate. As he approaches his 100th birthday, he is also the oldest serving Senator. Many of my colleagues will recall the momentous occasion in September of 1998 when he cast his 15,000th vote in the Senate. With these and so many other accomplishments over the years, he has appropriately been referred to as "an institution within an institution."

In 1902, the year STROM THURMOND was born, life expectancy was 51 years and today—the last time I heard—it is 77 years. But I think it is going up regularly. STROM continues to prove that, by any measure, he is anything but average.

He has seen so much in his life. To provide some context, let me point out that, since his birth, Oklahoma, New Mexico, Arizona, Alaska and Hawaii gained Statehood, and eleven amendments were added to the Constitution. The technological advancements he has witnessed, from the automobile to the airplane to the Internet, literally span a century of progress. Conveniences we have come to take for granted today were not always part of STROM THURMOND's world. Perhaps this explains why during our Judiciary committee hearings, we have heard him asking witnesses who were too far away from the microphone to "please speak into the machine."

The story of his remarkable political career truly could fill several volumes. It began with a win in 1928 for the Edgefield County Superintendent of Schools. Eighteen years later, he was Governor of South Carolina. STROM was even a Presidential candidate in 1948, running on the "Dixiecrat" ticket against Democrat Harry Truman.

I must admit that he has come a long way in his political career, given that he originally came to the Senate as a Democrat. I am happy to say that wisdom came within a few short years when STROM saw the light and joined the Republican Party.

That was supposed to be humorous. But I did not hear any laughter.

When I first arrived in the Senate in January of 1977, he was my mentor. As my senior on the Judiciary committee, it was STROM THURMOND who helped me find my way and learn how the committee functioned. He has not only been a respected colleague, but a personal friend, ever since.

During his tenure as Chairman of the Judiciary committee, STROM THURMOND left an indelible mark on the committee and the laws that came through it. He became known and respected for many fine qualities and positions—his devotion to the Constitution, his toughness on crime, his sense of fairness.

He is also famous for his incredible grip. Many of us have experienced STROM THURMOND holding our arm tightly as he explains a viewpoint and asks for our support. I might add that this can be a very effective approach.

STROM is also known to have a kind word or greeting for everyone who comes his way, and for being extremely good to his staff—and to all the workers here on Capitol Hill. No question. He has gone out of his way.

I might add that I have seen him operate in his own home State and other places. I have seen him. He has operated in the most even-mannered, decent, honorable way to people regardless of where they came from—regardless of their color, their religion, their country of origin, or any other distinguishing characteristic. STROM has always been good to everybody.

Despite his power and influence, he has never forgotten the importance of small acts of kindness.

STROM THURMOND is truly a legend—someone to whom the people of South Carolina owe an enormous debt of gratitude for all his years of service. Clearly, the people of South Carolina recognize the sacrifices he has made and are grateful for all he has done for them. In fact, you cannot mention the name STROM THURMOND in South Carolina without the audience bursting into spontaneous applause. He truly is an American political icon.

Abraham Lincoln once said that:

> The better part of one's life consists of friendships.

With a friend like STROM THURMOND, this sentiment couldn't be more true. I am a great admirer of STROM THURMOND, and, as everyone around here knows, I am proud to call him my friend.

One final note about STROM THURMOND: He is a great patriot. I am grateful for his work with me over the years in support of a Constitutional Flag Amendment. A decorated veteran of World War II who fought at Normandy on D-Day, STROM THURMOND loves this country. He loves it very much. Let me just say this country loves him, too.

STROM THURMOND is a wonderful father. He has raised his children to be very fine people. And they love him as well.

When his daughter died, it was one of the most tragic things I have ever seen. It was the first and only time I ever saw STROM THURMOND shed tears. He is such a strong, resilient, patriotic leader. But on that day, at that funeral, STROM THURMOND broke down, which showed how much he loved his daughter and his family. I know how much he has. That is the mark of a great man.

I am glad today, or at least by tomorrow, hopefully, this body will be able to give STROM THURMOND the only thing he has asked of us, as a last request, in return for his service: the confirmation of his former chief counsel, Judge Dennis Shedd, who himself is a wonderful, decent man.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, just so all Senators understand where we are, I have been told that the cloture vote that was scheduled for this afternoon has been vitiated. But we will be voting on the Shedd nomination sometime tomorrow morning.

I see the distinguished Senator from Florida on the floor. Could he indicate how long he wishes to speak? I was about to begin the debate on the nomination.

Mr. NELSON of Florida. About 10 minutes.

Mr. LEAHY. Mr. President, I ask unanimous consent that the distinguished Senator from Florida be recognized for 10 minutes, with the time divided equally. I make that request, that that 10 minutes of time be taken equally out of both sides.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Florida is recognized for 10 minutes.

TECHNOLOGY AND FREEDOM

Mr. NELSON of Florida. Mr. President, I come to the floor not to speak on the Shedd nomination—and I had spoken to the chairman of the committee—but to speak about a matter we will be discussing tomorrow as we take up the homeland defense bill and some of the questions of privacy that have arisen, not necessarily directly involved in this bill but clearly in the discussion of homeland security.

Some grave questions of invasion of privacy have been noted. So I felt compelled to take the floor of the Senate to raise further the issue of governmental intrusion into the private lives of people.

I realize that in this technologically advanced age, in order to go after the bad guys, in order to be able to stop them before they hit us, clearly there has to be the clandestine means of penetrating the communications that are going on. That is very important to the defense of this country and our citizens. At the same time, the constitutional rights of privacy must always be foremost in our minds as we battle this new, elusive kind of enemy called the terrorist.

So I want to offer some words. I start, first, with words from a very famous American who had something significant to say about privacy, Justice Louis Brandeis, in which he argued, in a 1928 case, that the Framers of our Constitution—and I will quote Justice Brandeis:

> . . . sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations.

Justice Brandeis went on, that the Framers of the Constitution had:

> . . . conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man.

Now, Justice Brandeis wrote those words in a dissenting opinion in a 1928 case involving a liquor dealer who was convicted by evidence gathered through a wiretap, way back then, early in the last century. That case arose because technology had granted the Government an increased ability to peer inside people's private lives—then, in 1928, a wiretap.

The technology increased governmental authority, forcing the Supreme Court to evaluate and redefine the boundaries between freedom and governmental power. The technological advances also stimulated an important national debate about the balance between individual freedom and the legitimate needs of law enforcement.

Now we are at a similar crossroads, and those words ring out to us today as we go about trying to balance the rights between individual freedom and the legitimate needs of the Government to penetrate terrorist cells.

Technology has advanced faster than the Nation's norms and the laws for managing them. Modern technology makes possible unprecedented intrusions into the private lives of American people. This ability, coupled with increasing governmental demands to use that technology, poses a grave threat to personal privacy and personal freedom.

This past week, I was rivetted by the news of the revelations about how the Department of Defense is developing a computer system to grant intelligence and law enforcement authorities the power to secretly access ordinary citizens' private information, including e-mail, financial statements, and medical records—to access that private information without the protections of a court order.

Clearly, in this post-9/11 world, we need to develop tools that will enable our Government to keep us safe from terrorists by disrupting their operations. But these tools need to be balanced against the protection of innocent people's right to privacy. If the right to privacy means anything, it is the right of the individual to be free from unwarranted governmental intrusion.

So what rivetted my attention were reports, first in the New York Times, the Washington Post, and then in the Washington Times, that the so-called Total Information Awareness Program—located in DARPA, deep inside the Department of Defense—would make possible unwarranted governmental intrusions such as we have never seen before.

It is disturbing that we are developing a research system that, if ever used, would violate the Privacy Act as well as violate a lot of other Federal laws on unreasonable searches of private information without probable cause, which is the typical standard that needs to be met. That is why we go to a judge to get an order allowing us to intrude on such things as searches, as seizures, on such things as wiretaps.

I have a serious concern about whether this type of program, called Total Information Awareness, can be used responsibly. So while we investigate and learn more about it, I intend to speak out to the Congress and to the committees on which I am privileged to serve—including the Armed Services Committee—to speak out that we need to oversee this program to ensure that there is no abuse of law-abiding individuals' privacy.

It has been reported that this program is authorized or endorsed by the homeland security legislation pending now in the Senate. And that does not appear to be the case. While it doesn't specifically tend to be the case, this legislation, the Homeland Security Department, does include a provision creating a research division within the new Homeland Security Department. It would develop, among other things, information technologies similar to the Total Information Awareness Program. While I strongly support funding for new research, and I certainly believe that we must use our technological advantage to defeat our enemies, at the same time I think we better take a breath, be very cautious that any new research done in the Defense Department or within the new proposed Department of Homeland Security does not threaten our personal freedoms.

I also have grave concerns that this information awareness program is being directed by someone who is very controversial: Retired Rear Admiral Poindexter, the former Reagan administration official who was convicted in, you remember, the Iran-contra story. There is a very legitimate question about whether or not he is the appropriate person to head such a sensitive program.

To quote from recent editions of the Washington Post, specifically November 16, an editorial:

> However revolutionary and innovative it may be, this is not neutral technology, and the potential for abuse is enormous.

The editorial continues:

> Because the legal system, designed to protect privacy, has yet to catch up with this technology, Congress needs to take a direct interest in this project.

The editorial goes on:

> And the defense secretary should appoint an outside committee to oversee it, before it proceeds.

The editorial concludes:

> Finally, everyone involved might also want to consider whether Adm. Poindexter is the best person to direct this extremely sensitive project.
>
> Though his criminal convictions were overturned on appeal, his record before the Congress hardly makes him an ideal protector of the legal system. . . .

That is the Washington Post.

In conclusion, ever since I had the privilege to serve with the likes of these great Senate giants on the floor right now, Senators LEAHY and HATCH, guardians of the Constitution because of their roles on the premier committee that guards the Constitution in the Senate, privacy is an issue that has attracted my attention and concern.

Has my time expired?

The PRESIDING OFFICER (Mr. NELSON of Nebraska.) The Senator's time has expired.

Mr. NELSON of Florida. I ask unanimous consent that I conclude my remarks in 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. NELSON of Florida. I thank Senators for letting me make this case.

When I first came here, I became concerned that back in 1999 we allowed banks and insurance companies to merge, but we didn't protect individual's privacy. It would shock people to know that if you go have a physical exam in order to get a life insurance policy and if that life insurance company is acquired by a bank, that the access to those individually identifiable medical records is unlimited, without your personal consent, to anywhere within that bank holding company.

You might also be interested to know that recently we had the issuance of rules by the Bush administration on medical record privacy, but there was a huge omission in that pharmaceutical companies could go to drugstore chains, pay the drugstore chain for the names and ability to communicate to individual people who had prescriptions, and then that pharmaceutical chain could contact that individual patient, asking them, soliciting them to change their medication to a different kind of medication, one that would be within the generic equivalent or a different brand name than the one that the physician had prescribed for them. That is an invasion of personal privacy. Yet it is allowed under the rules of the new administration.

Take, for example, the case 2 weeks ago in Fort Myers, FL. Suddenly a dumpster was overflowing with tax records, bank records, Social Security numbers, all kinds of personally identifiable financial information not properly disposed of by the bank subsidiary. The bank says there is no such law. So I filed a bill to protect individual's personal financial privacy.

Lo and behold, another invasion of privacy, identity theft, one of the big things, more recently, in Orlando, FL—another dumpster. Now all of a sudden, one of the two large pharmaceutical drugstore chains dumps all of the prescriptions in the dumpster, along with the bottles. As a result, the personally identifiable medical information is there for the public to see from someone pilfering the dumpster.

I think I have made my case. Privacy is something we better be concerned about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we have before us the nomination of United States District Court Judge Dennis Shedd of South Carolina to the Court of Appeals for the Fourth Circuit.

Judge Shedd's nomination was reported out of the Judiciary Committee last Thursday on a voice vote. Nine Democratic Senators, including myself, voted against him. As I noted before, I told Senator THURMOND I intended to bring this matter to a vote by the committee this year. My concern at the penultimate meeting, the meeting before last week, a meeting we held in October, was that we had very little time to debate this controversial nominee and that threatened to prevent a committee vote on 17 other of the President's judicial nominees before the committee.

Incidentally, those 17 district court nominees and 2 circuit court nominees were confirmed by the Senate last week. Those 17 district court nominees were on the Senate Calendar because the Senate Judiciary Committee was able to report those nominees despite unparalleled personal attacks by Republicans on me as chairman. Those attacks have included everything from saying I am not bringing up nominees—although I am and we are at a record rate that far outpaces the Republican rate during their six and one-half years of control—to even attacks in these recent months on my religious beliefs as well as the religion of several of the members of the Democratic majority on the Senate Judiciary Committee.

Notwithstanding these unprecedented attacks on both our religious beliefs and our actions, the confirmations last week bring to 99 the number of President Bush's judicial nominees confirmed by the Democratic-led Senate in the past 16 months.

I mention this because before that, during the 6½ years when the Republican majority controlled the Senate, they averaged 38 judicial confirmations per year. In fact, in the year 1996, over the whole year, they allowed only 17 district court judges to be confirmed all year and did not confirm a single circuit court nominee—not a single one. We had 17 district court judges in 1 meeting and those 17 nominees of President Bush were confirmed on one day last week by the Democratic-led Senate.

I put this in the record so the people understand the historic demonstration of my bipartisanship toward the President's judicial nominees in perspective with the recent history of judicial confirmations. The fact is that in addition to the 83 district court nominees confirmed, the Senate has also already confirmed 16 of his circuit court nominees. That is in sharp contrast to the fact that the Republicans allowed only 7 circuit court nominees to be confirmed per year, on average, during their control of the Senate. For example, more than half of President Clinton's circuit court nominees in the 106th Congress were defeated through such obstruction—more than half.

In fact, the Fourth Circuit—to take one at random—is one of many circuits affected by the other party's obstruction of President Clinton's judicial nominees. In the Fourth Circuit, seven of President Clinton's nominees to that circuit were never given a hearing or a vote in committee or on the floor—seven out of that one circuit alone.

James Beaty, one of the Fourth Circuit nominees of President Clinton, did not get a hearing or a vote in 1995, or 1996, or 1997, or 1998. Another Fourth Circuit nominee, Judge Richard Leonard, did not get a hearing or vote in 1995 or 1996.

Another Fourth Circuit nominee, James Wynn, did not get a hearing or a vote in 1999, 2000, or 2001. Other Fourth Circuit nominees—Elizabeth Gibson, Judge Andre Davis, or Judge Roger Gregory—also did not get hearings or votes during the period of Republican control of the Senate.

Indeed, the first hearing the Judiciary Committee held last year on a judicial nominee was for an earlier Fourth Circuit nominee, Judge Roger Gregory. He had been nominated initially by President Clinton when the Republicans were in control. They did not act on him. He was brought back by President Bush, and he became the first judge confirmed to the Fourth Circuit in several years. He was also the first African American confirmed to the Fourth Circuit in American history. That is because our committee in the Senate acted in the summer of 2001. Judge Gregory was the first of 20 circuit court nominees on whom we proceeded to hold hearings in our 16 months in the majority.

So the partisan rhetoric about the Judiciary Committee having blockaded President Bush's judicial nominees and having treated nominees unfairly might be a good stump speech on the circuit, but it is belied by the facts. Frankly, I think the staff at the White House who have put those kinds of misstatements in the President's speeches have done the President a disservice, as they have the Senate.

Turning to the nomination of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit, I cannot fail to note that it is not without controversy. In fact, it is quite controversial. Issues in his judicial record raised cause for concern among many Senators on the Judiciary Committee as well as with many citizens who live in the jurisdiction of the Fourth Circuit and elsewhere in the country who have written to the Senate in opposition to his elevation and confirmation.

While considering the information gathered in the hearing process, I placed Judge Shedd's nomination on the committee agenda in September. That was my effort to show Senator THURMOND courtesy as a former chairman and to signal that I expected this committee to proceed to consider the nomination before the year was out. Several Senators asked to hold the nomination over, and under the rules any Senator can.

On October 7, when I hoped to be able to list his name for consideration again, I was told there would be a debate so lengthy that we would not even be able to consider the 17 other judicial nominations of President Bush that were on the agenda or, for that matter, the legislative matters we were trying to take up before the election. So I told Senator THURMOND, and other Senators before that markup, it was for this reason that I would not list Judge Shedd's nomination on the agenda for the October 8 markup, but I explained to Senator THURMOND and others that I hoped we would be able to consider it at our next opportunity, as we knew at that point we would have a lame duck session. So now, having the lame duck session, I scheduled as soon as we came back and Senators would be here a markup on Judge Shedd and one other judicial nominee.

The committee has received more than 1,200 letters from individuals and organizations, both in and out of South Carolina, expressing concerns about elevating Judge Shedd. In fact, right here, it stands about 2 feet high—the stack of letters we got against it. These letters raise serious issues. What I heard about the nominee from the citizens of South Carolina and from others around the country was and is troubling.

I ask unanimous consent to have printed samples of letters such as those from citizens of South Carolina in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOUTH CAROLINA
LEGISLATIVE BLACK CAUCUS,
Columbia, SC, September 4, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The South Carolina Legislative Black Caucus (SCLBC) was formed in 1975 soon after the Civil Rights Movement in the 1960's. Presently, the SCLBC has 31 members: seven senators and 24 representatives, including four women. The SCLBC is dedicated to the struggle for fairness, equality and justice for all South Carolinians, and to the civic and political involvement of African-Americans, women and other racial and ethnic minorities.

We seek to preserve the civil rights strides that occurred in South Carolina over the decades, and we fight to prevent any regressive step that threatens to rollback civil rights and constitutional rights of American-Americans, women and other racial and ethnic minorities. The nomination of U.S. District Judge Dennis W. Shedd to the U.S. Court of Appeals for the Fourth Circuit represents such a regressive step, and accordingly, we strongly oppose the nomination.

African-Americans constitute a full one-third of South Carolina's population, yet there is only one active African-American federal judge in the state. And, there are only two South Carolinian female federal judges, one on the federal District Court and the other on the Fourth Circuit. This is unfair and unjustified because there are many well-qualified African-American and women jurists and lawyers who deserve an opportunity to serve this nation on the federal judiciary.

Because African-Americans are one-third of South Carolina's population and the Fourth Circuit has a greater number of African-Americans than any circuit, it is critical that any nominee, especially one from South Carolina, be an unabashed champion of civil rights. The appointee should have a record that demonstrates fairness and justice to all people. Based on our careful review of Judge Dennis Shedd's performance on the U.S. District Court for the District of South Carolina, we have concluded that his record shows a serious hostility to civil rights and constitutional protections.

Since his appointment to the federal bench in South Carolina, Judge Shedd has engaged in right-wing judicial activism by imposing strict and exacting standards when reviewing employment discrimination cases brought by African Americans and women. He has dismissed almost every employment discrimination, sexual harassment, civil rights and disability case that has come before him. Judge Shedd seems to believe that discrimination is not an actionable offense even when the Equal Employment Opportunity Commission has found "reasonable cause" that discrimination has occurred. Judge Shedd, however, seems to apply a more lenient standard in reviewing discrimination cases brought by white men. Judge Shedd has allowed four out of five "reverse" discrimination cases to proceed beyond the summary judgment phase of litigation.

This record shows that Judge Shedd does not have an abiding concern for civil rights and fairness. It further shows that Shedd lacks the requisite moderate reasoning to bring balance to the Fourth Circuit. In fact, his membership to the Fourth Circuit would push it further beyond the mainstream of American values and would subject South Carolinians and residents of other states within the Fourth Circuit to an extreme right-wing interpretation of this nation's civil rights laws and constitutional protections.

Accordingly, we oppose Judge Shedd's nomination without reservation. His values represent the Old South, where African Americans and women were judged by different and unequal standards.

We appreciate your attention. If you have any questions, please contact me at the address and telephone number above.

Sincerely,

JOSEPH H. NEAL,
Chairman.

SOUTH CAROLINA STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Columbia, SC, June 24, 2002.
Senator PATRICK LEAHY,
Chairman, Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to oppose the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals.

By now, you must be familiar with the importance of the Fourth Circuit to the African American community. Almost a quarter of the Fourth Circuit's residents are African American. The Fourth Circuit, with over 6 million African Americans in the five states, has the greatest number of African Americans of any Circuit Court in the country. The Latino population within the Fourth Circuit now at more than one million persons, has nearly tripled in the last decade. Based on these demographics, more may be at stake here for the future of civil rights than in any other Circuit Court in the country.

The Fourth Circuit is already an extremely conservative Court on civil rights and Constitutional issues. This Circuit ruled that federal law-enforcement officials need not follow the Miranda decision, only to be reversed by the Supreme Court. This Circuit authorized drug testing for pregnant women without their consent, which was reversed by the Supreme Court. This Circuit ruled that the Equal Employment Opportunity Commission was limited to remedies contained in employee arbitration agreements, and again, was reversed by the Supreme Court. The Circuit also has been reversed recently in capital habeas corpus cases and citizen suits under environmental laws. The Fourth Circuit has issued numerous other opinions that are hostile to affirmative action, women's rights, fair employment, and voting rights.

This is also the Court to which moderate African American nominees were repeatedly denied membership. No fewer than four African Americans were nominated to this Court by President Clinton, only to have their nominations languish for years due to Senatorial obstruction. Thus, if a nominee *is* to be confirmed to this Court, the nominee must be a jurist who will bring moderation and ideological balance to this Court. It is our strongly held view that this nominee is not Dennis Shedd.

Judge Shedd's judicial record reveals a deep and abiding hostility to civil rights cases. A review of Shedd's unpublished opinions reveals that Judge Shedd has dismissed all but very few of the civil rights cases coming before him. In nearly thirty cases involving racial discrimination in employment, he granted summary judgment for the employer in whole or in part in all but one case; most of the cases were dismissed altogether. Many of these cases were strong cases with compelling evidence and litigated by experienced civil rights lawyers.

Gender and disability discrimination cases before Judge Shedd fare no better. He has granted summary judgment on every sexual harassment claim on which summary judgment was requested. Collectively, these rulings leave us with the distinct impression that, in Dennis Shedd's view of the world, discrimination does not exist, and just as importantly, a jury should never be asked even to decide that question.

We are profoundly disturbed by the mounting evidence of Judge Shedd's zealous efforts to assist the defense in civil rights cases. There are repeated instances of Judge Shedd's intervention in civil rights cases—without prompting by the defendant—in ways that are detrimental to the plaintiff case. In a number of cases, Judge Shedd, on his own motion, has questioned whether he should dismiss civil rights claims outright or grant summary judgment. He has invited defendants to file for attorneys' fees and costs against civil rights plaintiffs. These are not the actions of an impartial decision-maker.

We are extremely concerned about Judge Shedd's rulings promoting "States' rights," and view these as a fundamental encroachment on Congress's ability to enact civil rights and other legislation. Judge Shedd has a very restrictive view of Congressional power. He struck down the Driver's Privacy Protection Act of 1994 as legislation beyond Congress's power, although this legislation was an "anti-stalking" measure designed to prohibit public disclosure of drivers' license information. In an opinion authored by Chief Justice Rehnquist, the Supreme Court unanimously overturned Judge Shedd's ruling and refuted his reasoning. This stands as one of the few occasions in which the Supreme Court rejected unanimously a holding that Congress exceeded its power in enacting a statute.

The question of judicial temperament is raised by Judge Shedd's offensive remarks during a judicial proceeding about an issue that strikes at the heart of many—the Confederate flag. Judge Shedd presided over a federal lawsuit seeking the removal of the Confederate flag from the dome of the South Carolina Statehouse. According to press accounts of a hearing held in the case, Judge Shedd made several derogatory comments about opposition to the flag. First, he attempted to marginalize opponents to the flag by questioning whether the flag matters to most South Carolinians. (It does, and thirty percent of South Carolina's population is African American.) He also minimized the deep racial symbolism of the flag by comparing it to the Palmetto tree, which appears in South Carolina's State flag.

Our membership in South Carolina, deserves to be represented on the Circuit by a nominee who has a record of judicial impartiality, is committed to the progress made on civil rights and individual liberties, and has a deep respect for the responsibility of the federal judiciary to uphold that progress. Dennis Shedd is not that nominee. We urge you and the Senate Judiciary Committee to vote against his nomination.

Sincerely,

JAMES GALLMAN,
President.

Mr. LEAHY. We received a letter from the Black Leadership Forum, signed by many well-respected African Americans, including Joseph Lowery, and more than a dozen more internationally known figures, as well as letters from other African American leaders.

I ask unanimous consent that these letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

BLACK LEADERSHIP FORUM, INC.,
Washington, DC, September 16, 2002.
Hon. ERNEST F. HOLLINGS,
Member of the Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: We are writing to share with you a letter which the Black Leadership Forum, Inc. (BLF), whose members are listed on the left side of this page, delivered several weeks ago to members of the Senate Judiciary Committee. The attached letter strongly opposes the nomination of Judge Dennis Shedd to a seat on the Fourth Circuit Federal Court of Appeals, for the reasons stated in substantial detail.

It has come to our attention that you are actively supporting Mr. Shedd's nomination and are aggressively pressing the Judiciary Committee for speedy approval of a hearing on his nomination by the full Senate. Therefore, we feel that it is urgent for you to be directly informed by BLF of the bases for our objections to this nomination. We reflect in this letter the deep concern in the African American community about this nomination because Mr. Shedd's judicial record undercuts our closely guarded values of equal justice and threatens the maintenance of our civil rights advances and constitutional protections.

Conversations with numerous African Americans who also are resident-constituents of your District, indicate that they, too, believe that this nomination should not go forward. We sincerely hope, therefore, that we can meet with you regarding our objections to Mr. Shedd's nomination and that until we have had this discussion, you will forego any further actions supporting his nomination. We have called your office requesting such a meeting prior to a vote by the Judiciary Committee on this issue.

Love Embraces Justice,

DR. JOSEPH E. LOWERY,
DR. C. DELORES TUCKER,
YVONNE SCRUGGS-LEFTWICH, PH.D.

RAINBOW PUSH COALITION
Chicago, IL, August 24, 2002.
Senator PATRICK LEAHY,
Member, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Let me lend my voice of opposition to the chorus of discontent surrounding the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I urge you to oppose the Shedd nomination, based on the merits, and the merits alone. A seat on the Fourth Circuit is too important to the nation's judiciary not to be heavily scrutinized.

As a native of South Carolina, I am deeply disturbed by the direction taken by the Fourth Circuit in recent years. As a Judicial Circuit with considerable influence on the Supreme Court, those elevated to the Court should reflect the highest American ideals of inclusion and equal protection under the law. Moreover, the states included in the Fourth Circuit are comprised of the highest percentage of African Americans, than any other Circuit, thus judges on the Court must be sensitive and respectful for the civil rights laws for which we fought so hard.

Currently, the Fourth Circuit is the most extremist court in the nation on civil rights issues, criminal justice issues, and those involving the power of the federal government, to enact legislation, which holds States accountable for civil rights violations. The nomination of Dennis Shedd threatens to take the Court in a further extremist direction. For example, Judge Shedd's opinion in the Condon v. Reno case suggests that he favors disempowering Congress. American judges, and their rulings should protect rights, rather than restrict the balance of power.

To preserve this nation's ideals of inclusion, and to ensure equal protection under the law for all Americans, I urge you, and other members of the members of the Senate

Judiciary Committee to vote "No" on the nomination of Dennis Shedd.

Sincerely,

REVEREND JESSE L. JACKSON, SR.

NATIONAL BAR ASSOCIATION,
Washington, DC, September 4, 2002.

Re Nomination of Judge Shedd, United States Court of Appeals for the Fourth Circuit.

Hon. PATRICK LEAHY,
Chairman Senate Judiciary Committee, Dirksen Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Bar Association hereby submit this letter in strong opposition to the confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. We strongly urge you to vote to defeat his appointment to this critical Court.

The National Bar Association, established in 1925 is the oldest and largest organization of minority attorneys, judges, legal scholars and law students in the United States and in the world. During our 77 year history we strive to obtain equal justice for all persons within the jurisdiction of these United States of America. Real diversity can only be achieved as a result of equal justice for all which directly results in equal opportunity. Real diversity, equal justice, and equal opportunity does not currently exist in our federal judiciary.

The National Bar Association maintains a watchful eye on federal judicial nominations, as part of its' historical mission. We have a duty and obligation to support or oppose any nomination which directly affects our struggle for equal justice and equal opportunity for all. During these difficult times, the United States of America must set an example to the world by assuring equal justice and equal opportunity to a truly diverse nation.

The National Bar Association feels, confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit will severely undermine and inhibit its' goals of equal justice for all, equal opportunity for all, and real diversity. In our opinion the one thing which insulates the United States of America from anarchy, civil strife, etc. is our Construction (as currently amended), which provides an open judiciary, where *any* citizen regardless of race, creed, color, gender, economic status, social status, etc. can seek redress. Absent an open federal judiciary, citizens will seek other less civil means to voice their concerns and seek redress. An open judiciary is the balance for the scales of justice.

The essential element of an open judiciary is our constitutional right to trial by jury. This right provides some assurance of fair and equitable treatment in resolution of disputes, without political influence of the government. Therefore, we must oppose federal judicial nominees, when their actions or beliefs, in any way reduce complete access to the courts, right to trial by jury, or in any way discourage access and right to trial by jury.

A review of Dennis Shedd's record appears to indicate a judicial philosophy to reduce and discourage access to the courts and exercise of each citizens right to trial by jury. For these reasons, the National Bar Association strongly opposes nomination of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit.

Sincerely,

MALCOLM S. ROBINSON,
President.

THE NATIONAL BLACK CAUCUS
OF STATE LEGISLATORS,
Washington, DC, September 19, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

Hon. PATRICK J. LEAHY,
U.S. Senate, Chair, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Black Caucus of State Legislators (NBCSL) is the body that represents some 600 African American state legislators in 44 states, the District of Columbia and the U.S. Virgin Islands. Last year, we celebrated our 25th year of involvement and dedication to many of the most pressing social issues and policies that impact our legislators' districts and the nation at large. Our commitment is to our constituents as well as the national agenda. Our dedicated work is to maintain the highest values of civil and human rights insuring that African Americans are a fair and representative part of the political and social equations of this great nation.

In their letter to you, dated September 4, 2002, members of the South Carolina Legislative Black Caucus have spoken clearly and definitively in opposing the nomination of Judge Dennis Shedd to the Fourth Circuit. In reviewing the information presented therein and having also researched the history and record of Judge Shedd, we find it woefully deficient regarding the issues of fairness, equality and justice. Moreover, as has been pointed out by our colleagues in South Carolina "African Americans constitute a full one-third of South Carolina's population yet there is only one active African American federal judge in the state." In that there are unquestionably "many, well-qualified African American . . . jurists" in South Carolina, this is rightly seen an unfair and unequal treatment in the sight of fair representation. Further, considering the existent disproportionate representation of jurist of Color, certainly an effort must be made to insure that any South Carolina nominee be a strong advocate of civil and human rights. Rather, Judge Shedd's performance on the U.S. District Court for the District of South Carolina demonstrates what could be construed as hostile to civil and constitutional rights.

We have learned that Judge Shedd's insensitivity to fairness has been demonstrated in his review of employment discrimination cases brought by African Americans and in fact, women, even in such cases when the Equal Opportunity Commission has found "reasonable cause." But, we have also found that in furtherance of this questionable action, when white men bring cases of "reverse" discrimination, those cases proceed. We also note that there have been concerns raised about the number of unpublished opinion issued by the Judge and further that such concerns regarding the decisions were reversed or vacated by the Fourth Circuit Court of Appeals.

The Fourth Circuit must have a judge who is mindful of the rightful place that African Americans have in this nation, and be a strong advocate of civil rights, human rights and constitutional rights. Any nominee should have demonstrated his dedication to such virtues and ideals. No other individuals should be considered for this important position.

For these reasons among others raised by our South Carolina Legislative Black Caucus, we cannot support the nomination of Judge Dennis Shedd for the Fourth Circuit and would ask that the opinion of our body be strongly considered in this matter. Should you have any questions, or require additional comment, please contact me.

Very truly yours,

JAMES L. THOMAS,
President.

CONGRESSIONAL BLACK CAUCUS
OF THE UNITED STATES CONGRESS,
Washington, DC, July 26, 2002.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the Congressional Black Caucus, we write to express our strong opposition to the confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. We urge you to vote to defeat his appointment to this critical court.

The Fourth Circuit has the highest percentage of African-American residents of any federal circuit in the nation. As you know, President Clinton tried in vain for many years to integrate the Fourth Circuit by nominating no fewer than four moderate African-Americans to the court, only to see their nominations languish. James Beaty and James Wynn from North Carolina, Andre Davis from Maryland and Roger Gregory from Virginia were never given hearings before the Judiciary Committee at any time during the Clinton presidency. It was not until President Clinton took the extraordinary step of giving Roger Gregory a recess appointment in the final days of his Presidency that the last all-White circuit court in the nation was finally desegregated.

The Fourth Circuit is also the most conservative of the federal circuits. Its rulings on the rights of those accused of crimes, employees who face discrimination, and individuals with disabilities are far outside the judicial mainstream. Given the importance of the Fourth Circuit to the African-American community and the current ideological imbalance on the Court, it is imperative that any nominee to this Court be a jurist of moderate views who will protect the civil and constitutional rights of all Americans. Dennis Shedd is not that nominee.

Above all, we are concerned that any nominee to the Fourth Circuit be committed to the rigorous enforcement of federal civil rights laws. We are particularly troubled by Dennis Shedd's record in this area. Throughout his eleven years on the federal district court, Judge Shedd has demonstrated a propensity to rule against plaintiffs in civil rights cases. Based on our review of Judge Shedd's record, we doubt seriously whether he can fairly and impartially adjudicate the claims of persons protected by the federal civil rights laws.

Despite the fact that employment discrimination cases comprise a large portion of Judge Shedd's civil rights docket, Judge Shedd has allowed only few discrimination plaintiffs to have their day in court. In almost every case, Judge Shedd has dismissed some or all of the claims of civil rights plaintiffs before they have a chance to be heard by the jury. By all evidences, Judge Shedd utilizes an extremely high threshold of evidence necessary to allow a discrimination claim to get to the jury. For example, in the one race discrimination case in which Judge Shedd did not dismiss at least some of the plaintiff's claims, a White manager terminated an African-American female employee after directing racial epithets at her in the presence of a co-worker. Even with this evidence, Judge Shedd said it was an "extremely close question" whether the case should be dismissed. Given Judge Shedd's characterization of the evidence in this case, we question his commitment to following decades of case law recognizing that discrimination often occurs in much more subtle but no less pernicious forms and therefore may proven circumstantially. In contrast to Judge Shedd's systematic dismissal of claims by African-American plaintiffs, Judge Shedd has allowed "reverse discrimination" claims by White men to proceed to trial in four of the five cases in which summary judgment was requested.

Also, in a number of cases, Judge Shedd has overruled a magistrate's recommendation to allow claims to be tried to a jury. In one case, a magistrate concluded that a female corrections officer could pursue her claim for "outrageous conduct" where her supervisor subjected her to repeated requests for sex, lewd language, and physical contact, and told her co-workers that he was having an affair with her and that she was pregnant with his child. The conduct occurred not only in the workplace but by telephoning the plaintiff at home and by visits to the plaintiff's house, which the supervisor said he could visit "anytime he wanted." Judge Shedd dismissed the claim, stating that while the defendant's actions were "certainly disgusting and degrading," they did not rise to the level of outrageous conduct.

Judge Shedd's narrow and restrictive view of civil rights claims is also evidenced by his dismissal of several cases in which the Equal Employment Opportunity Commission had found "reasonable cause" to believe that discrimination occurred. A finding of "reasonable cause" by the EEOC is extremely rare (occurring in fewer than 10 percent of the cases filed). Thus, the fact that Judge Shedd has refused to allow many of these claims to get to the jury strongly suggests that Judge Shedd utilizes an exceedingly high threshold for proving unlawful discrimination. The endorsement of such a restrictive standard that is far outside the mainstream of federal jurisprudence has devastating implications for all civil rights plaintiffs if Judge Shedd is confirmed to the Fourth Circuit.

At his June 27 hearing, Judge Shedd admitted that, during his eleven years on the bench, a plaintiff has never won an employment discrimination jury trial in his court. He defended this record by asserting that he could not recall a plaintiff ever winning a jury trial in a discrimination case in any court in South Carolina. However, we have subsequently learned that during Shedd's tenure on the bench, there have been at least twenty-one jury verdicts favorable to discrimination plaintiffs in other federal courts in South Carolina, yielding over $7 million in damages. Shedd's lack of awareness of the outcome of these numerous cases evidences a troubling indifference toward the type of civil rights cases with which, by virtue of his docket, he should be the most familiar.

Another area of grave concern to us is Judge Shedd's narrow view of Congressional power to enact protective legislation. We believe that Judge Shedd has the worst federalism record of any nominee considered by the Judiciary Committee thus far. At the same time, the Fourth Circuit has been the most active federal circuit in curtailing federal power, invalidating many portions of important federal legislation in recent years. Judge Shedd's record in this area signals he will join this Circuit's aggressive efforts to alter the balance of federal and State power in a way that threatens enforcement of our most cherished civil rights laws.

Judge Shedd authored the original district court opinion in Condon v. Reno, striking down the Driver's Privacy Protection Act based on his belief that the federal government did not have the power to require States to ensure that State driver's license records would remain private. Although the Fourth Circuit affirmed Judge Shedd's decision, the Supreme Court unanimously reversed the holding in a decision by Chief Justice Rehnquist. In an unpublished opinion, which usually signifies a routine decision, Judge Shedd struck down part of the Family and Medical Leave Act, holding that the Eleventh Amendment doctrine of state sovereign immunity prevents an employee from suing a State agency for a violation of that statute. This issue—because it calls into question Congress's power to remedy sex discrimination in the workplace—has profound implications for Congress's authority under Section 5 of the 14th Amendment.

Judge Shedd has demonstrated a reluctance to sanction law enforcement for crossing the line. In a recent criminal case, a deputy sheriff and a State prosecutor videotaped a constitutionally protected conversation between a lawyer and a defendant charged with a capital crime. The defendant was convicted in state court, but the South Carolina Supreme Court overturned the conviction on the basis of the videotape, calling it "an affront to the integrity of the judicial system," and stating that "[t]he right to counsel would be meaningless without the protection of free and open communication between client and counsel." Judge Shedd presided over the federal cases arising from a grand jury's investigation of the matter. When the deputy offered a guilty plea, Judge Shedd reportedly questioned it because he did not believe a civil rights violation occurred. Judge Shedd imposed only a $250 fine on the deputy and remarked at his sentencing hearing that "[the deputy] is caught up in a situation in which there's at least part of the criminal defense bar trying to get prosecutors and law enforcement punished. That's what's going on in the law." In contrast, when the defense attorney was convicted of perjury for denying he leaked the videotape to the press after learning of its existence before trial, Judge Shedd sentenced the lawyer to prison and a $20,000 fine, accompanied by a lecture about the serious consequences of committing perjury.

Judge Shedd has also exhibited a high level of insensitivity on issues of race. Judge Shedd made several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome. According to press accounts, Judge Shedd suggested that South Carolinians—thirty percent of whom are African-American—"don't care if that flag flies or not." ("Judge Dismisses Most Flag Defendants, The Greenville News, June 11, 1994). He also analogized the Confederate battle flag, to many a symbol of support for slavery and racist acts of terror directed at African-Americans, to the Palmetto tree, which is on the State flag: "What about the Palmetto tree?" What if that reminds me that Palmetto trees were cut down to make Fort Moultrie and that offends me?" ("U.S. Judge Dims Hope of Battle Flag's Foes," The State, June 11, 1994.) It is shocking that Judge Shedd, who was raised in South Carolina during the 1950s and 1960s, could compare—even hypothetically—being "offended" by the representation of the Palmetto tree to the reaction of the African-American community to the Confederate battle flag.

Dennis Shedd's opinions in his eleven years on the federal bench reflect hostility toward plaintiffs in civil rights cases, a desire to limit Congress's authority to enact legislation that is applicable to the States, and a general insensitivity on issues of race. The Fourth Circuit desperately requires a voice of moderation and commitment to core civil and human rights values. We believe that Judge Shedd is not that voice and that the Committee should therefore reject his nomination to this important court.

Sincerely,

Eddie Bernice Johnson, Chair;
John Conyers;
E. Towns;
Stephanie Tubbs Jones;
James E. Clyburn;
Albert R. Wynn;
Corrine Brown;
Barbara Lee;
Sheila Jackson-Lee;
Bobby L. Rush;
Elijah E. Cummings;
Melvin L. Watt;
Earl F. Hilliard;
Danny K. Davis;
Eva M. Clayton;
Julia Carson;
William J. Jefferson;
Gregory W. Meeks;
Donald M. Payne;
John Lewis;
Sanford D. Bishop, Jr.;
Benny G. Thompson;
Carrie P. Meek;
Alcee L. Hastings;
Diane E. Watson;
Chaka Fattah;
Wm. Lacy Clay;
Major R. Owens;
Carolyn C. Kilpatrick;
Maxine Waters;
Juanita Millender-McDonald;
Jesse Jackson, Jr.;
Harold E. Ford, Jr.;
Cynthia McKinney;
C.B. Rangel.

Mr. LEAHY. We received a letter from the Mexican American Legal Defense and Educational Fund, in the interest of many Latinos in the Fourth Circuit, expressing opposition to Judge Shedd as well as correspondence from others expressing concern.

I ask unanimous consent that these be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL FUND,
Washington, DC, September 30, 2002.

DEAR SENATE JUDICIARY COMMITTEE MEMBER: On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I urge you to oppose the nomination of Dennis Shedd to the 4th Circuit Court of Appeals. MALDEF is a Latino civil rights organization that was founded in Texas in 1968. Since that time, we have expanded our work across the nation and represent all Latinos. In our more recent history, we opened a community outreach office on the census in Atlanta, Georgia prior to the 2000 census. Due to the growth of the Latino community in the Southeast and the pressing legal needs of our community in that region, we expanded our office this year into a full regional office handling litigation, advocacy and community education within the 4th Circuit states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Many people still are not aware of the rapid growth of the Latino community in this region of the country. The following is a sample of the Latino growth rates over that the last decade in 4th Circuit states. In Maryland, Howard County's Latino population grew at a rate of 104%, Anne Arundel County saw its Latino population grow at a rate of 76%, Baltimore County's Latino population grew by 65%, and Prince George's County experienced 37% growth of Latinos. In Virginia, Prince William County's Latino population grew by 94%. Fairfax County experienced 71% growth of the Latino population, Virginia Beach City's Latino population grew by 65%, and Arlington county experienced 46% Latino growth. In North Carolina, Wake County's Latino population grew by 190%, Mecklenburg County saw its Latino population grow by 163%, and Cumberland County experienced Latino growth at a rate of 97% in the last decade. In South Carolina, Richland County saw its Latino population grow at a rate of 66%.

In addition, much of the Latino growth in these states is being driven by the movement of Latino immigrants. What many of these Latino immigrants face in these southeastern states are barriers to housing, jobs, education, and health, as well as targeting by local law enforcement similar to what many Latino immigrants faced decades ago in states like California, Texas and New York. While barriers and improper law enforcement tactics still occur in states like California and New York, these traditionally high-immigrant states also now have a built-in infrastructure to serve the needs of immigrants and help them find recourse if their rights are trampled upon. Unfortunately, similar infrastructures do not exist in most of the region covered by the 4th Circuit. As such, ensuring that only nominees who will be fair to the new Latino community in the southeast is particularly important.

MALDEF's evaluation of Dennis Shedd uncovered a demonstrated lack of commitment to protect the civil rights of ordinary residents of the United States and to preserve and expand the progress that has been made on civil rights and individual liberties. In every respect, Dennis Shedd has demonstrated that he would likely decide cases in a manner that run counter to the core principles and rights we believe are necessary to protect Latinos, particularly the most vulnerable who live within the 4th Circuit.

Throughout his eleven years on the federal district court, Judge Shedd has dismissed almost all of the civil rights cases that have come before him; thus, preventing the merits of these cases to be heard by a jury. Based on his handling of race, gender, age, and disability claims, we conclude that Judge Shedd would not give Latino plaintiffs seeking legal remedies for civil rights violations a fair day in court.

In the area of upholding federal statutes, Judge Shedd's rulings regarding federalism are also troubling and follow the Fourth Circuit's bold attempts to narrow the powers of Congress in its protection of the rights of all Americans. We conclude that Judge Shedd, as a judge on the circuit court, would continue attempts to limit the powers of Congress to pass legislation that protects the rights of Latinos and other protected groups.

Judge Shedd has also exhibited a high level of insensitivity or poor judgment in commenting on issues about race—while serving as a federal district judge in a state with a population that is 30% African-American. For example, in a recent unpublished case, Judge Shedd was reported in the press as making several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome.

Dennis Shedd's eleven-year record as a federal district judge reflects hostility towards plaintiffs in civil rights cases, a desire to limit authority to enact legislation that is applicable to states, and insensitivity to issues of discrimination. Further, Judge Shedd's extremist views on these issues render him unsuitable to serve on the Fourth Circuit. For these reasons, we urge you to oppose his nomination to the Fourth Circuit Court of Appeals.

Sincerely,

ANTONIA HERNANDEZ,
President and General Counsel.

Mr. LEAHY. Mr. President, hundreds, probably thousands, of letters from South Carolina citizens arrived in my office urging a closer look at Judge Shedd's nomination to serve in the Fourth Circuit.

So we don't have a CONGRESSIONAL RECORD tomorrow morning that will be several hundred pages long, I will not include all of them with my remarks today. However, I ask unanimous consent that a list of the letters of opposition to the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LETTERS OF OPPOSITION TO THE NOMINATION OF DENNIS SHEDD TO THE 4TH CIRCUIT COURT OF APPEALS

LOCAL CIVIL RIGHTS GROUPS

NAACP of South Carolina State Conference, June 24, 2002; May 21, 2002.

NAACP of Andrews Branch, August 7, 2002.

NAACP of Eutawville, South Carolina, August 7, 2002.

NAACP of Newberry, South Carolina, August 7, 2002.

NAACP of Hilton Head Island/Bluffton, South Carolina, NAACP, August 24, 2002.

NAACP of Moncks Corner, South Carolina, August 7, 2002.

NAACP of Kershaw, South Carolina, September 17, 2002.

NAACP of Clarendon County Branch, August 12, 2002.

Urban League of the Upstate, Inc., South Carolina, September 24, 2002.

NAACP of North Carolina, June 24, 2002; June 26, 2002.

NAACP of Maryland State Conference, September 4, 2002.

Progressive Maryland, August 8, 2002.

NAACP of California State Conference, September 9, 2002.

NAACP of Mississippi State Conference, August 24, 2002.

NAACP of Delaware State Conference, August 14, 2002.

Public Justice Center, October 7, 2002.

NAACP of West Virginia State Conference, August 14, 2002.

Quad County (IL) Urban League, September 27, 2002.

Birmingham Urban League, Inc., September 24, 2002.

Advocates for Ohioans with Disabilities, August 31, 2002.

National Organization for Women, Western Wayne County (MI), October 8, 2002.

NATIONAL CIVIL RIGHTS GROUPS

Black Leadership Forum, September 16, 2002, November 12, 2002 (Dr. Joseph E. Lowery).

NAACP, September 17, 2002 (Kweisi Mfume).

Mexican American Legal Defense and Educational Fund, Sept. 30, 2002 (Antonia Hernandez).

People for the American Way, June 24, 2002; September 4, 2002.

American Association of University Women, June 20, 2002; November 14, 2002.

National Council of Jewish Women, August 15, 2002.

Rainbow/Push Coalition, August 24, 2002 (Reverend Jesse L. Jackson, Sr.).

Alliance for Justice, November 15, 2002 (Nan Aron).

People for the American Way, November 15, 2002 (Ralph Neas).

Leadership Conference on Civil Rights & Alliance for Justice, July 11, 2002, coalition letter signed by the following groups: Alliance for Justice and Leadership Conference on Civil Rights August 30, 2002, NARAL, NAACP Legal Defense and Educational Fund, NAACP, American Association of University Women, ADA Watch, National Council of Jewish Women, AFL–CIO, NOW Legal Defense and Education Fund, People for the American Way, Feminist Majority, National Partnership for Women and Families, National Organization for Women, and Disability Rights Education and Defense Fund.

Alliance for Justice and Leadership Conference on Civil Rights, September 18, 2002, coalition letter signed by the following groups: Leadership Conference on Civil Rights, Alliance for Justice, People for the American Way, NARAL, Planned Parenthood Federation of American, Human Rights Campaign, National Organization for Women, American Association of University Women, NOW Legal Defense and Education Fund, National Family Planning and Reproductive Health Association, National Council of Jewish Women, National Abortion Federation, and The Feminist Majority.

Alliance for Justice and Leadership Conferee on Civil Rights, November 15, 2002, coalition letter signed by the following groups: Leadership Conference on Civil Rights, Alliance for Justice, NARAL, NAACP Legal Defense and Educational Fund, NAACP, People for the American Way, American Association of University Women, Feminist Majority, ADA Watch, National Partnership for Women and Families, National Council of Jewish Women, National Organization for Women, AFL–CIO, NOW Legal Defense and Education Fund, and Disability Rights Education and Defense Fund.

ELECTED OFFICIALS

National Black Caucus of State Legislators, September 25, 2002.

South Carolina Legislative Black Caucus, September 4, 2002.

North Carolina Legislative Black Caucus, September 26, 2002.

Legislative Black Caucus of Maryland, Inc., September 9, 2002.

Wisconsin Legislative Black & Hispanic Caucus, August 21, 2002.

Margaret Rose Henry, State Senator, State of Delaware, September 19, 2002, November 12, 2002.

Maryland State Delegate Howard "Pete" Rawlings, August 21, 2002.

Congressional Black Caucus, July 26, 2002, October 2, 2002.

BAR ASSOCIATIONS

National Bar Association, September 4, 2002.

Old Dominion Bar Association, September 11, 2002.

North Carolina Association of Black Lawyers, August 30, 2002.

Alliance of Black Women Attorneys of Maryland, Inc., August 30, 2002.

National Employment Lawyers Association, September 17, 2002, November 15, 2002.

North Carolina Academy of Trial Lawyers, September 26, 2002.

LAW PROFESSORS

UNC—Chapel Hill School of Law: John Carles Boger, Lissa L. Broome, Kenneth S. Broun, John O. Calmore, Charles E. Daye, Eugene Gressman, Ann Hubbard, Daniel H. Pollitt, and Marilyn V. Yarbrough.

Duke University School of Law: Christopher H. Schroeder and Jerome Culp.

North Carolina Central University School of Law: Renee F. Hill, David A. Green, Irving Joyner, Nichelle J. Perry, and Fred J. Williams.

LAW SCHOOL STUDENTS

Howard University School of Law Students, September 11, 2002, signed by 58 Howard University Law Students.

ATTORNEYS

Tom Turnipseed, Columbia, South Carolina, June 26, 2002.

Walt Auvil, Attorney, Parkersburg, West Virginia, June 19, 2002.

Neil Bonney, Attorney, Virginia Beach, Virginia, June 20, 2002.

Timothy E. Cupp, Attorney, Harrisonburg, Virginia, June 21, 2002.

Devarieste Curry, August 31, 2002.

Joseph D. Garrison, Attorney, New Haven, Connecticut, June 18, 2002.

Stephen B. Lebau, Richard P. Neuworth, Anna L. Jefferson, Carrie D. Huggins, Attorneys, Baltimore, MD, June 20, 2002.

David M. Melnick, Attorney, Rockville, MD, June 20, 2002.

Gabriel A. Terrasa, Attorney, Owings Mills, MD, June 20, 2002.

Cathy Ventrell-Monsees, Attorney, Chevy Chase, MD, June 20, 2002.

Salb, Shannon, Attorney, Washington, DC, September 19, 2002.

RELIGIOUS LEADERS

South Carolinians, September 30, 2002.

Ms. Elvira Faulkner-McIlwain, Lancaster District Pee Dee Conf. AME Zion Church.

Rev. Dr. Lloyd Snipes, Presiding Elder, Lancaster District Pee Dee Conf. AME Zion Church.

Rev. Matthew L. Browning, Pastor, David Stand AME Zion Church.

Rev. Dr. Reid R. White, Paster, El Bethel AME Zion Church.

Rev. Harold Jones, White Oak AME Zion Church.

Rev. Dr. Marion Wilson, Steele Hill AME Zion Church.

Rev. R.A. Morrison, Pastor, Salem AME Zion Church.

Rev. Albert Young, Pastor, Mt. Zion AME Zion Church.

Rev. Theodis Ingram, Pastor, Warner Temple AME Zion Church.

Rev. Henry I. Dale, Pastor, North Corner AME Zion Church.

Rev. Eldren D. Morrison, Pastor, Pleasant Hill AME Zion Church.

Rev. Beatrice H. Massey, Pastor, Mt. Nebo AME Zion Church.

Rev. Dorothy N. Wallace, Pastor, New United AME Zion Church.

Rev. Deborah Waddell, Pastor, Gold Hill AME Zion Church.

Rev. Thomas R. Moore, Mt Carmel, AME Zion Church.

Rev. Gloria Stover, Pastor, Greater Frazier AME Zion Church.

Rev. Toby L. Johnson, Pastor, Clinton Chapel AME Zion Church.

Rev. Len Clark, Pastor, Bingham Chapel AME Zion Church.

Rev. James R. Thomas Jr., Pastor, Camp Creek AME Zion Church.

Rev. James E. Gordon, Pastor, St. Paul AME Zion Church.

Rev. Dr. Roy H. Brice, Pastor; Mt. Moriah AME Zion Church.

Rev. Albert Tucker, Pastor, Centennial AME Zion Church.

Rev. Roosevelt Alexander, Mt. Tabor, AME Zion Church.

CITIZENS

Marlin Maddoux, Host, Point of View Radio Talk Show.

Gladys W. Wallace, Elgin, SC, April 1, 2002.

Kathy Moore, Charleston, SC, June 24, 2002.

Salvador V. Acosta, Jr., North Charleston, SC, June 21, 2002.

Henderson and Gwen Beavers, Charlottesville, VA, August 29, 2002.

Florence Brandenburg, Shedrick Knox, Birmingham, AL August 1, 2002.

Barbara Burgess, Marshall, Virginia, November 14, 2002.

James T. McLawhorn, October 2, 2002.

Judith Polson, New York, NY, September 14, 2002.

Gloria Washington, Stone Mountain, GA, September 11, 2002.

Keith Washington, Stone Mountain, GA, September 11, 2002.

And letters from more than 1,200 other citizens.

Mr. LEAHY. Mr. President, there is a reason, when you look at Judge Shedd's record, that many believe he has a reputation for assisting the defense in civil cases and for ruling for the defense in employment civil rights cases, for example. His holding in Condon v. Reno shows that his view of the constitutional allocation of powers between the States and the Federal Government goes even beyond what we have seen from a very conservative activist Supreme Court across the street. They are busily rewriting the law in this fundamental area. And Judge Shedd goes beyond the U.S. Supreme Court. His actions in a case involving serious prosecutorial and police misconduct also raise serious questions about his fairness in criminal cases.

His record as a whole raises serious concerns about whether he should be elevated to a court that is only one step below the U.S. Supreme Court and whether he should be entrusted with deciding appeals there.

Every litigant, every defendant, every person, every plaintiff who comes before a judge in the Federal courts must be assured that the judge will give a fair and unbiased hearing to the case at hand. The test of a judge, especially a lifetime appointment, goes beyond just the question of competence. When we are talking about our Federal courts—remember, our Federal courts are admired around the world for their independence and their fairness, but that means that whether you or I, or anybody else walks into a Federal court, no matter what our case is, whether we are plaintiff or a defendant, whether we are the Government or one responding to the Government, whether we are rich or poor, no matter what our political background is, when we walk into the courtroom door, we have to be able to have confidence that this judge, this Federal judge, will hear our case—he or she will hear it fairly.

Litigants in our federal courts should be able to have confidence to say and believe that it makes no difference what my political background is, what the color of my skin is, where I am from, or anything else. I will win or I will lose based on the merits of the case, not based on the individual prejudices of the judge.

Unfortunately, when one looks at Judge Shedd's record, one has to say that somebody coming in to his court could not have that assurance. One has to say unless they fit into a narrow category that Judge Shedd has routinely favored in his cases, you are probably pretty unlucky to be before his court.

Let me go through these concerns in a little more detail. First, Judge Shedd has a reputation for assisting in the defense in civil cases, raising issues sua sponte (on his own motion, without a motion from the lawyers for the litigants), in essence making himself the third litigator and not leaving it up to the parties—the plaintiff or defendant—to litigate the case, but actually stepping in and taking sides and making it very clear to the people in the courtroom that he is taking sides.

He has ordered defendants to make motions for summary judgment whether they wanted or planned to or not. He has resolved issues before they are even raised and fully briefed, having made up his mind before the case is even heard, having made up his mind on behalf of one of the litigants. This shows a pattern of a judge injecting himself into litigation, particularly in the shoes of corporations and others if they are being sued, if they are defendants in civil litigation. Here are some specific cases that illustrate these interventions by Judge Shedd to the benefit of one of the parties.

In McCarter v. RHNB, a case alleging gender discrimination, Judge Shedd granted summary judgment. He did not even wait for the company to raise these grounds. He raised it for them and summarily ruled in their behalf on an issue they had not even raised.

In Shults v. Denny's Restaurant, a case involving a claim of employment discrimination under the Americans with Disabilties Act, Judge Shedd raised an issue on his own, saying he was doing it "for possible resolution by summary judgment." In other words, putting himself on the side of Denny's and in essence advocating for their interests.

Again, deciding how best the defense should execute their litigation strategy, he noted that three of the defenses asserted are potentially dispositive of certain claims—in other words, three of the defenses could settle the case right there—and said "these issues do not appear to necessitate much, if any, discovery on the part of the plaintiff." He mentioned, almost as an afterthought at the close of his order, that defendants "may also file a memorandum" if they want.

It does not help when you are litigating a case if you know the judge has already made up his mind for the other side. It helps even less if, having made it clear he has made up his mind for the other side, he actually steps in and helps the other side.

What kind of an image does that give to people who are expecting fairness and impartiality in our Federal courts? What does that say to people who are being told by all of us, as we always are, that our Federal courts are impartial? What does it say when they watch cases being tried by a judge who takes sides openly and clearly and continuously in his courtroom?

In Lowery v. Seamless Sensations, a case where an African American woman brought claims under Title VII for employment discrimination on the basis of race, Judge Shedd turned to the person she was suing and said: Make a motion to dismiss. Then he quickly granted it. I bet you that woman walked out of there wondering why she ever even bothered coming into court when it was so obvious the judge made up his mind.

Take Coker v. Wal-Mart, in which it appears the judge wanted to get rid of this case. He wanted to make a motion on his own to send it back to the State court, but he did ask Wal-Mart: Give me a memo to show me I can really do that which, of course, is what Wal-Mart wanted.

In Gilmore v. Ford Motor Company, a product liability case, Judge Shedd outlined four factors he must consider before dismissing an action for failure to prosecute. He found that the defendants had not set forth evidence addressing these four factors, but nevertheless went on to "glean certain pertinent information from the record."

In other words, he said: Here is what you need to win this case. You have not raised these issues yourself. I have gleaned them from somewhere in the record. So do not worry, buddies, I have taken care of you; I am on your side. I will argue your case for you and, in doing this, I can dismiss the case against you.

You almost wonder if the winning side feels they should pay their attorneys when the judge has stepped in to help them win the case.

In Simmons v. Coastal Contractors, both parties were appearing without a lawyer, or pro se. Judge Shedd noted that "this civil action . . . is before the court sua sponte." While he must have meant the motion itself was before him sua sponte, or on his own motion, he brought up deficiencies in the plaintiff's complaint and ordered that an amended complaint be filed or the action would be dismissed on the judge's own motion. In other words, he essentially indicated I am going to decide the case. You litigants go have coffee if you want, but I am going to make up my mind, make your arguments for you, and settle the case for you.

In another substitution for his strategic litigation judgment for that of the defendants, Tessman v. Island Ford-Lincoln-Mercury, Judge Shedd threatened to dismiss the plaintiff's Title VII action on his own unless the plaintiff could show cause why he should not. He said the plaintiff had not alleged that she had presented her claim to, or received a right-to-sue letter from the EEOC and decided that rather than letting the defense move for dismissal, he would do so on his own. In other words: I am going to make the arguments on the other side and get rid of the case.

Additionally, of the 11 cases relating to employment discrimination available in the public record, Judge Shedd held for the employer in every single one, including one case where he sat by designation on the Fourth Circuit. Judge Shedd granted summary judgment after summary judgment and found for the employer and against the employee in a wide range of employment discrimination claims.

Of the 54 fair employment cases included in the unpublished opinions he provided to the Committee, more than 80 percent of them grant summary judgment to the defendants. That does not appear to be a fair record. It strongly indicates plaintiffs are not receiving fair hearings. Employment cases are often fact-specific disputes that would not seem likely to result in an overwhelming majority of summary judgment decisions for defendants because under the summary judgment standard, the evidence must be viewed in the light most favorable to the nonmovant—the plaintiff under these circumstances—and the judge must find that there are no disputes about material facts and that judgment as a matter of law is warranted for the moving party the defendants.

Certainly when I look at the mail I get from South Carolina and from litigants and others there, there is a pervasive feeling that unless you fit the right category when you come before that court, you are not going to get a hearing favorable to you—actually, an overwhelming feeling that the hearings will not be fair. They will be slanted to one side. That is not how we maintain the integrity and independence of the Federal bench. For example, the National Employment Lawyers Association reviewed Judge Shedd's public record. They sent a letter opposing his confirmation. I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL EMPLOYMENT
LAWYERS ASSOCIATION,
September 17, 2002.

Re Dennis Shedd—Appointee for United States Court of Appeals.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the National Employment Lawyers Association (NELA), I am writing you to express our organization's strong opposition to the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. We urge the members of the Senate Judiciary Committee to vote against his nomination. We further urge the Administration to nominate a person for that seat who will apply federal employment and labor laws in a fair and even-handed manner, and who will interpret those laws in keeping with the intent of Congress.

DURING HIS HEARING, JUDGE SHEDD OFFERED MISLEADING INFORMATION

Judge Shedd's employment law decisions have been, almost without exception, in favor of employers. At his Committee hearing earlier this year, Judge Shedd claimed that he was unable to recall any employment case in his courtroom that had gone to trial that resulted in a verdict or judgment in favor of the plaintiff. By way of explanation, Judge Shedd told the Committee that no judge in his district had an employment case where the employee had won at trial. This statement was untrue, and several other judges in the district presided over trials which were won by the plaintiffs. Shedd's statement is not only indicative of his anti-employee bias, but also demonstrates a cavalier attitude toward the truth and a willingness to offer erroneous information to the Committee.

In addition, NELA is concerned that Judge Shedd may not have opened his entire judicial record for scrutiny by the Senate Judiciary Committee and the public. Shedd turned over unpublished opinions only after his hearing, and never provided the Committee with a full docket of his cases. Without a full docket, it is impossible to determine whether all of Judge Shedd's unpublished opinions have been released. Your Committee is considering Judge Shedd's lifetime appointment to a court where his rulings would carry enormous precedential force. In light of the importance of this appointment, the Committee and the full Senate should not be forced to make a decision based on a record that may be incomplete.

JUDGE SHEDD'S EMPLOYMENT DECISIONS REVEAL A STRONG ANTI-EMPLOYEE BIAS

NELA has analyzed dozens of Judge Shedd's unpublished and published decisions in employment cases. These decisions reveal a willingness to bend the law and ignore precedent in order to reach results-oriented rulings.

JUDGE SHEDD FREQUENTLY IGNORED THE FINDINGS OF HIS OWN MAGISTRATE JUDGE IN ORDER TO RULE AGAINST EMPLOYEES

In the federal district courts, Magistrate Judges often evaluate a case and recommend to the judge whether the plaintiff has presented sufficient evidence for the case to go to trial. The decisions of Magistrate Judges are typically affirmed, as the Magistrate Judge usually has had an opportunity to fully review the facts of the case. Judge Shedd has frequently ignored uncontradicted evidence and overruled the recommendations of Magistrate Judges.

In *Cleary* v. *Nationwide Mutual Insurance Co.*, the Magistrate Judge has found that there was sufficient evidence for a trial where a female employee was fired in retaliation for filing a sexual harassment case. The employer forced the female employee to take administrative leave and then fired her after she filed a sexual harassment claim, but the harasser was allowed to keep working. Judge Shedd rejected the Magistrate Judge's recommendation, and refused to let the case go to trial. By viewing each of the seven or eight incidents of harassment as a separate incident rather than as a whole, Judge Shedd concluded that there was no evidence that the female employee was forced to take leave and then terminated for retaliatory reasons (contrary to the Magistrate Judge's findings). Judge Shedd's analysis—viewing each incident in isolation—is contrary to established Supreme Court precedent. Judge Shedd also excused some of the defendant's acts as mere "mistakes."

In *Dinkins* v. *Blackman*, Judge Shedd rejected a Magistrate Judge's recommendation and granted summary judgment on a sexual harassment claim and other claims by the employee, even though Judge Shedd found that the sexual harassment was "gross behavior." Judge Shedd refused to give the employee the opportunity to seek further information for her case in discovery, ignoring a new Supreme Court case which was decided after Dinkins filed her case.

In *Ellis* v. *Speaks Oil Co.*, Judge Shedd granted summary judgment in favor of the employer on an age discrimination claim, contrary to the Magistrate Judge's recommendation, because he concluded that the plaintiff, a truck driver, was not performing his duties up to his employer's expectations of driving two trips per day. He disregarded evidence found by the Magistrate Judge which showed that the plaintiff, who was 62 years old, was driving two trips per day until the company let him go.

In *Roberts* v. *Defender Services*, Judge Shedd ignored the Magistrate Judge's recommendation to deny the employer's motion for summary judgment in a sexual harassment case. Judge Shedd agreed that the harassment in this case was severe, but ruled that the woman did not prove that she was really upset by the harassment, which should have been a question for the jury to decide.

JUDGE SHEDD IGNORED CLEAR AND ESTABLISHED PRECEDENT IN ORDER TO RULE IN FAVOR OF CORPORATE EMPLOYERS AGAINST INDIVIDUAL EMPLOYEES

In *Ephraim* v. *Paul Harris Stores, Inc.*, Judge Shedd held that a claim of invasion of privacy (false light) was not cognizable under South Carolina law, despite two South Caroline Supreme Court decisions that had recognized this as a valid claim under state law.

In *Rector* v. *Rainbow Shops, Inc.*, Judge Shedd disregarded South Carolina state-court decisions that had held that a mere insinuation is actionable in a defamation case if it is false and malicious and the meaning is plain. Instead, he decided that employee's termination while the store was experiencing cash shortages was not reasonably capable of a defamatory meaning. Judge Shedd also allowed the employer to read and sign the form, even though the employer offered no reason for doing this. Judge Shedd did not even require the employer to explain why it was necessary for the termination meeting to occur in public, in the presence of other store employees.

In *Storms* v. *Goodyear Tire & Rubber Co.*, Judge Shedd held that an employee could not bring a claim for breach of contract based on language contained in the company's own personnel documents because there was no evidence of "mutual assent" to those documents. He did not explain why the company had not assented to the promises contained in its own documents. He refused to follow precedent by the South Carolina Supreme Court on this and related issues. Later, in *Truesdale* v. *Dana Corp.*, Judge Shedd cited his own opinion in *Storms* and again failed to follow precedent. In this case, an employee was fired in violation of the company's own disciplinary policies and procedures. By interpreting the employer's personnel documents in a selective, extremely pro-employer manner, Judge Shedd determined that the employer's policies did not protect the employee.

JUDGE SHEDD DISREGARDED OR MISCONSTRUED EVIDENCE TO THE BENEFIT OF EMPLOYERS

In *English* v. *Kennecott Ridgeway Mining Co.*, an injured employee claimed that he was fired in retaliation for filing a workers' compensation claim. Judge Shedd dismissed the retaliatory discharge claim despite uncontradicted evidence (summarized in his own opinion) which demonstrated the employer's hostility toward the injured worker because of his workers' compensation claim. In fact, while the plaintiff "was still under the care of the company's physician, coworkers informed English that his superiors were complaining that English was milking the system, that he was not really hurt, and that he should be returned to full duty."

In *Givens* v. *South Carolina Health Insurance Pool*, Judge Shedd allowed the state insurance pool to exclude AIDS/HIV from health insurance coverage. Judge Shedd held that the §501(c) insurance underwriting exclusion (safe harbor provision) of the Americans with Disabilities Act ("ADA") exempted the Insurance pool from coverage under that statute, even though the State did not do any of its own actuarial studies or underwriting studies to evaluate the expensive and risks of insuring persons with AIDS/HIV. Since the State failed to do any of its own studies, it should have been barred from being able to claim the §501(c) exemption.

In *Gregory* v. *Chester County Sheriff's Dept.*, Judge Shedd accepted a poorly reasoned recommendation from a Magistrate Judge against an employee. The Magistrate Judge had found that the employee could not prove that her demotion was an "adverse action" by the employer. This ruling is contrary to precedent that demotions are adverse job actions. *Gurganus* v. *Beneficial North Carolina, Inc.*, 2001 U.S. App. LEXIS 26943 (4th Cir. 2000). Although Judge Shedd stated that he was supposed to review the Magistrate Judge's recommendation de novo, he issued only a one-page summary order.

In *Richberg* v. *Glaston Copper Recycling*, Judge Shedd refused to consider evidence presented by the plaintiff that showed the existence of genuine issues of material fact when he granted summary judgment for the employer. For example, he claimed that the plaintiff had failed to challenge the employer's affirmative defense that the plaintiff was terminated for failing to meet "established work standards," although the plaintiff had submitted a positive performance evaluation from his personnel file. Judge Shedd also refused to follow a state court decision that had held that a sixteen-day proximity in time between a workers' compensation filing and a drug screen was prima facie retaliation, on the grounds that the drug screen in the *Richberg* case was ordered 50 days after the filing.

JUDGE SHEDD'S APPOINTMENT TO THE FOURTH CIRCUIT WOULD STACK THE COURT WITH PRO-EMPLOYER JUDGES

NELA members who practice in the states within the Fourth Circuit repeatedly have reported that they do everything they can to avoid filing employment cases in federal court and avoid filing federal claims in state court, for fear of removal. As a result, federal statutes prohibiting discrimination in employment—Title VII, the ADA, the Age Discrimination in Employment Act, the Reconstruction-era civil rights acts—are largely not enforced in those states because the Fourth Circuit has created a hostile environment for those claims. As Committee members are aware, the Fourth Circuit has been reversed even by the current Supreme Court on a number of occasions, in cases involving employment and other matters. See, e.g., *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279 (2002) (reversing the Fourth Circuit decision by a 6–3 vote, and holding that the EEOC is not bound by arbitration agreements between an employee and employer); *Ferguson* v. *City of Charleston*, 531 U.S. 67 (2001) (by a 6–3 vote, holding that coerced drug testing of pregnant women is unconstitutional); *Dickerson* v. *United States*, 530 U.S. 428 (2000) (by a 7–2 vote, the Court refused to overrule *Miranda* v. *Arizona*).

NELA STRONGLY OPPOSES THE CONFIRMATION OF JUDGE SHEDD

Judge Shedd's record shows a cavalier attitude toward evidence, legal precedent, and an alarming tendency to deny working men and women who appear before him their day in court. Judge Shedd is dismissive toward the rights of workers who face harassment and mistreatment by their employers. Unlike his colleagues in the District of South Carolina, there has never been a pro-employee verdict in any civil rights trial in Judge Shedd's courtroom. If fairness and a commitment to equal justice are expected of appointees to the United States Court of Appeals, then Judge Shedd has proven that he cannot satisfy these expectations. For these reasons, NELA urges you to oppose the confirmation of Judge Dennis Shedd.

Very truly yours,

FREDERICK M. GITTES,
President, National Employment Lawyers Association.

Mr. LEAHY. Mr. President, I mentioned that Judge Shedd tends to go even beyond where an activist U.S. Supreme Court has gone. In a 1997 case challenging the constitutionality of the Driver's Privacy Protection Act, Judge Shedd made a federalism ruling that went way beyond even the extreme federalism rulings of the U.S. Supreme Court, and it was so bad that the U.S. Supreme Court in a 9-to-0 opinion reversed Judge Shedd's ruling.

In Condon v. Reno, Judge Shedd ruled on the constitutionality of the Driver's Privacy Act, which essentially prohibited States from selling and sharing personal information gleaned as they were picking up driver's license information. He said that the Act violated the 10th Amendment as interpreted by the courts in New York v. United States and Printz v. United States. Three years later, Chief Justice Rehnquist wrote for the Court explaining that, to the contrary, neither of the cases applied. He did not get just one of them wrong, he got them both wrong. The Chief Justice wrote that because the Act did not require the States in their sovereign capacity to regulate their own citizens, but instead regulates the States as the owners of the databases. Therefore, the Act was consistent with the constitutional principles enunciated in New York v. Printz.

In Crosby v. South Carolina, he found the Family and Medical Leave Act unconstitutional on the grounds that it was not properly enacted under Congress's power. I mention this case because it is the second time Judge Shedd ruled in such a way in an important federalism case. He also ruled this way because he just took a magistrate judge's very brief report and did not put in any significant analysis of his own.

In this case, it is almost impossible to figure out his reasoning for why this important law with bipartisan support would be unconstitutional, especially when acts of Congress are entitled to a presumption of constitutionality. One would think if somebody really cared about the courts of appeal and the Supreme Court, they would have at least given us rigorous analysis instead of making what appears to be a somewhat arbitrary ruling.

In addition, he issued several opinions relating to a murder case where a privileged conversation between the defendant and his attorney was monitored and recorded on videotape by the county sheriff's department. Present in the room where the conversation was being monitored were several of the sheriff's deputies and the county prosecutor who subsequently handled the case. The defendant was convicted and sentenced to death but the Supreme Court of South Carolina reversed because of the nature of the videotaping. In its opinion, the Supreme Court of South Carolina—not one considered the most liberal of courts—used very strong language that condemned the failure to disqualify the local prosecutor's office. They cited the prosecutor's special responsibilities to do justice. And the South Carolina Supreme Court said it would not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice. That is about as strong a condemnation by any state Supreme Court of a prosecutor's actions as I have ever heard.

So the federal prosecutions relating to the videotaping were then brought to Judge Shedd's courtroom. Both the prosecutor, Fran Humphries, and the defense attorney, Jack Duncan, were brought before a federal grand jury investigating these constitutional violations.

Mr. DUNCAN testified that he had not given a copy of the tape to a television reporter, while Mr. Humphries testified he had not immediately known the taping was taking place. Now each of them was charged with perjury based on these statements. As I mentioned, the prosecutor and several of the sheriffs, were there watching the taping. So it was obvious he was not telling the truth.

Mr. DUNCAN, the defense attorney, was found guilty and sentenced to 4 months in prison. Even though the information seemed overwhelming against the prosecutor, Judge Shedd dismissed those charges.

This is enlightening because if anybody was hurt by the improper taping, it was the defendant and the defense attorney. If anybody truly committed a wrongdoing, as the South Carolina Supreme Court said in the strongest language against a prosecutor I can remember, it was the prosecutor. But having them both before his court, Judge Shedd in effect exonerated the prosecutor and sentenced the defense attorney to 4 months.

Think of yourself as the litigant before his court. Look at all of these cases I have talked about, and so many others. I do not fall in the category of the sides he tends to rule with. I am on the other side. It would be an awful sinking feeling to go in there knowing how good your case is but you are probably going to lose.

This particular decision shows disregard for the rights of Americans who, no matter what they have been accused of, should be able to expect privacy and not to be videotaped by the government when they are talking to their attorneys. The law is settled in this country that with attorney-client privilege you can sit down and talk with your attorney without the prosecutor videotaping what you are saying, without them listening to or eavesdropping on you.

There are a couple of people you are able to talk to with a reasonable expectation of privacy. You are able to talk to your spouse. You are able to talk to your attorney. You are able to talk to your priest in a penitent relationship. Here, the prosecutor violated that—something that every prosecutor's handbook in America says is wrong, something that hornbook law says is wrong, every ethics course says is wrong, and every bar association says is wrong. The Supreme Court of South Carolina unanimously said it was wrong but Judge Shedd said to the prosecutor: It is okay; we will get the other guy. Well, that calls into question his ability to be fair in criminal cases.

So I am concerned when I see his record as a Federal district judge, and I ask myself: If this is his record as a Federal district judge, how is he going to be as a circuit judge on the court of appeals? So I share some of the same concerns about his fairness that we have heard expressed from South Carolina and from throughout the Fourth Circuit.

I know arguments will be made on the other side, and this will be disposed of however the Senate decides to vote, but for me, I could not in good conscience vote aye on this nomination. I will vote no.

I ask unanimous consent that letters from the Leadership Conference on Civil Rights, Alliance for Justice, and others be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND ALLIANCE FOR JUSTICE,
Washington, DC, August 30, 2002.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: We, the undersigned civil and human rights organizations, write to express our strong opposition to the confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit.

First, we want to comment on the Judiciary Committee's level of review of this particular nomination. On July 11, we sent a letter expressing concern that the Committee had not received all of the information required to make a fully informed decision about whether to elevate Judge Shedd to the Fourth Circuit. We urged the Committee to take steps to complete the record on this nominee, and to hold another hearing to allow the Committee to fully examine the complete record.

It now appears as if the Committee has declined to ensure that it has obtained the complete judicial record and has decided not to hold a second hearing on the nomination. We are deeply troubled that the Committee may vote on the Shedd nomination without first obtaining a complete record and then providing an opportunity to publicly explore that record. The many concerns that we have identified in Judge Shedd's record produced thus far and which give rise to our opposition only strengthen our conviction that a vote on the nomination should occur only after a full record is obtained and examined.

We strongly believe that the composition of the federal judiciary is a civil rights issue of profound importance to all Americans, because the individuals charged with dispensing justice in our society have a direct impact on civil rights protections for us all. As you know, the role of the federal judiciary in protecting the rights of the powerless is particularly acute in the Fourth Circuit, which has the highest percentage of African-Americans of any federal circuit in the nation.

The Fourth Circuit is also arguably the most conservative of the federal circuits. Several of its most conservative decisions have been subsequently reversed by the Supreme Court as too extreme, including Condon v. Reno, a challenge to Congress's power to protect the privacy of drivers' license information; an attempt to overrule the Miranda rule; and Virginia's attempt to limit the right of reproductive choice. Because of the high percentage of minority citizens in the circuit and the very conservative nature of the court, it is imperative that any new appointment to this court be a person of moderate views who is wholly committed to the goals of equality and equal opportunity for all Americans. After an extensive review of Judge Shedd's record, it has become clear that he is not that nominee.

We are deeply concerned about Judge Shedd's reluctance to follow the law in support of vigorous enforcement of legal protections against discrimination for women and minorities. During Judge Shedd's time on the bench, at least forty African-Americans have filed employment discrimination cases that were assigned to Judge Shedd's court. Of those, Judge Shedd granted summary judgment for the employer in whole or in part in almost every case. In one case, Bailey v. South Carolina Dep't of Social Services, Judge Shedd granted summary judgment to the employer, even though the EEOC had determine there was reasonable cause to believe that the plaintiff was not promoted due to his race. In another case, McMillan v. Department of Corrections, the plaintiff alleged discrimination in the denial of a pay increase by the Department of Corrections. The plaintiff's supervisor had requested a pay increase for the plaintiff. At the same time, another State agency conducted an investigation into racially discriminatory employment practices within the Department of Corrections and concluded that White employees tended to do significantly better than Black employees in performance pay increases. Nevertheless, Judge Shedd refused to let this case go to trial. In contrast to cases involving African-American plaintiffs, in four out of five discrimination cases filed by White male plaintiffs, Judge Shedd has denied summary judgment and paved the way for trial.

Judge Shedd has an equally poor record in cases involving gender discrimination. In one case, Roberts v. Defender Services, Inc., he granted summary judgment to an employer in a sexual harassment case, even after concluding that the supervisor's conduct "clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment." Despite that finding, Judge Shedd concluded that the plaintiff had not provided any evidence that she "subjectively perceived the environment to be abusive," reaching this conclusion despite the fact that the record contained evidence that the plaintiff's supervisor made sexual comments to her on a daily basis, that she told him these comments were offensive, that she and a female manager took steps to report the conduct to corporate headquarters, and that she resigned from her job.

Judge Shedd has also exhibited a disturbing tendency to resolve cases on summary judgment in favor of defendants, even where genuine issues of material fact were clearly presented. For example, in Alston v. Ruston, Judge Shedd granted summary judgment on a Section 1983 complaint after concluding, as a matter of law, that a prison guard had not used excessive force—despite an affidavit and a well-pleaded complaint from the plaintiff alleging that the officer had sprayed him in the face with tear gas without justification, advanced toward him "swinging his fists and punching [plaintiff] in the mouth," and wielded a broomstick until another officer intervened. Given the evidence presented, there was no room for Judge Shedd to conclude that excessive force had not taken place as a matter of law. Nevertheless, Judge Shedd made such a ruling and dismissed the plaintiff's case.

In other cases, Judge Shedd has exhibited hostility toward plaintiffs in civil rights claims involving allegations of misconduct by law enforcement officers. For example, in Joye v. Richland Co. Sheriff's Dep't., Judge Shedd dismissed a Section 1983 claim brought by a person wrongfully arrested by sheriff's deputies under a bench warrant issued for his son. Despite the fact that the arrest warrant described a 31 year old man, standing 5′ 11″, the officers arrested the plaintiff who was 61 years old and stood 5′ 7″ tall. The plaintiff argued that the officers had acted unreasonably in arresting him, in violation of his 4th Amendment rights. Judge Shedd, however, concluded that the plaintiff had not stated a valid 1983 claim because the officers had a "reasonable, good faith, belief, that they were arresting the correct person." He therefore rejected, as a matter of law, the contrary conclusion of the magistrate that the officers were not entitled to a "good faith" defense on these facts.

Judge Shedd's record also displays a consistent disregard for the rights of people with disabilities. He has ruled against disability rights plaintiffs in almost every instance, departing from settled law and adopting tortured interpretations of disability rights laws. In one case, Judge Shedd approved a state health insurance pool's complete exclusion from coverage of a man who was HIV positive. The plaintiff who filed the case sought to have it decided on an expedited basis, but died eight months later before any decision was rendered. In another case, a magistrate had found no evidence that the plaintiff's disability interfered with his ability to do his job and recommended that the plaintiff be permitted to proceed with the claim. Nevertheless, Judge Shedd dismissed the plaintiff's claim, concluding, without citing any evidence, that the disability rendered the plaintiff unable to do his job.

We are also very concerned about Judge Shedd's views on "state's rights" which would limit Congress's power to pass laws that are applicable to the States. Shedd authored the original district court opinion in Condon v. Reno, striking down the Driver's Privacy Protection Act based on his belief that the federal government did not have the power to require States to ensure that State driver's license records would remain private. Although the Fourth Circuit affirmed Judge Shedd's decision, the Supreme Court unanimously reversed the holding in a decision by Chief Justice Rehnquist. We are unaware of any other instance in the last 50 years where a district court judge has struck down an act of Congress on federalism grounds only to be unanimously reversed by the Supreme Court. Judge Shedd also struck down part of the Family and Medical Leave Act (FMLA), in Crosby v. South Carolina Dep't of Health and Envtl. Control, holding that the 11th Amendment doctrine of state sovereign immunity prevents an employee from suing a State agency for violation of the FMLA. This issue—because it calls into question Congress's power to remedy sex discrimination in the workplace—has profound implications for Congress's authority under Section 5 of the 14th Amendment.

Judge Shedd has also exhibited a high level of insensitivity on issues of race. In a recent case, Judge Shedd made several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome. According to press accounts, Judge Shedd suggested that South Carolina, 30% of whom are African-American, "don't care if that flag flies or not." He also analogized the Confederate battle flag, to many a symbol of support for slavery and racist acts of terror directed at African-Americans, to the Palmetto tree, which is on the State flag, stating: "What about the Palmetto tree? What if that reminds me that Palmetto trees were cut down to make Fort Moultrie and that offends me?" Judge Shedd's hostility to the lawsuit in open court provides strong evidence of a poor judicial temperament. His attempt to minimize the symbolism of the Confederate flag to the African American community and suggest it is comparable to an image of the Palmetto tree reflects a stunning insensitivity to the injurious impact this particular symbol still has on many of our citizens.

In sum, Dennis Shedd's eleven-year record on the federal district bench reflects hostility towards plaintiffs in civil rights cases, including minorities, women and persons with disabilities, a desire to limit Congress's authority to enact protective legislation that is applicable to the states, and insensitive to issues of race. Judge Shedd's view on these issues render him a poor choice for the Fourth Circuit and we therefore urge you to oppose his confirmation.

Sincerely,

Wade Henderson, Executive Director, Leadership Conference on Civil Rights; Nan Aron, President, Alliance for Justice; Kate Michelman, President, NARAL; Elaine R. Jones, President and Director-Counsel, NAACP Legal Defense and Educational Fund; Hilary Shelton, Director—Washington Bureau, NAACP; Ralph Neas, President, People for the American Way; Nancy Zirkin, Director of Public Policy, American Association of University Women; Eleanor Smeal, President, Feminist Majority; Jim Ward, Executive Director, ADA Watch; Judith L. Lichtman, President, National Partnership for Women and Families; Marsha Atkind, National President, National Council of Jewish Women; Kim Gandy, President, National Organization for Women (NOW); William Samuel, Director—Department of Legislation, AFL-CIO; Patrishia Wright, Director of Government Affairs, Disability Rights Education and Defense Fund; Liza M. Maatz, Vice President of Government Relations, NOW Legal Defense and Education Fund.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, September 4, 2002.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the more than 500,000 members and supporters of People For the American Way (PFAW), we write to express our strong opposition to the elevation of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit.

Judge Shedd's views on federalism are of grave concern. Judge Shedd authored the original district court opinion in Condon v. Reno, which struck down the Driver's Privacy Protection Act based on his analysis that the federal government did not have the power to require states to ensure that driver's license records remain private. Although the Fourth Circuit Court of Appeals agreed, an a unanimous decision authored by Justice Rehnquist, the Supreme Court unanimously reversed. PFAW is unaware of any other instance in the last 50 years where a district court judge has struck down an act of Congress on federalism grounds only to be unanimously reversed by the Supreme Court.

In Crosby v. South Carolina Dept. of Health and Envtl. Control, Judge Shedd also struck down part of the Family and Medical Leave Act (FMLA), holding that the 11th

Amendment doctrine of state sovereign immunity prevents an employee from suing a State agency for violation of the FMLA. This issue—because it calls into question Congress's power to remedy sex discrimination in the workplace—has profound implications for Congress's authority under Section 5 of the 14th Amendment.

Judge Shedd has a troubling record on civil rights enforcement. Throughout his eleven years as a federal district court judge, Judge Shedd has dismissed almost every civil rights case on behalf of minority claimants that has come before him, thereby preventing the merits of these cases from being heard by a jury.

For example, in Bailey v. South Carolina Dept. of Social Services, Judge Shedd granted summary judgment to the employer, even though the Equal Employment Opportunity Commission (EEOC) had determined there was reasonable cause to believe that the African American plaintiff was not promoted because of his race. In McMillan v. South Carolina Dept. of Corrections, a case involving allegations of race discrimination, Judge Shedd refused to allow the plaintiff's claim to go to trial, despite a finding by another state agency that Caucasian employees tended to receive higher performance pay increases than African-American employees.

In contrast, in four of the five cases filed in his court by Caucasian plaintiffs alleging "reverse discrimination" in employment, Judge Shedd denied summary judgment and allowed the case to proceed to a jury trial.

Judge Shedd's record also reflects insensitivity in civil rights cases alleging discrimination based on gender. For example, in Roberts v. Defender Services, Inc., a recommendation of the federal magistrate and granted summary judgment to the defendant. In Roberts, the record contained evidence that the plaintiff's supervisor made sexual comments to her on a daily basis, that she told him these comments were offensive, that she and a female manager took steps to report the conduct to corporate headquarters, and that she resigned from her job. Despite this evidence, Judge Shedd stated that while the supervisor's conduct "clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment," the plaintiff had not provided any evidence that she "subjectively perceived the environment to be abusive."

A number of Judge Shedd's opinions reflect a disregard for laws protecting the disabled. For example, in Payette v. Westinghouse Electric Corp., Judge Shedd effectively read the right of employees to "reassignment," a crucial protection for those with disabilities, out of the Americans with Disabilities Act (ADA). Congress explicitly included reassignment to a vacant position, when the person is no longer able to do his or her job, as one type of accommodation required by the ADA. In Givens v. South Carolina Health Insurance Pool, Judge Shedd ignored the plain meaning of the ADA when he approved a state health insurance pool's refusal of coverage for a man who was HIV positive. No other medical condition was excluded, and the state had done no actuarial analysis to justify the exclusion of individuals with HIV/AIDS. While many courts have held that the ADA does not prevent insurance plans from providing lesser benefits for treatment of particular types of disabilities, this ruling goes beyond those decisions.

Judge Shedd has exhibited a high level of insensitivity on issues of race. In a recent case, Judge Shedd made several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome. According to press accounts, Judge Shedd suggested that South Carolinians, 30% of whom are African-American, "don't care if that flag flies or not." He also analogized the Confederate battle flag, to many a symbol of support for slavery and racist acts of terror directed at African-Americans, to the Palmetto tree, which is on the South Carolina State flag, stating: "What about the Palmetto tree? What if that reminds me that Palmetto trees were cut down to make Fort Moultrie and that offends me?"

Given the importance of the Fourth Circuit and the current ideological imbalance on the court, it is imperative that any nominee to this court be a jurist of more moderate views who will protect the civil and constitutional rights of all Americans. Judge Shedd's record demonstrates that he is not the nominee. PFAW urges the Judiciary committee to reject his nomination.

Sincerely,

RALPH G. NEAS,
President.

NATIONAL HEADQUARTERS,
Chicago, IL, August 24, 2002.

Senator PATRICK LEAHY,
Member, U.S. Senate,
Washington, DC

DEAR SENATOR LEAHY: Let me lend my voice of opposition to the chorus of discontent surrounding the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I urge you to oppose the Shedd nomination, based on the merits, and the merits alone. A seat on the Fourth Circuit is too important to the nation's judiciary not to be heavily scrutinized.

As a native of South Carolina, I am deeply disturbed by the direction taken by the Fourth Circuit in recent years. As a Judicial Circuit with considerable influence on the Supreme Court, those elevated to the Court should reflect the highest American ideals of inclusion and equal protection under the law. Moreover, the states included in the Fourth Circuit are comprised of the highest percentage of African Americans, than any other Circuit, thus judges on the Court must be sensitive and respectful for the civil rights laws for which we fought so hard.

Currently, the Fourth Circuit is the most extremist court in the nation on civil rights issues, criminal justice issues, and those involving the power of the federal government, to enact legislation, which holds States accountable for civil rights violations. The nomination of Dennis Shedd threatens to take the Court in a further extremist direction. For example, Judge Shedd's opinion in the *Condon v. Reno* case suggests that he favors disempowering Congress. American judges, and their rulings should protect rights, rather than restrict the balance of power.

To preserve this nation's ideals of inclusion, and to ensure equal protection under the law for all Americans, I urge you, and other members of the members of the Senate Judiciary Committee to vote "No" on the nomination of Dennis Shedd.

Sincerely,

REVEREND JESSE L. JACKSON, SR.

SOUTH CAROLINA LEGISLATIVE
BLACK CAUCUS,
Columbia, SC, September 4, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: The South Carolina Legislative Black Caucus (SCLBC) was formed in 1975 soon after the Civil Rights Movement in the 1960's. Presently, the SCLBC has 31 members; seven senators and 24 representatives, including four women. The SCLBC is dedicated to the struggle for fairness, equality and justice for all South Carolinians, and to the civic and political involvement of African-Americans, women and other racial and ethnic minorities.

We seek to preserve the civil rights strides that occurred in South Carolina over the decades, and we fight to prevent any regressive step that threatens to rollback civil rights and constitutional rights of African-Americans, women and other racial and ethnic minorities. The nomination of U.S. District Judge Dennis W. Shedd to the U.S. Court of Appeals for the Fourth Circuit represents such a regressive step, and accordingly, we strongly oppose the nomination.

African-Americans constitute a full one-third of South Carolina's population, yet there is only one active African-American federal judge in the state. And, there are only two South Carolinian female federal judges, one on the federal District Court and the other on the Fourth Circuit. This is unfair and unjustified because there are many well-qualified African-American and woman jurists and lawyers who deserve an opportunity to serve this nation on the federal judiciary.

Because African-Americans are one-third of South Carolina's population and the Fourth Circuit has a greater number of African-Americans than any circuit, it is critical that any nominee, especially one from South Carolina, be an unabashed champion of civil rights. The appointee should have a record that demonstrates fairness and justice to all people. Based on our careful review of Judge Dennis Shedd's performance on the U.S. District Court for the District of South Carolina, we have concluded that his record shows a serious hostility to civil rights and constitutional protections.

Since his appointment to the federal bench in South Carolina, Judge Shedd has engaged in right-wing judicial activism by imposing strict and exacting standards when reviewing employment discrimination cases brought by African Americans and women. He has dismissed almost every employment discrimination, sexual harassment, civil rights and disability case that has come before him. Judge Shedd seems to believe that discrimination is not an actionable offense even when the Equal Employment Opportunity Commission has found "reasonable cause" that discrimination has occurred. Judge Shedd, however seems to apply a more lenient standard in reviewing discrimination cases brought by white men. Judge Shedd has allowed four out of five "reverse" discrimination cases to proceed beyond the summary judgment phase of litigation.

This record shows that Judge Shedd does not have an abiding concern for civil rights and fairness. It further shows that Shedd lacks the requisite moderate reasoning to bring balance to the Fourth Circuit. In fact, his membership to the Fourth Circuit would push it further beyond the mainstream of American values and would subject South

Carolinians and residents of other states within the Fourth Circuit to an extreme right-wing interpretation of the nation's civil rights laws and constitutional protections.

Accordingly we oppose Judge Shedd's nomination without reservations. Hi values represents the Old South, where African Americans and women were judged by different and unequal standards.

We appreciate your attention. If you have any questions, please contact me at the address and telephone number above.

Sincerely

JOSEPH H. NEAL,
Chairman.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
Baltimore, MD, September 17, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the NAACP, the nation's oldest, largest and most widely-recognized grass roots civil rights organization, I am writing to let you know of the Association's strong opposition to the nomination of District Court Judge Dennis W. Shedd to the Fourth Circuit Court of Appeals. Delegates from every state in the nation, including the five states comprising the Fourth Circuit, unanimously passed a resolution from the South Carolina State Conference in opposition to the nomination at the NAACP's annual convention in Houston in early July.

Members of the NAACP believe that the Federal judiciary, as the final arbiter of the U.S. Constitution, is the branch of government primarily charged with protecting the rights and liberties of all Americans. In many instances in our nation's history, the courts have been the only institution willing to enforce the rights of minority Americans. We cannot afford to permit the Federal judiciary to retreat from its constitutional obligation and resort to the type of judicial activism that threatens civil rights and civil liberties.

No other federal circuit reflects this extreme right-wing activism more than the Fourth Circuit Court of Appeal, which is home to more African Americans than any other circuit. The Fourth Circuit Court of Appeals' hostility to civil rights, affirmative action, women's rights, voting rights and fair employment is unrivalled. Its decisions are so far out the mainstream that the Supreme Court has reversed the Fourth Circuit on basic constitutional protections such as Miranda warnings.

Judge Shedd's addition to the Fourth Circuit would further relegate that court to the periphery of judicial mainstream. His judicial record and testimony before the Judiciary Committee reflect a disposition to rule against the plaintiff in employment and discrimination cases. Moreover, his restrictive view of federal legislative authority, as indicated in Condon v. Reno, 972 F. Supp. 977 (D.S.C. 1997), which struck down the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721–25 and was later overturned in a 9-to-0 decision by the Supreme Court, confirms our perspective that Judge Shedd's judicial philosophy and temperament would further push the Fourth Circuit to the right-wing.

Accordingly, as unanimously passed by the over 1,200 delegates to the 2002 NAACP National Convention, I ask that you oppose the nomination and that you use your influence to encourage the Senate Judiciary Committee to not vote him out of Committee. However, if the nomination makes it to the Senate floor, we ask you to vote against it.

I appreciate your attention and interest in this important matter. Please do not hesitate to contact me or Hilary Shelton, Director of the NAACP Washington Bureau at (202) 638–2269, if we can be of assistance.

Sincerely,

KWESI MFUME,
President & CEO.

SOUTH CAROLINA STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Columbia, SC, June 24, 2002.

Senator PATRICK LEAHY,
Chairman, Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to oppose the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals.

By now, you must be familiar with the importance of the Fourth Circuit to the African American Community. Almost a quarter of the Fourth Circuit's residents are African American. The Fourth Circuit, with over 6 million African Americans in the five states, has the greatest number of African Americans of any Circuit Court in the country. The Latino population within the Fourth circuit now at more than one million persons, has nearly tripled in the last decade. Based on these demographics, more may be at stake here for the future of civil rights than in any other Circuit Court in the country.

The Fourth Circuit is already an extremely conservative Court on civil rights and Constitutional issues. This Circuit ruled that federal law-enforcement officials need not follow the Miranda decision, only to be reversed by the Supreme Court. This Circuit authorized drug testing for pregnant women without their consent which was reversed by the Supreme Court. This Circuit ruled that the Equal Employment Opportunity Commission was limited to remedies contained in employee arbitration agreements, and again, was reversed by the Supreme Court. The Circuit also has been reversed recently in capital habeas corpus cases and citizen suits under environmental. laws. The Fourth Circuit has issued numerous other opinions that are hostile to affirmative action, women's rights, fair employment, and voting rights.

This is also the Court to which moderate African American nominees were repeatedly denied membership. No fewer than four African Americans were nominated to this Court by President Clinton, only to have their nominations languish for years due to Senatorial obstruction. Thus, if a nominee *is* to be confirmed to this Court, the nominee must be a jurist who will bring moderation and ideological balance to this Court. It is our strongly held view that this nominee is not Dennis Shedd.

Judge Shedd's judicial record reveals a deep and abiding hostility to civil rights cases. A review of Shedd's unpublished opinions reveals that Judge Shedd has dismissed all but very few of the civil rights cases coming before him. In nearly thirty case involving racial discrimination in employment, he granted summary judgment for the employer in whole or in part in all but one case; most of the cases were dismissed altogether. Many of these cases were strong cases with compelling evidence and litigated by experienced civil right lawyers.

Gender and disability discrimination cases before Judge Shedd fare no better. He has granted summary judgment on every sexual harassment claim on which summary judgment was requested. Collectively, these ruling leave us with the distinct impression that, in Dennis Shedd's view of the world, discrimination does not exist, and just as importantly, a jury should never be asked even to decide that question.

We are profoundly disturbed by the mounting evidence of Judge Shedd's zealous efforts to assist the defense in civil rights cases. There are repeated instances of Judge Shedd's intervention in civil rights cases—without prompting by the defendant—in ways that are detrimental to the plaintiff's case. In a number of cases, Judge Shedd, on his own motion, has questioned whether he should dismiss civil rights claims outright or grant summary judgment. He has invited defendants to file for attorney's fees and costs against civil rights plaintiffs. These are not the actions of an impartial decision-maker.

We are extremely concerned about Judge Shedd's rulings promoting "States' rights," and view these as a fundamental encroachment on Congress's ability to enact civil rights and other legislation. Judge Shedd has a very restrictive view of Congressional power. He struck down the Driver's Privacy Protection Act of 1994 as legislation beyond Congress's power, although this legislation was an "anti-stalking" measures designed to prohibit public disclosure of drivers' license information. In an opinion authored by Chief Justice Rehnquist, the Supreme Court unanimously overturned Judge Shedd's ruling and refuted his reasoning. This stand as one of the few occasions in which the Supreme Court rejected unanimously a holding that Congress exceeded its power in enacting a statute.

The question of judicial temperament is raised by Judge Shedd's offensive remarks during a judicial proceeding about an issue that strikes at the heart of many—the Confederate flag. Judge Shedd presided over a federal lawsuit seeking the removal of the Confederate flag from the dome of the South Carolina Statehouse. According to press accounts of a hearing held in the case. Judge Shedd made several derogatory comments about opposition to the flag. First, he attempted to marginalize opponents to the flag by questioning whether the flag matters to most South Carolinians. (It does, and thirty percent of South Carolina's population is African American.) He also minimized the deep racial symbolism of the flag by comparing it to the Palmetto tree, which appears in South Carolina's State flag.

Our membership in South Carolina, deserves to be represented on the Circuit by a nominee who has a record of judicial impartiality, is committed to the progress made on civil rights and individuals liberties, and has a deep respect for the responsibility of the federal judiciary to uphold that progress. Dennis Shedd is not that nominee. We urge you and the Senate Judiciary Committee to vote against his nomination.

Sincerely,

JAMES GALLMAN,
President.

THE NATIONAL BLACK CAUCUS
OF STATE LEGISLATORS,
Washington, DC, September 19, 2002.

Hon. PATRICK J. LEAHY,
U.S. Senate, Chair, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Re Fourth Circuit Nomination of Judge Shedd.

DEAR SENATOR LEAHY: The National Black Caucus of State Legislators (NBCSL) is the body that represents some 60 African American state legislators in 44 states, the District of Columbia and the U.S. Virgin Islands. Last year, we celebrated our 25th year of involvement and dedication to many of the most pressing social issues and policies that impact our legislators' districts and the nation at large. Our commitment is to our constituents as well as the national agenda. Our dedicated work is to maintain the highest values of civil and human rights insuring that African Americans are a fair and representative part of the political and social equations of this great nation.

In their letter to you, dated September 4, 2002, members of the South Carolina Legislative Black Caucus have spoken clearly and definitively in opposing the nomination of Judge Dennis Shedd to the Fourth Circuit. In reviewing the information presented therein and having also researched the history and record of Judge Shedd, we find it woefully deficient regarding the issues of fairness, equality and justice. Moreover, as has been pointed out by our colleagues in South Carolina "African Americans constitute a full one-third of South Carolina's population yet there is only one active African American federal judge in the state." In that there are unquestionably "many, well-qualified African American . . . jurists" in South Carolina, this is rightly seen as an unfair and unequal treatment in the sight of fair representation. Further, considering the existent disproportionate representation of jurists of Color, certainly an effort must be made to insure that any South Carolina nominee be a strong advocate of civil and human rights. Rather, Judge Shedd's performance on the U.S. District Court for the District of South Carolina demonstrates what could be construed as hostile to civil and constitutional rights.

We have learned that Judge Shedd's insensitivity to fairness has been demonstrated in his review of employment discrimination cases brought by African Americans and in fact, women, even in such cases when the Equal Opportunity Commission has found "reasonable cause." But, we have also found that in furtherance of this questionable action, when white men bring cases of "reverse" discrimination, those cases proceed. We also note that there have been concerns raised about the number of unpublished opinions issued by the Judge and further that such concerns regarding the decisions were reversed or vacated by the Fourth Circuit Court of Appeals.

The Fourth Circuit must have a judge who is mindful of the rightful place that African Americans have in this nation, and be a strong advocate of civil rights, human rights and constitutional rights. Any nominee should have demonstrated his dedication to such virtues and ideals. No other individuals should be considered for this important position.

For these reasons among others raised by our South Carolina Legislative Black Caucus, we cannot support the nomination of Judge Dennis Shedd for the Fourth Circuit and would ask that the opinion of our body be strongly considered in this matter. Should you have any questions, or require additional comment, please contact me.

Very truly yours,

JAMES L. THOMAS,
President.

Mr. LEAHY. Before yielding the remainder of my time, I first say to my friend from Utah, he has been very patient but then he has told us before he is a patient man.

I yield the floor.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to this recitation of various cases involving Judge Shedd, and I have to say I certainly have a different viewpoint. Let me go through those cases in approximately the order that the distinguished Senator from Vermont listed them.

My colleague referred to Shults v. Denny's Restaurant. This was an Americans with Disability Act and slander case where Judge Shedd sua sponte considered summary judgment and ordered the plaintiff to file a memorandum in opposition to the court's sua sponte motion for summary judgment. This action by Judge Shedd was again based on jurisdictional defenses raised in the defendant's answer: Failure to file within the 2-year statute of limitations and failure to exhaust the administrative Equal Employment Opportunity Commission review.

In the order, requesting the plaintiff to file a memorandum, Judge Shedd wrote:

> Although the express language of rule 56 provides only for the parties to move for summary judgment, Federal district judges possess the inherent power to raise, sua sponte, an issue for possible resolution by summary judgment.

Therefore, Judge Shedd had the right to bring this motion under the Rules of Civil Procedure.

My colleague refers to Lowery v. Seamless Sensations. This was a title VII case in which the defendant raised the defense that the plaintiff failed to timely file both a charge of discrimination with the EEOC and the lawsuit. Both are jurisdictional prerequisites to any Federal court action.

Since that defense called into question the court's subject matter jurisdiction, Judge Shedd expedited consideration of those defenses. Remember, it would serve no purpose for the court to proceed on the merits where the court had no jurisdiction. In order to expedite consideration of the issues, Judge Shedd ordered the defendant to file a motion to dismiss based on those defenses. Judge Shedd further ordered that motion should be filed in his court instead of the magistrate court assigned to the case. Ultimately, the defendant was granted summary judgment on the grounds that the plaintiff could not establish a prima facie case. Therefore, the case survived the above-discussed motion to dismiss, evidencing that although he raised the issue, Judge Shedd fairly evaluated the merits of the case.

In another matter, my colleague makes a special mention of Coker v. Wal-Mart. Let's look at this case to see where again my colleague gets it wrong. In this case, the defendant removed the case from State to Federal court. Judge Shedd sua sponte questioned whether removal was appropriate, as it appears the motion for removal had been filed outside the 30-day time limitation established in 28 U.S.C. section 1446(b). Doubting whether he had the authority to remand the case sua sponte, Judge Shedd stated he would permit the defendant to file a brief addressing whether removal was timely and whether the court had authority to remand.

Rather than assisting the defense, Judge Shedd raised the issue of remand, and held the defendant to the proper burden of showing that removal was proper. He aided the plaintiff, who had apparently failed to raise the issue, this is exactly the opposite of what the distinguished Senator from Vermont has said. Judge Shedd had a duty to raise the removal issue, a purely jurisdictional matter, and he gave the defendant the opportunity to challenge his sua sponte action, which is what a good judge would do.

My colleague also refers to Gilmore v. Ford Motor Company, a product liability case. In that case, Judge Shedd sanctioned the plaintiff for failure to prosecute the action by dismissing the case. He made that determination after he properly evaluated each of the factors established by the Fourth Circuit in Ballard v. Carson. Indeed, my colleague in the Senate worries more about this case than did the plaintiff. The plaintiff failed to respond to this motion to dismiss for failure to prosecute after earlier failing to respond to the defendant's motion to compel discovery.

Notably, my colleague did refer to Simmons v. Coastal Contractors, Inc., a discrimination and retaliation employment case in which both parties represented themselves pro se. Judge Shedd sua sponte brought the petitioners before the court and ordered the plaintiff to cure specific deficiencies in his complaint or face dismissal. This decision was an attempt to aid the plaintiff in properly drafting his complaint.

My colleague refers to Tessman v. Island Ford-Lincoln-Mercury, a title VII case, where Judge Shedd sua sponte challenged the court's subject matter jurisdiction, given the plaintiff's apparent failure to allege that she had first presented her claim to the EEOC and received a right-to-sue letter. He ordered the action dismissed unless the plaintiff could show cause why that action should not be taken by the court. This is a wholly appropriate approach and probably the only approach that could have been taken by any good judge.

My colleague refers to Smith v. Beck, a 1983 gender discrimination case in which several women alleged discrimination when they were not admitted, without male escorts to a nightclub featuring nude female dancers. Judge Shedd sua sponte questioned whether the plaintiffs' allegation sufficed to establish the defendant private club's actions were under color of State law. Based on his conclusion that merely operating an establishment that has a State liquor license does not transform a club into a State actor, Judge Shedd dismissed the case. In other words, he analyzed the law, as he should.

In short, my colleague has suggested that Judge Shedd "assists the defense." That is so highly misleading a charge it is hard to take it seriously. But I suppose I must since it has been raised. The truth is that a judge's discretion in assisting either side to get their case right is fairly wide, but within bounds that Judge Shedd has not crossed. The Supreme Court of the United States has written:

> [D]istrict courts are widely acknowledged to possess the power to enter summary judgments sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence.

The Fourth Circuit Court of Appeals held that:

> It is a fundamental precept that Federal courts are courts of limited jurisdiction, constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by Federal statute. A primary incident of that precept is our duty to inquire, sua sponte, whether a valid basis for jurisdiction exists, and to dismiss the action if no such ground appears.

The truth is that in each of the cases in which Judge Shedd acted sua sponte, he provided the proper notice and opportunity to respond to the plaintiff.

Perhaps my colleague will be less troubled than he appears to be when he learns that none of the cases he refers to where Judge Shedd supposedly assisted the defense were reversed on appeal. Not one. It seems it would be best to leave the litigation of cases to the parties, lawyers, and judge involved rather than second-guess them on the floor of the Senate.

I, for one, am getting a little tired of some of our colleagues on the other side acting as if every plaintiff's case has to be won no matter what the facts and the law support. Actually, some of those cases have to be lost because they are not good cases.

Now let's just be honest about it. Cases are decided by judges and jurors—judges in nonjury cases and juries in jury cases. I have seen a lot of cases where plaintiffs have not won because they should not have won. To criticize judicial nominees for ruling against plaintiffs is nonsensical because every judge should decide against plaintiffs when they are wrong. It does not take brains to figure that out. But I guess for some on the other side, unless the plaintiff wins there is an injustice.

My colleague criticizes Judge Shedd's ruling in Condon v. Reno with the aim of characterizing his judicial ideology in the process.

I was shocked to learn by one of Judge Shedd's detractors that he is a "sympathetic participant in [a] judicial campaign to disempower Congress," and that he is a judge who "resort[s] to outdated and reactionary views of federal power."

I am sure this came as a surprise to Judge Shedd as well.

Condon v. Reno concerned the Driver's Privacy Protection Act. Judge Shedd held in Condon that the Act violated the Tenth Amendment in that it improperly commanded states to implement federal policy.

The 4th Circuit affirmed Judge Shedd's ruling, while the Supreme Court ultimately reversed it. But this was clearly a difficult call to make; in fact, the lower federal courts that addressed the issue split evenly before the Supreme Court ruling, eight finding the Act constitutional and eight finding it unconstitutional.

Those finding the Act unconstitutional together with Judge Shedd included Judge Barbara Crabb, Chief Judge of the Western District of Wisconsin, a Carter appointee, and Judge John Gobold of the 11th Circuit, a Johnson appointee. Several Democrat Governors across the nation, including Democrats Jim Hunt of North Carolina, Jeanne Shaheen of New Hampshire and Don Siegelman of Alabama permitted their respective State Attorneys General to sign onto an amicus brief urging the Supreme Court to find the Act unconstitutional.

In addition, the Democrat Attorney General of Wisconsin also signed the amicus brief. So, reasonable minds can differ on these matters.

It seems to me that either the vast right wing campaign to "disempower" Congress is either much larger than previously supposed, or that this was a case in which thoughtful, and respected judges could, and indeed did, disagree.

Of course, my colleagues ignore another federalism case of Judge Shedd's United States v. Brown. That case involved the Gun Free School Zones Act.

The defendant challenged the constitutionality of the Act on federalism grounds. Judge Shedd allowed the prosecutor to prove facts at trial that the Act was a valid exercise of Congressional power.

The Supreme Court later invalidated the Gun Free Zones Act in United States v. Lopez. Unlike the Condon v. Reno, Judge Shedd upheld the exercise of federal power, yet not surprisingly, his critics point us to the Condon case but not to the Brown case.

That is amazing to me.

My colleague again comments on Judge Shedd's ruling in Crosby v. South Carolina Department of Health.

Interestingly he did not raise the same objections to Judge Roger Gregory who ruled to uphold Judge Shedd's ruling when he was before us last year. One wonders why?

Judge Shedd is criticized for adopting a magistrate report striking down as unconstitutional part of the Family Medical Leave Act after a state agency cited 11th amendment sovereign immunity against an employee lawsuit.

Of course, the fact that eight of nine Circuit Courts have agreed with his ruling seems not to concern my colleagues, including the First, Second, Third, Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits.

In fact, numerous Democrat-appointed judges agreed with Judge Shedd, including Carter appointees Amalya Kearse of the First Circuit, Richard Arnold of the Eighth, and Robert Anderson of the Eleventh; and Clinton nominees Sandra Lynch and Kermit Lipez of The First Circuit, Theodore McKee of the Fourth, Kermit Bye of the Eighth, Jose Cabranes of the Second Circuit, and Roger Gregory of the Fourth Circuit. Those are able, distinguished judges.

It should not come as any surprise that the Ninth Circuit is the only Circuit Court which has ruled the other way.

One would think from this near universal agreement that Judge Shedd's ruling in Crosby would seem reasonable one, one well within the judicial mainstream, no matter how we look at it. And yet he is criticized for it here on the floor.

In the area of Criminal Justice, my colleague makes special mention of the Quattlebaum murder case. Let's look at that case to see where my colleague gets it all wrong.

In that case, officers took into custody a murder suspect, Mr. Quattlebaum. During police questioning of Quattlebaum, which Quattlebaum was informed was being videotaped, the deputy sheriff left the room. Soon after the deputy sheriff left the room, he went to the room where the videotaping was being done and noticed that an attorney was now in the room with Quattlebaum, despite the fact that no one was to have access to that room other than law enforcement. The deputy sheriff immediately consulted with superiors and legal advisors as to what to do about the running videotape, but the damage—i.e., recording an attorney-client conversation—had already been done.

In response to the videotaping, prosecutors indicted the deputy sheriff for a civil rights violation. Mr. Quattlebaum's attorney, on the other hand, about whom my colleague appears concerned, ended up being indicted for perjury based on his grand jury testimony that he had not released the protected videotape to the media, and spent 4 months in prison.

The deputy sheriff pled guilty to charges based on the videotaping of the attorney-client conversations.

My colleague has expressed concern that the deputy sheriff who conducted the improper videotaping was not more heavily penalized by comparison to the defendant's attorney who perjured himself after releasing the protected tape to the media.

That concern is easily assuaged. The sentencing range in the guidelines for the offense to which the deputy sheriff pled guilty was zero to six months imprisonment, one year of supervised release, and a fine of $1,000 to $10,000. The Government moved for a downward departure of the zero to six months jail time for the police officer based on his assistance in the prosecution of related matters.

As Judge Shedd acknowledged during the sentencing hearing, in order to depart downward, he had to issue a sentence that was less than the minimum in the guidelines range, i.e., since less than zero time in prison is not possible, Judge Shedd, in accepting the downward departure request had to impose a fine that was less than $1,000 and could not impose any jail time on Mr. Grice.

Judge Shedd's sentencing decisions were controlled by the crimes charged and the related sentencing guidelines enacted by Congress. Judge Shedd's sentence of a fine without jail time was mandated by the guidelines once the government's request for downward departure was accepted.

My colleague's concern for the trail lawyer who served 4 months for perjury, after releasing a privileged videotape to the media, is not altogether clear to me, especially since that unethical conduct caused a convicted murderer to escape his sentence.

The concern is also strange given that my colleague expressed the opposite concern with regard to Judge Charles Pickering for questioning the inequitable result of mandatory sentencing guidelines.

Look, let me just bring this to an end by reading a letter of one of the attorneys involved in that case. This is a letter to me by E. Bart Daniel, attorney at law in Charleston, SC. It is regarding the nomination of Dennis W. Shedd to the Fourth Circuit Court of Appeals.

> DEAR SENATOR HATCH: I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, an Assistant U.S. Attorney, a United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a "white collar" criminal defense practice. I have appeared many times in court before Judge Shedd and found him to be courteous and fair. He has exhibited great integrity and a strong character while on the bench.
>
> One of the most difficult cases in which I appeared before Judge Shedd was in *United States* v. *John Earl Duncan* (3:99–638–001). Mr. Duncan was a practicing attorney who was convicted of perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33,386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge Shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.
>
> During the sentencing phase of the Duncan case, Judge Shedd was courteous and patient and listened intently to the many people who spoke on our client's behalf including my co-counsel Dale L. DuTremble and me.
>
> I know of no judge more qualified for the position than Judge Shedd. If you have any questions or I can be of any further support, please do not hesitate to call.

That ought to put that to bed.

In all honesty, the charges against Judge Shedd that have been raised are shameful; absolutely shameful. It makes you wonder. Why? Why are we putting a really fine Federal district court judge who served almost 13 years on the bench with a distinguished record through this type of bitter and I think shameless set of accusations?

We had originally agreed with the Democrat leadership to confirm Judge Shedd late last week along with other judicial nominees by unanimous consent, but instead, base politics appears to have intervened. I am hopeful we can get this done tomorrow.

According to an article by Byron York in National Review Online on Friday afternoon, it is clear what happened. He writes that, after the Shedd vote in the Judiciary Committee on Thursday, the usual left-wing groups, including, he writes, People for the American Way, Leadership Conference on Civil Rights, Alliance for Justice, and the National Abortion Rights Action League, all urged Democrat Senators "to continue the fight against Dennis Shedd in the full Senate." He quotes one leader as warning that, "controversy will follow these nominations to the Senate floor."

Here we are about to engage in the longest debate on a Senate nominee on the Senate floor this year. The special interest groups said jump, and so today we will jump high, and I guess tomorrow as well.

I am not complaining entirely. I am grateful to the distinguished chairman. I know it is a tough job to be chairman of the Judiciary Committee, and I hope this is not his fault. I am not shy of any debate on the President's superbly qualified judicial nominees.

But I do fear that, once again the American people will roll their eyes that, when we have as much to do in the Senate that is still undone, the leadership would think that a divisive and lengthy debate on a judicial nominee is a good idea.

But I understand why it is happening. I am not a newcomer here. It appears to be happening because of the Louisiana Senate election.

It has been rumored and reported that the Northern liberals who hold the money strings and the liberal special interest groups here in Washington who claim to represent African American interests—have said that the money won't flow and folks won't help get out the vote in Louisiana unless Judge Dennis Shedd, Senator THURMOND's former counsel gets slowed down yet again.

(Mr. ROCKEFELLER assumed the Chair.)

Mr. HATCH. Now, look, most of us who have served on the Judiciary Committee for a number of years have known Judge Dennis Shedd. He was chief of staff to Senator THURMOND when he was chairman of the committee, and his chief counsel when he was not chairman.

I have known him for most of my time in the Senate. He is one of the finest people I have ever known. He is also one of the better Federal district court judges in the country. Judge Shedd is a decent man. I resent his being dragged through this process for months, as he has been. Senator THURMOND's last request has gotten slowed down again.

Now, I am grateful we are going to have a vote on him tomorrow, up or down. I surely hope my colleagues will look at his record, and not look at the distortions of his record, and will vote for him and will support Senator THURMOND and those of us who know him, and know him well.

I think some have trouble getting the message. The message I got from the recent election is perhaps different than what my colleagues across the aisle received. As far as I see it, the President took three issues to the American people: his Iraq policy, homeland security, and his judicial nominees. Of course, he had other issues, but those were the three primary issues.

The election showed that Americans trust this President, including in his selection of judicial nominees. The election indicated voters rejected the obstruction in the Senate we experienced this last year, including on judicial nominees. Voters especially rejected the shrillness and the distortions of reputations they read and heard about in hundreds of news stories, scores of editorials, and dozens of op-eds, and those they saw on TV. Voters sent us a clear message, it seems to me, that we should end the obstruction and maltreatment of judicial nominees, and yet here we are about to engage in hours of debate that will largely see the race card played, and the role of judges—and one judge, in particular—distorted and mischaracterized.

Today, at the behest of the so-called Washington civil rights lobby, now a wholly owned subsidiary of plaintiffs' trial lawyers, my friends on the other side will spend a business day describing an experienced judge as biased, as pro this and anti that, and now I am afraid some of my Democratic colleagues can no longer evaluate judges as unbiased umpires who call the balls and strikes as they are, not as they alone see them, and not as they want them to be.

Now, it is silly to suggest an umpire is pro bat or pro ball or pro batter or pro pitcher, but, of course, trial lawyers, and those who shill for them, have an interest in exactly such scorekeeping. To say all plaintiffs have to win all cases is just nuts, but yet that is what we have been getting lately.

But even this is not what bothers me the most about the debate that has been scheduled today. I am reminded of what my friend Senator KENNEDY said in 1982 about those who opposed extending the Voting Rights Act. Senator KENNEDY lamented in 1982 that "there are those among us who would open old wounds . . . [and] refight old battles."

Mr. President, they say the more things change, the more they stay the same—well, almost the same.

Now, with that regret expressed, I wish to express my great satisfaction that the Judiciary Committee has favorably recommended the nomination of Judge Dennis Shedd of South Carolina for a vote of the full Senate.

Mr. President, Senators feel very strongly about their staffs. Our legal counsels make uncounted sacrifices to work for us and for the American people. We are surrounded by very talented lawyers who forego larger salaries for the sake of public service. Sometimes they put their personal opinions aside to advocate ours.

We Senators take it very personally when they are nominated and given the opportunity for yet higher public service. It has been the tradition of the Judiciary Committee to give great courtesy to former staffers. I certainly take it very personally, and know Senator THURMOND does, too, that we have not done so in the case of Dennis Shedd, who has served with distinction for the last 12 years as a Federal district court judge in South Carolina.

When Judge Shedd was nominated to the Federal trial bench, Chairman BIDEN had this to say to him:

> I have worked with you for so long that I believe I am fully qualified to make an independent judgment about your working habits, your integrity, your honesty, and your temperament. On all these scores, I have found you to be beyond reproach.

Now, this is high praise indeed from a colleague on the other side of the aisle for whom we all have the greatest respect. Judge Shedd has strong bipartisan support in his home State as well, and not only from Senator THURMOND and Senator HOLLINGS—a Republican and a Democrat—he is also strongly supported by Dick Harpootlian, South Carolina State chairman of the Democratic Party, and himself a trial lawyer.

Let me just say that again. Judge Shedd is not only supported by my distinguished Democrat colleague, Senator HOLLINGS, but also by the Democratic Party chairman in South Carolina. This suggests a reality far from the slogans and distortions launched against President Bush's nominees, and in particular Judge Shedd.

First, it has been suggested that Judge Shedd will add to what liberals and plaintiffs' trial lawyers perceive as conservative appeals court—or at least on the issues that profit them. But contrary to the divisiveness card that his detractors are playing, Judge Shedd will add diversity to that Court.

Mr. President, Dennis Shedd has served as a federal jurist for more than a decade following nearly twenty years of public service and legal practice. While serving the Judiciary Committee, Judge Shedd worked, among many other matters, on the extension of the Voting Rights Act, RICO reform, the Ethics in Post-Employment Act, and the 1984 and 1986 crime bills.

As Senator BIDEN put it: "His hard work and intelligence helped the Congress find areas of agreement and reach compromises."

That leads me to address a few issues that have been raised by his detractors.

Mr. President, the last five Fourth Circuit confirmations have all been Democrats.

What seems to me more important to focus on—and what the American people want us to focus on—is that when Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit Court of Appeals.

Interestingly, by way of disproving some of my colleagues' diversity-mania, the last Democrat confirmed to the Fourth Circuit Court of Appeals, Judge Gregory, has affirmed Judge Shedd's rulings in 11 appeals. Notably, Judge Gregory agreed with Judge Shedd's ruling in the Crosby case, which found that the Family and Medical Leave Act was improperly adopted by Congress, a case which the liberal groups seem worked up about when it comes to Shedd but not when it came to Judge Gregory. No one asked Judge Gregory about his ruling in Crosby when he was before the Judiciary Committee last year. But may Democrat colleagues drilled Judge Shedd on it. Talk about discrimination.

Mr. President, Judge Dennis Shedd has heard more than 5,000 civil cases, reviewed more than 1,400 reports and recommendations of magistrates, and has had before him nearly 1,000 criminal defendants.

Judge Shedd's record demonstrates that he is a mainstream judge with a law reversal rate. In the more than 5,000 cases Judge Shedd has handled during his 12 years on the bench, he has been reversed fewer than 40 times—less than 1 percent.

Detractors have made much of the fact that he has relatively few decisions he has chosen to publish. But, in fact, he falls in the middle of the average for published opinions in the Fourth Circuit. One Carter appointee has published all of 7 cases, one Clinton appointee has published only 3, and another Carter appointee has published 51, only one more than Judge Shedd, despite being on the court for 10 years longer.

Judge Shedd is known for his fairness, for his total preparation, and for showing no personal bias in his courtroom. This is not just my opinion; this reflects the opinions of lawyers who practice before him. Judge Shedd is well-respected by members of the bench and bar in South Carolina. According to the Almanac of the Federal Judiciary, attorneys said that Judge Shedd has outstanding legal skills and an excellent judicial temperament.

Here are a few comments from South Carolina lawyers: "You are not going to find a better judge on the bench or one that works harder," "He's the best federal judge we've got." "He gets an A all around." "It's a great experience trying cases before him." "He is polite and businesslike."

Let me take a moment also to address one of the more ludicrous attempts to discredit Judge Shedd that has been raised: that when he was confirmed to the District Court bench he had little experience in the practice of law.

I have to say that to ignore the remarkable experience Dennis Shedd had in legislation practice crafting historic laws while serving the Judiciary Committee is some chutzpah. To raise an objection like that almost 13 years after the fact is just plain silly. But it goes to show what we have to put up with in the obstruction and distortions of this past year.

Let's be clear, when Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit. He will also add some diversity to that court. The last five Fourth Circuit confirmations have all been Democrats.

I have to say that the most misleading criticism raised about Judge Shedd involves his employment cases.

Downright deceptive is that Judge Shedd's detractors, the outside liberal groups, have now taken to grouping and describing employment cases as civil rights cases.

They want us to believe that every quarrel between an employee and her employer rises to a Rosa Parks significance. No doubt every plaintiff's trial lawyer would like to think of themselves as a Thurgood Marshall. But this deception is unfortunate and a disservice to the cause of civil rights that I have longed championed in this Chamber.

Cloaking every small, perhaps even frivolous, employment case with the mantle of the civil rights movement, Washington's professional nominee detractors have been particularly misleading on Judge Shedd's employment cases.

They have misleadingly pointed out that the Judge seldom grants summary judgment in employment cases in favor of the employee. Of course, they fail to point out that few judges do. Any good lawyer knows that. Summary judgment is a judgment without a jury, and every good lawyer knows that employment cases are inherently fact-laden and go to trial by a jury or more often they settle. Or in many cases, the employee fails to state a claim and the case has to be dismissed.

Of course, Judge Shed's detractors could have noticed that he has only twice been reversed in his decisions in employment cases. But of course, they did not notice that.

They might have pointed out that in one of the appeals that he was invited to hear for the Fourth Circuit, he reversed a summary judgment and remanded for trial a political discrimination case against a worker who was a Democrat. But they did not do that either.

Judge Shedd's detractors have also made irresponsible claims as to the Judge's criminal case record.

In fact, in criminal cases, Judge Shedd has strongly defended citizens due process rights from violation by the state. He has frequently chastised law enforcement for errors in search warrants an the questionable use of seized property. In fact, he has sanctioned the State for discovery problems. He is known for aggressively informing defendants and witnesses of their fifth amendment rights.

Remarkably, Judge Shedd has never been reversed on any ruling considered before or during trial, or on the taking of guilty pleas. His detractors have somehow failed to note this.

The cases that come before a judge are often difficult. Judge Shedd has not been exempted. In one prisoner's case, Judge Shedd allowed a detainee to engage in a hunger strike and ruled against government's attempt to force feed him.

Although some would seek to question Judge Shedd's respect for privacy in criminal cases, into cases he protected HIV blood donor's confidentiality. In another case, he ordered special accommodations to an HIV positive defendant to ensure his continued clinical treatment.

These are not the rulings of a judge who is insensitive to prisoners and criminals, but this is the record of a judge who works hard to get the work of law enforcement right.

Of course, no smear campaign against a Bush judicial nominee, paid for plaintiffs' trial lawyers, and carried out by their left-wing lobbyists, is complete without the suggestion that the nominee is foe of environmental rights.

Of course, in their paint-by-the-numbers attack, Judge Shedd's detractors have ignored the wetlands protection case where he handed down tough sanctions against a violator and ordered expensive wetlands restoration.

The left-wing detractors skipped over Judge Shedd's decision in favor of National Campaign to Save the Environment.

They missed his ruling to grant standing to a plaintiff challenging a road construction project on its environmental impact.

They missed his ruling in favor of a woman protesting possible waste dumping in her community.

The well-paid, left-wing lobbyists who have turned attacking President Bush's judicial nominees into a small cottage industry see only what they want to see and not what the truth would show them.

The most breathtaking charge against Judge Shedd was first made by the NAACP that Judge Shedd has—"a deep and abiding hostility to civil rights."

I must admit that was outraged by this when I first read it, and I still am. It is a distortion far beyond the pale of decency, and I call on my colleagues once again to repudiate such rabid practices.

In part. I am outraged because there are some who would profile Judge Shedd as merely a white male from the South and start from there to give him a certain treatment.

If Judge Shedd's record working for civil rights legislation on the Judiciary Committee were not enough of an accomplishment for one lifetime for any man or woman, the truth is that in each of the cases that have come before Judge Shedd involving the Voting Rights Act of 1965, plaintiffs have won their claims.

In the Dooley case, a one person/one vote case, Judge Shedd gave the plaintiff a clear and strong decision. In another political rights case, he ruled to protect the plaintiff's right to make door-to-door political solicitations.

Of course, Mr. President, you know a lot about a judge by how they conduct their courtroom. As you know, I have been a strong advocate for the protection of religious practices in the public square. It says a lot about Judge Shedd, especially in these times, that he has allowed religious headdress in his courtroom.

Judge Shedd also led efforts to appoint the first African American woman ever to serve as a magistrate judge in South Carolina and has sought the Selection Committee to conduct outreach to women and people of color in filling such positions. He pushed for an African American woman to be chief of pretrial services. He has actively recruited persons of color to be his law clerks.

And because of Judge Shedd's work in an award-winning drug program that aims to reverse stereotypes amount 4,000 to 5,000 school children, he was chosen as the United Way's School Volunteer of the Year.

The Judiciary Committee received a very touching letter from one of Judge Shedd's former law clerks, Thomas Jones, that we have blown up here. Perhaps the Presiding Officer will be able to read it from the chair.

The letter says:

> Dear Senator LEAHY: My name is Thomas W. Jones, Jr. I am an African American attorney currently practicing as a litigation associate in Baltimore, MD. Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd on the U.S. District Court for the District of South Carolina. During my 18 months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of Judge Shedd's jurisprudence or daily activities. It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit. Thank you for your attention regarding this matter. Respectfully, Thomas W. Jones, Jr.

That was written on June 25 of this year to Senator LEAHY.

I will read another letter into the RECORD as well. This is a letter from Phyllis Berry Myers, President and CFO of the Center for New Black Leadership. I believe we received it today. It reads as follows:

> DEAR SENATOR HATCH: The Centre for New York Leadership (CNBL) believes the Senate's judicial nomination system is broken and needs repairing.
>
> We have watched with great trepidation as the Senate's role of "advise and consent" for Presidential nominations, especially judicial nominations, has become increasingly, "search and destroy," "slander and defame." It is a wonder that reasonable, decent people agree to go through the confirmation process at all.
>
> The confirmation process has become particularly brutal if the nominee is labeled "conservative." Traditional civil rights groups mass to castigate and intimidate, as they do now, attempting to thwart the confirmation of Judge Dennis W. Shedd to the U.S. Fourth Circuit Court of Appeals.
>
> Once again, we are witnessing the new depth to which public discourse and debate has sunk when fabrications, statements taken out of context, misinformation and disinformation can pass as serious political deliberation and debate. The vitally needed discussion about continued civil rights progress in a 21st Century world gets lost in the cacophony. Our nation and true civil rights advocates are poorer because of this.
>
> The Senate can restore to itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of

all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

Sincerely,

Phyllis Berry Myers,
President & CEO.

Of course, the liberal groups starkly ignore Judge Shedd's ruling in the Vanderhoff case. In that case, Judge Shedd dismissed the claim of a fired employee who repeatedly displayed the Confederate flag on his toolbox in violation of company policy. Judge Shedd rejected the plaintiff's contention that he was dismissed because of his national origin as a "Confederate Southern American."

Perhaps my colleagues have sympathy for that plaintiff, too. After all, the plaintiff was represented by a trial lawyer in this employment case—or as they would like us to see it, a civil rights case—even though it was brought on behalf of a true racist.

I looked at a letter that the NAACP sent to the Judiciary Committee, a letter all the other copycat groups have repeated.

I ask unanimous consent that the letter be printed in the Record so everybody can see how fake the Washington NAACP has become when they carry the plaintiffs' trial lawyers' water.

There being no objection, the material was ordered to be printed in the Record, as follows:

National Association for the
Advancement of Colored People,
Baltimore, MD, September 17, 2002.

Re Fourth Circuit nomination of Judge Shedd.

U.S. Senate,
Washington, DC.

Dear Senator: On behalf of the NAACP, the nation's oldest, largest and most widely-recognized grass roots civil rights organization, I am writing to let you know of the Association's strong opposition to the nomination of District Court Judge Dennis W. Shedd to the Fourth Circuit Court of Appeals. Delegates from every state in the nation, including the five states comprising the Fourth Circuit, unanimously passed a resolution from the South Carolina State Conference in opposition to the nomination at the NAACP's annual convention in Houston early July.

Members of the NAACP believe that the federal judiciary, as the final arbiter of the U.S. Constitution, is the branch of government primarily charged with protecting the rights and liberties of all Americans. In many instances in our nation's history, the courts have been the only institution willing to enforce the rights of minority Americans. We cannot afford to permit the federal judiciary to retreat from its constitutional obligation and resort to the type of judicial activism that threatens civil rights and civil liberties.

No other federal circuit reflects this extreme right-wing activism more than the Fourth Circuit Court of Appeal, which is home to more African Americans than any other circuit. The Fourth Circuit Court of Appeals' hostility to civil rights, affirmative action, women's rights, voting rights and fair employment is unrivalled. Its decisions are so far out the mainstream that the Supreme Court has reversed the Fourth Circuit on basic constitutional protections such the Miranda warnings.

Judge Shedd's addition to the Fourth Circuit would further relegate that court to the periphery of judicial mainstream. His judicial record and testimony before the Judiciary Committee reflect a disposition to rule against the plaintiff in employment and discrimination cases. Moreover, his restrictive view of federal legislation authority, as indicated in *Condon* v. *Reno*, 972 F.Supp. 977 (D.S.C. 1997), which struck down the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721–25 and was later overturned in a 9-to-0 decision by the Supreme Court, confirms our perspective that Judge Shedd's judicial philosophy and temperament would further push the Fourth Circuit to the right-wing.

Accordingly, as unanimously passed by the over 1,200 delegates to the 2002 NAACP National Convention, I ask that you oppose the nomination and that you use your influence to encourage the Senate Judiciary Committee to not vote him out of Committee. However, if the nomination makes it to the Senate floor, we ask you to vote against it.

I appreciate your attention and interest in this important matter. Please do not hesitate to contact me or Hilary Shelton, Director of the NAACP Washington Bureau at (202) 638–2269, if we can be of assistance.

Sincerely,

Kwesi, Mfume,
President & CEO.

Mr. HATCH. They describe their so-called civil rights complaint, and it boiled down to something not having anything to do with Judge Shedd's civil rights record. They project on to Judge Shedd their complaints about the Fourth Circuit as it currently stands. Though personally I believe that these charges are unfounded.

Well, Judge Shedd is not on the Fourth Circuit yet.

The NAACP's well-funded complaint is about appellate decisions Judge Shedd has had nothing to do with. That is remarkably irresponsible for an organization once so distinguished. Thurgood Marshall would be very displeased with this sort of sloppy advocacy.

Then the NAACP got to the heart of the matter. In the letter signed by Kwesi Mfume they show who is paying the bills. On behalf of plaintiff's trial lawyers, the NAACP complains about Judge Shedd's employment rulings—not his civil rights or voting rights rulings which are unimpeachable, but employment rulings. As I have said before, we know such a complaint has no basis in the reality of how employment cases are litigated and resolved.

Of course they, too, fail to note that Judge Shedd has only been reversed twice in employment cases during his 12-year career on the Federal bench.

The truth is the so-called civil rights attack on Judge Shedd is nothing but a campaign paid by and for the plaintiff's trial lawyers. They stoop so low to get their profits that they have put the NAACP, that once great organization, and other civil rights groups up to do their dirty work. That bothers me a lot.

Just so I set the record straight, I know a lot of really good trial lawyers in this country. I know a lot of them who fight for justice, for rights for the oppressed and for those who are down trodden. I am not referring to them. I am talking about those who are funding these vicious left-wing attacks on President Bush's judicial nominees, and there are plenty of them. They are loaded with dough, and they seem to want to manipulate the Federal bench like they have some of the State court benches. It is wrong.

Dennis Shedd is well qualified to serve on the Fourth Circuit Court of Appeals. I think so, and the American Bar Association, hardly a bastion of conservative politics, has said so.

In supporting his confirmation, I for one express my gratitude on behalf of the American people for an entire life spent in public service.

One other letter I will read is a letter from the Congress of Racial Equality. It is written to Senator Daschle as of today's date. It reads as follows:

Dear Senator Daschle: This is an open letter in the interest of justice. The Congress of Racial Equality, CORE, enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd—

And, of course, I am pleased there is not going to be a filibuster. I think that is very unwise, and I hope we do not stoop to that level on either side of the aisle. I thought we had overcome that propensity in the last number of years. There have been so few in the history of this body, I hope we do not stoop to that again.

The letter reads as follows:

Dear Senator Daschle: This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.

Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.

Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. His efforts have championed the efforts to recruit and elect the first African-American U.S. Magistrate Judge in the South Carolina District, Margaret Seymour. He was actively sought minority and female candidates for other Magistrate Judge positions, and has directed the Selected Commission in South Carolina to bear in mind diversity in the selection of candidates for these positions.

Judge Dennis Shedd's accomplishments and service have transcended bi-partisan support even from his home state Senators, notably, Senators Strom Thurmond and Senator Ernest Hollings who wholly support his nomination.

In the interest of fairness, balance we ask you to look past the unfounded partisan attacks of propaganda against Judge Shedd and fairly examine his work for yourselves. We strongly believe Judge Shedd's accomplishments and contributions to justice and civil rights speaks for itself.

We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair filibuster against him. Let Judge Shedd have his day on the Senate floor

Sincerely,

NIGER INNIS,
National Spokesman.

Again, I am pleased there will be no filibuster against this worthy Federal district court judge who has served with distinction for the last 12 years. I caution this body, I hope we do not resort to filibusters on judicial nominees, as has been recommended by some notable left-wing law professors. Filibustering judicial nominations should not be done lightly, if at all. When we elect a President, we elect a President who will have the power to choose his or her judicial nominees. Senator's have a right to raise any issues against those nominees, so long as they are honestly raised.

In Judge Dennis Shedd's case, the outside groups have raised a lot of issues that are not honestly raised. I have not heard any criticisms against him that are valid in my judgment, and I know Judge Shedd personally and I have reviewed his complete record.

Just this morning, I received a letter from Joseph Anderson, chief judge for the District of South Carolina. It is noteworthy that Chief Judge Anderson was a Democratic member of the South Carolina Legislature before his appointment to the Federal bench. He served as a district court judge for 16 years and chief judge for the last 2 years. He and Judge Shedd have been suite-mates in the Federal courthouse in Columbia. For all of these reasons, he writes, he believes he is qualified to comment on Judge Shedd's abilities, qualifications, and reputation. Judge Anderson writes:

> I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant.)

The letter continues:

> Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to recuse himself and he is very consistent about this.

Chief Judge Anderson then addresses the quality of Judge Shedd's decisions. He says:

> I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

He continues:

> In regard to the issue of granting summary judgment or otherwise dismissing cases short of trial, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial, and a great number of those eventually settle—which means that the plaintiff and defendant agree on the outcome. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

It is ridiculous to say that, because a judge has not granted summary judgments for plaintiffs, that he was not fair. In employment cases, often the entire contest is whether the plaintiff survives summary judgment, after which the case settles. And that is true in Judge Shedd's cases. Once a summary judgment is refused, that means the case is going to be tried by a judge or jury, and then the parties settled.

I ask unanimous consent that the letter from Chief Judge Anderson be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, S.C., November 18, 2002.

In re Dennis W. Shedd, Nominee to Fourth Circuit Court of Appeals.

Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

In response to your specific inquiries, I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant).

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to recuse himself and he is very consistent about this.

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

In regard to the issue of granting summary judgment or otherwise dismissing case short of trail, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial and a great number of those eventually settle before the trial can be conducted. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards.

JOSEPH F. ANDERSON, Jr.,
Chief United States District Judge.

Mr. HATCH. I believe this letter speaks volumes about Judge Shedd's fairness and dispels the completely unfounded criticism that Judge Shedd's reversal rate or dismissal rate is somehow out of sync or cause for concern.

I have been on the Senate Judiciary Committee for 26 years. Most of my colleagues will say I have acted with fairness, honesty, and candor during those 26 years. Most would say I have done so as chairman of the committee when I have been chairman. I know Dennis Shedd. I know him very well. I worked closely with him and Senator THURMOND, as did many on the committee. I saw in Dennis Shedd a very scrupulously honest and decent man. I never saw one iota of evidence that he was anything but an honest and decent, honorable human being, with the respect for all people, regardless of race, religion, or origin—or any other reason. I can say this man served the committee well. He was chief of staff for the committee when Senator THURMOND was chairman. He got along well with everyone. He did his job, and did it well.

He has had experience in private practice. He has had experience in this legislative body that I don't think many staffers could match. He has had 12 years of experience on the Federal district court bench in South Carolina where the chief judge himself says he has distinguished himself.

I have bitterly resented some of the outside attacks which have come to be the norm in the case of President Bush's nominees. If a person is considered moderate to conservative or conservative, then automatically these groups start to attack some of these people. It is not right. I have had respect for a number of these groups in the past, but I have lost respect for them in the last couple of years with some of the arguments they have made and some of the cases they have tried to make and some of the distortions they have foisted upon the Senate Judiciary Committee. It is time to quit doing that. I would like to see the outside groups argue their cases well, argue their ideology well, do what they are organized to do, but do it honestly, do it fairly; do not destroy a person's reputation, as I think many have attempted to do here, and especially a person against whom you can find no real fault.

I know Dennis Shedd. He is an honorable, honest, competent, intelligent, former chief of staff of this committee but now Federal district judge in South Carolina. He deserves some respect in this body, and he deserves the vote of this body. I hope my colleagues will look past some of these unfortunate criticisms that are, in my opinion, dishonest, that we have shown to be distortions, and vote for Dennis Shedd tomorrow so that he can bring a greater element of ability to the circuit court of appeals.

Mr. President, contrary to some of the arguments made here today, it is clear to me that this debate is not so much about Judge Shedd, as it is about the purposeful delaying and denying of President Bush's judicial nominations.

The delay and speechmaking about Judge Shedd fits right into the pattern we have been seeing for almost two years.

Under Democrat control, the Senate has undertaken a systematic effort to treat President Bush and his judicial nominees unfairly. Some have attempted to justify this unfair treatment as tit-for-tat, or business as usual, but the American people should not accept such a smokescreen. What the Senate is doing is unprecedented.

Historically, a president can count on seeing all of his first 11 Circuit Court nominees confirmed. As you can see on this chart, Presidents Reagan, Bush and Clinton all enjoyed a 100 percent confirmation rate on their first 11 Circuit Court nominees. In stark contrast, 7 of President Bush's first 11 nominations are still pending at the close of President Bush's first Congress.

History also shows that Presidents can expect almost all of their first 100 nominees to be confirmed swiftly. Presidents Reagan, Bush and Clinton got 97, 95 and 97, respectively, of their first 100 judicial nominations confirmed. But the Senate has confirmed only 83 of President Bush's first 100 nominees.

Some try to blame Republicans for the current vacancy crisis. That is bunk. In fact, the number of judicial vacancies decreased by three during the 6 years of Republican leadership. There were 70 vacancies when I became chairman of the Judiciary Committee in January 1995, and there were 67 at the close of the 106th Congress in December 2000.

Some try to justify wholesale delays as payback for the past. That is also untrue. Look at the facts: During President Clinton's 8 years in office, the Senate confirmed 377 judges—essentially the same (5 fewer) as for Reagan (382). This is an unassailable record of non-partisan fairness, especially when you consider that President Reagan had 6 years of a Senate controlled by his own party, while President Clinton had only 2.

Finally, some might suggest that the Republicans left an undue number of nominees pending in Committee without hearings at the end of the Clinton administration. Well, we left 41, which is 13 less that the Democrats left without hearings in 1992 at the end of the Bush Administration.

So you see, Mr. President, what is happening to Judge Shedd fits into a pattern of unfairness that is not justified by any prior Republican actions.

President Bush deserves to be treated as well as the last three Presidents.

NOMINATIONS RECORD OF THE 107TH CONGRESS

My Democrat colleagues are apparently proud that in this Session, so far, the Senate has confirmed 99 judges. There is much eagerness in their voices in asserting that this number compares favorably to the last three sessions of Congress during which Republicans were in control of the Senate.

Although it is flattering that the Republican record under my leadership is being used as the benchmark for fairness, I am afraid that this does not make for a correct comparison because Republicans were never in control during President Clinton's first 2 years in office.

Let me repeat that, we were never in control during President Clinton's first 2 years in office. The proper comparison is not to the Republican record of the last 6 years of President Clinton, but to his first 2 years.

Despite the numbers that my colleague throws out in their comparison of apples to oranges.

Now, Mr. President I brought a visual. Here you see apples and oranges. It is fair to say that they are difficult to compare and that a comparison only leads the listener to conclude that they are both fruit. But they are not at all the same kind.

The fact remains that the Democrat achievement in this Session fails noticeably when properly compared, apples to apples.

During President Clinton's first Congress, when Senator BIDEN was the Chairman of the Judiciary Committee, the Senate confirmed 127 judicial nominees. And Senator BIDEN achieved this record despite not receiving any nominees for the first 6 months—in fact, Senator BIDEN's first hearing was held on July 20th of that year, more than a week later than the first hearing of this Session, which occurred on July 11, 2001.

Clearly, getting started in July of Year One is no barrier to the confirmation of 127 judges by the end of Year Two. But we have confirmed only 99 nominees in this Session.

Senator BIDEN's track record during the first President Bush's first 2 years also demonstrates how a Democrat-led Senate treated a Republican president. Then-Chairman BIDEN presided over the confirmation of all but 5 of the first President Bush's 75 nominees in that first two-year session. Chairman THURMOND's record is similar. The contrast to the present could hardly be starker.

We are about to close President Bush's first 2 years in office, having failed the standards set by Chairman BIDEN and Chairman THURMOND. That is nothing over which to be proud.

Mr. HOLLINGS. Mr. President, in South Carolina, Senator THURMOND and I have a long tradition of working cooperatively to nominate judges. Senator THURMOND has made good choices in the past, and he has done so again, with Judge Dennis Shedd, for elevation to the Court of Appeals for the Fourth Circuit.

Judge Shedd is familiar to many Members, having staffed the Judiciary Committee for several years, and of course serving as chief counsel and administrative assistant to Senator THURMOND himself.

He is a very smart and capable man. For more than a decade, he has been a judge on the United States District Court for South Carolina, based in Columbia. He has a reputation as a hard worker on the bench, as a straight-shooter, and one who is up-to-date on the laws. By special designation, he has sat on the Fourth Court on several occasions.

No judge now sitting on the Fourth Circuit has as much Federal trial experience. On the bench, he has handled 5,000 cases, and he has been reversed less than one percent in that entire time, an outstanding record of sound judgment.

I can say he has the support of a wide array of lawyers in South Carolina, and has received a well qualified rating by the American Bar Association.

I have a letter from Joseph Anderson, chief United States District Judge, who writes:

> "I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case.

And here is a letter from nine faculty members of the University of South Carolina School of Law, from which Judge Shedd graduated. After analyzing several of his cases they conclude: "Judge Shedd's record on the Federal bench demonstrates that he is fair and impartial in all matters that come before him, including to plaintiffs in employment discrimination and civil rights cases. . . . In our view he will make an excellent addition to the Fourth Circuit."

Let me acknowledge that the NAACP, and some others, have concerns with him. But I have looked into those situations, and I find them wanting with respect to specific inappropriate actions by Judge Shedd.

We in the law know that you never have a character witness come up and tell what he knows of his own association, but rather you bring witnesses who give testimony to his reputation in the particular community.

In that regard, having checked it out, Judge Shedd is my kind of judge. He is hard, he is tough, but he is hard and he is tough on both sides.

We who have practiced law before the courts, and know the score, and don't play games appreciate a judge who is not going to allow any games to be played on you.

I have said often that as much as we need a balanced budget, we need some balanced Senators, and some balanced judges.

I hope we can garner bipartisan support, and to see that this Judge is confirmed.

I ask unanimous consent to print the letters in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, SC, November 18, 2002.

In re Dennis W. Shedd, Nominee To Fourth Circuit Court of Appeals.

Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I, therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

In response to your specific inquires [I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant).]

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to recuse himself and he is very consistent about this.

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

In regard to the issue of granting summary judgment or otherwise dismissing cases short of trial it appears to me that Judge Shedd's record is not different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial and a great number of those eventually settle before the trial can be conducted. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards,
JOSEPH F. ANDERSON, Jr.,
Chief United States District Judge.

JUNE 26,2002.

Hon. JOHN R. EDWARDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR EDWARDS: We write to you as individual members of the faculty at the University of South Carolina School of Law. We are concerned that professors from law schools in your state recently may have provided you with inaccurate information regarding United States District Court Judge Dennis Shedd, whose nomination to the Fourth Circuit Court of Appeals is scheduled for a hearing in the Senate Judiciary Committee this week. As members of the academic legal community in South Carolina, we wish to set the record straight on Judge Shedd's record on the bench, and to urge your approval of this well-qualified nominee.

Contrary to claims made by his opponents, Judge Shedd's record in cases involving state sovereignty and the scope of congressional authority reflects that he has taken a fair and balanced approach to these issues and is well within the accepted mainstream among federal judges. On the difficult issue of whether Congress had authority under the Commerce Clause to enact the Driver's Privacy Protection Act (DPPA), Judge Shedd concluded, after careful analysis of existing case law, the DPPA violated the Tenth Amendment in that it commanded states to implement federal policy in violation of Supreme Court precedent, *New York v. United States*, 515 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997). *See Condon v. Reno*, 972 F.Supp. 977 (D.S.C. 1997).

While the Supreme Court ultimately ruled that DPPA represented a valid exercise of Congress' Commerce Clause power, 7 of the other 15 lower court judges to consider the issue prior to the Court's decision agreed with Judge Shedd. Among those were Judge Barbara Crabb, the Chief Judge of the Western District of Wisconsin and an appointee of President Jimmy Carter, and John Godbold of the 11th Circuit, a Johnson appointee. In addition, several governors, including Governor Jim Hunt of North Carolina, authorized their attorneys general to file amicus briefs in *Condon* urging the Supreme Court to uphold Judge Shedd's ruling and to declare the law unconstitutional. To us, the disagreement among lawyers, judges and scholars regarding whether DPPA was constitutional in the wake of the Supreme Court's decisions in *Printz* and other opinions reflects the difficult question presented in this case. Judge Shedd's opinion represents a reasoned (albeit later overruled) approach to that question.

On the issue of state immunity under the Eleventh Amendment, opponents have cited Judge Shedd's opinion in the case of *Crosby* v. *South Carolina Dep't of Heath*, C.A. No. 3:97–3588–19BD, as an example of his "highly protective views" of state sovereignty. In *Crosby*, Judge Shedd in an unpublished opinion found that the 11th Amendment protected states from lawsuits in federal court under the Family and Medical Leave Act (FMLA). Contrary to the claims of his critics, Judge Shedd's opinion in *Crosby* is well within the mainstream of recent Eleventh Amendment jurisprudence. In fact, eight of the nine Circuit Courts of Appeals to decide the issue of whether the FMLA applied to state agencies have agreed with Judge Shedd's ruling in *Crosby*. *See Laro v. New Hampshire*, 259 F.3d 1 (1st Cir 2001); *Hale v. Mann*, 219 F.3d 61 (2nd Cir 2000); *Chittister v. Dept. Community and Econ. Dev.*, 226 F.3d 223 (3rd Cir 2000); *Lizz v. WMATA*, 255 F.3d 128 (4th Cir 2001); *Kazmier v. Widmann*, 225 F.3d 519 (5th Cir 2000); Sims v. Cincinnati, 219 F.3d 559 (6th Cir 2000); *Townsell v. Missouri*, 233 F.3d 1094 (8th Cir 2000); *Garrett v. UAB Board of Trustees*, 193 F.3d 1214 (11th Cir 1999). In fact, the Fourth Circuit opinion on this issue was joined by recent Bush appointee Roger Gregory, who was unanimously approved by the Judiciary Committee and unanimously confirmed by the full Senate. *See Lizzi v. WMATA*, 255 F.3d 128 (4th Cir 2001).

Those less familiar with Judge Shedd's record also may not be aware of his opinion in another case involving the scope of Congress' authority under the Commerce Clause. In *United States v. Floyd Brown*, Crim. No. 94–168–19, Judge Shedd in an unpublished opinion rejected a criminal defendant's constitutional challenge to the Gun Free School Zones Act, finding that the prosecution could prove facts at trial that would support some basis for federal jurisdiction under the statute. Consequently, Judge Shedd found that the Act represented a valid exercise of congressional authority under the Commerce Clause. The Supreme Court later disagreed with Judge Shedd and struck down the Act in a controversial 5–4 decision. See *United States v. Lopez*, 514 U.S. 549 (1995). Nonetheless, Judge Shedd's opinion in *Brown* demonstrates that he is far from the "sympathetic participant in the campaign to disempower Congress" that his detractors have alleged.

Even more disturbing than their criticism of Judge Shedd's record on federalism issues is the North Carolina law professors' distortion of his record in civil rights and employment discrimination cases. While we will not address each and every mischaracterization contained in their recent letter to you, suffice it to say that those professors clearly have not provided you with the full picture of Judge Shedd's record.

For example, the assertion that Judge Shedd has never granted relief in an employment discrimination case and that he inappropriately uses Rule 56 summary judgment in these cases in misleading and inaccurate. As you must know from your career as a litigator, when a case proceeds beyond the summary judgment stage, the likelihood of settlement in that case increases exponentially. Moreover, an extremely high percentage of employment discrimination cases around the country are disposed of by summary judgment either because the courts consider the claims not to be meritorious or because the plaintiff failed to meet the minimal requirements set by statute and judicial precedent. We understand that Judge Shedd has repeatedly denied summary judgment to defendants in employment discrimination and civil rights cases. In addition, we are aware of only two instances in which the Fourth Circuit has overturned Judge Shedd in employment discrimination cases during his almost twelve-year career on the bench.

For your information, we wanted you to be aware of a few of the cases (among many) where Judge Shedd allowed plaintiffs to proceed past the summary judgment stage in civil rights and employment cases:

In *Miles v. Blue Cross & Blue Shield*, C.A. No. 3:94–2108–19BD, Judge Shedd denied defendant Blue Cross & Blue Shield's motion for summary judgment in a case brought under Title VII of the Civil Rights Act, where an African-American employee alleged that she was fired because of her race. The case included allegations that the plaintiff's supervisor used racially disparaging remarks on several occasions. The supervisor also allegedly stated that he did not want an African-American to hold the position held by the plaintiff.

In *Davis v. South Carolina Department of Health*, C.A. No. 3:96–1698–19BD, Judge Shedd refused to dismiss a Title VII lawsuit by an African-American employee who claimed that she was denied a promotion because of her race. The case involved allegations that the company promoted an unqualified white employee, and that a supervisor who participated in the decision not to promote the plaintiff had made racially disparaging remarks to her.

In *Ruff v. Whiting Metals*, C.A. No. 3:98–2627–19BD, Judge Shedd refused to dismiss a Title VII race discrimination case brought by an African-American welder after he was laid off. The case involved allegations that supervisors repeatedly made racial statements in the workplace, and that one supervisor claimed that he was going to use the pending layoffs to "get rid of some" African-American employees.

In *Black v. Twin Lakes Mobile Homes*, C.A. No. 0:97–3971–19, Judge Shedd denied summary judgment for the defendant, an owner of a mobile home park who sought to evict an HIV-positive tenant because of his medical condition. Shedd's ruling allowed the plaintiff's lawsuit alleging discrimination under the Fair Housing Act to go forward.

In addition to the above cases, Judge Shedd also has presided over three cases where the NAACP has alleged violations of the Voting Rights Act in which the NAACP prevailed. *NAACP* v. *Lee County*, C.A. No. 3:94–1575–17; *NAACP* v. *Holly Hill*, C.A. No. 5:91–3034–19; *NAACP* v. *Town of Elloree*, C.A. No. 5:91–3106–06. Far from displaying a hostility to civil rights and employment discrimination cases, Judge Shedd's record demonstrates that he is a judge who keeps an open mind, applies the law to the facts, and treats all parties fairly.

In sum, as members of the academic legal community in South Carolina [we can unequivocally state that Judge Shedd's record on the federal bench demonstrates that he is fair and impartial in all matters that come before him, including to plaintiffs in employment discrimination and civil rights cases. In addition, his career on the bench and as a staff member of the United States Senate shows that he has a clear understanding of and appropriate deference to Congress' legislative powers. In our view, he will make an excellent addition to the Fourth Circuit, and we urge you to support his nomination.

Sincerely,

F. Ladson Boyle; David G. Owen; S. Allen Medlin; Howard B. Stravitz; William J. Quirk; Randall Bridwell; Ralph C. McCullough II; Dennis R. Nolan; Robert M. Wilcox.

Mr. COCHRAN. Mr. President, I support the confirmation of Judge Dennis W. Shedd of South Carolina as U.S. Circuit Judge for the Fourth Circuit.

Judge Shedd has served more than 10 years as a United States District Judge for the District of South Carolina where he has earned a reputation for sound judgement and fairness. Prior to his appointment to the Federal bench, Judge Shedd spent nearly 20 years in the practice of law and public service, including ten years as a staff member of U.S. Senator STROM THURMOND. During his tenure in the Senate, Judge Shedd served as Counsel to the President Pro Tempore as well as Chief Counsel and Staff Director of the Senate Judiciary Committee.

While serving on the Federal bench, Judge Shedd has been a member of the Judicial Conference Committee on the Judicial Branch and its subcommittee on Judicial Independence. He has also participated in community activities where he has helped organize and promote drug education programs in the Columbia, SC public schools.

Judge Shedd has handled more than 4,000 civil cases and over 900 criminal matters. No judge currently sitting on the Fourth Circuit has as much Federal trial experience. In the thousands of cases Judge Shedd has handled, he has been reversed fewer than 40 times—less than one percent. In addition, a majority of the ABA's Standing Committee on the Judiciary rated Judge Shedd "Well Qualified."

I believe Judge Shedd has demonstrated the character, wisdom, and judicial temperament needed to be an outstanding judge on the Federal appellant bench. I encourage my colleagues to support his nomination.

Mr. THURMOND. Mr. President I am greatly pleased that the full Senate is considering the nomination of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. Judge Shedd is a man of impeccable character who will make an outstanding addition to the Federal appellate bench. He possesses the highest sense of integrity, a thorough knowledge of the law, and a good judicial temperament. These qualifications have earned Judge Shedd widespread respect and bipartisan support in my home State of South Carolina. In addition to Republican support, Senator ERNEST HOLLINGS and State Democratic Party chairman Dick Harpootlian have endorsed his nomination.

I am exceedingly proud of Dennis Shedd. He was a loyal employee of mine for 10 years and is very deserving of this high honor. Judge Shedd has been successful at every stage of his professional life and has dedicated most of his career to public service. Upon graduation from the University of South Carolina School of Law, he joined my staff and eventually served as administrative assistant. Thereafter, during my tenures as chairman and ranking member of the Judiciary Committee, he served as the committee's chief counsel and staff director. As a staff member, he gained a well-deserved reputation for honesty and hard work.

Upon returning to South Carolina, Judge Shedd entered the private practice of law and also served as an adjunct law professor at the University of South Carolina. In 1990, President Bush nominated Dennis Shedd to the United States District Court for the District of South Carolina, and he has served ably for more than a decade. On numerous occasions, Judge Shedd has been given the honor of sitting on the Fourth Circuit by designation.

Judge Shedd's performance on the district court has been marked by distinction. He has been assigned more than 5,000 cases during almost 12 years on the bench. Out of all these cases, he has only been reversed 37 times, resulting in a reversal rate of less than 1 percent. These numbers indicate both the skilled legal mind and the thorough preparation that he will bring to the Fourth Circuit. Judge Shedd also possesses a good judicial temperament, treating all litigants in his courtroom with dignity and respect.

Unfortunately, some groups have portrayed Judge Shedd's judicial career in a negative light. I would like to take a moment to address these allegations and concerns. An examination of Judge Shedd's record indicates that he is not only fair and impartial, but personally dedicated to upholding the constitutional rights of all people.

Judge Shedd has been criticized for his handling of Alley v. South Carolina, a lawsuit wherein the plaintiffs sought to remove the Confederate flag from atop the statehouse dome in Columbia, SC. The South Carolina NAACP has asserted that Judge Shedd "made several derogatory comments about those opposing the flag, and minimized the deep racial symbolism of the Confederate flag by comparing it to the Palmetto tree, which appears in South Carolina's state flag."

These allegations are misleading and inaccurate. A close look at the transcript of the hearing reveals that Judge Shedd made a point of saying that his comments were not meant to be disparaging. In fact, he said, "I'm not going to denigrate the constitutional claim abut the Confederate flag." Furthermore, Judge Shedd never ruled on the merits of the case. Rather, he abstained to allow a claim to go forward in State court, arguably the forum better equipped to handle the issue.

Additionally, it is important to note that Judge Shedd's comments about the Palmetto tree were made during his examination of the lawyer's legal argument in the case. The argument hinged on the offensive nature of the

Confederate flag, and Judge Shedd pointed out that many symbols could be perceived as offensive, such as the Palmetto tree on the State flag. Judge Shedd then stated, "I'm not determining now on whether or not the flag should be there at all. I'm just doing what—you lawyers have been with me before know, I'm exploring your legal theory." In this case, Judge Shedd was simply engaging in the Socratic method with the lawyers, and his words should not be twisted to insinuate any personal feelings about the propriety of flying the Confederate flag over the statehouse dome.

I would like to point out the case of Vanderhoff v. John Deere, the one case involving the Confederate flag in which Judge Shedd did rule. In that case, an employee was fired because he refused to comply with company policy and remove the Confederate flag from his toolbox. The employee sued under title VII, a statute designed to prohibit workplace discrimination based on race, sex, religion, and national origin. He argued that his national origin was a "Confederate Southern American" and that he had been the subject of discrimination. Judge Shedd rejected this argument and dismissed the plaintiff's claim. Thus, on the one Confederate flag case where he ruled on the merits, Judge Shedd's decision went against a flag proponent.

In recent weeks, Judge Shedd has been the subject of vicious attacks based on his handling of employment discrimination cases. Over and over again, we have head the accusation that Judge Shedd shows a bias towards defendants. A review of Judge Shedd's record indicates that he has been fair to the civil rights claims of plaintiffs in his courtroom. In fact, Judge Shedd has only been reversed two times in employment discrimination cases. With such a low reversal rate, I am disappointed that some groups have insisted on attacking this fine judge.

One commonly cited case is Roberts v. Defender Services, in which Judge Shedd dismissed a plaintiff's sexual harassment claim. In this case, Judge Shedd merely followed the law as established by the Supreme Court, which held in Faragher v. City of Boca Raton, 524 U.S. 775 (1998), that the work environment must be both objectively and subjectively offensive. While the plaintiff had clearly shown that the work environment was objectively offensive, Judge Shedd determined that she had not made a showing that she perceived it to be offensive. He based his determination on the fact that she had recommended the position to someone else and stated that the employer was "a nice person" who was "pretty good to work for." These comments by the plaintiff demonstrate that Judge Shedd's decision was reasonable under the circumstances of this case.

The truth is that Judge Shedd has issued rulings that have benefitted plaintiffs on numerous occasions. For example, in Miles v. Blue Cross & Blue Shield, C.A. No. 3:94-2108-19BD, an action was brought under title VII of the Civil Rights Act by an African-American employee who alleged that she was fired because of her race. There was ample evidence that the plaintiff had been subjected to racial slurs before being fired. Judge Shedd appropriately denied the defendant employer's motion for summary judgment.

In another case, Davis v. South Carolina Department of Health and Environmental Control, C.A. No. 3:96-1698-19BD, an action was brought under title VII by an African-American employee who alleged that she was denied a promotion because of her race. There was evidence that an unqualified white employee had been promoted and that racially disparaging remarks had been made. Judge Shedd followed the law and denied the defendant employer's motion for summary judgment. Again in Ruff v. Whiting Metals, C.A. No. 3:98-2627-19BD and Williams v. South Carolina Department of Public Safety, C.A. No. 3:99-976-19BC, Judge Shedd denied a defendant's motion for summary judgment on race discrimination claims.

In the case of Treacy v. Loftis, C.A. No. 3:92-3001-19BD, Judge Shedd, overruling a magistrate judge's recommendation, declined to grant summary judgment on a fired employee's claim of intentional infliction of emotional distress. In that case, the plaintiff claimed that her job was terminated due to her involvement in an interracial relationship. Judge Shedd, in refusing to grant summary judgment, allowed the case to go forward.

There are many other cases like these. Judge Shedd's record reveals that he has upheld important rights protected by the Constitution. If elevated to the Fourth Circuit, Judge Shedd will continue to protect civil liberties.

In addition to Judge Shedd's proven record of protecting civil rights, he has personally dedicated himself to providing equal opportunities for women and minorities. As an example, Judge Shedd served as chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. He also played an instrumental role in the selection of Margaret Seymour as the first female African-American U.S. magistrate judge in the district of South Carolina. When Judge Seymour was nominated by President Clinton to the district court, Judge Shedd fully supported her nomination. Furthermore, Judge Shedd has hired both African-American and female law clerks.

I would like to turn to another accusation that has been leveled against Judge Shedd. He has been accused of espousing an unreasonably narrow interpretation of congressional power based on his decision in Condon v. Reno, 972 F.Supp. 977 (1997), in which he struck down the Driver's Privacy Protection Act. The act regulated the dissemination of State motor vehicle record information, and the State of South Carolina challenged its constitutionality. Judge Shedd ruled that under Supreme Court precedent, the act violated the 10th amendment by impermissibly commandeering State governments, forcing them to regulate in a specific fashion. The Fourth Circuit upheld this decision, Condon v. Reno, 155 F.3d 453 (4th Cir. 1998), but the Supreme Court ultimately reversed. Reno v. Condon, 120 S.Ct. 666 (2000).

I stress that this case was one of first impression. Given the U.S. Supreme Court opinions in New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 898 (1997), Judge Shedd's ruling was entirely reasonable. In a very persuasive opinion, he compared the Drivers Privacy Protection Act with those acts invalidated in New York and Printz and found it to have similar constitutional defects.

Judge Shedd was not alone in his analysis. At least one liberal commentator, Erwin Chemerinsky, concluded that the Supreme Court's distinction of the Drivers Privacy Protection Act from the statutes struck down in New York and Printz was unconvincing. While Chemerinsky agreed with the final outcome of the case, he has argued that the Supreme Court should have overruled both New York and Printz in order to reach its decision in Reno. Professor Chemerinsky's argument lends support to the proposition that Judge Shedd, in striking down the statute, was correct in his interpretation of the law at that time.

In addition, of the 16 lower Federal court judges who considered the constitutionality of DPPA, 8 determined that the statute was unconstitutional. In short, there is nothing to indicate that Judge Shedd's decision in this case was out of the mainstream.

Another case that has been cited is Crosby v. U.S., in which Judge Shedd held that the plaintiff's claim under the Family and Medical Leave Act was barred by the 11th amendment to the Constitution. Judge Shedd's detractors have argued that this case is another example of his narrow view of congressional power. However, this accusation is unfair and unwarranted. In this case, Judge Shedd sought to follow the law as established by the Supreme Court. He was not attempting to make new law, but was instead seeking to apply the law correctly. Furthermore, Judge Shedd was not alone in his decision. Out of nine circuit courts that have considered this same question, eight have agreed with Judge Shedd. It is worth noting that Judge Roger Gregory, originally appointed by President Clinton, joined the Fourth Circuit's opinion that agreed with Judge Shedd's ruling.

Judge Shedd has also been criticized as being antiplaintiff for disposing of matters sua sponte, or on his own motion. This charge is without merit for a number of reasons. First, Federal judges face enormous caseloads. If an area of the law is clear, it is completely proper for the judge to act on his own motion, helping to move litigation along and clear the dockets. Second, the law clearly allows for district court judges to consider matters without prompting from lawyers. The Supreme Court has acknowledged this, stating in Celotex Corp. v. Catrett, 830 F.2d 1308 477 U.S. 317, 326 (1986), that district courts may grant summary judgment sua sponte to a party that has not moved for summary judgment. As long as a judge is acting properly, which Judge Shedd has always done, sua sponte decisions are entirely appropriate.

I have known Judge Dennis Shedd for over 24 years and can personally vouch for his integrity and high moral character. He is truly a man of knowledge, ability, and superior ethical standards. Judge Shedd will bring a wealth of trial experience to the Fourth Circuit, having handled more than 4,000 civil cases and over 900 criminal matters. In addition, he possesses unmatched legislative experience. It is no surprise that the American Bar Association gave Judge Shedd a rating of "Well Qualified." I am proud to support my friend, Dennis Shedd, and I hope to see him confirmed to the United States Court of Appeals for the Fourth Circuit. I ask unanimous consent that the attached materials be printed in the RECORD.

DENNIS W. SHEDD—NOMINEE TO THE FOURTH CIRCUIT COURT OF APPEALS

Background. Appointed by President George H.W. Bush to the United States District Court for South Carolina in 1990, Dennis W. Shedd has served as a federal jurist for more than a decade.

In addition to his service on the District Court, he sat by designation on the Fourth Circuit Court of Appeals on several occasions. Shedd also has served on the Judicial Conference Committee of the Judicial Branch and its Subcommittee on Judicial Independence.

From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate, including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee.

Judge Shedd is well-respected by members of the bench and bar in South Carolina. According to South Carolina plaintiffs' attorney Joseph Rice, "Shedd—who came to the bench with limited trial experience—has a good understanding of day-to-day problems that affect lawyers in his courtroom. . . . He's been a straight shooter." Legal Times, May 14, 2001.

According to the Almanac of the Federal Judiciary, attorneys said that Shedd has outstanding legal skills and an excellent judicial temperament. A few comments from South Carolina lawyers; "You are not going to find a better judge on the bench or one that works harder." "He's the best federal judge we've got." He gets an A all around." It's a great experience trying cases before him." "He's polite and businesslike."

Plaintiff lawyers commended Shedd for being even-handed; "He has always been fair." "I have no complaints about him. He's nothing if not fair." Almanac of the Federal Judiciary, Vol. 1, 1999.

Judge Shedd would bring unmatched experience to the Fourth Circuit. He has handled more than 4,000 civil cases since taking the bench and over 900 criminal matters. In fact, no judge currently sitting on the Fourth Circuit has as much federal trial experience as Judge Shedd, and none can match his ten years of experience in the legislative branch.

Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times less than one percent). Since taking his seat on the Fourth Circuit in 2001, Judge Roger Gregory (a Democrat appointed by President Bush) has written opinions affirming several of Judge Shedd's rulings. Judge Gregory also agreed with Judge Shedd's holding in Crosby v. South Carolina Dep't of Health (case cited by Judge Shedd's opponents) that Congress did not effectively abrogate State sovereign immunity in the Family and Medical Leave Act. See Lizzi v. WMATA, 255 F.3d 128 94th Cir. 2001.

Judge Shedd has been completely forthcoming with the Senate Judiciary Committee's requests for information. Earlier this year, Judge Shedd sent nearly one thousand unpublished opinions to the Committee for review immediately after Chairman Leahy requested them. Judge Shedd has continued to provide additional unpublished opinions, as well as all other information the Committee has requested regarding his rulings, opinions and judicial record generally.

Judge Shedd has bi-partisan support from his home state Senators; Senators Thurmond and Hollings support his nomination.

A majority of the ABA's Standing Committee on the Judiciary rated Judge Shedd "Well Qualified." Democrats have called the ABA rating the "gold standard" for judicial nominees.

ROSENBERG PROUTT FUNK &
GREENBERG, LLP,
Baltimore, MD, June 25, 2002.

Senator PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee, the Dirksen Building, Washington, DC.

DEAR SENATOR LEAHY: My name is Thomas W. Jones, Jr. I am an African-American attorney currently practicing as a litigation associate in Baltimore, Maryland.

Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd ("Judge Shedd") on the U.S. District Court for the District of South Carolina. During my eighteen months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of judge Shedd's jurisprudence or daily activities.

It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable Committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit.

Thank you for your attention regarding this matter.

Respectfully,
THOMAS W. JONES, JR.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 13, 2002.

JAMES GALLMAN,
President, SCNAACP,
Columbia, SC.

DEAR PRESIDENT GALLMAN: Thank you very much for your interest in the nomination of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. I want to assure you that Judge Shedd is an outstanding Federal Judge, and he is committed to upholding the rights of all people under the Constitution. Rather than being hostile to civil rights, as his detractors have claimed, Judge Shedd is committed to the ideals of equal justice under the law. I am confident that upon an examination of his record, you will find that Dennis Shedd is eminently qualified, applies the law fairly, and exhibits an appropriate judicial temperament.

I would like to address your concerns regarding Judge Shedd's civil rights record. I believe that it is commendable in all respects. First of all, Judge Shedd has been accused of granting summary judgment for defendants in almost every case. This accusation is false. A review of Judge Shedd's record indicates that he has been fair to the civil rights claims of plaintiffs in his courtroom. In fact, he has issued rulings that have benefitted plaintiffs on numerous occasions. For example, in Miles v. Blue Cross & Blue Shield, C.A. No. 3:94–2108–19BD, an action was brought under Title VII of the Civil Rights Act by an African-American employee who alleged that she was fired because of her race. There was ample evidence that the plaintiff had been subjected to racial slurs before being fired. Judge Shedd appropriately denied the defendant employer's motion for summary judgment.

In another case, Davis v. South Carolina Department of Health and Environmental Control, C.A. No. 3:96–1698–19BD, an action was brought under Title VII by an African-American employee who alleged that she was denied a promotion because of her race. There was evidence that an unqualified white employee had been promoted and that racially disparaging remarks had been made. Judge Shedd followed the law and denied the defendant employer's motion for summary judgment. Again in Ruff v. Whiting Metals, C.A. No. 3:98–2627–19BD and Williams v. South Carolina Department of Public Safety, C.A. No. 3:99–976–19BC, Judge Shedd denied a defendant's motion for summary judgment on race discrimination claims.

In the case of Treacy v. Loftis, C.A. No. 3:92–3001–19BD, Judge Shedd, overruling a magistrate judge's recommendation, declined to grant summary judgment on a fired employee's claim of intentional infliction of emotional distress. In that case, the plaintiff claimed that her job was terminated due to her involvement in an interracial relationship. Judge Shedd, in refusing to grant summary judgment, allowed the case to go forward.

Judge Shedd has also been accused of making insensitive remarks about the Confederate flag during proceedings in the case of Alley v. South Carolina, C.A. No. 3:94–1196–19. a lawsuit in which the plaintiffs sought to remove the Confederate flag from atop the Statehouse dome. These allegations are misleading and inaccurate. A close look at the transcript reveals that Judge Shedd made a point of saying that his comments were not meant to be disparaging. In fact, he said, “I'm not going to denigrate the constitutional claim about the Confederate flag.” Judge Shedd went on to say, “I'm not determining now on whether or not the flag should be there at all. I'm just doing what-you lawyers have been with me before know, I'm exploring your legal theory.”. The transcript clearly indicates that Judge Shedd was questioning the lawyers about their arguments in this case, something that is done every day in courtrooms across the nation. Furthermore, Judge Shedd never ruled on the merits of the case. Rather, he abstained to allow a claim to go forward in state court, arguably the forum better equipped to handle the issue.

I would like to point out the case of Vanderhoff v. John Deere, C.A. No 01-0406-19BD, the one case involving the Confederate flag in which Judge Shedd did rule. In that case, an employee was fired because he refused to comply with company policy and remove the Confederate flag from his toolbox. The employee sued under Title VII, a statute designed to prohibit workplace discrimation based on race, sex, religion, and national origin. He argued that his national origin was a “Confederate Southern American” and that he had been the subject of discrimination. Judge Shedd rejected this argument and dismissed the plaintiff's claim. Thus, in the one Confederate flag case where he ruled on the merits, Judge Shedd's decision went against a flag proponent.

In addition to Judge Shedd's demonstrated fairness in the civil rights arena, he has shown that he is personally committed to ensuring equal opportunities for women and minorities. He was instrumental in the selection of Judge Margaret Seymour, now a Federal District Court Judge, as the first African-American female magistrate judge in the District of South Carolina. He has also made an effort to hire African-American and female law clerks. In fact, Thomas Jones, an African-American man who clerked for Judge Shedd, wrote a letter to Senator Leahy in which he said that the allegations made against Judge Shedd should “be given the short shrift they are due . . . .”

Next, I would like to address the concerns raised by the case of Condon v. Reno, 972 F. Supp. 977 (D.S.C. 1997), in which Judge Shedd held that the Driver's Privacy Protection Act (DPPA) was unconstitutional. He was eventually reversed by the Supreme Court. Reno v. Condon, 528 U.S. 141 (2000). It is important to stress that this case was one of first impression. Given the United States Supreme Court opinions in New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 898 (1997), Judge Shedd's ruling was entirely reasonable. In a very persuasive opinion, he compared DPPA with those Acts invalidated in New York and Printz and found it to have similar constitutional defects.

While the Supreme Court ultimately disagreed with Judge Shedd, his opinion was not outside of the mainstream. Of the 16 lower Federal court judges who considered the constitutionality of DPPA, 8 determined the statute unconstitutional. Some of these judges, such as Judge Barbara Crabb and Judge John Godbold, were nominated by Democratic presidents.

In summary, I believe that Judge Shedd is a highly qualified candidate who will make an excellent addition to the United States Court of Appeals for the Fourth Circuit. It is a shame that he has been characterized as a judge with an agenda to curtail civil rights. On the contrary, Judge Shedd has demonstrated that he will apply the law fairly to all people. In addition, he has received a rating of “Well Qualified” by the American Bar Association, and he has the support of South Carolina Democrats, such as Senator Fritz Hollings and state Democratic Party Chairman Dick Harpootlian.

I hope that this information is helpful during your further consideration of Judge Shedd, and I hope that you will join me in support of this fine man. I have known Judge Shedd for a long time, and he is in all respects an honorable public servant. Again, thank you for your interest.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

U.S. SENATE
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 30, 2002.

LETTERS TO THE EDITOR,
The New York Times,
New York, NY.

DEAR EDITOR: This letter is in response to the editorial that appeared in your paper on July 28, 2002, entitled “The Secret History of Judges.” The piece questioned whether Judge Dennis Shedd, whom President Bush nominated to the U.S. Court of Appeals for the Fourth Circuit, has adequately supplied the Senate Judiciary Committee with all relevant information regarding his 11 years as a Federal District Court Judge. I can assure you that Judge Shedd has been thoroughly responsive to Committee requests and has provided an extraordinary amount of material. In fact, to the best of my knowledge, there is simply nothing left for him to hand over. This tired call for more information is nothing more than a delay tactic being utilized by political groups that oppose most of President Bush's judicial nominees, even when the nominees are, like Judge Shedd, extremely well-qualified.

All interested parties have had ample time to examine Judge Shedd's record. On June 27, 2002, Judge Shedd testified before the Committee for more than two hours, during which time he answered all questions asked of him. After the hearing, individual Senators had the opportunity to submit questions, and Judge Shedd prepared written responses to questions from six Senators.

Previously, on March 22, 2002, the Committee requested all of Judge Shedd's “unpublished” opinions. To fulfill this extremely broad request, as many as a dozen district court employees were required to undertake an extensive and time-consuming manual search of case files within the district as well as an electronic search of available computer records. Within 12 days, Judge Shedd provided a first set of documents to the Committee. As Judge Shedd was able to secure additional documents from out-of-state court storage, he supplemented his initial response with a second set of documents on May 20, 2002. In summary, Judge Shedd expeditiously supplied the Committee with more than 13,000 pieces of paper. Therefore, all documents responsive to this request have been available to Committee members for a significant period of time.

Although it has been suggested that Judge Shedd had not provided the appropriate documentation, the record will reflect that Judge Shedd has diligently worked to produce all documents, of which he and other court employees are aware, that satisfy the Committee request. While Judge Shedd has been assigned some 5,000 civil cases, many of these cases included routine matters, such as foreclosures, and have ended without any substantive ruling by Judge Shedd. Likewise, cases are often referred to Federal magistrate judges who make reports and recommendations to the District Court Judge. While Judge Shedd has received some 1,400 reports from magistrate judges, many of these are on non-substantive issues. I can assure you that the opinions Judge Shedd has supplied represent, to the best of his knowledge, all of his substantive “unpublished” opinions.

Your editorial asserts that civil rights groups have identified “important rulings by Judge Shedd that have not been handed over.” I have previously requested that these groups identify the particular cases in which they are interested, but they have yet to do so. I would once again urge these groups to identify the cases that cause them concern, and Judge Shedd will be happy to locate any information on these cases that will assist Committee members as they evaluate his nomination.

In short, Judge Shedd has acted promptly, professionally, and in good faith in his dealings with the Senate Judiciary Committee. His record is as complete as any other circuit nominee we have ever had before the Committee. There simply is no justifiable basis to clam that he has failed to respond to Committee requests.

It is my sincere hope that Judge Dennis Shedd will soon be confirmed as a Federal Circuit Court Judge. He is a fine man who has performed ably on the Federal bench for more than a decade. He has responsively provided the Senate Judiciary committee with documentation that chronicles his career as a distinguished jurist. Quite simply, Judge Shedd's record is complete, and it proves that he is committed to upholding the rights of all people under the Constitution.

Sincerely,

STROM THURMOND.

FAIRNESS: JUDGE SHEDD'S ABA “WELL QUALIFIED” RATING—THE ABA RATED JUDGE SHEDD “WELL QUALIFIED” FOR THE FOURTH CIRCUIT

According to the ABA Standing Committee on Federal Judiciary, a nominee is evaluated on “integrity, professional competence, and judicial temperament.”

“Integrity is self-defining. The prospective nominee's character and general reputation in the legal community are investigated, as are his or her industry and diligence.”

“In investigating judicial temperament, the Committee considers the prospective nominee's compassion, decisiveness, openmindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.”

“To merit Well Qualified, the prospective nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, wide experience, the highest reputation for integrity and either have shown, or have exhibited the capacity for, judicial temperament, and have the committee's strongest affirmative endorsement.”

Source: The ABA Standing Committee on Federal Judiciary: What It Is and How It Works, American Bar Association (July 1999) (pages 4 and 6).

[From the Post and Courier, Nov. 15, 2002]

SHEDD'S ADVANCE A WELCOME SIGN

President Bush's nomination of U.S. District Court Judge Dennis Shedd of Columbia to the 4th U.S. Circuit Court of Appeals finally was sent to the full Senate by the Senate Judiciary Committee Thursday. That overdue action represents an important step forward in breaking the partisan logjam on federal judicial appointments.

It also represents a potential step away from what Sen. Strom Thurmond aptly described as "destructive politics" last month after Judiciary Chairman Patrick Leahy, D–VT, reneged on his promise to send Judge Shedd's nomination to the full Senate. Sen. Thurmond, who's retiring after a long, distinguished career in politics, vividly expressed his outrage at this violation of personal trust, telling his colleagues: "In 48 years in the Senate, I have never been treated in such a manner."

And the Judiciary Committee's growing habit of blocking presidential appointments to the Federal bench has reached critical mass over the last year and a half. Democrats' protests that Senate Republicans had subjected President Clinton to the same mistreatment don't hold up when the rates of rejection are considered, particularly at the appeals court level. That blatantly party-line obstruction of judicial appointments became a campaign season liability for the Democrats in some states, including South Carolina, where Republican Lindsey Graham repeatedly stressed the need to break that pattern by giving President Bush a GOP Senate—and a GOP-controlled Judiciary Committee—in his winning campaign to replace Sen. Thurmond.

Recognizing the incoming Senate's intentions on this issue, and the voting public's message, Sen. Leahy didn't call for a committee roll-call vote on the nominations of Judge Shedd and Professor Michael McConnell to the appeals courts Thursday, instead allowing them to advance.

And despite familiar objections from special-interest groups that seem intent on branding any judge who has ever issued a purportedly conservative ruling as a reckless "extremist," Judge Shedd has the support of not just leading Republicans, but of Sen. Ernest F. Hollings, D–SC. The senator has been openly critical of the Judiciary Committee's previous attempts to derail this nomination.

Thursday's Judiciary Committee decision was not merely a victory for Judge Shedd, President Bush, Sen. Thurmond and Sen. Hollings. It was a victory for fairer, more efficient consideration and confirmation of presidential judicial appointments by the Senate.

[From the Greenville News, Oct. 15, 2002]

INSULTING THURMOND

Senate Judiciary Committee Chairman Patrick Leahy, a Democrat from Vermont, did a number last week on retiring South Carolina Sen. Strom Thurmond, and in the process thumbed his nose at both the Constitution and any sense of fair play. Highly partisan Democrats don't want Thurmond's choice for the 4th U.S. Circuit Court of Appeals, U.S. District Judge Dennis Shedd, to get a well-earned promotion to the appeals court.

Shedd is eminently qualified, but he has been painted as an opponent of civil rights, the disabled and common workers. The case hasn't been made, but then, the Democrats who oppose his nomination aren't interested in making the case with facts. They have conveniently used Shedd as an election issue.

With the U.S. Senate in the hands of Democrats, it has become something of a sport in Washington to prevent President Bush from getting his top choice for federal judges. But Sen. Leahy sunk to a new low last week by refusing to allow a vote on the Shedd nomination, and in doing so, it became obvious he had flat-out lied to Sen. Thurmond. Leahy had promised South Carolina's 99-year-old senior senator a Judiciary Committee vote on Shedd, but that was before word leaked that a committee Democrat would vote for Shedd. If his nomination got to the full Senate, he would be approved, especially with South Carolina's Sen. Fritz Hollings wholeheartedly supporting this nomination.

The Senate Judiciary Committee has become a graveyard for Bush's top choices for seats on the federal appeals court. The Democrats have flexed their muscles to prevent the nomination of reputable choices—such as Charles Pickering and Priscilla Owen—from making it to the Senate floor for a vote they probably would win. But now the powerful Leahy has proven he can go lower—by denying a vote, even after he made a promise to allow one.

Thurmond was indignant last week, making a rare Senate speech in which he said about Leahy, "In my 48 years in the United States Senate, I have never been treated in such a manner." Thurmond is leaving a Senate in which a man's word is no longer his honor.

[From the Orangeburg Times and Democrat, Oct. 13, 2002]

NOMINATION OF SHEDD HELD HOSTAGE

The continuing battle over federal judgeships grows more frustrating.

It's a partisan and philosophical battle that has gone beyond what was ever intended by the framers of our Constitution. The founders gave presidents appointment power for judges, with the Senate's role being advice and consent.

Particularly since the Clinton years of the 1990s, the process has been paralyzed by politics. A Republican Senate left Clinton nominees hanging, never even giving them a hearing and a vote. The Democratic Senate has been doing the same thing with President Bush's nominees.

On Tuesday, partisanship got closer to home when Cordova native and S.C. U.S. District Judge Dennis Shedd was denied a vote by the Senate Judiciary Committee on his nomination to the 4th Circuit Court of Appeals.

The decision to delay the vote prompted S.C. Republican Sen. Strom Thurmond, for whom Shedd once served as a top aide, to react angrily at the committee and its Democratic leader, Sen. Patrick Leahy of Vermont. Leahy said the vote on Shedd was too contentious for the session and would have sparked a debate delaying action on other judicial candidates.

That may be, but Thurmond was taking the rejection personally, addressing the Senate Judiciary Committee himself in a rare appearance.

"In my 48 years in the U.S. Senate, I have never been treated in such a manner. You assured me on numerous occasions that Judge Shedd would get a vote, and that is all that I have ever asked of you. I have waited patiently for 17 months, and I have extended every courtesy to you," Thurmond said to Leahy.

The judgeship battles are likely to trample on more Senate decorum, particularly when judges meet vocal opposition as has Shedd. Despite endorsements by the American Bar Association and others, Shedd has faced criticism from the NAACP and other organizations contending his record shows no sympathy for those in discrimination cases. Sixth District Congressman Jim Clyburn is among opponents.

But Shedd enjoys the support of both Republican Thurmond and Democrat Ernest F. Hollings from South Carolina. And he is former chief legal counsel to the Senate Judiciary Committee, which Thurmond formerly chaired.

Thurmond's anger over the delay of Shedd's nomination probably won't change the equation.

A vote probably will not come until next year—and may not come then unless the Republicans regain control of the U.S. Senate in November's election. That would mean that Thurmond, who will soon turn 100 and is not seeking re-election, won't be voting on a judicial candidate he recommended and President Bush nominated way back on May 9, 2001.

In all, Bush has nominated 126 U.S. Appeals Court and U.S. District Court nominees, and the senate has confirmed 80: 14 judges to appeals courts and 66 to district courts. Most of the others haven't been put to a vote.

Shedd should not be one of them. His record is a good one, and it is that record that should be the test of his approval, not what others believe about his personal or political philosophy.

Shedd is certainly not out of the judicial mainstream and his opinions are not rooted in controversy.

Sen. Hollings is known for his candid if not controversial assessment of people. The S.C. Democrat is solidly behind Shedd, being the one to introduce him initially to the Senate Judiciary Committee.

Saying Shedd "has an outstanding record of sound judgment," Hollings told the Judiciary Committee that Shedd is "my kind of judge—hard and tough, but hard and tough on both sides."

His nomination should be brought to a vote by the Senate committee and then the full Senate, where we're confident he will win approval.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will speak today in morning business briefly.

The PRESIDING OFFICER. The Senator may proceed.

HOMELAND SECURITY

Mr. DORGAN. Mr. President, I rise to say a few words about the issue of homeland security. I will not talk at the moment about the bill itself, which we will vote on tomorrow, but a couple of issues dealing with homeland security that are very important, that have been raised in recent days and need to be discussed.

One issue deals with something that is happening in the Defense Department. My colleague Senator NELSON from Florida spoke of it earlier today. That is the creation of an Information Awareness Office and the prospect of having an agency that would amass your most personal information—credit card purchases, travels, medical information, and so on—and put it into a single database. That concerns me greatly. I will speak about that in a moment.

But first I will speak about another issue relating to homeland security. This is an issue that was recently highlighted by a task force headed by former Senator Warren Rudman and former Senator Gary Hart.

That task force included former Secretaries of State Warren Christopher and George Shultz, retired Admiral William Crowe, former Chairman of the Joint Chiefs of Staff, and others. There is a very significant blue ribbon task force.

They issued a report that was sponsored by the Council of Foreign Relations. The report was titled "America Still Unprepared, America Still In Danger."

The task force found that 1 year after the September 11 attacks, America remains—according to them—dangerously unprepared for another terrorist attack. At the top of the list of concerns in this task force was this:

> 650,000 local and State police officials continue to operate in a virtual intelligence vacuum without access to terrorist watch lists that are provided by the United States Department of State to immigration consular officials.

Why is this important? Well, consider that 36 hours before the September 11 attack, one of the hijackers who piloted the plane that crashed in Pennsylvania, named Ziad Jarrah, a 26-year-old Lebanese national, was actually pulled over by the Maryland State Police for driving 90 miles an hour on Interstate 95. If this fellow's name had been on the State Department terrorist watch list—and it happens that it was not—there would have been no way for that Maryland State trooper to know it. That Maryland State trooper can type a name into the system and go to the NCIC where they have the database of convicted felons, but that trooper has no access to the watch list that the Immigration Service has courtesy of the State Department.

You have all of these people around the country—law enforcement officials—who are actually the first line of defense and the first responders in the event something happens. And they are out there stopping people with traffic stops and stopping suspicious people who are driving automobiles without license tags, and so on. They don't have any idea whether someone they have just stopped is a known terrorist on a watch list prepared by the State Department and given to the Immigration Service and given to the consular offices. Why? Because they currently have no mechanism to access it.

Right now, a county sheriff somewhere in a northern county in North Dakota is patrolling a road. If down that road for some reason would come a terrorist who crossed over a remote section on the border between the United States and Canada and a county sheriff stops that known terrorist who is on the watch list for driving 90 miles an hour on Highway 22, there isn't any way that county sheriff is going to be able to access that watch list and know that he or she has pulled over a known terrorist.

That is wrong.

Let me read an excerpt from the Hart-Rudman report, discussing what they regard as a top concern:

> With just 56 field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the Federal Bureau of Investigation. This burden can and should be shared with 650,000 local county and State law enforcement officers. But they clearly cannot lend a hand in the counterterrorism information void that now exists. When it comes to combating terrorism, the police officers on the beat are effectively operating deaf, dumb and blind.

That is from the report.

Again, quoting from the report:

> Terrorist watch lists provided by the United States Department of State to immigration and consular officials are still out of bounds for State and local police. In the interim period, as information sharing issues get worked out, known terrorists will be free to move about to plan and execute their attacks without any bother from local law enforcement officials because they can't know their names and they can't access the list.

My staff has been in contact with this task force. We have also been in contact with the State Department and the White House, asking when something is going to be done to connect the dots here. Since we made these contacts, the administration is apparently looking for ways to integrate that terrorist watch list—called the Tipoff database—with the National Crime Information Center which is accessible by State and local law enforcement officers. I call on the administration to expedite, as much as is possible, the effort to make this happen. We can't waste another day in this regard, as all of us know.

The head of the CIA said the other day that we are in as much risk from a terrorist act as we were the day before September 11. If that is the case, then we ought to expect that all law enforcement officials around this country would have access to that terrorist watch list.

Let me go now to the second issue. I just spoke of the need for law enforcement to have access to a list of known terrorists and those who associate with known terrorists for purposes of protecting this country.

Well, one can certainly go to the other extreme in gathering information in the name of homeland security. And a good example of that is a project that is being developed in the Department of Defense, by the Information Awareness Office.

The Information Awareness Office is developing a long-term plan for what is called data mining. A master plan would be developed by which all of the information that moves around electronically in our country—every purchase you make with a credit card, every magazine subscription you buy, every medical prescription you fill, every Web site you visit, every e-mail you send or receive, every academic grade you ever received, every bank deposit you made, every trip you book—would go into a massive database. And the Federal Government would use the database to identify suspicious behavior.

That is not what we ought to be doing in this country. We ought to have a war on terrorism. But we ought not, in our zeal to engage in this war on terrorism, in any way break down the basic civil liberties that exist in our Constitution. The right to privacy is one of the most basic rights in America—the right to expect there is not a Big Brother with a massive computer system gathering all the information about everything everyone is doing in this country and evaluating it, perusing it, and moving it back and forth to try to determine who might or might not be doing something maybe suspicious.

That is not, in my judgment, in concert with the basic civil liberties that we expect in this country and that are guaranteed to the citizens in this country. We must stop this before it starts.

I understand that a change in law—specifically a change in the 1974 Privacy Act—would be required to implement this data mining program. That, in my judgment, is not going to happen in the Congress. I would not support such a change, and I think most of my colleagues would oppose a change of that type.

(Mrs. MURRAY assumed the chair.)

Mr. BYRD. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. BYRD. The Senator says he is confident that the Congress will do no such thing? I say most respectfully to the Senator, I would not count on what the next Congress might do. I am very much afraid of what the next Congress might do in many areas. Doesn't the Senator share that feeling?

Mr. DORGAN. Well, I happen to——

Mr. BYRD. I say, Congress normally would not do that. But I am not too sure what the next Congress might do.

Mr. DORGAN. Madam President, I understand the concern expressed by my colleague. Let me say, there is a great disinfectant in this country, and that disinfectant is sunlight. If we can shed some light on these kinds of proposals, I do not think there is any question the American people will demand—will demand—of this Congress to preserve the basic rights, and especially the basic right to privacy that exists and that they expect to continue in the life of this country.

So I understand the point that the Senator from West Virginia makes, but I believe the more we disclose the efforts of those who would suggest that it is all right to snoop about everybody and everything that goes on in this country, the more we will expose, in my judgment, the great, great concern and anger of the American people to demand their right to privacy and demand that we not amend the 1974 Privacy Act in order to accommodate this kind of activity.

Mr. BYRD. Madam President, will the Senator yield?

Mr. DORGAN. Of course I will yield.

Mr. BYRD. I am not going to detain the Senator. My colleague here wishes to get the floor, and I am not going to detain him, but I still have to say that I am surprised at some of the things we do here.

The distinguished Senator from North Dakota is one of the brightest Senators I have ever seen over my good many years in this institution. But let's take the war, the resolution on a war with Iraq. I took the position that if we are, indeed—I was against that resolution, but I said, if, indeed, we are going to shift this kind of power to the President, a power to declare war, then shouldn't we put a sunset provision in, shouldn't we stop that, at least give him 2 years, and then say that we have to take another look at that?

Was the Senator surprised, as I was, to see this very body—and even more surprisingly to see our own party—oppose that provision, a sunset provision, when the Constitution says Congress shall have the power to declare war, and we were shifting that power to the Chief Executive to determine how and when our military forces would be used, for how long and where? And he has that power in perpetuity. The next President after him will have that same power.

I was surprised. I am surprised to see where this Senate, which has been the great protector of the American people and the constitutional system for over 200 years, is going of late. I have been very bitterly disappointed in this Senate, of which I am a part, to see where it is going. It seems to have lost its nerve, lost its way, lost its vision, lost its understanding of its role under the Constitution.

Well, I thank the Senator and yield the floor.

Mr. DORGAN. Madam President, let me conclude by saying, I understand the angst and the concern expressed by my colleague.

After September 11, a day that this country experienced a terrible, terrible tragedy—we have come together and we have worked together to try to protect our homeland. But there have also been, in this period, instances where we have gone overboard. We should not sacrifice privacy rights in the name of homeland security. We need to find an appropriate balance between the two.

There is much we can do, and much we should do, and much we will do, in my judgment, to improve law enforcement capabilities, but we can do that without injuring the American people, without diminishing the right to privacy.

I understand the point that the Senator from West Virginia makes. But my point is, if someone is creating an office with the expectation that Congress will amend the 1974 Privacy Act so that the Federal Government can track where you shopped, where you spent money, where you traveled, what airline you ride on, how much you owe, what kinds of grades you received—if someone thinks that the Congress is going to allow that to happen, that someone is sadly mistaken.

I do not think Congress is going to allow that to happen. I am not going to allow that to happen. My colleague from Florida spoke on the floor earlier today and it prompted me to want to come to say, as one Member of the Senate, I think there will be many of us who come to the floor of the Senate and say, this isn't something that will be allowed. This is not something that Congress will entertain in any serious way. The right to privacy is critical. It is important. And we must respect it.

So I spoke about two things: One is the need for law enforcement officials around the country to access the State Department terrorist watch list. That is important, and it is necessary. I also spoke about the prospect of gathering raw data about everybody in the country, about everything they do, to identify "suspicious" behavior. That is dangerous, and we ought not to consider it.

Madam President, others want to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent to speak in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CHILDREN'S HEALTH INSURANCE PROGRAM

Mr. ROCKEFELLER. Madam President, I rise today to ask unanimous consent for a bill which has been hotlined on our side and which relates to improved protection for children under the Children's Health Insurance Program. And it is not a bill which I will hand to the clerk at the time that I have completed my remarks, nor will I ask unanimous consent that it be printed in the RECORD, although it is ready and being hotlined, because we want to try to resolve a few remaining problems from several States on our side, which I do not think we are going to be able to do. We have tried in every way to do it.

Fundamentally, the Senator from West Virginia is on his feet trying to convince those States, whether they are here or not, whether their staff members perhaps are, not to try and do what has happened so often before under the Children's Health Insurance Program, and that is a State at the last moment using the leverage of the final seconds of Congress to try to leverage a better deal for itself.

The House is coming back to pass homeland security. There was one objection made on that side in the House. That person is being worked with at this time. If that objection is not raised and there is not an objection raised here, then the Children's Health Insurance Program could get funding for another 2 years. If not, funds will be returned to the Federal Government. Children will not get health insurance, and there will be a very dramatic effect which this Senator does not want to see happen.

This bill, which I will not ask unanimous consent to report, is very much bipartisan. It has been worked on for a very long period of time. It started back in 1992, something of that sort. It had a slow evolution because Senator John Chafee and myself wanted very much for the bill to be done under Medicaid. The Governors struggled strenuously to have the entire matter handled on a State-by-State basis, which was in effect a mistake because it meant some States that were very aggressive picked it up, and in others that were not so aggressive—my own being one of those—it took a number of years for the program to get going. That was lost time, lost health care for children.

It is very much a bipartisan, bicameral agreement that we believe is in the best interests of our constituents and that we can do it on the Children's Health Insurance Program this year.

The budget situation clearly is going to get a lot worse, starting in January. We need to protect the CHIPS funds before they are spent on other matters, as indeed they will be because, as I indicated, the money will be returned to the Federal Government. Don't expect that to come back into children's health insurance.

It is my understanding there are a number of Senators who have expressed concern and have stated their intention to hold up this bill in an effort to get the best possible outcome for their State. I do understand that. I have been through that a number of times even this year with individual States, now two or three States, one or two States, where they are trying to use a formula, which has been worked out, which applies to all States equally, to increase that formula to allow them to do other things which are outside of the Children's Health Insurance Program.

The Children's Health Insurance Program is obviously larger than any one State. My State does not get what it needs. There are only 20,000 children on a regular basis who are covered, although 55 have come in and out of that program, but I cannot say in all conscience that 55 are covered. The Children's Health Insurance Program is in a situation that if we do not act now, this money will be lost from the Children's Health Insurance Program for good.

It will happen. We have a new administration, new priorities, new budget, and the same OMB director who has very firm views about this.

This is not, however, a permanent solution. I am trying to stanch the drain, the bleeding for these next 2 years. I am trying my level best to do that.

This bill actually has a chance to pass in the Senate and in the House and to be taken up and passed in its entirety. I only ask with all of my heart that Senators give it a chance, that Senators not try to leverage the last possible variety or program outside of the CHIP program or extension of or some particular addition which will bring down, in fact, if an objection at this very late stage, with a day or so remaining, which will obviously work, is held. If that objection is held, then there will be no bill at all.

Earlier this year I worked in a bipartisan manner to develop a very comprehensive proposal based on a basic and fundamental philosophy that no child should go without needed health care. I was pleased at the time to be joined by my good friend Senator LINCOLN CHAFEE, Senator KENNEDY, and Senator HATCH to introduce the Children's Health Insurance Improvement and Protection Act of 2002. Unfortunately, no action has been taken on that proposal, and I am left worrying that we will end this session in a day or two having forgotten our children.

Therefore, I am introducing a proposal that will at least protect the Children's Health Insurance Program for the next 2 years. This is not a permanent solution. This can change. But it is a solution for the next 2 years so money does not have to be returned. Children will be left behind.

The Children's Health Insurance Program, as the Presiding Officer knows very well, has been an unqualified success. It has been an amazing success. Last year 4.6 million children across America were enrolled in the Children's Health Insurance Program and the percentage of children without health insurance has declined in recent years by reason of the Children's Health Insurance Program. In my State of West Virginia, the CHIP program provides health coverage on a permanent basis to over 20,000. And, of course, it needs to do much better than that. As I indicated, we were slow in starting a number of years ago. We have picked up our pace more recently.

Health insurance coverage is key to assuring children's access to all kinds of health care. I need not go into this. Uninsured children who are injured are 30 percent less likely than insured children to receive medical treatment, 3 times more likely not to get a needed prescription. Health outcomes are affected in all respects. As children do eventually become adults, they carry with them the legacy of what they didn't get as children in the way of health insurance.

However, the continued success of the CHIP program is now, as I have indicated—I hope soberly enough—in very serious jeopardy. On September 30 of this year, $1.2 billion in unspent children's health insurance funds was sent back to the General Treasury. It is gone. In addition, some $1.5 billion of these funds are projected to revert back to the Treasury next September 30. If we do not act to protect this money for children and send money to the States that can in fact use it, we will have failed our children.

A 2-year fix is only a first step. There is much more that we need to do. The Bush administration projects that 900,000 children will lose their health insurance coverage between fiscal years 2003 and 2006 if we do not take action this year.

The bill I am discussing, that I hope will not be blocked by any individual Member, is tremendously important. It is called the CHIP Dip. Federal CHIP funding has dropped by more than $1 billion this year, and this reduction has no underlying health policy justification whatsoever. I cannot honestly imagine that with so many children at stake in so many different States, that one would look at the last moment to leverage a particular advantage.

I have been through this before even this year with a Senator from another State. And in formulas, there are various ways, technical ways, of things happening. Those can be brought up in a very careful and effective way at the last moment, and people can dig in their heels. But I beg Senators to look at the overall results for our children.

If we do not get this bill, it will affect the next 2 years. All of this, I might say, resulted in something that took place during the budget compromises that we had in 1997. These programs all have sort of obscure beginnings, but there are very large consequences.

As a result, a number of States will have insufficient Federal funding to sustain their enrollment. They just won't have that money. They will have no choice but to scale back or limit their Children's Health Insurance Programs. I cannot imagine anything worse.

We have talked about judges this afternoon while I was presiding. We talked about homeland security. I am talking about children's health insurance. I would not put that second to either of the previous two discussions. I care passionately about it. I remember precisely when the Senate got together and asked all the staff to leave, and 20 of us with very different points of view sat around a number of years ago and we worked out a children's health insurance budget, which passed very easily. Some people had never talked about health insurance at all, and we said this cannot do for children. It passed and it has been moving along ever since.

The biggest problem will result in enrollment cuts in the CHIP Program and the future health problems, as I indicated, of adults who, as children, could have received benefits under the CHIP Program but who did not because we were unable to take action, or the program was fundamentally insufficient.

We are trying to do the best we can. I am introducing this concept of the bill. It is being hotlined on our side. It has not been hotlined on the Republican side yet.

Again, it is only a first step that we need to take. We need a comprehensive and reasonable approach to shore up CHIP financing and avert a devastating enrollment. I cannot think of anything more important that we can do as a nation.

I conclude by saying we need to put more money into this program. However, this legislation—at least for the short period—will protect $1.2 billion that should be spent on children's health insurance rather than on roads or other matters, and will put money into States that can use it now to cover children. It is the least we can do.

I urge my colleagues to support this legislation, and I urge my colleagues on the other side to support it in the last days when it is hotlined on their side of the aisle. I urge my colleagues on this side of the aisle to support it for the protection of 4.6 million children across America and giving us a chance to do more.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Madam President, I see two of my distinguished colleagues on the floor of the Senate who want to speak. At this moment, I am in no great hurry to get away. I am happy to accommodate both of them.

I ask unanimous consent that I may yield to either Senator SPECTER or Senator FRIST—Senator FRIST first. How much time would the Senator like?

Mr. FRIST. Less than 15 minutes.

Mr. SPECTER. I would like 10 minutes.

Mr. BYRD. For not to exceed 25 minutes—15 and 10—and that I then regain my right to the floor, even though I may walk away from the floor in the meantime.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I thank our distinguished President pro tempore for accommodating our schedules.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. FRIST. Madam President, I ask unanimous consent to speak in morning business, if that is necessary.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY

Mr. FRIST. Madam President, I rise to address a homeland security issue that we will be voting on tomorrow morning. Specifically, I would like to discuss the Lieberman amendment. This amendment strips out certain provisions which Senator LIEBERMAN and other proponents of the provision believe are unrelated to the underlying homeland security bill.

More specifically, I want to address the issue of vaccines. There are three claims that have been made by the proponents of the Lieberman amendment, as they relate to the vaccine provisions. For my colleagues who were not on the floor Friday, I refer them to some of my underlying comments on the policy of the homeland security bill and the vaccine provisions which I mentioned on the floor Friday.

This afternoon, what I would like to do specifically is examine these three claims. First, the proponents of the Lieberman bill say that the underlying vaccine provisions in the bill remove individual rights to sue. Their second claim is that Thimerosal, contained in vaccines, causes autism. The third claim I would like to refute is that these vaccine provisions do not belong in the homeland security bill.

Claim No. 1: The proponents of the Lieberman amendment say the vaccine provisions remove individual rights to sue. They are saying these provisions are an example of Republicans fronting for special interests; that they take away individual rights to sue and provide legal immunity from liability for vaccine makers.

My response is that these provisions do nothing more than require injuries that are related, or allegedly related, to a vaccine to first proceed through the Vaccine Injury Compensation Program (VIC program). The VIC program was very specifically established in the mid-1980s for all injuries that are allegedly related to a vaccine.

Since the mid-1980s, all such injuries alleged to be caused by a vaccine are collected and channeled quickly and appropriately first through this Vaccine Injury Compensation Program. A no-fault, efficient alternative to our tort system; very quickly.

That requirement is law today. The provisions that are in the underlying homeland security bill simply restate and clarify what that law is and what that law does. If there is an alleged vaccine-related injury, you first go to the Vaccine Injury Compensation Program. After a period of time, whether or not the program decides in your favor, whether or not there is what you regard as adequate compensation, at the end of that program, you can simply state that you still want to go to court. Whatever that program decides, you are free to go to court. You are free to sue, and there are no caps in terms of liability.

The provisions in this bill take away no one's right to sue. The provisions in the underlying homeland security bill provide no immunity from liability.

A little perspective: There are currently about 875 cases alleging injury due to the presence of a preservative called Thimerosal that is no longer used in vaccines. Right now, these 875 cases are in front of the Vaccine Injury Compensation Program, consistent with the law since the 1980s. These cases are in no way affected by the provisions in the homeland security bill. I want to repeat that. These 875 cases that are in the Vaccine Injury Compensation Program are being dealt with in an orderly process that was outlined several months ago, and they are in no way affected by the provisions in the underlying bill.

If individuals are unsatisfied with what the Vaccine Injury Compensation Program decides, at the end of it, you can say: Forget what you have concluded from me; I am going straight to court. Anyone can do that today, and one can still do that with the provisions of this bill.

The only people who are really affected by the language in this underlying homeland security bill are the trial lawyers who are trying to circumvent the very law this body passed in the mid-1980s—a law which has worked very well since that point in time. The trial lawyers basically are trying to create a loophole in the current law.

The provisions in the underlying homeland security bill state very simply that you first go to the Vaccine Injury Compensation Program, and for good reason. After which, you can still go to court and sue with no caps or no limits.

Claim No. 2—and this one probably bothers me as much as any because it is twisting medical science. I am not sure exactly what the reasons are, but this claim is Thimerosal-containing vaccines cause autism. Additionally, proponents claim that Thimerosal as an additive in a vaccine has a causal relationship to the autism, a disease with increasing incidence. The incidence of autism is increasing. We do not know why, and that is why it is important for us to conduct the appropriate research.

There has been a lot of misrepresentation about the various vaccine provisions in the bill, but this one really irks me the most. It is grandstanding which crosses the line because it is not what science says. It is not what the medical community says. It is not what medical science in the broadest sense says. In fact, it is the exact opposite of what the Institute of Medicine has said.

Last week on the floor one of my colleagues said these provisions in the underlying homeland security bill—saying why they must be stricken—said specifically:

> Liability protection for pharmaceutical companies that actually make mercury-based vaccine preservatives that actually have caused autism in children. . . .

That is scientifically wrong. Science does not validate it. Let me tell you what science says. I quote the October 2001 Institute of Medicine record. The report is called "Thimerosal-Containing Vaccines and Neurodevelopmental Disorders." That report concluded:

> The hypothesis that Thimerosal exposure through the recommended childhood immunization schedule has caused neurodevelopmental disorders is not supported by clinical or experimental evidence.

The argument that is being used in support of the Lieberman amendment as the reason to support stripping these provisions is based on a false premise, a totally false premise, according to medical science today. What bothers me about it, and the reason this bothers me more than any of the other three claims, is probably because it scares parents. It says vaccines are going to hurt your children, and that demagoguery is going to mean these parents are not going to let their children get these childhood vaccines. These vaccines fight diseases that have caused pandemics and epidemics, diseases that will kill children if we do not make the vaccines available. Epidemics will occur, and death will ensue.

I challenge my colleagues to go to the American Academy of Pediatrics and to the Institute of Medicine and ask that question: Does Thimerosal, according to the scientific literature, cause autism? The answer is no.

A number of the people on the floor have also held up a New York Times magazine article quoting it as further proof that the preservative Thimerosal causes autism. I do not want to spend a lot of time on it, but I do want to read what the people who are quoted in the article are saying.

I ask unanimous consent that two letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

INSTITUTE FOR VACCINE SAFETY,
JOHNS HOPKINS UNIVERSITY,
BLOOMBERG SCHOOL OF PUBLIC HEALTH,
November 11, 2002.

Proposed title: Misleading the public about autism and vaccines.

TO THE EDITOR: The unfortunate use of a sensationalized title in the article published November 10. 2002 in the New York Times Magazine "The not so crackpot autism theory: reports of autism seem to be on the rise. Anxious parents have targeted vaccines as the culprit. One skeptical researcher thinks it's an issue worth investigating," absolutely misrepresents my opinion on this issue. Also, the caption under the photograph of me "Neal Halsey says that vaccinologists have no choice but to take the thimerosal threat seriously" is not a statement that I ever made. There is no "threat" as thimerosal has been removed from vaccines used in children. The headline, the press release issued prior to publication, and the caption are inappropriate. I do not (and never did) believe that any vaccine causes autism.

I stated to the author on at least two occasions that the scientific evidence does not suggest any causal association between vaccines and autism and he reaffirmed that the article would reflect my opinion. Unfortunately, the title implies the opposite opinion. A "fact checker" employed by the New York Times asked me several questions and minor corrections were made, but I was never shown the text of the article and no questions were asked about the title that implies a belief that I do not hold. It was my expectation that the title would be about thimerosal and the difficult decisions that were made during the past three years that have resulted in the removal of thimerosal as a preservative from vaccines administered to infants and young children. Changes in the use of thimerosal were made by the Food and Drug Administration and the vaccine industry with urging by the American Academy of Pediatrics and the Public Health Service in a concerted effort to make vaccines as safe as possible.

The sensationalized title sets an inappropriate context for everything in the article. Readers are led to incorrectly believe that statement in the article refer to autism. I have expressed concern about subtle learning disabilities from exposure to mercury from environmental sources and possibly from thimerosal when it was used in multiple vaccines. However, this should not have been interpreted as a support for theories that vaccines cause autism, a far more severe and complex disorder. The studies of children exposed to methylmercury from maternal fish and whale consumption and the preliminary studies of children exposed to different amounts of thimerosal have not revealed any increased risk of autism.

Inappropriated reporting has contributed to public misunderstanding of vaccines and other health care issues. The use of deceptive title is one of the primary means that newspapers have misled the public. The New York Times and other newspapers need to conduct self-examinations into this role in misleading the public and modify procedures accordingly to help prevent future major misrepresentations of scientific data and opinions. Another disserve to the public comes when scientists become reluctant to talk with the media for fear of being misquoted or misrepresented. I have already spent a great deal of time correcting the misinformation in the Sunday's NYT Magazine article. Naturally, the next reporter from the NYT who contacts me will be met with skepticism and reluctance unless changes are made to prevent recurrences of this debacles.

Apparently, editors, not authors, write most titles. To avoid misinterpretations authors should propose titles and assume responsibility for making certain that titles do not misrepresent the opinions of individuals or information presented in the article. Proposed titles and subtitles should be included in the review by "fact checkers'" when interviewing people whose opinions are included in the title. The best way to avoid these problems would be to permit individuals referred to in articles an opportunity to read a draft of the text before it is to late to correct mistakes or misunderstandings.

The New York Times and other newspapers and magazines should have policies requiring authors, editors and fact checkers to disclose personal associations with issues covered in articles they are involved in preparing and they should be relieved from their responsibility for articles where they have personal issues or conflicts of interest.

The general public and parents of children with autism have been misled by the title of this article and the news release. This is a disservice to the public and the value of my opinion has been diminished in the eyes of physicians, scientists, and informed members of the public. I encourage interested readers to review my scientific publications and to read objective reviews of this and under other vaccine safety issues conducted by the Institute of Medicine (www.iom. edu).

NEAL HALSEY, M.D.,
Director.

DEPARTMENT OF PEDIATRICS, DUKE
UNIVERSITY SCHOOL OF MEDICINE,
Durham, NC.

Subject: Thimerosal issue.

TO THE EDITOR: As one of the two authors of the July 7, joint PHS/AAP 1999 statement that you cite in your article on "The Not-So-Crackpot Autism Theory" it is appropriate that several misconceptions in your article be rectified. The EPA guidelines on mercury levels related to methyl mercury, a very different compound from ethyl mercury which is the metabolite of thimerosal. Three other guidelines issued by federal and World Health Organization agencies were not exceeded by the vaccine levels.

Nevertheless we chose to recommend the removal of thimerosal, not because there was any evidence of its toxicity to vaccine recipients, but to enhance public confidence in vaccines. To the credit of the pharmaceutical industry, within 1 year all vaccines for children were free of thimerosal.

The only possible exception is influenza virus vaccine which is not recommended for children less than 6 months of age and for which a newly licensed product is now available free of thimerosal. Despite the absence of thimerosal from these products over the past two years, there has been no decrease, in fact an alleged increase, in the incidence of autism among our childhood population—strongly suggesting other factors involved in its etiology. Regrettably this exemplifies another issue where the best-intentioned actions have served to benefit no one other than the liability lawyers who feed on events of this sort as sharks in bloodied waters.

Yours sincerely,
SAMUEL L. KATZ, MD,
Wilburt C. Davison Professor
and Chairman Emeritus.

Mr. FRIST. Madam President, I will quote a couple paragraphs from each.

The first is from Dr. Neal Halsey, who is profiled in the article in the New York Times and who is characterized as being concerned about the Thimerosal threat. Dr. Halsey heads up the Johns Hopkins University Institute for Vaccine Safety, and he wrote saying that this story

> absolutely misrepresents my opinion on this issue. . . .There is no "threat" as thimerosal has been removed from vaccines used in children. The headline, the press release issued prior to publication, and the caption are inappropriate. I do not (and never did) believe that any vaccine causes autism.

He continues:

> I stated to the author on at least two occasions that the scientific evidence does not suggest—

Does not suggest—

> any causal association between vaccines and autism and he reaffirmed that the article would reflect my opinion. Unfortunately, the title implies the opposite opinion.

He concludes:

> The general public and parents of children with autism have been misled by the title of this article and the news release. . . .I encourage interested readers to review my scientific publications and to read objective reviews of this and other vaccine safety issues conducted by the Institute of Medicine.

The second letter is from Dr. Samuel Katz, Professor and Chairman Emeritus at the Department of Pediatrics at the Duke University School of Medicine. Dr. Katz writes:

> As one of the two authors of the July 7 joint PHS/AAP 1999 statement that you cite in your article . . . it is appropriate that several misconceptions in your article be rectified. . . .we chose to recommend the removal of Thimerosal, not because there was any evidence of its toxicity to vaccine recipients, but to enhance public confidence in vaccines. To the credit of the pharmaceutical industry, within 1 year all vaccines for children were free of Thimerosal.

Dr. Katz concludes:

> Despite the absence of Thimerosal from these products over the past two years, there has been no decrease, in fact an alleged increase, in the incidence of autism among our childhood population—strongly suggesting other factors involved in its ideology. Regrettably, this exemplifies another issue where the best-intentioned actions have served to benefit no one other than the liability lawyers who feed on events of this sort as sharks in bloodied waters.

The final statement is from Every Child by Two, the Rosalynn Carter-Betty Bumpers Campaign for Early Childhood Immunizations in a statement released today:

> Most importantly, we are concerned that the Senate may be inadvertently fueling fears that vaccines cause autism. In fact, well-respected studies concluded that the evidence is inadequate. Much research is available to support these conclusions.

Madam President, the third claim—and I will be brief on the third claim—we have heard on the floor from the advocates of the Lieberman amendment, which I encourage my colleagues to oppose, is that the vaccine provisions do not belong in the homeland security bill. I would argue just to the contrary. If we do not have a stable manufacturing base for vaccines, there is absolutely no way we can prepare our communities and our Nation in the event there is a biological warfare attack on our soil.

We talk a lot about smallpox, and we all know today we are inadequately protected because today we are inadequately vaccinated against smallpox. We cannot destroy the manufacturing base for our vaccines today. We started with 12 vaccine companies in this country, companies that made vaccines. In large part because of the liability issue, the number of companies making vaccines has decreased to four vaccine manufacturers in the world. Only two vaccine manufacturers are in this country, and at the same time, the National Institutes of Health is embarking upon a new initiatives to develop a vaccine for botulinum toxin, a major initiative on their part. If we vote to strike these provisions, we are putting at risk our manufacturing base which we absolutely must have to be a prepared Nation. Vaccine development cannot be ramped up quickly because manufacturing is a highly complex process. These important provisions further stabilize the vaccine supply system, and thus, are key to our ability to establish appropriate homeland security.

Those are the three claims we have heard over the last 2 to 3 days. I encourage my colleagues to look at earlier statements on what the vaccine provisions are specifically.

I urge my colleagues to vote against the Lieberman amendment tomorrow and to move forward on this important homeland security bill.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. How much time remains of the 25 minutes identified by the Senator from West Virginia?

The PRESIDING OFFICER. The Senator from West Virginia has 10 minutes.

Mr. SPECTER. I thank the Chair.

NOMINATION OF DENNIS SHEDD

Madam President, I will briefly comment on two matters: First on the confirmation of Judge Shedd, and second on the pending Lieberman amendment to the homeland security bill.

I support confirmation of Judge Shedd for a number of reasons. First, he has been found well qualified by the American Bar Association, the highest rating which can be given. I knew Judge Shedd when he served as chief counsel, chief of staff, to the Judiciary Committee from 1981, when I came to the Senate and started to serve on the Judiciary Committee, until 1988. I believe he is a fair, equitable, and competent jurist. I know Judge Shedd's record on the U.S. district court where he has served since 1991. I asked Judge Shedd some questions, and he responded in some detail.

I ask unanimous consent that Judge Shedd's written response be included at the conclusion of my comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPECTER. In those written comments he pointed out that in civil demonstration cases he has been fair and equitable: One bench trial verdict of over $2 million and another over $1 million; he has employed both female and African-American law clerks; and, in general, set forth the specifics to show that he has not been discriminatory in his judicial practices. These comments have been checked out by staff and found to be accurate.

Judge Shedd has been criticized for circumventing the authority of Congress under the commerce clause in a very celebrated case, United States v. Brown, involving the Gun-free School Zones Act. Judge Shedd found that it was constitutional and was later reversed by the Supreme Court of the United States under United States v. Lopez. In brief, it is a complicated subject, but Lopez, the Supreme Court decision of 1995, curtailed the authority of Congress under the commerce clause.

Judge Shedd has been said to have limited what Congress can do on States' rights. Here is a case where he found congressional authority. It was a close case. He was reversed—or later the Supreme Court decided he was in error. But I think it illustrates the point that Judge Shedd did give latitude for congressional enactments.

It is my hope that Judge Shedd will not be part of the so-called payback theory. I did not like what happened to President Clinton's nominations when Republicans controlled the Senate. As the RECORD will show, I supported Judge Roger Gregory for the Fourth Circuit. We have had some of the payback consideration on the Fifth Circuit I think fairly stated with Judge Pickering, and I hope that will not occur with Judge Shedd. It is my hope we will soon have a protocol which will take politicization out of judicial selections when there is a Democratic President, such as President Clinton, with a Republican Senate. Now the shoe is on the other foot, and we have a Republican President, President Bush, and a Senate controlled by the Democrats. We ought to move away from that.

As the RECORD will show, I have supported qualified nominees submitted by President Clinton and was pleased to note that there was reciprocity. All 11 of Pennsylvania's district court judges have been confirmed, as has Judge Brooks Smith, the one contested circuit judge.

EXHIBIT 1

RESPONSE OF JUDGE DENNIS SHEDD TO SENATOR SPECTER'S QUESTION

During my June 27, 2002, hearing before the Senate Judiciary Committee, Senator Specter asked me if I believed that the NAACP's opposition to my nomination was fair. I responded that I do not think it is fair. Senator Specter then asked me to provide a written answer explaining my position. I trust that this will be responsive to the Senator's request.

In lodging its opposition to me, as I understand it, the NAACP has focused on a relatively small number of cases—primarily employment discrimination cases—in which the plaintiffs did not prevail. Relying on these cases, and ignoring my complete record, the NAACP has attempted to create the impression that I do not treat civil rights plaintiffs fairly. However, this is a complete mischaracterization of my record as a district judge, and it is based on a very limited—and misleadingly selective—sampling of my casework. My complete record as a district judge demonstrates that the charge is not accurate.

I do not wish to belabor this response with a case-by-case rebuttal of the employment cases for which, to my knowledge, I have been criticized. Of course, people are entitled to disagree bout the outcome of a particular case depending on their viewpoint. However, as an initial matter, I would note that I have not been made aware of any criticism which suggests that my decisions in these cases are legally incorrect or improper. I do not claim to have been correct on every issue that has come before me, but I can tell you that I have conscientiously endeavored to be correct.

Moreover, contrary to the misimpression that the NAACP has attempted to create, I have on many occasions denied defendants' motions for summary judgment (or to dismiss) in employment cases. I have done so when a magistrate judge has recommended that I grant the motion, and I have done so over the defendant's vigorous objection. Typically, once a plaintiff defeats a summary judgment motion in this type of case, the case settles, and that has happened often in my cases. However, I have also had employment cases, in which I denied the defendant's motion, thereafter process to verdict. Further, sitting by designation with the Fourth Circuit, I joined with Judge Sam Ervin in reversing a summary judgment and remanding a case in order to allow the employment discrimination plaintiffs to proceed to trial. I believe these examples alone refute the NAACP's criticism of me.

As I am sure you are aware, an individual's civil rights may be implicated in federal litigation in many contexts outside the realm of employment discrimination. I have been presented with countless cases of various types in which an individual's civil rights were implicated, including (but not limited to) criminal cases, voting rights cases, habeas corpus cases, and cases involving allegations of governmental misconduct of some type. My complete record in these types of cases further reflects the fact that I do not have any type of anti-civil rights bias.

For example, I have presided over trials in which civil rights plaintiffs have won jury verdicts or gained a settlement at trial. I have granted relief in at least five habeas corpus cases. I ruled in favor of the plaintiff and upheld the one-person/one-vote principle in a case in which the plaintiff challenged the method of electing members to a local school board, and I have handled a number of Voting Rights Act cases in which (to my recollection) the plaintiffs in each case succeeded on their claim of a violation.

I have always endeavored to be vigilant in ensuring the protection of civil rights in criminal cases as well. I have, for example, granted judgment of acquittal on numerous occasions to defendants where I believed, as a matter of law, that the government failed to meet its burden of proof. I have also disallowed the government from using evidence at trial when I thought that its use would improperly disadvantage the defendant. It is also my practice during trial to ensure very specifically that defendants are aware of their constitutional right to testify or not to testify. Similarly, it is my practice to ensure that witnesses who I believe may incriminate themselves by their testimony are aware of their rights, and I have appointed counsel in some instances to advise these witnesses before they testify.

I would also note that my overall record in civil cases demonstrates that I do not have any bias against plaintiffs. I have, for example, awarded a bench trial verdict of over $2,000,000 in one case, and over $1,000,000 in another case. In addition, I have presided over jury trials which led to substantial verdicts in a plaintiff's favor, and I have on at least one occasion directed a verdict of liability in a plaintiff's favor. I have also raised, sua sponte, the propriety of the removal of cases from state court, thereby setting in motion the procedure by which the plaintiffs could return to their chosen forum (i.e., state court). I have also assisted parties in civil cases in reaching a settlement, and often this has occurred where it appeared as though the plaintiff would otherwise gain no recovery.

Apart from my case record, I believe that my commitment to ensuring fairness for all persons is exhibited by my conduct in other matters. For example, I have employed female and African-American law clerks. I have also actively recruited and support minority and female candidates for magistrate judgeships.

Now in my twelfth year on the district court. I have handled thousands of civil and criminal cases in which I have issued countless rulings, all of which are public record. During this time, my concerted effort has been to ensure that all litigants are treated fairly according to the law. I do not approach any case, or any litigant, with any type of bias, and I do not decide issues before me on anything other than the pertinent law. I am gratified that I have earned a reputation among lawyers in this district (as reported in the Almanac of the Federal Judiciary) for being fair and impartial. I believe my impartiality is reflected by the low number of cases in which I have been reversed, as one could reasonably expect that any type of bias on the part of a district judge would manifest itself over time in appellate response to judge's work.

I would like to point out an incident that occurred earlier this year, as I believe it is akin to the current accusations against me. On May 3, an article appeared in the Washington Post stating, in essence, that I was insensitive to disabled persons because I would not allow a blind woman to be present in the courtroom during a trial over which I presided. That article was printed without anyone from the newspaper contacting me to verify the allegation, which I readily could have refuted. However, after the article ran, I was able to obtain a transcript of the trail in question, and it very clearly confirmed what I already knew; I had made special efforts to accommodate the woman in question, and I only ordered her to leave the courtroom (as I was required to do by the Federal Rules of Evidence) after the parties identified her as a potential witness and requested that all trial witnesses be sequestered. In other words, the woman was required to leave the courtroom because she was a potential witness, not because she was blind. Fortunately, when the actual facts came to light, the newspaper ran another story setting the record straight.

I mention this story not as a complaint, but as an example of how a perfectly legitimate set of facts can easily be misused to portray a false impression. I believer that this has occurred in this instance, and I am very appreciative to the Committee for providing me the opportunity to set the record straight about my judicial career.

In closing, I would add a personal comment. In my life, I have seen first hand the unfair and unequal treatment of disadvantaged people in society. That is one reason I have always cared so deeply for doing my best to treat all people fairly and with respect. Those who know me would emphatically agree that I have an abiding concern for fairness. I believe my record as a judge underscores my dedication to his principle and I will continue to show fairness and respect to all in my judicial actions, as well as in my public and private life.

Mr. SPECTER. How much time remains, Madam President, of the 10 minutes?

The PRESIDING OFFICER. The Senator has 5 minutes 50 seconds.

HOMELAND SECURITY

Mr. SPECTER. Madam President, we face a very difficult situation on homeland security in a number of respects. I spoke last week about my concern that there was not sufficient authority in the Secretary to direct the intelligence agencies and my concern about the labor-management provisions. I did not offer amendments because when the House of Representatives has, in effect, gone home, if we pass amendments, there will have to be a conference and the bill will be brought down.

I believe it is vitally important that homeland security be passed, that we move ahead to put all the so-called dots on the screen, as I spoke at length on last week. Had all the dots been on the screen, I think 9/11 might well have been prevented. I do not accept the assertion of CIA Director George Tenet that another 9/11 is inevitable.

The House-passed bill from last Wednesday, which has come over, is a voluminous bill, hundreds of pages long. As we start to consider it, there are seven provisions now which Senator LIEBERMAN has sought to strike: Provisions on childhood vaccines; protections for qualified antiterrorism technologies; the university of homeland security advancement, which seems to pinpoint Texas A&M; the extended duration of the advisory committee; the exemption for FACA; the airport security liability protections; the provision on contracting with offshore entities, which Senator Wellstone had added, to prohibit the Secretary from contracting with inverted domestic corporations.

All of these provisions, I think, require very extensive consideration and analysis. I am very distressed to see them added on the bill, with no hearings and no chance for consideration. Now we are faced with a homeland security bill which is very heavily weighted with provisions which are undesirable. It makes it difficult.

Candidly, I am not sure how I would vote on all of these provisions if they were presented individually. I do think that on a matter of this importance, it would have been orderly procedure to have these provisions submitted for hearings and consideration. It may well be that by the time we add up all of the provisions, the disadvantages may well outweigh the advantages of this bill on homeland security.

Ultimately, the need to have homeland security, to have a Secretary who will be able to put all of the investigative agencies under one umbrella, is so important that we will have to swallow hard. This is really a case where it is a matter of take it or leave it on a bill which is undesirable in many aspects, but the importance of protecting America from terrorist attacks outweighs so many of these provisions which are highly undesirable.

There is an old expression about not wanting to see either legislation or sausage made. This homeland security bill is problemsome in so many respects that it is giving sausage a bad name. It goes very far. However, it is so important to have a Secretary with authority on homeland security to act to protect against terrorism. This bill is very weighty and has undesirable aspects, and there are amendments which would have improved the bill tremendously.

I lodge these objections that the procedural posture really of legislative blackmail, with the House having gone home, a take-it-or-leave-it proposition, puts this Senator in a very difficult position. Ultimately, I think the necessity for homeland security outweighs these disadvantages, but barely.

I again thank my colleague from West Virginia for arranging this sequence, and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. I yield whatever time he may wish to consume to the distinguished Senator from Vermont, Mr. LEAHY, with my retaining the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Vermont.

Mr. LEAHY. Madam President, I thank the distinguished senior Senator from West Virginia. He has been my friend for nearly 30 years, and his constant courtesy is one of the reasons for it.

Mr. BYRD. And will be for the next 30.

Mr. LEAHY. I thank the Senator.

TRIBUTE TO EMMYLOU HARRIS

Madam President, last week, at the Birchmere Music Hall in Alexandria, VA, there was a concert that honored one of the most distinguished songwriters and singers I know, Emmylou Harris. Emmylou Harris was honored because of the work she has done to aid victims of landmines and to help stop the scourge of landmines throughout the world. In honoring her, some of the best artists of this country came and sang for her. They honored both her work and, of course, they honored her amazing talent.

My wife Marcelle and I, and our daughter Alicia, and Emmylou's daughter, mother, and friends were there to hear this. She received the award from the Vietnam Veterans of America Foundation, the Patrick

Leahy Humanitarian Award. I can't think of anything that gave me more pleasure than to give it to her.

I ask unanimous consent that an article from Rolling Stone magazine of November 13, 2002, speaking of Emmylou being honored in Washington, DC, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Rolling Stone, Nov. 13, 2002]

EMMYLOU HONORED IN D.C.

(By Lynne Margolis)

MUSICIANS, POLITICIANS PRAISE HARRIS FOR LANDMINE CHARITY WORK

When Senator PATRICK J. LEAHY presented singer-songwriter Emmylou Harris with his namesake humanitarian award Tuesday night at the Birchmere Music Hall in Alexandria, Virginia, he said her work on behalf of landmine victims might have touched more lives—in more important ways—than her vast body of beloved music.

Harris, who received the award from the Vietnam Veterans of America Foundation for her creation and continued support of the Concerts for a Landmine Free World benefits, said it merely represented how blessed she is to be able "to give something back" in exchange for a career that brings her so much joy that "you really can't call it work."

Harris seemed even more humbled than usual by the shower of accolades from LEAHY, VVAF president Bobby Muller and some of her closest musical friends including Steve Earle, Buddy and Julie Miller, Patty Griffin, Nanci Griffith, Guy Clark, Rodney Crowell, John Prine and Jamie O'Hara, all of whom performed at the benefit concert. Pal Mary Chapin Carpenter was unable to attend because of back problems, but sent flowers that adorned the stage of the intimate, 500-seat venue. Most of the artists had participated in earlier Landmine Free World concert tours and, like Harris, have visited countries devastated by landmines that still remain years after military conflicts have ended. LEAHY has spearheaded efforts for a global landmine ban; VVAF aids civilian victims of those conflicts.

During a night that focused on the purest of musical elements—lyrics, wooden guitars, and frequently, Harris' angelic soprano soaring in harmony with her equally talented friends—she gave as much praise to her fellow activists and performers as they did to her.

"Really what I have done has been given the opportunity to reflect, or deflect, some of the light that shines on me because of the nature of my work, and shine it on these people, these causes, these situations," she said backstage.

"I'm so, so grateful for the opportunity to be able to do that. Because that's the only way I know to be really thankful for my blessings. This is a really wonderful moment for me. And I'm so grateful to all my fantastic friends who made it possible."

The night contained a few overtly political references or anti-war proselytizing, though Prine performed "Your Flag Decal Won't Get You Into Heaven" and his 1970 tearjerker gem, "Hello in There," with its reference to parents who lost a son in Korea. Harris noted that her father was a World War II veteran and Korean War POW, and that the show was occurring one day after Veterans Day as well as the twentieth anniversary of the Vietnam Veterans Memorial dedication. She talked about playing at the memorial's fifteenth anniversary five years ago and how listening to O'Hara sing his "50,000 Names" was "the most cathartic experience I've ever had in my career." As he performed the tune again, sniffles could be heard in the audience. Later, at Harris' request, Earle did "a song about faith," the title track from his new album, Jerusalem.

Earlier, LEAHY cracked that everybody in Washington was in the room except U.S. Attorney General John Ashcroft, who "listens to Steve Earle all the time." The outspoken Earle has made his anti-war and anti-death penalty views well known in Washington.

Harris noted that "Jerusalem" provided a necessary note of hope, adding "we're in a very difficult time right now." Backstage she said, "I don't know whether [war is] inevitable or not. Certainly, the world is gonna change in some way pretty soon. I can't see the status quo staying the same."

But this was a night for positivity and humor, despite the profusion of sad love songs and achingly beautiful hormonies delivered on tunes such as Harris' "Prayer in Open D" (performed by the Millers as "Prayer in D" because, Buddy explained, "I can't play an open D").

For the encore, Harris brought out John Starling and Mike Auldrige, original members of the D.C.-area bluegrass band the Seldom Scene, for the Louvin Brothers' classic "Satan's Jeweled Crown," which she recorded on Elite Hotel.

The evening was probably best represented by comments delivered by LEAHY. "There are people in Southeast Asia, in Africa, in Central America, around the world, who are going to be helped by what you have done," he said. "They will never know you, they'll never hear your songs, they'll never know your fame. They'll never be able to do anything to help you, but because you've helped them, their lives are immeasurably better. And how many people in life can say that?"

Mr. LEAHY. I yield the floor, and I thank the Senator from West Virginia.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from West Virginia.

Mr. BYRD. The distinguished Senator from Vermont is welcome, and I congratulate him.

FAREWELL TO SENATOR ROBERT SMITH

Mr. BYRD. Madam President, last year when my beloved little dog Billy passed away, many people came to me to express their condolences. It was like losing one of the family. My wife and I have shed many tears over little Billy. There is never a day that I don't pass his little box of ashes that is sitting up in my bedroom, never a day that I don't touch that little box and think of little Billy. He has been with us 15 years.

We have a new dog now, one which is a very sweet little female dog. She is a lap dog. She is a Shi Tzu, a dog that came out of Tibet. It was bred to be a lap dog in the palace, extremely friendly, knows no person is not a friend. She just smothers my wife's face with kisses—and mine, too. So we love her.

But I said to Erma the other night: Erma, if Billy could come back tomorrow, would he still be No. 1? And both she and I said yes; even though we love this little dog, the little dog we have now, the female—she is called Trouble; I think my wife saw me coming when she named the little dog Trouble. I said to Erma, if Billy came back tonight, would he still be No. 1, and she said yes. And we both agreed that Billy would still be No. 1.

Last year, when our beloved dog Billy Byrd passed away, many people came to me to express their condolences. But one who really, really touched me was a big, hulking Navy combat veteran who came to my office and showed a personal compassion in that moment of sorrow. That person came to talk about the little dog that I had lost. He had read about the passing of our little dog Billy. He read the story in the newspaper, and he came to my office to express his sorrow.

Who was he? That person was the senior Senator from New Hampshire, Mr. ROBERT SMITH. He would make about two of me, ROBERT BYRD. Here he came to my office, took his own busy time to come to my office. This was back in April of this year. He came to my office, paid a special visit to my office to tell me how sorry he was to hear about my little dog Billy.

So once again, as I have many times in my long years with which God has blessed me, I came to realize that the people with whom we work here in the Senate often have a personal side that we do not get to know or understand in our working relationships on the Senate floor. Our colleagues are usually much more complex than their public persona would lead one to believe and have facets to their characters that are not often seen in their daily official activities.

But Senator ROBERT SMITH'S thoughtful expression of sympathy gave me a better understanding and appreciation for this man who for several years now has proudly represented his State in the Senate. He is on the Armed Services Committee with me. I have served on that committee now with him these many years. Senator SMITH possesses an admirable quality of perseverance. As a young man, he had to work his way through college. Although he was the son of a naval aviator who was killed in combat during World War II, when ROBERT SMITH was old enough, he enlisted in the Navy and he proudly served our country in combat in Vietnam. He is a person who had to run for Congress three times before being elected. As a Senator, his tenacious adherence to his independent ways eventually cost him his Senate seat.

He has often been portrayed as a fierce conservative, but I came to perceive him as the "citizen legislator" that he promised to be when he was first elected to Congress in 1984. In his twelve years in the Senate, he has been a forceful advocate of the many and various causes in which he believes, and he has never been deterred by the labels others may place on those views.

BOB SMITH's politics is not easy to characterize, from his support for a constitutional amendment to balance the budget to helping to preserve and protect our environment, he has defied easy labels. Senator SMITH has also been a strong advocate for modernizing his state's and the nation's infrastructure, and for that I sincerely applaud him. He has also tenaciously fought to gain a thorough accounting of American MIAs and POWs.

I have probably opposed Senator SMITH more than I have agreed with him, but I have consistently been impressed with his independence of spirit and thought, and his dedication to the causes in which he believes. I am confident that in his future efforts he will continue to demonstrate the steadfastness, courage, and integrity that he has exemplified during his twelve years in this chamber. I wish him well in his future endeavors.

I hope he will, indeed, come back and visit those who are his colleagues of this date.

RECONSTRUCTION OF AFGHANISTAN

Mr. BYRD. Mr. President, on another matter, it was just over one year ago, on November 12, 2001, that Afghanistan's government of religious extremists fled Kabul. The rule of the Taliban soon collapsed in the rest of the country, and a new government, endorsed by the United Nations, took shape. Despite this new government, the United States still has more than 8,000 troops in Afghanistan performing a number of important missions, from tracking down al-Qaida terrorists who have taken to the hills to providing security to the new Afghan President. In other words, from tracking down al-Qaida terrorists, who have taken to the hills on the one hand, to providing security to the new Afghan President on the other hand.

But the situation in Afghanistan is anything but stable. Our troops still face hit-and-run attacks from al-Qaida and Taliban fighters. The leadership of the new Afghan government has been targeted for assassination. Warlords that control portions of Afghanistan's countryside have questionable allegiance to the central government. Two million Afghan refugees have returned to their homes in the past year, many finding that their homes had been destroyed by war and their fields ravaged by drought.

But with the Administration gearing up for a new war in Iraq, important questions must be asked. What is our plan for Afghanistan? How great is the risk that we will lose the peace after winning a war in a poor, landlocked Central Asian country? Is the potential for war with Iraq shifting our attention from unfinished business in Afghanistan?

Recent press reports on the situation in Afghanistan are not encouraging. On November 8, the Washington Post carried an article which quotes the Chairman of the Joint Chiefs of Staff, General Richard Myers, as saying that we have "lost a little momentum" in tracking down terrorists in Afghanistan. With al-Qaeda adapting to our military tactics, the report continues, the Pentagon is now debating whether to emphasize reconstruction efforts at the expense of military operations.

Such a shift in mission should not be taken lightly. Unless clear goals are laid out for the rehabilitation of Afghanistan and a sensible strategy is enunciated to achieve those ends, our nation could find its feet sinking into the quicksand that is Afghanistan.

I was in Afghanistan 47 years ago. I went to Afghanistan as a member of the subcommittee of the House Foreign Affairs Committee. I saw enough of Afghanistan to convince me at that time that it was very difficult to subjugate that country. Since then, the Soviets tried and failed. Before then, the British tried and they failed. We have already spent over $20 billion in Afghanistan, and we still don't have Osama bin Laden. We are a long way from winning that war, if that is what we are trying to do.

Let us not forget our recent, tragic history with nation building, such as our attempts to pacify the chaos of Somalia in the early 1990s. We should also not forget that in 1979, the Soviet Union grabbed control of Kabul in little more than a day, but spent the next nine years trying to extend its control to the rest of the country. Those people are not easy to handle.

Today, the United States has no clear goals or sensible strategy for how to work with our allies to rebuild Afghanistan. Instead of a clear plan of action, we hear lip service about a Marshall Plan for Afghanistan. Start sinking money into that bottomless pit. Such grand promises, if left unfulfilled, would send the wrong message to our allies and the Afghan people about our commitment to seeing that that country does not again become a haven for terrorists.

The Administration has already sent confusing messages to Congress about its commitment to rebuilding Afghanistan. On August 13, 2002, the President refused to designate as emergency spending $174 million in humanitarian aid for Afghanistan, which was contained in the Fiscal Year 2002 Supplemental Appropriations Act. By refusing to designate those funds as an emergency, the President did not allow the funds to be spent as Congress intended.

While the President refused to spend that money, he has publicly promised $300 million in foreign aid to Afghanistan for fiscal year 2003. However, Congress has not received any such request. As the committee report for the Fiscal Year 2003 Foreign Operations Appropriations bill, as reported unanimously from the Senate Appropriations Committee on July 18, states:

> The Committee is, therefore, perplexed that, despite calls for a Marshall Plan for Afghanistan and the critical importance to U.S. national security, the administration did not submit a formal fiscal year 2003 budget request for Afghanistan. The Committee has been informally advised that the administration plans to spend approximately $98,000,000 for Afghanistan in funds from the Foreign Operations, Export Financing, and Related Programs Appropriations Act.

If the administration fails to back up its promises of aid with actual dollars, how are we ever going to complete our mission in Afghanistan? We ought to be reasonable with our promises, but once we make a commitment, this nation should put our money where our mouth is.

It is clear that the United States must do more to focus the international community on creating a concrete plan of action for rebuilding Afghanistan. But the first step in creating this plan is to get the administration's attention off of Iraq just long enough to give serious consideration to the problems in Afghanistan. To that end, the Senate Foreign Relations Committee has reported a bill to authorize $3.3 billion in aid for Afghanistan. This bill was passed by the Senate last week.

While I share with the authors of the bill the great concern about the potential for Afghanistan to slide back into chaos and disorder, I have serious reservations about several provisions of this bill.

First, the bill authorizes $3.3 billion in foreign aid for Afghanistan with no indication of why this figure was proposed. It is important to understand that the authorization of those funds does not actually allow the U.S. Government to spend a single dime for Afghanistan. It takes an appropriations bill to spend that money. As Chairman of the Appropriations Committee, the committee that is expected to come up with the cash to fund such an authorization, I do not understand how this figure of $3.3 billion was reached. I am left with the impression that the bill in question authorizes these billions of dollars simply to send a message that rebuilding Afghanistan is an important task.

Second, as Chairman of the Appropriations Committee, I am not sure where Congress would find the funds to fulfill the $3.3 billion commitment to Afghanistan. Will the administration support cutting back on some of our foreign aid programs in order to send money to Afghanistan? Or will the administration propose to increase our foreign aid spending in order to fund this new aid package? Without the cooperation of the administration, it would be difficult to appropriate the full amount of the funds that are authorized by this bill. As I am sure the sponsors of the bill would agree, the last thing we need are more empty promises to help the people of Afghanistan.

Third, the Afghanistan aid bill contains a sense of the Congress provision that encourages the President to work to expand the U.N. peacekeeping mission now underway in Kabul to include the whole of Afghanistan. Right now, the United States is not a participant in that peacekeeping mission. It is not clear what role our troops would have in such an expanded peacekeeping mission, but Congress should be careful not to endorse the commitment of our soldiers to such a mission before we have an understanding of what that commitment might entail, such as how many troops might be involved, how long they might be there, and what goals must be achieved before withdrawal.

Finally, while this bill pushes for more aid and more peacekeepers for Afghanistan, we are still without a plan or strategy for our involvement in that country. The administration needs to work with our allies and the United Nations to produce an understandable strategy that will address the reconstruction needs of Afghanistan, while sharing the costs among all countries that have an interest in the peace and security of that nation.

The future of Afghanistan is an important national security issue for the United States. Discontent is being sown in Afghanistan by al-Qaida agents, and if order again breaks down in Afghanistan, we can bet that terrorists and extremists will try to take advantage of the situation. If Osama bin Laden is still alive, which recent reports seem to indicate, I am sure that he is looking forward to the failure of U.S. and allied efforts to bring security and stability to Afghanistan. If we are to head him off at the pass, the first thing we need to do is have a clear plan of action.

While the President seems eager to use military force against Saddam Hussein, I urge him first to take care of the unfinished business in Afghanistan. The situation is crying for his attention. The Senate has passed a bill to authorize funds to address the problems in Afghanistan, but it is up to the President to show the leadership that is needed to prevent the situation in that country from further deterioration.

Mr. REID. Mr. President, will the Senator from West Virginia yield for a question?

Mr. BYRD. Yes, I will.

Mr. REID. I apologize for interrupting, but I wanted to engage the Senator for a brief minute on homeland security.

Mr. BYRD. Yes.

Mr. REID. Let me tell you what I wanted to ask the Senator. I heard the very fine statement of the senior Senator from Pennsylvania, talking about all the bad things that are encompassed in the Daschle amendment. But he finished his statement by saying: Well, but there is nothing else we can do. I am going to have to vote for the bill.

The Senator from West Virginia has served in the House of Representatives, is that not true?

Mr. BYRD. Yes.

Mr. REID. I have, also. Now, the Senator is aware that the House of Representatives has not yet completed its business. They have sent everybody home, but the leadership is still in place. Does the Senator understand that?

Mr. BYRD. Yes.

Mr. REID. And they, the leadership, have the authority to pass, as we do here, legislation by unanimous consent. Does the Senator understand that?

Mr. BYRD. Yes.

Mr. REID. My concern here is that Members of the House of Representatives, including DAN BURTON, one of the leading long-term House Members and a very conservative man from Indiana—I served with him when I was there—he said, talking about the things that are in the Daschle amendment, of which the Senator from West Virginia is a cosponsor——

Mr. BYRD. By unanimous consent, I had asked to cosponsor the amendment, yes.

Mr. REID. Chairman Burton said:

> These provisions don't belong in the bill. This is not a homeland security issue. This is a fairness issue.

And he goes on to say, talking about one provision; that is, the vaccine:

> Fifteen years ago, one in every 10,000 children were autistic. Today, one in every 250 children is autistic. We have an epidemic on our hands. More and more parents believe the autism affecting their children is relating to a vaccine or a mercury preservative.

And he goes on. I say to the distinguished Senator from West Virginia, as to people talking about endangering the homeland security bill by voting for this amendment, does the Senator agree with me this is senseless? That if this amendment is as bad as Chairman BURTON and the Senator from Pennsylvania said, shouldn't we vote on the merits of that and just have the House accept our changes? We wouldn't have to go to conference. Does the Senator understand that?

Mr. BYRD. Yes, the House could accept the amendment. If the Senate adopts the amendment, the House could accept it and there would be no conference.

Mr. REID. Wouldn't that be the best? Let's say this amendment has the merits, as indicated in the statement of Congressman BURTON. We have heard statements here on the floor for several days now about all the very bad things in this homeland security amendment.

This is my question to the Senator from West Virginia, who has studied this legislation more than anyone else: Wouldn't it seem appropriate and good legislation if we voted in favor of this amendment and sent it back to the House? That is why they arranged to come back, in case there would be some housekeeping they have to do. Wouldn't that be the best thing to do with this large 484-page piece of legislation?

Mr. BYRD. I should think so. It would be my feeling, Mr. President, that we ought to look at the amendment on its face, on its merits, and vote for it. If I were disposed to vote against it—there are some who will—but those of us who are for it should not back away because of some scare tactic that is being used by the White House to try to get Members to vote against that amendment. Where is the House of Representatives supposed to be? They get paid the same salaries as we do. Their job is not finished. Our job is not finished. Why shouldn't they be here?

Over the many years I have been in the Senate, 44 years now, time and time again I have seen the House pass a conference report or appropriations bill or something, and walk away and leave the Senate holding the bag. There is no reason why they should not have to come back, if we pass an amendment and it goes to conference. They should come back and finish their work. This is an important piece of work. They ought not go home on the pretext that, if this measure is passed by the Senate, they should not have a conference on it. Or the White House should not be spreading the scare stories.

If the House wants to have a conference, that's fine. If the House doesn't want to have a conference and wants to accept the bill, it can, or it wants to accept the amendment, it can. Then that could go to the President for his veto, if he wishes.

Mr. REID. I appreciate very much the Senator yielding.

I simply close by saying I really think we would be doing the President, the Congress, and the country a favor by adopting this amendment. It would take all the talk radio out of all the bad things in this bill—at least many of the bad things. I repeat, I think we would be doing the President a favor by passing this amendment, sending this bill to the House, and then let them handle that bill accordingly.

I am confident that they arranged to come back, anyway, for things like this. I think they probably understood it would be very difficult for the Senate to accept their bill exactly as they sent it to us. So, again, I appreciate the Senator yielding. I think anyone saying—as the Senator from Pennsylvania did, and I am paraphrasing him, not saying exactly what he said—that even though there were bad things in this amendment, he saw no alternative but to go ahead and vote to get this thing out of here because otherwise the whole bill would come down, I simply state for the record that will not happen and that is not the case.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

I would only add that if the whole thing comes down, that may be for the best. That may be for the best. It has a lot more wrong with that bill suddenly dumped upon us in the early hours of Wednesday morning. As far as I am concerned, greater mischief can happen in many ways than having that bill die. As far as I am concerned, we ought to be back next year and take our time and do a good job on that bill. I have always been for homeland security. I was one of the first around here to state that we needed a Department of Homeland Security. But this bill that has 484 pages in it, that has been suddenly dumped upon us, dumped on us—as far as I am concerned, it would be no great tragedy if that bill would die and we could start again next year.

Having that bill is not going to make the American people one whit more secure—not one whit—because even if that bill is passed, the President is going to have 12 months in which to submit his plan, which we know nothing about at this time. When we pass this bill, we will not know anything about his plan. But under that bill the Congress authorizes the President to submit his plan. That plan will automatically go into effect after a certain number of months, the most of which would be 12 months. It will automatically go into effect.

We don't know today what is in his plan. He probably doesn't know yet what he intends to submit as a plan. As far as I am concerned, we are buying a pig in the poke and Senators ought not vote for that bill. But at the very least, Senators ought to vote for this amendment because it does clean up a little bit of what is wrong with the bill.

The PRESIDING OFFICER. The assistant Republican leader.

TRIBUTE TO SENATOR PHIL GRAMM

Mr. NICKLES. Mr. President, it is a pleasure and a privilege for all of us to serve in the Senate. One of the great benefits of serving in the Senate is we have the opportunity to serve with some outstanding individuals—outstanding leaders not only in their States but outstanding leaders in their country.

One of those individuals that I will always rank as one of my favorite Senators, and one of the most effective Senators I have had the privilege and pleasure of serving with, is Senator PHIL GRAMM of Texas.

Senator GRAMM was elected to and served 6 years in the House. He was elected in 1978. He was elected as a Democrat. Eventually he resigned and ran as a Republican. I think he was the first person to do that in a century. It was a pretty phenomenal thing. Then he came to the Senate where he has served for 18 years. Much to my regret, he announced he would be retiring and will soon complete his very distinguished Senate career. Seldom do you find a person who makes such a difference in public policy over that period of time, as Senator GRAMM has.

I was elected to the Senate in 1980, and I remember very well the Gramm-Latta budget bill that passed the House of Representatives in 1981. That was Senator GRAMM, a Democrat, working with Congressman Latta, a Republican, to basically pass President Reagan's economic budget, a phenomenal accomplishment; it laid the guidelines for reducing and changing taxes. The maximum tax rate actually, in 1981, was 70 percent; 6 years later it was 28 percent—a phenomenal achievement. Some might disagree with it, but it was a phenomenal achievement. And it was due, in great part, to the leadership of PHIL GRAMM.

So every once in a while we have the privilege of serving with someone who can make a real difference. And Senator GRAMM has done that. He did it in the House. He has done it in the Senate. He has made accomplishments. He has made legislation. He has angered his opponents, but I think in all cases, his adversaries or his opponents, while they may have disagreed with him on the issue, had to respect him for his conviction, for his commitment, for his effectiveness. I respect that.

Many of us made tributes to Senator Wellstone. We regret the tragedy of his death. But we respected his commitment. Likewise, I can tell you, I know Senator Wellstone would say he would have to respect Senator PHIL GRAMM. He did not agree with him—he agreed with him very little—but he had to respect him. One of the great things about the Senate is that we can disagree on issues, but we can have respect and admiration for people who have convictions and commitments, and, on occasion, when they prove the effectiveness of that to actually change law.

Most of us remember the Gramm-Rudman-Hollings Balanced Budget Act that passed in 1985 and was basically reaffirmed in 1987. It gave us caps and targets and rescissions, and so on. That is still basically part of our budget law today. I have had the pleasure of serving with Senator GRAMM on the Budget Committee for many years. Serving on the Budget Committee is a thankless task, but he has been a leader within the Budget Committee. He is a person who has believed in budgets, a person who has believed in discipline, and he was able to make that law.

If you look at the Gramm-Leach-Bliley Financial Service Modernization Act, in 1998, again, he proved he could work with Democrats and Republicans to make significant revisions of law. He did that from his position as chairman of the Banking Committee.

Today we are debating homeland security, and he is one of the principal authors of the President's homeland security bill, which I hope and pray we will finish tomorrow, and, again, in large part because of his leadership, and also the leadership of Senator THOMPSON, who, regrettably, also is retiring from the Senate.

So we are losing some great Members who I hate to see leave. But, likewise, I would just like to say it has been a pleasure and a privilege to work with, in my opinion, one of the most effective, one of the most outstanding Senators I have had the pleasure of knowing in my Senate tenure.

It has been a pleasure to have Senator GRAMM join me on the Senate floor. He has sat right behind me for the last 18 years. He has made a monumental contribution to this country and to his State of Texas.

I am very happy for both Senator GRAMM and his lovely wife Wendy and their family. I wish them every success. I am confident they will enjoy every success. Senator GRAMM is an outstanding leader who has made invaluable contributions to make our country better. He has made the State of Texas better and he has made our country better. I thank him very much for his commitment, his effectiveness, and his public service.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Oklahoma for his remarks about the remarkable PHIL GRAMM. And I would like to attempt to make some comments upon his leaving us. My abilities are inadequate because he is, indeed, a very special American and human being.

DON has delineated a number of his historic achievements: with the budget, with health care, with homeland security, and so many others. But there are a lot of qualities about PHIL that are important.

He has told us often, particularly after the untimely death of Paul Coverdell, that we should tell those we love that we love them, that we ought not to wait. I don't know if I have said that directly to him, but I love PHIL GRAMM. I have loved him virtually since I have come to this body. He has consistently been, to me, the most principled, interesting, and courageous battler for America I have ever seen. I have said on many occasions, recognizing the poor grammar, that PHIL GRAMM is our "most invaluable Senator." By that I mean he is the one this body could least do without. I truly believe that.

This body will be diminished by his leaving. He has been a force—a force—for the best of American values. First and foremost, PHIL GRAMM has been a champion for freedom. He has never doubted, as have many of his former colleagues in the academy, the validity of the American dream. He has studied history, traveled widely, and read much. His experience and learning have only confirmed his belief in the American ideal of democracy, freedom, and free enterprise. He knows it works. He knows this has been the system that has made America the envy of the world.

As a patriot, and in possession of this important truth, he has given his total effort to preserving and extending our brilliant heritage. From the time he gets up until the time he goes to bed, he fights for these great values of America. He has done so with more purity of purpose and depth of understanding than any I have known. Yes, he can compromise, and he does on occasion, but his compromises are always focused on whether or not the deal is best for America. Will it further freedom? That tends to be his test.

First and foremost, PHIL GRAMM fully comprehends the greatness and uniqueness of America. And his life has been directed with incredible fidelity toward its preservation and enhancement.

I recall one of the great trips I have taken in the Senate. It was CODEL GRAMM to Europe. PHIL insisted we stop at Normandy and examine that scene of carnage and courage. On another occasion, we visited the Flanders Cemetery, and PHIL read us the great poem: "On Flanders Fields." We could not leave, he said, until we laid a wreath at the Tomb of the Unknown Soldier. We also carefully examined the battlefield at Point du Hoc on the Normandy coast. PHIL showed us, with great pride, where the brave Texans scaled and took that great fortified height at Point du Hoc, a key moment in the D-Day victory.

PHIL GRAMM, with great clarity, has seen his battles for freedom in this Congress—absent, of course, the physical danger of war—in the same way. He sees his role as a soldier for freedom, and that he has been. Indeed, he has been a glorious warrior for freedom.

Our heritage of liberty has always been endangered by hostile outside enemies, ignorance, corruption, and political whims of the moment within. PHIL GRAMM has stood in the breach and, in the same vein as his beloved Texans at Normandy, he has carried the battle to the enemies of freedom. Time and again, he has staked it all—put his career and his reputation on the line—for those ideals.

He has been blessed with a great partner in his glorious struggle to enhance the American dream—Wendy Gramm. Everyone who knows Wendy loves her. And so does PHIL. They are an unlikely pair: the loud PHIL and the small, brilliant, and soft-spoken Wendy. Surely, it could only have been a match made in Heaven. Wendy's balance, her integrity, and her vision for America, which she so deeply shares with PHIL, make them one of America's great couples.

Thirdly, we cannot discuss his career without considering his effectiveness in advocacy. With an economist's ability to see the big picture, PHIL has an unsurpassed ability to demolish small minded proposals. His skill in debate is legendary. I have not seen his equal in my tenure in this body. No one gets to the core of the matter better or can put the complex in layman's terms more effectively than PHIL GRAMM—no one. Some are good at spin, but PHIL GRAMM does not spin. He analyzes. He distills arguments, and he puts them to the test of rigorous thought. He reduces them to their simplest form and then demonstrates with his powerful mind and verbal skill how such proposals either further or constrict the American way.

PHIL, though quite frank and blunt, could get away with comments few others could. Many of our colleagues have quoted from PHIL some of his remarkable comments. He made a very important speech on economic relations between the United Kingdom and the United States when we were in Europe. He expressed concern about the UK's move toward Europe. He recognized our historic relationships between our countries, and he urged them to join NAFTA. The speech made headlines all over Europe. It was a magnificent address. He knew it was important when he delivered it. He delivered it entirely without notes. I was very proud of him.

During the course of it, he noted the objections made by certain Europeans to American beef, much of which comes from Texas, of course, because of their fear of growth hormones. As an aside, he noted:

> Maybe you need to eat more of our beef. It could keep you from giving up your sovereignty.

His ability to demolish the conceit of the left that government can provide Americans more and better goods and services than the private sector is also unsurpassed. His advocacy for free trade is unsurpassed. PHIL believes in the concept of truth. He respects truth, and he battles to always appeal to objective truth. Thus he is not a spinmeister. He is a Texas straight shooter.

He will challenge an opponent's flawed core principles even when it may not be politically correct to do so. He will not just dance around the issue. He goes right to the heart of the matter, with integrity and courage. A few are taken aback by his directness, but most respect his honesty even if they disagree. And he has never allowed debate to ruin friendships.

Still, PHIL GRAMM does not take the future of America lightly. It is not just a matter of debate with him. It is not a matter of polls. He works to prevail on issues important to this country's future. This is not an intellectual exercise. It is in a different way as important to him as our victories in the past have been on the battlefield. His constant goal has been to make America better.

Perhaps you think I overstate the case, but I don't think so. I think he is a special, glorious warrior for the American way of life. And why should I not say here what I have said privately; that is, that a true recording of history will list him as one of the half dozen great Senators of the past century. This warrior for freedom will not cease when he leaves this body. Who knows, he may do more good from the outside than from the inside.

What we do know, however, is that while he was here, his contributions to America and to liberty were truly magnificent. I have been honored to know PHIL GRAMM and to have been his friend. I will miss him. This Senate will miss him.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. I understand the Senator from Alabama has some other remarks he would like to make. I appreciate his allowing me to proceed between the remarks he just made on Senator GRAMM and others he will be speaking on momentarily. One of them is the person I want to commend, but I can't do that without thanking Senator SESSIONS for what he had to say about Senator PHIL GRAMM.

I have had so much to say about him over the past month, I won't repeat it here. I have already made some remarks on the floor and had a chance last week at the retirement dinner to talk about him. He certainly will be greatly missed. He is such a talented, intelligent, persistent but delightful person. He has been a great Senator, great Congressman. He has a very large record of which he can be proud. I have worked with him in the House when he was a Democrat, in the House when he was a Republican, and in the Senate.

There are a lot of bills that would not have passed, a lot of issues would not have been properly handled if he had not been willing to take the time, dig into the substance, and get them done. But they are great bills, great laws that have his name on them: Gramm-Latta, the first budget of the Reagan years; and Gramm-Rudman-Hollings, which was a budget restraint mechanism he put in place in the 1980s here in the Senate; and Gramm-Leach-Bliley, the reform bill on financial services that was passed a couple years ago, and many others. But I took the time recently to add up bills or issues that I knew he was involved in just over the last 2 years that would have been much more expensive if they had passed, would have been hugely expensive. He probably has saved the taxpayers over the past 2 years somewhere close to $1 trillion, certainly in the hundreds of billions of dollars.

There might be those who say we should have spent that money. Well, you can argue that, but I can show direct cases where he has helped influence legislation or stopped legislation that would have been very costly to working taxpayers in America.

I thank Senator SESSIONS for what he had to say today.

TRIBUTE TO R.J. "DUKE" SHORT

Mr. LOTT. Mr. President, I rise this afternoon before the Senate adjourns for the year to recognize the extraordinary contributions of an individual who is not a Senator but who, in addition to having been a long time staff member here, is one of the Chamber's most beloved individuals, I believe. That is R.J. "Duke" Short or, as Senator THURMOND would call him, "Duke Short," which is pretty hard to understand if you don't know what he is actually saying.

My colleagues on both sides of the aisle know well that Duke has served for the past decade as chief of staff to the legendary Senator THURMOND, who is retiring next year at the age of 100. Duke has served our "centennial Senator" with incredible ability and grace. His judgment, his demeanor, and his knowledge on both the ways and traditions of this Chamber have impressed me. I have actually gone to him and asked for advice and made sure he knew what we were thinking about doing and making sure Senator THURMOND was comfortable with that.

I know many Senators have gone to Duke and sought his counsel as one of our longest serving and most effective staff members.

In so many ways Duke has been the Senate's unelected 101st Senator, I believe. The trust Senator THURMOND puts in him is obvious to anyone who has watched the two of them interact over the years. Duke is STROM's most constant companion, his closest and most trusted adviser and, I believe, his dearest friend. Theirs is not the usual relationship of a Senator and staffer. It is more like a father and son.

I know that Duke has had opportunities to go do other things, but at the urging or at the request of Senator THURMOND, he stayed. And he is going to stay with Senator THURMOND to the last day the Senator is here.

Even though they have been close on a personal basis, Duke Short has not misunderstood his role or stepped beyond the boundaries into the role of an elected official. He has always had a clear understanding of his responsibilities and, most importantly, where his job ends and an elected official's begins. It takes a person of extraordinary integrity and incredible common sense to be able to juggle both the role and the responsibilities that Duke Short has shouldered, and I can say without hesitation or equivocation: Well done, Duke. He should be very proud of his service to the Senator, to the Senate, and to his country.

By the way, there is something more to his career than his service to Senator THURMOND and the Senate. He served in the Army's prestigious 82nd Airborne. Then he came to the Senate as a staffer in 1974, where he served as a senior investigator for the Subcommittee on Internal Security.

He rose quickly through the ranks, later serving as chief investigator of the full Senate Judiciary Committee where he oversaw literally hundreds of judicial nominations and helped shepherd through the confirmations of Chief Justices and Associate Justices who now sit on the Supreme Court. To this day, he is remembered fondly by judges and justices all across the Nation as the individual with whom they worked most closely and who was always courteous and wise in his counsel as to how they should conduct themselves during the confirmation process.

As in his other duties in the Senate, Duke performed in the confirmation arena with the greatest dignity and integrity. Many of you may be surprised to know that Duke Short had a life before even his military service and before coming to the Senate. He was a U.S. Treasury Department agent and received numerous awards for distinguished service and assistance to our Nation's Federal, State, and local law enforcement officers and officials.

But it wasn't always the law enforcement, investigations, or government. He also originally was a chiropractor. That was his original profession. He is a graduate of the Palmer College of Chiropractic with the degree of Doctor of Chiropractic. Maybe there was some other role he performed for the Senator that we didn't know about.

What an interesting career this gentleman has had. He is an alumnus of North Georgia College and the recipient of South Carolina's most distinguished civilian award—the Order of the Palmetto. He is, of course, most fortunate to be married to Dee, a charming lady whom we will miss along with Duke when they go on to their next career.

I know my colleagues join me in wishing Duke good luck and our best wishes as he leaves the Senate in January at the conclusion of Senator THURMOND's record-setting term.

We will miss Duke's good humor and his style. He is the epitome of a Southern gentleman. He leaves this institution with a marvelous record. Too often we commend each other and we talk about the great deeds of Senators, and not enough attention is given to loyal staff members who serve in this body and in this room and on committee staffs and on personal staffs. But Duke Short could not leave without proper recognition of his service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the distinguished Republican leader for those comments about Duke Short. I likewise want to say something about him and didn't know that he intended to make those remarks.

Duke has been a friend of mine for 20 years. I have admired him greatly. He is the kind of person who comes along and reaffirms your faith in basic democracy, basic decency of the human race. After 30 years of service in the Senate as a senior staff member, he will be leaving.

Our Nation—and particularly the State of South Carolina—owes Duke Short a great debt of gratitude for his many years of distinguished and able public service in the Senate. As my colleagues well know, he served for many years as chief of staff to our legendary STROM THURMOND, who retires next month at the age of 100, after more than 47 years of service in this Chamber.

Over the years he has worked with Senator THURMOND Duke has earned a reputation as someone who always conducted himself with the utmost integrity and honesty. Given great authority—perhaps more than almost any other staff member in the Senate—he always dedicated himself to the highest principles of public service and demonstrated an uncompromising devotion to his mentor and boss, STROM THURMOND.

There is, among the world's cynics, a belief that the longer men and women remain in positions of public trust, the more they fall victim to the vagaries of power and influence. Duke Short stands as a wonderful exception to that rule, an example of truly unselfish public service, whether as a Federal agent or in the Army, a man who dedicated his life to things bigger than himself and found, in turn, enormous satisfaction in the giving.

In his years in the Senate—at least the ones I have been privileged to witness—Duke Short has earned more than just satisfaction from a job well done. He has earned, I believe, the respect, admiration, and friendship of every Senator in this body. In so many ways, he was one of us—a Member of the Senate family who never forgot that the only real power in politics is that which we hold from the public, and his only reason for service was to serve his Senator.

Duke came to the U.S. Senate in 1974 as a senior committee investigator. It was the beginning of a long and extraordinary partnership between him and Senator THURMOND. When STROM became chairman of the Senate Judiciary Committee in 1980, Duke was appointed chief investigator and, in that capacity, he oversaw and coordinated the confirmation of Chief Justice William Rehnquist, Associate Justices O'Connor, Scalia, Souter, Kennedy, and Thomas. He became the Senator's chief of staff nearly a decade ago and has served in that capacity ever since. All of us came to rely on Duke's judgment, his unerring sense of fair play and, of course, his uncanny ability to always represent the wishes of his boss, Senator THURMOND.

Prior to coming to the Senate, Duke served the Nation in other important ways. He was a member of the Army's prestigious 82nd Airborne Division and a respected U.S. Treasury Department agent. His contributions to law enforcement are legend within South Carolina and throughout the Nation. He has been a recipient of numerous national, regional, and State awards from law enforcement associations, and he was presented in 1990 with the State of South Carolina's highest civilian award, the Order of the Palmetto.

When Senator THURMOND was chairman of the Senate Armed Services Committee, Duke served as a close adviser on a wide range of issues from preparedness to nuclear arms control. Once again, he earned the respect of the Nation's highest officers and service chiefs, in addition to Cabinet members and the national security staffs of several Presidents.

Duke Short is one of those rare staff members whose expertise and judgment are called upon in a variety of settings. Through it all, he also demonstrated more than just a vast technical knowledge of different issues; he impressed us all with his deep and abiding love of and respect for the institutions of the Senate, as well as the vital importance of the legislative oversight process.

In all these arenas, Duke Short distinguished himself as an individual of rare humility. Working closely with Presidents, Cabinet members, Senators, Justices of the Supreme Court, and even foreign leaders, Duke's style always managed to disarm, to respectfully inform and, taking a page out of STROM THURMOND'S book, to politely and diplomatically move situations to where the people of South Carolina benefited most.

Finally, Duke is fortunate in one other area. He is married to an exceptional lady, Dee, who is truly the apple of his eye and one of the great inspirations of his life. Duke and Dee Short have always managed to light up any social and business event they attended.

Mr. President, the Senate will miss Duke Short's leadership, but individually I believe each of us will miss our friend, Duke Short. In an era of increasing rancor and incivility in public life, Duke Short's easygoing manner, his lighthearted humor and unswerving loyalty to country and friends will be sorely missed.

On behalf of a grateful Senate, thank you, Duke, for your good work and good will. May God continue to bless you and your fine family.

Mr. HATCH. Mr. President, for the past several decades, serving one of the United States Senate's most legendary figures—Senator STROM THURMOND of South Carolina—has been Robert J. Short. I rise today to pay tribute to the man we in the Senate fondly know as "Duke Short."

Duke is to be commended for his fine work and years of dedication to our Country. When I first arrived in Washington, DC., in January of 1977, Senator THURMOND was my senior on the Senate Judiciary Committee. As I settled in to my new role on the Judiciary Committee, I came to know and respect Duke, a bright and eager individual who was working at the time as Chief Investigator on the Committee.

Duke had first come to work in the Senate in 1974, and until 1976, he served as a Senior Investigator on the Senate Subcommittee on Internal Security. From 1976–1989, he was the Chief Investigator on the Senate Committee on the Judiciary. He has served as Chief of Staff and Administrative Assistant to President Pro Tempore Emeritus Senator STROM THURMOND since 1989.

Throughout the course of Duke's work in the Senate, he has assisted in the confirmations of literally hundreds of district and circuit court nominees, and of every sitting Supreme Court Justice. He played a key role in assisting the Judiciary Committee in its inquiry in the 1960's into motorcycle gang violence, as well as many other important matters. He has developed a remarkable wealth of knowledge about the Senate as an institution, and is widely respected by Senators past and present on both sides of the aisle.

Duke has been recognized throughout his distinguished career with many prestigious awards, too numerable to mention here, but most recently including a Reserve Officers Association Appreciation Award in 2000, an FBI Director's Appreciation Award and the Order of the Palmetto—the State of South Carolina's highest award, in 2001. This year, Duke received the ACA's Third Annual Patients' Champion Award.

Duke's career has been characterized by service to our great Country, not only in his work for the Senate for nearly thirty years, but in his earlier service in the U.S. Army with the 82nd Airborne Division, and as a special agent in the Intelligence Division of the Department of the Treasury.

Duke Short has served Senator THURMOND, South Carolinians, and his country well, with the spirit and endless dedication of a true patriot. We will sorely miss him in the United States Senate and wish him all the best in his retirement.

TRIBUTE TO STROM THURMOND

Mr. SESSIONS. Mr. President, I will now take the opportunity to pay tribute to the senior Senator from South Carolina, the Honorable STROM THURMOND.

The accomplishments of this man in his nearly 100 years of life, are truly amazing. All of his continuous years of public service to our country illustrate that Senator THURMOND's life has put the service of his country first. Born on December 5, 1902, in Edgefield, SC, he graduated from Clemson College, now Clemson University, in 1923. He studied law under his father.

For 8 years, he served as the town attorney, and he also served as a South Carolina State senator.

A true patriot, he joined the U.S. Army Reserve as a second lieutenant in 1924. He landed in Normandy on D-Day with the 82nd Airborne Division during World War II. He had been a judge. He was in his forties. They did not really want him to join the Army at the time the war broke out. He insisted that he be allowed to do so and walked away, as some would say, old enough to know better. But he ended up in Great Britain preparing for Normandy and the invasion with the 82nd, and he again volunteered. He volunteered to be on the glider force that would fly in behind enemy lines at the time of the D-Day invasion.

He got into one of those gliders. They are pulled off by bombers, and let go. Hopefully the plane lands safely. He was asked one time: How was the landing, STROM?

He said: All I can say is I didn't have to open the door; you could walk out the side.

None of these landings were safe. It was a highly dangerous mission. He volunteered in his midforties to do that. He stayed until the end of the war. I asked him if he stayed to the end. He said yes, until Germany surrendered in combat and he was put on a train heading toward the Pacific when Japan surrendered. He earned 18 decorations, medals, and awards, including the Legion of Merit with oak leaf cluster, Bronze Star for Valor, and the Purple Heart, among others.

His political career flourished when he was elected Governor. In 1948, he decided to run for President of the United States as a States rights candidate. He carried four States and received 39 electoral votes, the largest independent electoral vote in U.S. history.

However, the most memorable moment, I guess, came when he was elected to the Senate in 1954 as a write-in candidate. In the Senate, the highest office ever to be elected by a write-in, I understand, in the Senate, STROM THURMOND served on several committees. He has been a fixture on the Armed Services Committee on which I serve and where he has with constancy of purpose fought for a strong America and for our veterans. He served as chairman of this committee from 1995 to January of 1999 and was bestowed the great honor of being named chairman emeritus in 1999. Serving with Senator THURMOND on this committee was a great learning experience.

I am convinced his combat experience provided him with an excellent background to understand the intricacies of our military and the need of this Nation to be strong and avoid war but to win it, if necessary.

He has helped lead our effort in this Nation to victory in the cold war, to defeat and challenge head-on godless, totalitarian communism, a force incompatible with American values. He never faltered. He stayed the course throughout the entire cold war. He celebrated its victory.

He never was among those souls who waned, who blamed America first, who always thought America was at fault and causing the problems in the world.

His career was marked by determination, surely based on personal experience with war, to never have our soldiers outgunned in war. This was a magnificent service to our country, of historical importance, and in which he played a key role.

Additionally, I have had the pleasure to serve with Senator THURMOND on the Judiciary Committee where he has been a member since 1967. He served as chairman from 1981 to 1987 and chairman of the Subcommittee on Constitution, Federalism, and Property Rights from January to June of 2001. Coming from a lineage of law study and being a former judge, Senator THURMOND has cherished his role on this committee and continues to work to promote the rule of law and assure quality judges are appointed to Federal courts.

He has been a champion of the rule of law on the Judiciary Committee for 35 years. Yes, he has changed many of his views over the years. He came to see segregation was wrong, that it hurt African Americans, whites, and it hurt America. Still, his classical view that the law is sacred, that it must be followed, never wavered.

His leadership in passing the Federal sentencing guidelines was perhaps the greatest change in criminal law in the entire last century. It was enacted to equalize sentencing—those who commit the same crime serve the same time—and it abolished parole. He was a tower of strength in the battle to bring back respect for law enforcement, to provide rights to crime victims, and to crack down on criminals.

As a former prosecutor, I am convinced the great battles he led in the 1980s—sentencing guidelines, abolishing parole, allowing for the denial of bail in certain circumstances—were historic steps that stimulated the strong efforts by State law enforcement to break the back of the surging crime rates of the sixties and seventies and resulted in substantial reduction in crime.

Longer prison sentences for repeat and dangerous criminals have saved thousands of innocent lives. People have not been murdered because dangerous criminals have been apprehended and locked up. No man gave more steadfast leadership to this change than STROM THURMOND. Indeed, he appointed the first chairman of the Sentencing Guideline Commission who did a remarkable job, or at least he sought the appointment of Judge Wilkins from South Carolina.

One of the great memories I have of spending time with Senator THURMOND was when he asked me, a new Senator, to accompany him on a trip to China in 1997. On this trip, we had some time to climb the Great Wall of China. Senator THURMOND was the oldest person ever to climb the Great Wall unassisted, and it was quite a climb. His ability to put situations in perspective is illustrated by the fact that upon reaching the top of the wall, he said: This is a big wall. Let's go. Up early to exercise, dining late often, as we did on the trip, he did not flag, leaving the rest of us in his wake.

Though he is nearing the century mark, his determination to fulfill his service is remarkable. Just this past week, we had the elections of the Republican leadership. Senator THURMOND was there at 9 a.m. for the elections. Then we had our lunch with the Republican Policy Committee while last-minute issues were discussed, and he attended that. That afternoon, the Defense authorization bill was up for debate and passage. He was one of the few Senators to be in the Chamber, and only at 15 minutes till 6, when he was sure no votes would be held that night—which he asked me to confirm was accurate—did he leave. It was a long, hard day.

That is typical of his commitment to service. His fierce commitment to America and the Senate is legendary. During his service from 1994 to 2000 as President pro tempore of the Senate, he was consistently on time every morning to open the Senate, conduct the Pledge of Allegiance, and introduce the Chaplain for invocation. He knew the importance of his office, and he did not fail in that responsibility.

It has been a monumental career, a life almost larger than life. STROM THURMOND has set a high standard for duty, service, and country. It has been my honor to know and serve with him. He is a true southerner, a true American, and a true patriot.

STROM THURMOND will be forever remembered as a man who for a century was a vigorous proponent of strong national defense, a sound legal system composed of judges who follow, not make, law, and justice for victims of crime, and stiff punishment for wrongdoers.

One of his most enduring qualities, a quality that undoubtedly is a factor in his longevity, is his positive view of life, his optimism, his cheerfulness, and positive leadership which still are remarkable and continue to this day.

I am sure there have been times when he did not feel well, but his hearty greetings never changed. I have enjoyed hearing him call to me and say: How's the king of Alabama doing today?

Having watched his leadership for 6 years now in the Senate, I am convinced his positive leadership and character are major factors in his success.

I thank the Chair and yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CORZINE). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. NICKLES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR HUTCHINSON

Mr. NICKLES. Mr. President, Senator TIM HUTCHINSON of Arkansas, one of our colleagues, will soon be leaving us. I thank him for his service to his State and also to our country.

For the last 6 years, I have had the pleasure of working with Senator HUTCHINSON. He is a neighbor; he is a friend. I have gotten to know him very well. He served on my whip team. He is a very energetic and dynamic person who I think served his State and our country very well.

He served in the Arkansas State House of Representatives for 8 years. He served in the U.S. House for 4 years. I got to know him when he served in the statehouse, and I was very impressed with him. Actually, his congressional district was adjacent to that of Oklahoma. So I got to know him then. When he came to the Senate, I asked him if he would serve on my whip team, and he did. We became very good friends. He is a very energetic and committed person who did an outstanding job in the Senate. He is also a very intelligent and diligent Member.

He served on the Armed Services Committee and the HELP Committee and did a fantastic job. I worked with him. I was chairman of the task force dealing with the Patients' Bill of Rights and then was made chairman of the conference on the Patients' Bill of Rights. Senator TIM HUTCHINSON was there all the time, trying to pass a good and affordable Patients' Bill of Rights, one that would not bankrupt employers and one that would help provide good rights for patients all across this country. It has been a pleasure and privilege to serve with TIM HUTCHINSON in the Senate.

In the Senate we have the opportunity to work with outstanding individuals. TIM HUTCHINSON is one of those individuals. The election did not work out for him, but I am very optimistic that his future is very bright indeed. I thank him for his service to this body. I think he has made the Senate a better place, and I compliment him for his service.

TRIBUTE TO SENATOR FRANK MURKOWSKI

Mr. President, I also wish to comment on our retiring colleague, Senator FRANK MURKOWSKI. Senator MURKOWSKI and I were elected together in 1980, so we have been very good friends for the last 22 years.

I have served with Senator MURKOWSKI for the last 22 years on the Energy Committee. For the last several years, he has been the chairman of the Energy Committee. Talk about persistence, about dedication, and about a person who has really served his State of Alaska and served our country well; it is Senator FRANK MURKOWSKI. As a result of his leadership, many of us have gone to Alaska.

Senator STEVENS and Senator MURKOWSKI love their State. We all love our States, but they love their State with great enthusiasm and are very successful, forceful advocates for their parochial interests, as well as for our country.

Senator MURKOWSKI was thinking about how he could improve his State, but he was also thinking about our national energy posture. Frankly, we find ourselves in very difficult shape; we are importing the majority of our oil, and it only gets worse. He has tried to reverse that trend.

I compliment him for his leadership on the Energy Committee. He was a very effective and forceful chairman of the Energy Committee and served our country very well there.

I also had the pleasure of serving with him on the Finance Committee. He is a person who is a very good friend of taxpayers, a person who really wanted to grow our economy, and a person who I think was recognized by his State for his outstanding leadership. He was recently elected as Governor of the State of Alaska, and I have no doubt he will be an outstanding Governor of that great State.

So my compliments to Senator FRANK MURKOWSKI and to his lovely wife Nancy. They are very good friends of ours, a very outstanding senatorial couple who have made the Senate a better place and who make our country a better place. I thank and compliment him for his 22 years of service in the Senate and look forward to working with him as the next Governor of the State of Alaska.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SESSIONS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR TIM HUTCHINSON

Mr. SESSIONS. Mr. President, I thank the Senator from Oklahoma for his kind remarks about Senator TIM HUTCHINSON. He was one of my closest friends. He and Randi are fine people. We served together on the Armed Services Committee and the Health, Education, Labor, and Pensions Committee. I saw him perform day after day with fidelity to the principles that he campaigned on when he came to the Senate. He fought for what he believed in. He was one of the most able advocates in the Chamber. I do not think you could name on the fingers of your hand any Senator who could compete with him insofar as advocating positions on the floor. He stood for the great values of America.

While on the Armed Services Committee, I remember one battle he got into as Personnel Subcommittee chairman. He made great progress in regard to the problem of the great educational institutions in America, colleges and high schools, that barred military recruiters from coming on campus to recruit personnel for a career in the military. It is unthinkable to me that that would occur, but it happens in this country.

Indeed, the very liberties we have that provide for education and allow people to debate and disagree are protected by our military, and it denied them the right to come on campus to seek people to serve, which is really unbelievable. He fought that battle and reached an agreement eventually that essentially achieved the end of that unconscionable procedure.

He also presided on that subcommittee during consideration of a consistent series of pay raises for our men and women in the military. We have now gotten to the point where we are seeing our military get paid a far more decent wage than they were a few years ago.

On the HELP Committee, he was a prime advocate for the President's No Child Left Behind bill. He and I sponsored legislation called Dollars to the Classroom. We intended to put as much money to those teachers where learning occurs to try to enhance those magical moments when a teacher and a child come together and learning occurs. That was our vision, that is what we fought for, and No Child Left Behind had a lot of that in it.

As Senator NICKLES said, Senator HUTCHINSON fought for and was a great advocate during the battle over the Patients' Bill of Rights. He was a very responsible and articulate spokesman on some complex issues on which Senator NICKLES led us as we carried on that debate. I do appreciate him remembering and commenting on the extraordinary contributions of TIM HUTCHINSON. We are going to miss him. I will miss him personally. His leadership will be missed. I know he will have a great future in front of him.

TRIBUTE TO SENATOR FRANK MURKOWSKI

Mr. President, it is a sad day to think FRANK and Nancy MURKOWSKI will not be with us. I admire them so much.

We have had the occasion, my wife Mary and I, to spend time with them. I have come to respect him. I was in Alaska not too many years ago and passed his home in Fairbanks and talked to some of his neighbors, all of whom had such a high opinion of him.

He was a champion for energy. He understood that energy is good, not bad. He understood we need a great capacity, at the lowest possible cost, so American citizens can carry on their travel, heat and cool their homes at the lowest possible cost. Keeping energy costs down is important. He knew and warned us repeatedly that we were becoming too dependent on Middle East oil and energy and we needed to enhance our domestic production. He convinced me and almost the majority of this Senate that Alaska and the ANWR reserve could produce large amounts of oil with no threat to the environment, touching only the smallest portion of that vast reserve. I admired him for that and I supported him.

He also supported one of the programs that I believe was extremely environmentally friendly, the bill we call the CARA Act, which would allow revenue from offshore oil and gas wells in the Gulf and wherever they would drill to be plowed back into environmental programs in our country. It would provide a constant and guaranteed source of funds for environmental benefit. It was a good and forward-looking bill, far more historic, with greater potential for environmental benefits than a lot of people understood—although it did certainly have broad support in the environmental community.

It has been a pleasure to serve with FRANK. I have been impressed with his steadfastness, his constancy of purpose, his understanding that your message has to be repeated to break through the sound barrier in the country. I admire him and respect him very much. We will be missing him. I look forward to having the opportunity to visit FRANK and Nancy as often as possible when they come back to the capital city here as Governor of Alaska.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY

Mr. BYRD. Mr. President, tomorrow morning the Senate will vote on the amendment introduced by Senator DASCHLE to the homeland security bill. This amendment will strike several provisions in the bill that were added by the other body in the dark of night without their ever having seen the light of day until after they were adopted. I have added my name as a cosponsor of the amendment because I was troubled by the substance of these last-minute provisions. I was pleased that Senator DASCHLE and Senator LIEBERMAN were taking action to strike the new language from the bill. I support the amendment and I hope that other Senators will support it, as well.

I have cosponsored the amendment because I believe the Senate has a duty to take the time to improve legislation when it needs improving, as it does, obviously. This bill certainly needs improving. I had hoped that more Senators would be able to offer their amendments to this bill.

I have heard several of my colleagues expressing concerns about what is in the bill, as well as what is not in the bill. I have concerns of my own, many of which I have expressed in recent days. I also have amendments that could be offered to address these problems, just as other Senators have amendments that they had hoped to offer. But here we are, consuming all of our time under cloture in consideration of this single amendment. The Senators in the minority are keeping us from voting on the Daschle amendment until all 30 hours of debate have run. The Republican side of the aisle is doing this to prevent other amendments from being offered during this time.

While the administration is pressing hard to avoid other amendments, the die was already cast for this bill when the Senate voted last Friday to invoke cloture. Caesar crossed the Rubicon on January 11, in the year 49 A.D., on the night of January 11. Whether he crossed the Rubicon before midnight or after midnight on that night, I don't recall; I am not sure I ever knew. It was on that night that he crossed the Rubicon. He paused thoughtfully and then he said:

> The die is cast.

So be it.

I voted against cloture last week on Friday because I believed that there were problems in this bill that should be thoroughly addressed in the Senate; that we needed more time to debate those problems and that we needed more time in which to offer amendments to the 484-page bill that had been dropped on our desks on the morning of last Wednesday. I tried to get some of our Democratic colleagues to vote against cloture on Friday, so that we would have a little more time in which we Senators and our staffs could study that hurriedly-put-together bill, hurriedly passed by the other body. I felt that we should not invoke cloture on last Friday, that we should take a few more days, study the bill, and try to amend it before cloture, as I knew, would finally be adopted.

But my words were to little avail. There was at least one Senator who did vote against cloture at my importuning him to do so. And I deeply appreciated his willingness to listen and his willingness to vote against cloture.

There were others who were not quite so willing. They listened patiently, but they went on their way and voted for cloture. Some of them thought that, inasmuch as we would then have 30 hours under cloture, we could offer our amendments. But I knew that the entire 30 hours could be spent on one amendment. I had never seen it done before, but it very well could be. I was aware of that. I didn't think it would be done, but we have seen it has been done by the Republican minority, which has said: This far; no farther. You have offered one amendment, that being the Daschle amendment on behalf of himself and Mr. LIEBERMAN—you have offered that amendment, and the entire 30 hours will be spent on that amendment. You will not have any opportunity to offer any other amendment.

I still believe that there are serious problems in the bill that go far beyond the provisions stricken by the Daschle amendment. That was not an all-encompassing amendment as far as I was concerned. It was an amendment in the right direction but, even with the adoption of the amendment, there is going to be a tremendous amount of power shifted to the President. He is going to have a full year in which to indicate to the rest of us what his plan is for reorganizing, and for organizing the new Department. He probably doesn't know at this moment what his plan will be. But he has a year, under this bill, to offer his plan. And it will, ipso facto, automatically go into effect at some point. Congress is out of the loop. Congress will not be asked to approve his plan. Congress will only be informed of his plan. That's it. We have no further say in the matter.

So his plan, being a pig in a poke, a plan which we do not know now, that plan will at some point go into effect without any further vote on the part of Congress. Congress will not be asked to approve it. And this bill, which we will pass on tomorrow, will not give Congress the right to vote to approve that plan.

Moreover, an amendment, if I had been able to offer it, to provide for congressional approval—that amendment would not have been germane under cloture. So we were headed off there. So we have helped to cut our own throats, to a degree, by having voted for cloture last Friday.

I urged Senators last Friday, as I said before, not to vote for cloture last week, so we would have more time in which to read and study this bill that was dropped suddenly into our laps by the other body. I pleaded with this Senate not to shut off debate and limit amendments, and 28 other Senators voted with me not to do so.

There were 29 Senators who voted against it and they were all Democrats. Mr. President, 29 Democrats voted against cloture last Friday. Only 17 Democrats voted for some cloture. There were other Democrats who were absent and not voting and their votes, of course—at least four of those Senators would have voted against cloture. That would have brought the vote up to 33 votes against cloture, well over half the Democratic caucus. So that if only six of the 17 Senators who did vote for cloture last Friday had not voted for cloture and voted against it, or had not voted for cloture, then there would have only been 59 votes for cloture, which would have meant that cloture would not have been invoked.

Sixty-five votes in totality were for cloture. So all that was needed to defeat cloture was for six of those Senators who voted for cloture to vote against cloture.

Many of my colleagues last week, as I pleaded with them to vote against cloture, reassured me that we would have the opportunity to offer amendments after cloture was invoked. But those Members should look carefully at where the Senate stands today, because there is an important lesson to be learned about the rules of the Senate and the effect of cloture on the ability of Senators to offer amendments. Not only have Senators been restricted to offering only those amendments that are ruled to be germane—and we know that under the cloture rule—but Senators have been unable to offer any amendments at all, other than the amendment introduced by the majority leader.

Not all Senators could foresee that would happen, but all Senators should have known that could happen under the rule. It did happen. So I hope the Senators who voted for cloture, some of them at least, will have some afterthoughts that will help in the future to remind them that we ought not be in such a great hurry to invoke cloture, especially on an extremely complicated bill which has been brought to our attention in its entirety just within the past few days beginning with last Wednesday.

When I say to Senators that we should not shirk our responsibilities as legislators by invoking cloture, especially so quickly, so early on, I understand the kind of opportunities that are available under cloture, we will all understand this in the future.

I understand that the rules of the Senate have been used fairly to prevent amendments from being offered to the homeland security legislation. When I hear the arguments that voting for the single amendment that has been offered will jeopardize passage of the bill, I understand that such arguments were made possible by the vote to invoke cloture.

The Senate has painted itself, in a way, into a corner, by invoking cloture on the Thompson amendment. We have no one to blame but ourselves for allowing the administration and the other body to characterize this modest amendment as a threat to the passage of homeland security legislation. The administration wants to limit any amendments to one up-or-down vote so that the administration can argue that a vote for this amendment is a vote to "kill" the homeland security bill. There is simply no basis whatsoever in fact for the administration's attempts to politicize this vote by claiming that the vote on this amendment by Mr. DASCHLE and Mr. LIEBERMAN will kill the bill.

This legislation has been introduced for consideration by the Senate, and the extent of that consideration should not be confined to a few days of debate over whether simply to rubberstamp the legislation so it can be sent to the President for his signature.

If the President wants to insist on getting this bill passed before Congress adjourns, he could persuade both Houses of Congress to pass bills and work out their differences in conference. Such a conference is one which may or may not take very long.

As a matter of fact, the House could very well accept the amendment, if the amendment by Mr. DASCHLE and Mr. LIEBERMAN should prevail—the House could very well accept that amendment, and the bill would go to the President.

For now, I think the Senate should do its job. Senators need to look carefully at the bill, do what they can to make improvements before voting. And they only have this one chance—vote up or down on the Daschle amendment.

That will help some but not enough. But that might allow some Senators in their own good consciences to vote for the bill. As far as I am concerned, it is not enough because there would still be a tremendous shift of power from the legislative branch to the President. And I don't feel like shifting that power to any President—not just this one, but in particular this administration with its way of wanting to do things in a secretive manner and wanting to run a government out of the White House, and not in the full light of day or under the full scrutiny of the press and the people.

I intend to vote against this bill, and I know that a majority of Senators will likely vote for it. But whether Senators plan to vote for this bill or against it, we should all work to make sure that the Senate passes the best possible bill that it can under the circumstances. We ought to act responsibly in response to this eleventh-hour legislation that did not see the light of day until only a few days ago. We should not surrender our duties under the Constitution by allowing legislation to be dictated to this Senate in an atmosphere of political brinkmanship.

Senator DASCHLE's amendment strikes a number of very troubling provisions that were added to this bill at the last minute in the hopes that the Senate would cave in to the administration's empty rhetoric. Senator DASCHLE and Senator LIEBERMAN have called this bluff, and this amendment has cast a high-powered spotlight on language in this bill that cannot possibly withstand the light of day and the strict scrutiny of time. These shameful provisions could never survive public scrutiny, and now that they have been brought into focus, the Senate must ensure that they do not survive our consideration.

So let us see on tomorrow whether or not the Senate has the will and the courage to take a strong stand against this power grab. That stand can be taken by voting for the Daschle-Lieberman amendment.

This amendment strikes several provisions in this bill that do not deserve to be enacted into law. The first of these provisions in one that I have previously addressed, relating to unnecessary and dangerous exemptions from the Federal Advisory Committee Act. The language in this bill would give new blanket authority to the Secretary of Homeland Security to exempt advisory committees from existing public disclosure and conflict-of-interest rules. These rules already allow exemptions for sensitive information relating to national security. This bill would allow the Secretary to cloak committee activities behind a veil of secrecy, regardless of whether those activities actually involve issues of national security.

I believe that too much secrecy in government is dangerous to our civil liberties, and we should not authorize such broad exemptions without compelling evidence of the need for unchecked blanket authority.

The President of the United States already has that authority on a case-by-case basis. But now we are going to extend it to the Secretary of the new Department, and of course he can exercise blanket authority if he so wishes.

If we are to preserve our liberty and the integrity of our constitutional system, executive decision making must be subject to scrutiny and oversight by the Congress, the media, and the public. I support striking this language from the bill, and I thank Senators DASCHLE and LIEBERMAN for bringing it to the attention of the Senate.

The Daschle amendment also strikes several provisions in this bill that protect corporate campaign contributors from lawsuits. The first of these provisions would prohibit lawsuits against companies that manufacture vaccines by people who have been harmed by those vaccines, including children suffering from autism as a result of preservatives used in childhood vaccines.

Another of these liability provisions would enact sweeping tort reform for products that are designated as anti-terrorism technologies. These provisions would protect companies that manufacture everything from gas masks to computer software when their products fail, even when the companies know that their products will not work.

The final liability provision would give immunity to companies responsible for providing security screening in airports. The Senate rejected similar language last year during its consideration of the airline "bailout" bill, yet now we are being asked to approve it because it has been inserted into politically popular legislation. The attempt to slip this provision past the Senate is another example of the haste with which this bill has been drafted and considered by this Congress. Issues like these liability provisions should be carefully scrutinized before they become law, not just rubber-stamped by impatient lawmakers looking to put issues behind them and go home.

Another provision that has already been considered by this Senate relates to doing business with companies that have moved their headquarters out of the United States to avoid paying U.S. taxes. In its consideration of the Lieberman substitute to the homeland security bill, the Senate adopted an amendment offered by the late Senator Wellstone that prohibited the Secretary of Homeland Security from contracting with such companies, unless he needed to do so for national security reasons. The Thompson substitute guts the Wellstone amendment by allowing the Secretary expanded powers to waive this prohibition to prevent the loss of jobs or to save money for the government. The Senate should reject this attempt to undermine the will of the Senate by restoring the language of Senator Wellstone's amendment to the homeland security bill.

The Thompson substitute also tries to slip in language to delay the implementation of new airport security regulations. The Senate enacted procedures in last year's airline security bill for the Transportation Security Agency to issue regulations for improving security in our Nation's airports. The new language in the Thompson substitute would modify these procedures by requiring the Transportation Security Oversight Board to ratify any regulations before they become effective. I see no good reason for this modification, If there is one, the Senate should take the time to debate it rather than hastily approving it as part of this massive legislation.

The final provision that will be stricken by the Daschle-Lieberman-Byrd amendment is the language directing that a new homeland security research center be created at Texas A&M University.

I don't think the amendment specifically says that, but its provisions are such that that particular university would be most favored and targeted for location of such a center.

The amendment removes items from the list of highly specific criteria which all but guaranteed that Texas A&M would be the only university which would qualify for the new research center.

Mr. President, striking these provisions from the Thompson amendment is a good start. I believe that the Senate should go further in fulfilling its constitutional duty to improve this legislation before passing this bill. I believe there are many other provisions of this bill which should be stricken and begun anew next year.

In fact, I think we would all be more secure if we put off the whole bill and started over next year.

For example, there is a provision that the President may submit his recommendations to Congress and the only thing that Congress can do is just at that point agree to his recommendations. The Congress has no opportunity to approve or not approve of those recommendations as far as this bill is concerned. We might expect a great deal of chaos as these 28 agencies are moved into the Department. This will take place within the next year. The President has not yet submitted his plan for having the agencies moved into the new Department, but his plan will be submitted at some point and, ipso facto, will go into effect.

Under an amendment which I had offered earlier to the homeland security measure—that being at that time, I believe, the Lieberman bill that came out of the committee of which he is chairman—I had offered an amendment to provide for an orderly phase-in of agencies into the new Department over a period of a year.

Under my amendment, the recommendations of the administration would have gone to the Lieberman committee and to its counterpart in the House of Representatives. And those two committees would have had an opportunity, then, to hold hearings and, under expedited procedures, could have brought out bills, reported bills, to implement the phasing in of agencies into the new Department, with there being three phases, of 120 days each, which would have created an orderly process whereby these various agencies would have been phased into the new Department.

Also, the Congress would have been kept in the loop in each case, with the Lieberman committee and its counterpart in the House being able to hold hearings, call witnesses, vote out bills by expedited procedures. Those bills would come to the Senate. They could be called up in the Senate under expedited procedures so that there would be no filibuster, and those bills would be amended, passed on; and in this way the creation of the new Department, with the orderly phasing in of the agencies, would occur over the same period of time—1 year—as is the case with the current bill.

As it is, when we pass this bill in the Senate, we are out of the loop; we have automatically put ourselves, the Congress, to the sidelines. And the President then can do as he wishes. He can submit his plan, and that plan would automatically go into effect. Congress will be on the sideline. We will have said: Here it is, Mr. President. It's all yours. We have no more say in it. It's yours. Just be kind enough to let us know what your plans are. That's all we ask. Let us know what your plans are.

But under my amendment, those recommendations would have come to the Congress. Congress would have kept itself in the loop. It would have been able to maintain oversight. And with each phase, each of the three phases, as it passed from the first, to the second, to the third, Congress would have benefited by its experience under the first, and then under the second, and there would have been an orderly phase-in, and with Congress, as I say, retaining its place in the loop.

But that amendment was opposed even by Mr. LIEBERMAN and, I believe, the majority leader. The majority leader I think voted against it. It was his right to do so. But Mr. LIEBERMAN, the author of the bill which had been reported out by his committee, voted against the amendment. So I thought it would have been an improvement to the bill and certainly would not have been in derogation of the committee in its work. But that amendment was rejected. And there you are. I tried. I failed to bring about that improvement. So that is another improvement that I think ought to still have been put into the bill that is before us.

So I have seen the handwriting on the wall. I know this bill will probably pass the Senate. Having said that, I believe that the amendment by Mr. DASCHLE and Mr. LIEBERMAN is important because it does make some needed improvements to the bill. The Senate has a duty to approve at least these minimal proposals, if I may say that about them—they are important improvements—before handing over this broad grant of power to the executive branch.

I urge Senators to vote for the Daschle-Lieberman amendment on tomorrow morning.

Mr. President, I yield the floor.

PROCUREMENT POLICY

Mr. DEWINE. Mr. President, the homeland security legislation we have been debating takes on many organizational and administrative challenges, but one challenge it does not cover fully is in the area of information technology. Specifically, I am talking about departmental policies and guidelines for purchasing computer software. No doubt, effective procurement policies will be essential not just to the sound administration of the Department, but also to the successful achievement of a number of important policies identified in this legislation, including most notably, the ability of law enforcement and intelligence agencies to share data and coordinate activities to respond to or prevent terror or criminal acts.

For those sharing and analyzing data electronically, the security of the software being utilized, such as database and operating system software, is critical. These software technologies are referred to by those in the industry as "information assurance" technology. Information assurance technology is what is needed to assure information systems operate effectively, ensure the security of the information contained in these systems, and verify the identities of those authorized to use these systems. At its most fundamental level, information assurance software, for example, includes operating systems, database, and user authentication software.

It should not be a surprise to anyone here that agencies within the Federal Government that are responsible for our most sensitive information have to rely on information assurance technology. In fact, in January of 2000, the National Security Telecommunications and Information Systems Security Committee, an entity within the National Security Agency, proposed a policy that called on all Government agencies to purchase only those commercial-off-the-shelf, or COTS, software that had undergone an independent evaluation process that tests the security of the software. Toward that goal, the committee outlined a specific acquisition policy for those information systems critical to national security. This policy—the National Security Telecommunications and Information Systems Security Policy #11, or NSTISSP #11—states that Federal agencies with information systems involved in national security can only purchase commercial information assurance software that has been independently evaluated to be secure.

This sounds a bit technical, but if we take a step back and look at this proposed policy as consumers, it makes perfect sense. Today, many household items, like our dishwashers, televisions, stereos, and computers, have the now famous Underwriters Laboratory Label. This label provides consumers with the peace of mind that the products they are purchasing have met independent public safety tests.

Consumers have been purchasing products with the Underwriters Laboratory "seal of approval" for more than a century. However, businesses large and small, and local, State, and Federal Government agencies purchase computer software with no thought given to whether or not the software has met some outside measure of security assurance. That is an extremely risky proposition. Computer software is essential to our Nation's critical infrastructures, including our railroads, airports, pipelines, utilities, and financial services. At the Government level, information technology is critical to the administration of key Federal programs, our homeland defense, and most notably, our national security.

The costs of insecure, vulnerable information systems are real and sobering. Computer viruses, like Nimda and Code Red, penetrate, disrupt and disable information systems through security holes in software. Last year, according to industry estimates, these viruses inflicted $13 billion in damages on our economy and even incapacitated systems within our own Defense Department.

Fortunately, information technology laboratories exist that perform functions similar to the Underwriters Laboratory. Many software companies have these independent labs evaluate their products to determine if they meet various levels of security assurance. For example, the international Common Criteria provides for security evaluations that are recognized in 15 countries, including the United States, Germany, Canada, and Great Britain. Thus, if a software product is certified under the Common Criteria, it is recognized among all participating countries. More to the point, this certification is designed to validate the security claims made by software companies, much like the Underwriters Laboratory validates the safety claims of appliance manufacturers. In his book, "Secrets and Lies" cybersecurity expert Bruce Schneier noted that the Common Criteria is a "giant step in the right direction."

NSTISSP #11 is the Federal Government's way of saying that for its most sensitive national security systems, it is not enough for information technology providers to say their products are secure. Now, software providers must have independent evaluations to back up their claims.

It is my understanding that the Defense Department is working to implement an information assurance acquisition policy based on NSTISSP #11. That is an important and positive step, one called for in the Defense authorization bill conference report.

The reason why I am bringing this issue to the attention of my colleagues today is because I believe it is an issue that deserves the attention of the new Department of Homeland Security. After all, if the tragic terrorist attacks of September 11 proved anything, it is that our most sensitive information systems in Federal information sharing and coordination of strategies will likely take place among those law enforcement agencies within and outside of the Homeland Security Department. Information sharing and analysis also is likely to occur between our law enforcement and intelligence agencies. All of this activity requires that the Department of Homeland Security to have strong information assurance strategies, including those involving the purchase of information assurance systems in the commercial market.

I see the distinguished chair of the Governmental Affairs Committee and manager of the legislation currently pending on the floor. I know this is an issue of great interest and concern to him, and I would now yield the floor to him for any comments he wishes to make.

Mr. LIEBERMAN. I thank the distinguished Senator from Ohio for yielding, and I thank him for his comments, which are right on the mark. Information assurance will be critical to the new Department of Homeland Security, and independent evaluations can be useful tools to improve the security of information systems. In fact, information assurance is critical to the entire Federal Government and deserves to be a key component in any cybersecurity strategy. I look forward to seeing this framework for independent software evaluation evolve and improve through processes like the National Information Assurance Partnership and the Common Criteria.

Mr. DEWINE. I thank the distinguished chair of the Governmental Affairs Committee for his comments. I look forward to working with him and the new Department of Homeland Security to ensure that the Department's information assurance policies include the purchase of secure, stable information systems.

Mr. LIEBERMAN. I also thank the Senator from Ohio for his comments and look forward to working with him, as well.

UNACCOMPANIED CHILD PROTECTION ACT

Mrs. FEINSTEIN. Mr. President, I am disappointed that the bill before us does not contain in its entirety the Unaccompanied Child Protection Act, bipartisan legislation I introduced at the beginning of this Congress and that was included as Title XII of the Lieberman substitute to H.R. 5005.

I am pleased, however, that the measure contains one key component of that legislation: the transfer of authority over the care and custody of unaccompanied alien children to the Office of Refugee Resettlement within the Department of Health and Human Services.

This is key for two reasons: First, we do not want to burden the Secretary of Homeland Security with policy issues unrelated to the threat of terrorism. The Department will have a huge and important mission when this legislation is done and its attention should be focused on that mission.

Second, the federal government has a special responsibility to protect the children in its custody. For too long, the Immigration and Naturalization Service, INS, has not lived up to that responsibility. The children's provisions in this legislation is an important first step in correcting decades of questionable practices with regards to children that come under the agency's watch.

As I mentioned before, this is an important first step in providing protection for unaccompanied alien children. I ask my friend from Arizona, who is a senior member of the Judiciary Committee and part of the leadership on the other side of the aisle, if he would agree to work with me next year to further refine the important reforms relating to the treatment of unaccompanied alien children.

Mr. KYL. I thank my friend from California for her question. I know that she has worked long and hard on these issues and that it is her work and her dedication that is responsible for the inclusion of the children's provisions in the homeland security bill.

I would further say to my friend from California that while additional reforms may be warranted, the legislation before us today was primarily a structural bill, not a policy bill. That fact prevented the consideration of some of the reforms she has championed from being included in this legislation.

I pledged to work with her in the 108th Congress to help fashion legislation that could address some of the issues that had to be left out of this measure.

Mrs. FEINSTEIN. I thank the Senator from Arizona. You may be interested to know that I first became involved in this issue when I heard about a young 15-year old Chinese girl who stood before a U.S. immigration court facing deportation proceedings. She had found her way to the United States as a stowaway in a container ship captured off of Guam, hoping to escape the repression she had experienced in her home country.

Although she had committed no crime, the INS sent her to a Portland jail, where she languished for seven months. When the INS brought her before an immigration judge, she stood before him confused, not understanding the proceedings against her. Tears streamed down her face, yet she could not wipe them away because her hands were handcuffed and chained to her waist.

While the young girl eventually received asylum in our country, she unnecessarily faced an ordeal no child should bear under our immigration system. This young Chinese girl represents only one of 5,000 foreign-born children who, without parents or legal guardians to protect them, are discovered in the United States each year in need of protection.

So you see, this issue calls for clearer policy direction from Congress. I thank my friend and look forward to working with him in the beginning of the 108th Congress.

Mr. COCHRAN. Mr. President, the reorganization of our homeland security efforts is necessary if we are to achieve a higher level of safety for American citizens.

The bill before us improves our security by combining into a single department the federal agencies and programs that today have a role in providing homeland security. Those organizations comprise some 170,000 people. Bringing them together under a single reorganized department will enable us to improve coordination of the Government's efforts to defend the United States against terrorist attacks.

By creating the cabinet-level position of Secretary of Homeland Security, the bill ensures there will be a leader of this effort, with the appropriate authority and responsibility to carry out that mission.

The creation of a Border and Transportation Security Directorate—bringing together the Immigration and Naturalization Service from the Justice Department, the U.S. Customs Service from the Treasury Department, and the newly created Transportation Security Administration—will make a single entity responsible for securing our border and transportation systems and preventing the entry of terrorists into our country.

The Coast Guard, which also plays an important role in securing our borders, will move from the Department of Transportation to the Department of Homeland Security. By maintaining the Coast Guard as an independent agency reporting directly to the Secretary of Homeland Security, this bill ensures the Coast Guard will have the resources and advocacy it needs to conduct its important security missions as well as its other missions, such as search-and-rescue and boating safety.

This legislation also creates a Directorate of Emergency Preparedness and Response, which will coordinate the federal government's response to terrorist attacks and major disasters. Combining all the Federal Government's emergency response efforts into a single entity will improve the Government's coordination with state and local entities in preparing for and responding to terrorist attacks.

The need for this reorganization is critical to our national security. Its scope is necessarily quite extensive. If this effort is to be effective, the President must have the flexibility to adapt the new department as needed to carry out its mission. This bill provides him the management flexibility he needs while protecting the rights of the Federal workers who will serve in the new department.

This bill represents to most extensive reorganization of the Federal Government in over 50 years. By taking resources from existing departments and agencies and placing them in a new organization, it has required a very difficult balancing of competing interests and views. The success of those efforts is a tribute to those who have worked so hard to bring this legislation about.

The President in particular deserves praise for bringing together a wide variety of interests and addressing a variety of concerns about the new department. Here in the Senate, Senator THOMPSON, the ranking member of the Governmental Affairs Committee and one of the sponsors of the compromise proposal before us now, deserves great credit for his efforts to ensure this legislation was both effective and fair. Senator LIEBERMAN, the chairman of the Governmental Affairs Committee, was one of the first to identify the need for this department and to call for its creation, and he should be commended for his efforts as well.

The bill before us is the beginning, not the end, of our efforts to adapt to the new threats we face. After the Department of Homeland Security is created, we may find that other changes will be needed, but this legislation is a very important step to ensuring that our nation, our homeland, and our citizens, are protected to the fullest extent possible from the new and dangerous threats that confront us.

I support this effort and I urge all Senators to vote for it.

Let's get on with it.

Mrs. HUTCHISON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MILLER). Without objection, it is so ordered.

AVIATION SECURITY IMPROVEMENT ACT

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 623, S. 2949.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2949) to provide for enhanced aviation security, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 2949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(a) SHORT TITLE.—This Act may be cited as the "Aviation Security Improvement Act".

(b) AMENDMENT OF TITLE 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.
Sec. 2. Table of contents.

TITLE I—EXPLOSIVE DETECTION SYSTEMS

Sec. 101. Explosive detection systems.

TITLE II—AIR CARGO SECURITY

Sec. 201. Inspection of cargo carried aboard passenger aircraft.
Sec. 202. Air cargo shipping.
Sec. 203. Cargo carried aboard passenger aircraft.
Sec. 204. Training program for cargo handlers.
Sec. 205. Cargo carried aboard all-cargo aircraft.

TITLE III—PASSENGER IDENTIFICATION

Sec. 301. Passenger identification.
Sec. 302. Passenger identification verification.

TITLE IV—CIRCUMVENTION OF AIRPORT SECURITY

Sec. 401. Prohibition on unauthorized circumvention of airport security systems and procedures.

TITLE V—WAR RISK INSURANCE

Sec. 501. War risk insurance for certain aircraft.

TITLE VI—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

Sec. 601. Blast-resistant cargo container technology.

TITLE VII—FLIGHT SCHOOLS

Sec. 701. Modification of requirements regarding training to operate aircraft

TITLE VIII—MISCELLANEOUS

Sec. 801. Applications for nonlethal cockpit weapons
Sec. 802. FAA Notices to Airmen FDC 1/3353 and 2/95823.

TITLE [VII] *IX*—TECHNICAL CORRECTIONS

Sec. [701.] *901.* Technical corrections.

TITLE I—EXPLOSIVE DETECTION SYSTEMS

SEC. 101. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) is amended by adding at the end the following:

"(2) [FAILURE TO MEET DEADLINE] *DEADLINE.—*

"(A) IN GENERAL.—If the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

"(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requiremens of paragraph (1) as soon as practicable at that airport; and

"(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

"(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

"(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

"(ii) the need to ensure that such installations and modifications are effective; and

"(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

"(C) LIMITATION.—The Under Secretary may not make a determination under subparagraph (A) in the case of more than 40 airports.

"(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

"(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

"(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

"(3) REPORTS.—

"(A) IN GENERAL.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of the Aviation Security Improvement Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.

"(B) LIMIT ON NUMBER OF REPORTS.—The Under Secretary shall submit reports for each airport until the requirements of paragraph (1) have been met, but may not submit more than [6] *12* reports for any airport.".

TITLE II—AIR CARGO SECURITY

SEC. 201. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) is amended to read as follows:

"(f) CARGO.—

"(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish [a system] *systems* to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

"(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

"(B) all-cargo aircraft in air transportation and intrastate air transportation.

"(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).".

SEC. 202. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449, is amended by adding at the end the following:

"§ 44921. Regular inspections of air cargo shipping facilities

"The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into [such] arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.".

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this title.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

"44921. Regular inspections of air cargo shipping facilities.".

SEC. 203. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44922. Air cargo security

"(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide *pilot program* database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the [database] results of the pilot program to improve the known shipper program.

"(b) INDIRECT AIR CARRIERS.—

"(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

"(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

"[(2)] *(3)* NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

"[(3)] *(4)* SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate *or authority* issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

"[(4)] *(5)* INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part [109 of title 14,] *1548 of title 49*, Code of Federal Regulations.".

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part [109 of title 14,] *1548 of title 49*, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, as amended by section 202, is amended by adding at the end the following:

"44922. Air cargo security.".

SEC. 204. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 205. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section [44901(f)] *44901(f)(1)(B)* of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) Comment period.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) Final program.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) Suspension of procedural norms.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

TITLE III—PASSENGER IDENTIFICATION

SEC. 301. PASSENGER IDENTIFICATION.

(a) In General.—Subchapter I of chapter 449, as amended by title II of this Act, is further amended by adding at the end the following:

"§ 44923. Passenger identification

"(a) In General.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, *training of personnel*, and issues related to the types of identification available to the public.

"(b) Air Carrier Programs.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.".

(b) Conforming Amendment.—The chapter analysis for chapter 449, is amended by adding at the end the following:

"44923. Passenger identification.".

SEC. 302. PASSENGER IDENTIFICATION VERIFICATION.

(a) Requirement.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44924. Passenger identification verification

"(a) Program Required.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

"(b) Technologies Employed.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, [retinal] *retinal, iris*, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

"(c) Commencement.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.".

(b) Conforming Amendment.—The chapter analysis for chapter 449, is amended by adding at the end the following:

"44924. Passenger identification verification.".

TITLE IV—CIRCUMVENTION OF AIRPORT SECURITY

SEC. 401. PROHIBITION ON UNAUTHORIZED CIRCUMVENTION OF AIRPORT SECURITY SYSTEMS AND PROCEDURES.

(a) Prohibition.—Section 46503 is amended—

(1) by inserting "(a) Interference With Security Screening Personnel.—" before "An individual"; and

(2) by adding at the end the following new subsection:

"(b) Unauthorized Circumvention of Security Systems and Procedures.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.".

(b) Conforming and Clerical Amendments.—

(1) The section heading of that section is amended to read as follows:

"§ 46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures".

(2) The item relating to that section in the table of sections at the beginning of chapter 465 is amended to read as follows:

"46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures.".

TITLE V—WAR RISK INSURANCE

SEC. 501. WAR RISK INSURANCE FOR CERTAIN AIRCRAFT.

Section 44302 is amended by adding at the end the following:

"(f) War Risk Insurance.—

"(1) In general.—Not later than 30 days after the date of enactment of the Aviation Security Improvement Act, the Secretary shall—

"(A) extend for 270 days from such date of enactment the termination date of any aviation war risk insurance policies the Department issued that were in effect on such date of enactment on terms that are no less favorable than the terms of those policies as the policies were in effect on June 19, 2002; and

"(B) offer to amend each policy the term of which is extended to provide coverage for losses or injuries to hull, passengers, and crew, in addition to coverage for injury to third parties (with respect to both persons and property), on such terms and conditions as the Secretary may prescribe, at an additional premium comparable to the premium charged for the third-party casualty coverage under existing *Federal Aviation Administration* policies.

"(2) Report.—Not later than 90 days after the date of enactment of the Aviation Security Improvement Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

"(A) evaluates the availability of war risk insurance for air carriers and other aviation entities for passengers and third parties;

"(B) analyzes the economic effect upon air carriers and other aviation entities of available war risk insurance; and

"(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.".

TITLE VI—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

SEC. 601. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result (particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology; and

(3) provides recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

TITLE VII—FLIGHT SCHOOLS

SEC. 701. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) Aliens Covered by Waiting Period.—Subsection (a) of section 44939 is amended—

(1) by resetting the text of subsection (a) after "(a) Waiting Period.—" as a new paragraph 2 ems from the left margin;

(2) by striking "A person" in that new paragraph and inserting "(1) In general.—A person";

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking "any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more" and inserting "an aircraft";

(5) by striking "paragraph (1)" in paragraph (1)(B), as redesignated, and inserting "subparagraph (A)"; and

(6) by adding at the end the following:

"(2) Exception.—The requirements of paragraph (1) shall not apply to an alien who—

"(A) has earned a Federal Aviation Administration type rating in an aircraft; or

'(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.".

(b) Covered Training.—Section 44936(c) is amended to read as follows:

"(c) Covered Training.—

"(1) In general.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

"(2) Exception.—For the purposes of subsection (a), training does not include classroom

instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.".

(c) PROCEDURES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 113 of the Aviation and Transportation Security Act.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General of the United States shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, as amended by this section, in reducing risks to aviation and national security

TITLE VIII—MISCELLANEOUS

SEC. 801. APPLICATIONS FOR NONLETHAL COCKPIT WEAPONS.

The Secretary of Transportation shall act expeditiously on any pending application by an air carrier seeking authority for the use of less-than-lethal-weapons by its flight crews.

SEC. 802. FAA NOTICES TO AIRMEN FDC 1/3353 AND 2/95823.

(a) IN GENERAL.—The Secretary of Transportation—

(1) shall maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notices to Airmen FDC 1/3353 and 2/9583 (including any local Notices to Airmen of similar effect or import) as those restrictions are in effect on the date of enactment of this Act for a period of 180 days after that date;

(2) may not grant any waivers or exemptions from those restrictions, except as authorized by air traffic control for operational or safety purposes; and

(3) shall rescind immediately any waivers or exemptions from those restrictions that are in effect on the date of enactment of this Act.

(b) WAIVERS.—Beginning no earlier than 180 days after the date of enactment of this Act, the Secretary may modify or terminate such restrictions, or issue waivers or exemptions from such restrictions, if the Secretary promulgates, after public notice and an opportunity for comment, a rule under which the Secretary may grant a waiver or exemption only if—

(1) the application for the waiver or exemption was received by the Secretary not less than 5 days (excluding Saturdays, Sundays, and holidays) before the proposed operation for which it is requested;

(2) the application is for a specific stadium or venue, during a specified period of time, for a specific aircraft, and contains the names of the pilot, crew, and passengers who will be aboard the aircraft;

(3) the pilot and each crewmember have passed a fingerprint-based criminal history records check by the Federal Bureau of Investigation;

(4) the names of all individuals aboard the aircraft have been compared with names on appropriate security watch lists;

(5) access to the aircraft will be secured before the proposed operation; and

(6) timely notice has been, or will be, given to the operators of the affected stadium or other venue.

TITLE [VII] *IX*—TECHNICAL CORRECTIONS

SEC. [701.] *901.* TECHNICAL CORRECTIONS.

(a) Section 114(j)(1)(D) is amended by inserting "Under" before "Secretary".

(b) Section 115(c)(1) is amended—

(1) by striking "and ratify or disapprove"; and

(2) by striking "security" the second place it appears and inserting "Security".

(c) Section 40109(b) is amended by striking "40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935—44937" and inserting "40103(b)(1) and (2) and 40119".

(d) Section 44901(a) is amended by inserting "or, in the case of United States mail, by an officer or employee of the United States Postal Service under standards and procedures established by the Under Secretary," after " Code),".

(e) Section 44901(e) is amended by striking "subsection (b)(1)(A)" and inserting "subsection (d)(1)(A)".

(f) Section 44901(g)(2) is amended by striking "Except at airports required to enter into agreements under subsection (c), the" and inserting "The".

(g) Section 44903 is amended—

(1) by striking "Administrator" in subsection (c)(3) and inserting "Under Secretary"; and

(2) by redesignating the second subsection (h), subsection (i), and the third subsection (h) as subsections (i), (j), and (k), respectively.

(h) Section 44909 is amended—

(1) by striking "Not later than March 16, 1991, the" in subsection (a)(1) and inserting "The"; and

(2) by inserting "of Transportation for Security" after "Under Secretary" in subsection (c)(2)(F).

(i) Section 44935 is amended—

[(1) by striking "States;" in subsection (e)(2)(A)(ii) and inserting "States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));"; and]

(1) by striking "States;" in subsection (e)(2)(A)(ii) and inserting "States or described in subparagraph (C);";

(2) by redesignating subparagraph subsection (e)(2)(C) as subparagraph (D);

(3) by inserting after subsection (e)(2)(B) the following:

"(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

"(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

"(ii) was born in a territory of the United States;

"(iii) was honorably discharged from service in the Armed Forces of the United States; or

"(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107-71)."; and

[(2)] *(4)* by redesignating the second subsection (i) as subsection (k).

(j) Section 44936(a)(1)(A) is amended by striking "Transportation Security,," and inserting "Security,".

(k) Section 44940 is amended—

(1) by striking "Federal law enforcement personnel pursuant to section 44903(h)." in subsection (a)(1)(G) and inserting "law enforcement personnel pursuant to this title.";

(2) by inserting "FOR" after "RULES" in the caption of subsection (d)(2); and

(3) by striking subsection (d)(4) and inserting the following:

"(4) FEE COLLECTION.—Fees may be collected under this section as provided in advance in appropriations Acts.".

(l) Section 46301(a) is amended by adding at the end the following:

"(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is **$10,000**, except that the maximum civil penalty is **$25,000** in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).".

(m) Section 46301(d)(2) is amended—

(1) by striking "46302, 46303," in the first sentence;

(2) by striking the second sentence and inserting "The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(F), 44908, and 44909), section 46302, 46303, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.".

(n) Section 46301(g) is amended by striking "Secretary" and inserting "Secretary, the Under Secretary of Transportation for Security,".

(o) Chapter 465 is amended—

(1) by striking "**screening**" in the caption of section 46503; and

(2) by striking "screening" in the item relating to section 46503 in the chapter analysis.

(p) Section 47115(i) is amended by striking "non-federal" each place it appears and inserting "non-Federal".

(q) Section 48107 is amended by striking "section 44912(a)(4)(A)." and inserting "section 44912(a)(5)(A).".

(r) Sections 44903(i)(1) (as redesignated), 44942(b), and 44943(c) are each amended by striking "Under Secretary for Transportation Security" each place it appears and inserting "Under Secretary".

(s) Section 44936 is amended by adding at the end the following:

"(f) PROTECTION OF PRIVACY OF APPLICANTS AND EMPLOYEES.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.".

(t) Sections 44942(a)(1) and 44943(a) are each amended by striking "Under Secretary for Transportation Security" and inserting "Under Secretary of Transportation for Security".

(u) Subparagraphs (B) and (C) of section 44936(a)(1) are each amended by striking "Under Secretary of Transportation for Transportation Security" and inserting "Under Secretary".

(v) Section 44943(c) is amended by inserting "and Transportation" after "Aviation".

(w) Section 44942(b) is amended—

(1) by striking "(1) PERFORMANCE PLAN AND REPORT.—";

(2) redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) redesignating clauses (i) and (ii) of paragraph (1), as redesignated, as subparagraphs (A) and (B), respectively.

(x) The chapter analysis for chapter 449 is amended by inserting after the item relating to section 44941 the following:

"44942. Performance goals and objectives.
"44943. Performance management plans.".

(y) Section 44944(a)(1) is amended by striking "Under Secretary of Transportation for Transportation Security" and inserting "Under Secretary of Transportation for Security".

(z) Section 106(b)(2)(B) of the Aviation and Transportation Security Act is amended by inserting "Under" before "Secretary".

(aa) Section 119(c) of the Aviation and Transportation Security Act is amended by striking "section 47192(3)(J)" and inserting "section 47102(3)(J)".

(bb) Section 132(a) of the Aviation and Transportation Security Act is amended by striking "12,500 pounds or more." and inserting "more than 12,500 pounds.".

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the committee-reported amendments be agreed to; I understand that Senators HOLLINGS and MCCAIN have an amendment at the desk, and I ask that the amendment be considered; that the Hollings-Rockefeller-McCain amendment, which is at the desk, be considered and agreed to; that the substitute amendment, as amended, be agreed to; that the motions to reconsider be laid upon the table, en bloc; that the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendments were agreed to.

AMENDMENT NO. 4969 TO AMENDMENT NO. 4968

(Purpose: To add the text of S. 2950, entitled "A bill To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2003, 2004, and 2005, and for other purposes", as reported by the Committee on Commerce, Science, and Transportation)

The amendment (No. 4969) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

AMENDMENT NO. 4968

(Purpose: To provide for enhanced aviation security, and for other purposes)

The amendment (No. 4968), in the nature of a substitute, as amended, was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (S. 2949), as amended, was read the third time and passed, as follows:

S. 2949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(a) SHORT TITLE.—This Act may be cited as the "Aviation Security Improvement Act".

(b) AMENDMENT OF TITLE 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.
Sec. 2. Table of contents.

TITLE I—AIR CARGO SECURITY

Sec. 101. Inspection of cargo carried aboard passenger aircraft.
Sec. 102. Air cargo shipping.
Sec. 103. Cargo carried aboard passenger aircraft.
Sec. 104. Training program for cargo handlers.
Sec. 105. Cargo carried aboard all-cargo aircraft.

TITLE II—PASSENGER IDENTIFICATION

Sec. 201. Passenger identification.
Sec. 202. Passenger identification verification.

TITLE III—CIRCUMVENTION OF AIRPORT SECURITY

Sec. 301. Prohibition on unauthorized circumvention of airport security systems and procedures.

TITLE IV—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

Sec. 401. Blast-resistant cargo container technology.

TITLE V—FLIGHT SCHOOLS

Sec. 501. Modification of requirements regarding training to operate aircraft

TITLE VI—MISCELLANEOUS

Sec. 601. FAA Notice to Airmen FDC 2/0199.

TITLE VII—TECHNICAL CORRECTIONS

Sec. 701. Technical corrections.

TITLE VIII—NTSB AUTHORIZATION

Sec. 801. Short title.
Sec. 802. Authorization of appropriations.
Sec. 803. Assistance to families of passengers involved in aircraft accidents.
Sec. 804. Relief from contracting requirements for investigations services.

TITLE IX—CHILD PASSENGER SAFETY

Sec. 901. Short title.
Sec. 902. Improvement of safety of child restraints in passenger motor vehicles.
Sec. 903. Report on development of crash test dummy simulating a 10-year old child.
Sec. 904. Requirements for installation of lap and shoulder belts.
Sec. 905. Two-year extension of child passenger protection education grants program.
Sec. 906. Grants for improving child passenger safety programs.
Sec. 907. Definitions.
Sec. 908. Authorization of appropriations.

TITLE I—AIR CARGO SECURITY

SEC. 101. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) is amended to read as follows:

"(f) CARGO.—

"(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

"(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

"(B) all-cargo aircraft in air transportation and intrastate air transportation.

"(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).".

SEC. 102. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449, is amended by adding at the end the following:

"§ 44921. Regular inspections of air cargo shipping facilities

"The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.".

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

"44921. Regular inspections of air cargo shipping facilities".

SEC. 103. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44922. Air cargo security

"(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

"(b) INDIRECT AIR CARRIERS.—

"(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

"(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

"(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

"(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

"(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

"(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.".

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, as amended by section 102, is amended by adding at the end the following:

"44922. Air cargo security".

SEC. 104. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 105. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

TITLE II—PASSENGER IDENTIFICATION

SEC. 201. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Subchapter I of chapter 449, as amended by title II of this Act, is further amended by adding at the end the following:

"§ 44923. Passenger identification

"(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

"(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, is amended by adding at the end the following:

"44923. Passenger identification".

SEC. 202. PASSENGER IDENTIFICATION VERIFICATION.

(a) REQUIREMENT.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44924. Passenger identification verification

"(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

"(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

"(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

"44924. Passenger identification verification".

TITLE III—CIRCUMVENTION OF AIRPORT SECURITY

SEC. 301. PROHIBITION ON UNAUTHORIZED CIRCUMVENTION OF AIRPORT SECURITY SYSTEMS AND PROCEDURES.

(a) PROHIBITION.—Section 46503 is amended—

(1) by inserting "(a) INTERFERENCE WITH SECURITY SCREENING PERSONNEL.—" before "An individual"; and

(2) by adding at the end the following new subsection:

"(b) UNAUTHORIZED CIRCUMVENTION OF SECURITY SYSTEMS AND PROCEDURES.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.".

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) The section heading of that section is amended to read as follows:

"§ 46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures".

(2) The chapter analysis for chapter 465 is amended by striking the item relating to section 46503 and inserting the following:

"46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures".

TITLE IV—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

SEC. 401. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result (particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology; and

(3) provides recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

TITLE V—FLIGHT SCHOOLS

SEC. 501. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Subsection (a) of section 44939 is amended—

(1) by resetting the text of subsection (a) after "(a) WAITING PERIOD.—" as a new paragraph 2 ems from the left margin;

(2) by striking "A person" in that new paragraph and inserting "(1) IN GENERAL.—A person";

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking "any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more" and inserting "an aircraft";

(5) by striking "paragraph (1)" in paragraph (1)(B), as redesignated, and inserting "subparagraph (A)"; and

(6) by adding at the end the following:

"(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

"(A) has earned a Federal Aviation Administration type rating in an aircraft; or

"(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.".

(b) COVERED TRAINING.—Section 44936(c) is amended to read as follows:

"(c) COVERED TRAINING.—

"(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

"(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.".

(c) PROCEDURES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 113 of the Aviation and Transportation Security Act.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General of the United States shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, as amended by this section, in reducing risks to aviation and national security.

TITLE VI—MISCELLANEOUS

SEC. 601. FAA NOTICE TO AIRMEN FDC 2/0199.

(a) IN GENERAL.—The Secretary of Transportation—

(1) shall maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notice to Airmen FDC 2/0199 (including any local Notices to Airmen of similar effect or import), as those restrictions are in effect on the date of enactment of this Act, for a period of 180 days after that date;

(2) shall rescind immediately any waivers or exemptions from those restrictions that are in effect on the date of enactment of this Act; and

(3) may not grant any waivers or exemptions from those restrictions, except—

(A) as authorized by air traffic control for operational or safety purposes;

(B) for operational purposes of an event, stadium, or other venue, including (in the case of a sporting event) equipment or parts, transport of team members, officials of the governing body and immediate family members of team members and officials to and from the event, stadium, or other venue;

(C) for broadcast coverage for any broadcast rights holder;

(D) for safety and security purposes of the event, stadium, or other venue; or

(E) to operate an aircraft in restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic procedures.

(b) WAIVERS.—Beginning no earlier than 180 days after the date of enactment of this Act, the Secretary may modify or terminate such restrictions, or issue waivers or exemptions from such restrictions, if the Secretary promulgates, after public notice and an opportunity for comment, a rule setting forth the standards under which the Secretary may grant a waiver or exemption. Such standards shall provide a level of security at least equivalent to that provided by the waiver policy applied by the Secretary as of the date of enactment of this Act.

(c) BROADCAST CONTRACTS NOT AFFECTED.—Nothing in this section shall be construed to affect contractual rights pertaining to any broadcasting agreement.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. TECHNICAL CORRECTIONS.

(a) Section 114(j)(1)(D) is amended by inserting "Under" before "Secretary".

(b) Section 115(c)(1) is amended—

(1) by striking "and ratify or disapprove"; and

(2) by striking "security" the second place it appears and inserting "Security".

(c) Section 40109(b) is amended by striking "40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935—44937" and inserting "40103(b)(1) and (2) and 40119".

(d) Section 44901(e) is amended by striking "subsection (b)(1)(A)" and inserting "subsection (d)(1)(A)".

(e) Section 44901(g)(2) is amended by striking "Except at airports required to enter into agreements under subsection (c), the" and inserting "The".

(f) Section 44903 is amended—

(1) by striking "Administrator" in subsection (c)(3) and inserting "Under Secretary"; and

(2) by redesignating the second subsection (h), subsection (i), and the third subsection (h) as subsections (i), (j), and (k), respectively.

(g) Section 44909 is amended—

(1) by striking "Not later than March 16, 1991, the" in subsection (a)(1) and inserting "The"; and

(2) by inserting "of Transportation for Security" after "Under Secretary" in subsection (c)(2)(F).

(h) Section 44935 is amended—

(1) by striking "States;" in subsection (e)(2)(A)(ii) and inserting "States or described in subparagraph (C);";

(2) by redesignating subparagraph subsection (e)(2)(C) as subparagraph (D);

(3) by inserting after subsection (e)(2)(B) the following:

"(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

"(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

"(ii) was born in a territory of the United States;

"(iii) was honorably discharged from service in the Armed Forces of the United States; or

"(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107-71).";

(4) by inserting "and" after the semicolon in subsection (e)(2)(A)(iii);

(5) by striking "establish; and" in subsection (e)(2)(A)(iv) and inserting "establish.";

(6) by striking subsection (e)(2)(A)(v);

(7) by adding at the end of subsection (f)(1) the following:

"(E) The individual shall be able to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol."; and

(8) by redesignating the second subsection (i) as subsection (k).

(i) Section 44936(a)(1)(A) is amended by striking "Transportation Security,," and inserting "Security,".

(j) Section 44940 is amended—

(1) by striking "Federal law enforcement personnel pursuant to section 44903(h)." in subsection (a)(1)(G) and inserting "law enforcement personnel pursuant to this title.";

(2) by inserting "FOR" after "RULES" in the caption of subsection (d)(2); and

(3) by striking subsection (d)(4) and inserting the following:

"(4) FEE COLLECTION.—Fees may be collected under this section as provided in advance in appropriations Acts.".

(k) Section 46301(a) is amended by adding at the end the following:

"(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is $10,000, except that the maximum civil penalty is $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).".

(l) Section 46301(d)(2) is amended—

(1) by striking "46302, 46303," in the first sentence;

(2) by striking the second sentence and inserting "The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)—(d)(1)(A), 44907(d)(1)(C)—(F), 44908, and 44909), section 46302, 46303, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.".

(m) Section 46301(g) is amended by striking "Secretary" and inserting "Secretary, the Under Secretary of Transportation for Security,".

(n) Chapter 465 is amended—

(1) by striking "**screening**" in the caption of section 46503; and

(2) by striking "screening" in the item relating to section 46503 in the chapter analysis.

(o) Section 47115(i) is amended by striking "non-federal" each place it appears and inserting "non-Federal".

(p) Section 48107 is amended by striking "section 44912(a)(4)(A)." and inserting "section 44912(a)(5)(A).".

(q) Sections 44903(i)(1) (as redesignated), 44942(b), and 44943(c) are each amended by striking "Under Secretary for Transportation Security" each place it appears and inserting "Under Secretary".

(r) Section 44936 is amended by adding at the end the following:

"(f) PROTECTION OF PRIVACY OF APPLICANTS AND EMPLOYEES.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.".

(s) Sections 44942(a)(1) and 44943(a) are each amended by striking "Under Secretary for Transportation Security" and inserting "Under Secretary of Transportation for Security".

(t) Subparagraphs (B) and (C) of section 44936(a)(1) are each amended by striking "Under Secretary of Transportation for Transportation Security" and inserting "Under Secretary".

(u) Section 44943(c) is amended by inserting "and Transportation" after "Aviation".

(v) Section 44942(b) is amended—

(1) by striking "(1) PERFORMANCE PLAN AND REPORT.—";

(2) redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) redesignating clauses (i) and (ii) of paragraph (1), as redesignated, as subparagraphs (A) and (B), respectively.

(w) The chapter analysis for chapter 449 is amended by inserting after the item relating to section 44941 the following:

"44942. Performance goals and objectives
"44943. Performance management plans".

(x) Section 44944(a)(1) is amended by striking "Under Secretary of Transportation for Transportation Security" and inserting "Under Secretary of Transportation for Security".

(y) Section 106(b)(2)(B) of the Aviation and Transportation Security Act is amended by inserting "Under" before "Secretary".

(z) Section 119(c) of the Aviation and Transportation Security Act is amended by striking "section 47192(3)(J)" and inserting "section 47102(3)(J)".

(aa) Section 132(a) of the Aviation and Transportation Security Act is amended by striking "12,500 pounds or more." and inserting "more than 12,500 pounds.".

TITLE VIII—NTSB AUTHORIZATION

SEC. 801. SHORT TITLE.

This title may be cited as the "National Transportation Safety Board Reauthorization Act of 2002".

SEC. 802. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEARS 2003–2005.—Section 1118(a) of title 49, United States Code, is amended—

(1) by striking "and"; and

(2) by striking "such sums to" and inserting the following: "$73,325,000 for fiscal year 2003, $84,999,000 for fiscal year 2004, and $89,687,000 for fiscal year 2005. Such sums shall".

(b) EMERGENCY FUND.—Section 1118(b) of such title is amended by striking the second sentence and inserting the following: "In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $3,000,000.".

(c) NTSB ACADEMY.—Section 1118 of such title is amended by adding at the end the following:

"(c) ACADEMY.—

"(1) AUTHORIZATION.—There are authorized to be appropriated to the Board for necessary expenses of the National Transportation Safety Board Academy, not otherwise provided for, $3,347,000 for fiscal year 2003, $4,896,000 for fiscal year 2004, and $4,995,000 for fiscal year 2005. Such sums shall remain available until expended.

"(2) FEES.—The Board may impose and collect such fees as it determines to be appropriate for services provided by or through the Academy.

"(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this paragraph—

"(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

"(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

"(C) shall remain available until expended.

"(4) REFUNDS.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.".

(d) REPORT ON ACADEMY OPERATIONS.—The National Transportation Safety Board shall transmit an annual report to the Congress on the activities and operations of the National Transportation Safety Board Academy.

SEC. 803. ASSISTANCE TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—Section 1136 of title 49, United States Code, is amended by adding at the end the following:

"(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

"(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

"(2) BOARD ASSISTANCE.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.".

(b) REVISION OF MOU.—Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 804. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

Section 1113(b) of title 49, United States Code, is amended—

(1) by striking "Statutes;" in paragraph (1)(B) and inserting "Statutes, and, for investigations conducted under section 1131, enter into such agreements or contracts without regard to any other provision of law requiring competition if necessary to expedite the investigation;"; and

(2) by adding at the end the following:

"(3) The Board, as a component of its annual report under section 1117, shall include an enumeration of each contract for $25,000 or more executed under this section during the preceding calendar year.".

TITLE IX—CHILD PASSENGER SAFETY

SEC. 901. SHORT TITLE.

This title may be cited as "Anton's Law".

SEC. 902. IMPROVEMENT OF SAFETY OF CHILD RESTRAINTS IN PASSENGER MOTOR VEHICLES.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

(b) ELEMENTS FOR CONSIDERATION.—In the rulemaking proceeding required by subsection (a), the Secretary shall—

(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 40 pounds, under the requirements established in the rulemaking proceeding;

(2) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices;

(3) consider whether to develop a solution for children weighing more than 40 pounds who only have access to seating positions with lap belts, such as allowing tethered child restraints for such children; and

(4) review the definition of the term "booster seat" in Federal motor vehicle safety standard No. 213 under section 571.213 of title 49, Code of Federal Regulations, to determine if it is sufficiently comprehensive.

(c) COMPLETION.—The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act.

SEC. 903. REPORT ON DEVELOPMENT OF CRASH TEST DUMMY SIMULATING A 10-YEAR OLD CHILD.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the current schedule and status of activities of the Department of Transportation to develop, evaluate, and certify a commercially available dummy that simulates a 10-year old child for use in testing the effectiveness of child restraints used in passenger motor vehicles.

SEC. 904. REQUIREMENTS FOR INSTALLATION OF LAP AND SHOULDER BELTS.

(a) In General.—Not later than 24 months after the date of the enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to amend Federal motor vehicle safety standard No. 208 under section 571.208 of title 49, Code of Federal Regulations, relating to occupant crash protection, in order to—

(1) require a lap and shoulder belt assembly for each rear designated seating position in a passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement; and

(2) apply that requirement to passenger motor vehicles in phases in accordance with subsection (b).

(b) Implementation Schedule.—The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule.

(c) Report on Determination To Exclude.—

(1) Requirement.—If the Secretary determines under subsection (a)(1) that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of motor vehicle, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report specifying the reasons for the determination.

(2) Deadline.—The report under paragraph (1) shall be submitted, if at all, not later than 30 days after the date on which the Secretary issues a final rule under subsection (a).

SEC. 905. TWO-YEAR EXTENSION OF CHILD PASSENGER PROTECTION EDUCATION GRANTS PROGRAM.

Section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note; 112 Stat. 328) is amended by striking "and 2001." and inserting "through 2004."

SEC. 906. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) In General.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§412. Grant program for improving child passenger safety programs

"(a) Standards and Requirements Regarding Child Restraint Laws.—Not later than October 1, 2003, the Secretary shall establish appropriate criteria applicable to child restraint laws for purposes of eligibility for grants under this section. The criteria shall be consistent with the provisions of Anton's Law.

"(b) Requirement To Make Grants.—

"(1) In general.—The Secretary shall make a grant to each State and Indian tribe that, as determined by the Secretary, has a child restraint law in effect on September 30, 2004.

"(2) Limitation on number of grants.—Not more than one grant may be made to a State or Indian tribe under this section.

"(3) Commencement.—The requirement in paragraph (1) shall commence on October 1, 2004.

"(c) Grant Amount.—The amount of the grant to a State or Indian tribe under this section shall be the amount equal to five times the amount provided to the State or Indian tribe, as the case may be, under section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note) in fiscal year 2003.

"(d) Use of Grant Amounts.—

"(1) In general.—A State or Indian tribe shall use any amount received by the State or Indian tribe, as the case may be, under this section to carry out child passenger protection programs for children under the age of 16 years, including programs for purposes as follows:

"(A) To educate the public concerning the proper use and installation of child restraints, including booster seats.

"(B) To train and retain child passenger safety professionals, police officers, fire and emergency medical personnel, and educators concerning all aspects of the use of child restraints.

"(C) To provide child restraint systems, including booster seats and the hardware needed for their proper installation, to families that cannot otherwise afford such systems.

"(D) To support enforcement of the child restraint law concerned.

"(2) Limitation on federal share.—The Federal share of the cost of a program under paragraph (1) that is carried out using amounts from a grant under this section may not exceed 80 percent of the cost of the program.

"(e) Administrative Expenses.—The amount of administrative expenses under this section in any fiscal year may not exceed the amount equal to five percent of the amount available for making grants under this section in the fiscal year.

"(f) Applicability of Chapter 1.—The provisions of section 402(d) of this title shall apply to funds authorized to be appropriated to make grants under this section as if such funds were highway safety funds authorized to be appropriated to carry out section 402 of this title.

"(g) Definitions.—In this section:

"(1) Child restraint law.—The term 'child restraint law' means a law that—

"(A) satisfies standards established by the Secretary under Anton's Law for the proper restraint of children who are over the age of 3 years or who weigh at least 40 pounds;

"(B) prescribes a penalty for operating a passenger motor vehicle in which any occupant of the vehicle who is under the age of 16 years is not properly restrained in an appropriate restraint system (including seat belts, booster seats used in combination with seat belts, or other child restraints); and

"(C) meets any criteria established by the Secretary under subsection (a) for purposes of this section.

"(2) Passenger motor vehicle.—The term 'passenger motor vehicle' has the meaning given that term in section 405(f)(5) of this title.

"(3) State.—The term 'State' has the meaning given in section 101 of this title and includes any Territory or possession of the United States.".

(b) Clerical Amendment.—The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 411 the following new item:

"412. Grant program for improving child passenger safety programs.".

SEC. 907. DEFINITIONS.

In this title:

(1) Child restraint.—The term "child restraint" means any product designed to provide restraint to a child (including booster seats and other products used with a lap and shoulder belt assembly) that meets applicable Federal motor vehicle safety standards prescribed by the National Highway Traffic Safety Administration.

(2) Production year.—The term "production year" means the 12-month period between September 1 of a year and August 31 of the following year.

(3) Passenger motor vehicle.—The term "passenger motor vehicle" has the meaning given that term in section 405(f)(5) of title 23, United States Code.

SEC. 908. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this title, including the making of grants under section 412 of title 23, United States Code, as added by section 906.

Mrs. HUTCHISON. Mr. President, I appreciate the fact that we have now passed an air cargo security bill that I think will move the ball a long way down the road toward ensuring the safety of the traveling public and our aviation industry.

Since the 9/11 terrorist attacks, we have spent a tremendous amount of time, effort, and resources improving our passenger aviation security system. In fact, tomorrow we have a very important deadline that will be met. All of the airport screeners in our country will be Federal employees who have met a series of stringent requirements, undergone mandatory training, and passed performance and written examinations.

I am proud of the work we have done in this area, but I am also concerned that we have been neglecting other modes of transportation as we continue to focus on passenger aircraft. 1 year ago, Congress created the Transportation Security Administration to implement and oversee security on our highways, in our airports, on trains, and in our ports. However, until now, we only gave to the TSA the tools to do the job with respect to passenger aviation security.

Last week, we finally passed the port security bill. Now we need to take another step toward transportation security. While I am confident that our efforts have dramatically improved aviation security, we have not closed all the loopholes in our air cargo operations. This issue must be addressed.

Twenty-two percent of all air cargo in the United States is carried on passenger flights, but only a tiny percentage of this cargo is inspected. There is no point to carefully screening every piece of luggage if the cargo placed aboard the same flight is not inspected at all. That is why I introduced the Air Cargo Security Act with my friend from California, Senator DIANNE FEINSTEIN. We reasoned it was pointless to require air passengers to wait in long security lines, undergo rigorous searches, which all of us have certainly had the privilege of suffering through, if we then allow packages to travel on the very same flight with no inspections whatsoever. Ignoring this problem could be an invitation to disaster.

My legislation was the subject of a closed-door hearing of the Aviation Subcommittee. Without going into details, it was apparent there are significant vulnerabilities in our existing system of air cargo security. The Transportation Security Administration is doing the best it can with limited resources. But clearly, legislation is required.

I modified the bill in response to those weaknesses and the recommendations made by the Transportation Security Administration, as well as the Department of Transportation Inspector General.

This bill was unanimously passed by the Commerce Committee in September as part of a larger package of aviation security measures. Some of these provisions made their way into the homeland security compromise draft, but air cargo security is too important to simply wait until next year.

The bill before us will establish a more reliable and accountable known shipper program, with frequent inspections of shipping facilities, tamper-proof identification cards for employees, and an accessible shipper database.

For the first time, the Transportation Security Administration will have the power to revoke the license of a shipper or freight forwarder whose practices are unsound or who has engaged in illegal activity.

The bill also requires the Transportation Security Administration to conduct regular inspections of foreign shipping facilities. Freight forwarders will have to submit to random inspections, and the TSA must also implement a training program for cargo professionals. All cargo facilities must have an improved security plan.

While we tighten these rules and procedures, we must be careful not to cause any economic damage to an airline industry that is already in dire straits. It is critical that the measures we impose allow both passenger and cargo carriers to compete on an equal footing. We drafted this bill in consultation with air cargo carriers and the airlines. I am pleased that we have gained their support, because it is important we have the regulators and the aviation industry working together to make the most seamless security system possible, not only in our country but throughout the world.

I also want to point out that the bill before us would accomplish several other goals. These provisions have all been approved by the Commerce Committee, and I thank Senators HOLLINGS and MCCAIN for their leadership.

The bill reauthorizes the National Transportation Safety Board through fiscal year 2005. I was proud to serve as vice chair of the National Transportation Safety Board before I came to the Senate. This agency investigates civil aviation accidents and significant incidents in other modes of transportation: railroad, highway, marine, and pipeline. The NTSB also issues safety recommendations aimed at preventing future accidents. This reauthorization also strengthens performance requirements for booster seats for children weighing more than 50 pounds. The NTSB's important work is completed on a very reasonable budget. I am pleased to support this reauthorization bill.

The bill before us also makes technical corrections to last year's Aviation and Transportation Security Act. It allows TSA to use biometric identification technologies such as retina scans and fingerprints to assist in aviation security. It defines circumvention of airport security as a Federal crime. It authorizes a study on blast-resistant cargo containers, and it strengthens security at flight schools. These necessary measures fine-tune the comprehensive security legislation we passed last year. I am pleased we have cleared this legislation, and I urge my colleagues in the House to follow suit.

Mr. President, I would make a parliamentary inquiry. Am I correct in concluding that all of the necessary steps and procedures have occurred to assure that this bill has been passed and that Senate action on S. 2949 is now complete?

The PRESIDING OFFICER. The Senator is correct.

Ms. HUTCHISON. I thank the Chair.

I appreciate the cooperation of my colleagues. I thank Senator REID for helping me in this wrap-up. I know he has not yet come to the floor, but I know that he helped us in clearing this bill. This bill has been cleared by unanimous consent. It is a very important step in securing our homeland. We have taken great strides to secure our airports and the passenger screening is quite thorough. Everybody has to smile when you say that, because anyone who has flown in America in the last 6 months has certainly been subjected to a lot of scrutiny. I have certainly been frisked. I have had my shoes taken off, all of those things that drive people crazy. But the bottom line is, we do have a safer system. We got the wake-up call on 9/11 of 2001. We have taken extraordinary steps to secure our country and our aviation system. Anyone who says our system is not safer today than it was on September 10 of 2001 either has not flown or is being disingenuous.

I would like to thank Admiral Loy at the Transportation Security Administration, and certainly Secretary Mineta and President Bush for their strong leadership in homeland and transportation security. We are going to do everything we can to make sure our people are safe.

The port security bill was a huge step in the right direction. I have one of the largest petrochemical complexes in the world in Houston, TX. I want to make sure they had all the authority and resources they need to secure that port. In fact, just this week, I talked to the people from the Port of Houston, and they are taking steps on their own. We need to help them at the Federal level to improve security, but they are not waiting for us to act. They know the importance of this issue because they are on the front lines, hearing of new threats from Osama bin Laden just recently. So they are battening down the hatches.

We are going to do the same thing with air cargo in the bill we just passed. If the House does come back this year, I will urge my colleagues in the House to look at this bill and try to work with us to make sure the belly of the airplane is just as safe as the passenger cabin is today. All of us want that to happen. I appreciate everybody's cooperation in passing this very important piece of legislation. Mr. President, I look forward to chairing the Aviation Subcommittee next year, working with Senator ROCKEFELLER, my ranking member, with whom I have had a great working relationship. We have passed the aviation security measure that is the law today. We worked together to pass the port security bill.

Senator ROCKEFELLER and I have a great vision for what we can do in aviation to make our system not only secure and safe for the traveling public, but also economically viable. Without an aviation industry, this country would lose in commerce and in the freedom of our people to travel. Our country is vast and we need aviation. I am looking forward to chairing that Subcommittee with Senator ROCKEFELLER and working to try to make sure that we maintain an economically viable aviation industry that is safe and secure for the traveling public, and for the goods that comprise our commerce.

Mr. President, I yield the floor.

Mr. MCCAIN. Mr. President, I rise to speak on S. 2949, the Aviation Security Improvement Act. This bill builds and improves upon work that began last year when Congress passed the Aviation and Transportation Security Act, ATSA, P.L. 107-71. During the 10 months since that law's enactment, there has been a significant change in the way aviation security is handled. However, there is a long way to go until we achieve all our aviation security goals. I believe the bill before us would make many positive steps in the continuing effort to protect the nation's air transportation system. This bill also contains the text of S. 2950, the National Transportation Safety Board Reauthorization.

I want to begin by commending Senators HUTCHISON and SNOWE for their work on the air cargo security issue addressed in this legislation. The cargo provisions flow directly from their bills and would bolster an aspect of aviation security that was not addressed in great detail in last year's law. This is one area in which we can and should be proactive to get ahead of potential problems or vulnerabilities.

There is a particular issue in this bill that I want to discuss briefly. In last year's security bill, we mandated that airport screeners had to be U.S. citizens. While imposing that requirement was an understandable impulse, it had some negative ramifications that were not clear at the time. For example, American Samoans are not now eligible to be screeners because they are considered nationals, not citizens.

S. 2949 includes a provision to allow nationals of the U.S., honorably discharged veterans of the U.S. military, and lawful permanent residents who were employed as airport security screeners at the time of ATSA's enactment, to be eligible to compete for jobs as federal security screeners. The provision would not require that these individuals be hired, but give TSA the discretion to hire them if they meet all the other statutory requirements concerning the hiring of screeners. This is a fair and reasonable expansion of the existing provision.

A similar provision was added to the Homeland Security bill. However, the provision in the Homeland Security bill only expands the definition to include U.S. nationals. It would still exclude an important segment of the population-legal permanent residents. LPRs as they are known, can join the military and risk giving up their lives fighting for our country. Yet, to date, they cannot be hired as security screeners. This is wrong, and we should correct it now.

In addition, S. 2949 would reauthorize the National Transportation Safety Board. The NTSB is an independent Federal agency charged with investigating every civil aviation accident in the United States. It also investigates significant accidents in the other modes of transportation—railorad, highway, marine, and pipeline—and issuing safety recommendations intended to prevent future accidents. We are all aware of the important role the NTSB plays in the safety of our transportation system, and it is important that we move ahead with this reauthorizing legislation.

A key element of this bill involves authorization for the NTSB's new Training Academy, which will be the centerpiece of its teaching and training of transportation accident investigators worldwide. It also will provide state-of-the-art classrooms and laboratory space for accident investigation. This is especially important with the advent of new technology that is being used to build, fuel, and more all modes of transportation.

The legislation also would streamline the NTSB's procurement process during accident investigations and allow the Board to transfer its family assistance responsibilities to any Federal agency that takes over an investigation, such as the FBI, provided that the other agency is willing and able to handle those duties. Finally the bill would reauthorize the NTSB's funding for its day to day activities.

The importance of the agency is well known to all. I urge the support of this bill.

THE CONFIRMATION OF MICHAEL McCONNELL TO THE 10TH CIRCUIT

Mr. LEAHY. Mr. President, last Friday, the Senate approved the nomination of Michael McConnell to the United States Court of Appeals for the Tenth Circuit. As a professor, first at the University of Chicago, and then at the University of Utah, Mr. McConnell has been a strong voice for reexamining First Amendment jurisprudence of Free Exercise Clause and the Establishment Clause. He has expressed strong personal opposition to abortion to Roe v. Wade, to the clinic access law. He has testified before the Congress against the Violence Against Women Act on the grounds that it was unconstitutional.

Each of these issues was explored to some degree at his hearing before the Judiciary Committee and in follow up written questions. No one doubts that Professor McConnell is personable and intelligent. No one doubts that he is an outstanding and provocative professor. I see why so many of his law professor colleagues like him and have endorsed his nomination. But the Judiciary Committee also received letters from hundreds of law professors reminding us that the burden of persuasion on lifetime judicial appointments should be on the nominee, as well as a recent letter signed by hundreds of law professors opposing confirmation of Professor McConnell.

The question I was left with after his nomination hearing was whether we had witnessed another confirmation conversion. Stated another way, I remain very concerned that Professor McConnell may turn out to be an activist on the 10th Circuit.

For instance, I still have a hard time reading his writing on the actions of Federal District Court Judge John Sprizzo in acquitting abortion protesters as anything other than praise for the extra-legal behavior of both the defendants and the judge. Even though Professor McConnell has now been confirmed, I continue to be concerned that he appeared to commend a judge and regard him as a hero for not following the law.

I find his responses regarding the Violence Against Women Act convenient.

I see his refusal to take responsibility for his harsh criticism of the Supreme Court's decision in the Bob Jones case as an attempt to distance himself from his prior approval of the ability of religious institutions to discriminate on the basis of race, even if they are receiving benefits from the Government.

At his hearing, and in follow-up written questions, Professor McConnell sought to assure us that he understands the difference between his role as a teacher and advocate and his future role as a judge. He assured us that he respects the doctrine of stare decisis, and that as a Federal appeals court judge, he will be bound to follow Supreme Court precedent.

Although many of President Clinton's nominees who assured the Senate of these same things when they were nominated were discredited and not considered, this nomination has moved forward and been approved.

I reluctantly supported this nomination to the 10th Circuit based on Professor McConnell's assurances. I trust that he will not seek to undermine women's reproductive rights derived from the Constitution and articulated in Roe v. Wade. I trust that as an appeals court judge he will divorce his personal views on abortion and on racial discrimination in religious institutions from his decisions as a judge, and that he will act to uphold existing law. I trust that he will not seek to circumvent the doctrine of stare decisis and that he will not work to change the law through activism on the bench.

There are already admirers who predict that Professor McConnell is destined for a short stop at the 10th Circuit on the way to a Supreme Court nomination. I do not speculate about such things. Professor McConnell has yet to create a record on the 10th Circuit. I mention it only to note that no one should confuse my support of Professor McConnell's nomination to the 10th Circuit as an endorsement or approval for any other position.

IN REMEMBRANCE OF PAUL WELLSTONE

Ms. SNOWE. Mr. President, like all of my colleagues, I was shocked and deeply saddened by the tragic accident that claimed the life of Senator Wellstone, his wife Sheila, their daughter Marcia, two pilots, and three members of Paul's staff. My heart goes out to the families and they will remain in my thoughts and prayers.

It was always a privilege working with Senator Wellstone. In fact, one of the last images I have of him was in the final days of the session, when I encountered him coming up the aisle in the Senate Chamber after a vote with his typical boundless energy, warm smile, and friendly greeting. He was a compassionate, honorable man—and it was obvious to all of us that, together, Paul and Sheila made an extraordinary and loving team.

As a public servant, Senator Wellstone's most enduring legacy will surely be his career of conscience in elective office. With his unwavering passion and integrity, he was highly respected and will be long remembered.

With both of us hailing from northern border States, we shared the same perspective on a number of issues such as the reimportation of prescription drugs, and we worked together over the years to ensure the critical low-income energy program, LIHEAP, would be there for the people of Maine and Minnesota.

I was proud to serve with him on the Small Business Committee where I saw his diligence and tenaciousness firsthand, and to work with him on issues of importance to our veterans such as a bill establishing July 16 as a National Day of Remembrance for Atomic Veterans, as well as a measure providing for increases in veterans spending. I was also pleased to help champion his and Senator DOMENICI's legislation to create mental health parity—a perfect illustration of his compassion and the causes for which he felt duty-bound to fight.

Indeed, all of us and, most importantly, the people of Minnesota could count on Paul to stand up for his deeply held beliefs, speaking always from the courage of his convictions. He personified the notion of being able to disagree—even vehemently—without being disagreeable.

In fact, I cannot help but recall that when Senators were offering their appreciation to Senator HELMS upon the occasion of his retirement, Senator Wellstone offered very heartfelt and touching words. He acknowledged that he and Senator HELMS often differed on the issues. But Paul respected the purity of the convictions of his colleague across the aisle—and he wished him well.

Now, it is Paul Wellstone who has left our midst, and the entire Senate family shares in the sense of loss. We have a desk that was once filled with Paul's irrepressible spirit, and it strikes me that Paul Wellstone perished in pursuit of the very ideal he held to be so noble and worthy—public service.

This institution is always at its strongest when it is populated with men and women of Paul Wellstone's authenticity. We are diminished by his passing, and he will be missed.

CONFIRMATION OF JOHN ROGERS

Mr. LEAHY. Mr. President, last week the Senate voted to confirm the nomination of John Rogers who is nominated to the U.S. Court of Appeals for the Sixth Circuit. By confirming this nomination, we are trying to move forward in providing help to the Sixth Circuit. Earlier this year, we held a hearing for Judge Julia Gibbons to a seat on the Sixth Circuit, who was confirmed by the Senate on July 29, 2002 by a vote of 95 to 0. With last night's vote, the Democratic-led Senate confirmed the 15th judge to our federal Courts of Appeal and our 98th judicial nominee since the change in Senate majority in July 2001. I have placed a separate statement in the RECORD on the occasion of confirming that many of this President's judicial nominees in just 16 months.

Republicans often say that almost half of the seats on the Sixth Circuit are vacant but what they fail to acknowledge is that most of those vacancies arose during the Clinton administration and before the change in majority last summer. None, zero, not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership. With the confirmation of Professor Rogers, we have reduced the number of vacancies on that court to six, but four of those remaining lack home-State consent due to the President's failure to address the legitimate concerns of Senators in that circuit whose nominees were blocked by Republicans during the period of Republican control of the Senate.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year. Judge White's nomination may have set an unfortunate record.

Her nomination was pending without a hearing for over four years—51 months. She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination. Under Republican control, the Committee averaged hearings on only about eight Courts of Appeals nominees a year and, in 2000, held only five hearings on Courts of Appeals nominees all year.

In contrast, Professor Rogers was the fifteenth Court of Appeals nominee of President Bush to receive a hearing by the Committee in less than a year since the reorganization of the Senate Judiciary Committee. In 16 months we held hearings on 20 circuit court nominations. Professor Rogers was being treated much better than Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm. She never had a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

Others who supported Professor Markus include prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON, the National District Attorneys Association, and virtually every major newspaper in the state.

In his testimony to the Senate in May, Professor Markus summarized his experience as a Federal judicial nominee, demonstrating how the "history regarding the current vacancy backlog is being obscured by some." Here are some of things he said:

> On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . .
>
> At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.
>
> With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their

> credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.
>
> Over and over again they told me two things: 1. There will be no more confirmations to the 6th Circuit during the Clinton administration[.] 2. This has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . .
>
> The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Some were unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now so many vacancies on the Sixth Circuit.

Had Republicans not blocked President Clinton's nominees to this court, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republicans and Democrats. That is what Republican obstruction was designed to avoid, balance. The same is true of a number of other circuits, with Republicans benefitting from their obstructionist practices of the preceding six and a half years. This combined with President Bush's refusal to consult with Democratic Senators about these matters is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations. The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and that the vacancies be filled. The Chief Judge noted that, with four vacancies, the four vacancies that arose in the Clinton Administration, the Sixth Circuit "is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court." He predicted: "By the time the next President in inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them."

However, no Sixth Circuit hearings were held in the last three full years of the Clinton Administration (almost his entire second presidential term), despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The Committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost five years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over four years. Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor Rogers, just a few short months later in June.

Just as we held the first hearing on a Sixth Circuit nominee in many years, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit last year was the first on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years.

When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in six years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

A number of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on half—56 percent—of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

From the time the Republicans took over the Senate in 1995 until the reorganization of the Committee last July, circuit vacancies increased from 16 to 33, more than doubling. Democrats have broken with that recent history of inaction. In the last 16 months, we have held 26 judicial nomination hearings, including 20 hearings for circuit court nominees.

Professor Rogers' nomination was also the fourth judicial nomination from Kentucky to be considered by the Committee in its first year, and the eighth nomination from Kentucky overall. There are no judicial vacancies left in the State.

Professor Rogers of the University of Kentucky College of Law has experience as an appellate litigator and a teacher, and is a prolific author on a number of difficult legal topics. It is important to note that aspects of his record raise concerns. As a professor, he has been a strong proponent of judicial activism. No Clinton judicial nominee with such published views would ever have been confirmed during the period of Republican control. In his writings, Professor Rogers has called on lower court judges to reverse higher court precedents, if the lower court judge thinks the higher court will ultimately reverse its own precedent. Such an activist approach is inappropriate in the lower Federal courts. The Supreme Court itself has noted that lower courts should follow Supreme Court precedent and not anticipate future decisions in which the Supreme Court may exercise its prerogative to overrule itself.

Prognostications about how the Supreme Court will rule often turns out to be wrong. For example, some predicted that the Supreme Court would overturn Miranda, but the Supreme Court, in an opinion by Chief Justice Rehnquist, declined to do so. Similarly, people like Professor Rogers have called on the Supreme Court to overturn Roe v. Wade, but thus far the Supreme Court has rejected calls to reverse itself in this important decision regarding the rights of women and has resisted calls to return this country to the awful period of dangerous back alley abortions.

Professor Rogers also suggested in his academic writings that lower court judges should consider the political views of Justices in making the determination of when lower courts should overrule Supreme Court precedent. In his answers to the Committee, Professor Rogers acknowledged that he had taken that position but he now says that lower courts should not look to the views of Justices expressed in speeches or settings other than their opinions. Also, in his answers to the Committee, Professor Rogers said he would give great weight to Supreme Court dicta, or arguments that are not part of the holding of the case. I would like to take this opportunity to urge him to take seriously the obligation of a judge to follow precedent and the holdings of the Supreme Court, rather than to look to dicta for views that may support his own personal views. I would also urge him to resist acting on his academic notion that a judge should diverge from precedent when he anticipates that the Supreme Court may eventually do so.

Professor Rogers has assured us that he would follow precedent and not overrule higher courts, despite his clear advocacy of that position in his writings as a scholar. He has sworn under oath that he would not follow the approach that he long advocated. As with President Bush's Eighth Circuit nominee Lavenski Smith, who was confirmed earlier this summer, I am hopeful that Professor Rogers will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge.

I would also note that during his tenure at the Justice Department, Professor Rogers appeared to support an expansive view of the power of the Executive Branch vis-a-vis Congress. I am hopeful, however, that Professor Rogers will recognize the important difference between being a zealous advocate for such positions and being a fair and impartial judge sworn to follow precedents and the law.

When he was asked to describe any work he had handled which was not popular but was nevertheless important, he said that the case which came to mind was one in which he defended the CIA against a lawsuit seeking damages for the CIA's illegal opening of the private mail of tens of thousands of U.S. citizens during this 1970s or 1980s. Those were dark days of overreaching by the intelligence community against the rights of ordinary law-abiding American citizens. Although times have changed forever since the tragic events of September 11, I think it is important that the American people have access to judges who will uphold the Constitution against government excesses while also giving acts of Congress the presumption of constitutionality to which our laws are entitled by precedent.

Professor Rogers has repeatedly assured the Committee, however, that he would follow precedent and not seek to overturn decisions affecting the privacy of women or any other decision of the Supreme Court. Senator McCONNELL has also personally assured me that Professor Rogers will not be an activist but is sincerely committed to following precedent if he is confirmed. I sincerely hope that his decisions on the Sixth Circuit do not prove us wrong.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred April 29, 2002 in Indianapolis, IN. A self-proclaimed neo-Nazi shot a 13-year-old black teenager as she walked with friends outside a convenience store. Investigators say that the assailant, who has tattoos of swastikas, argued with several black men about the insignias and then went on a mission to hurt someone who was black. The victim recovered from her injury, but surgeons did not remove the bullet from her body.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

NATIONAL ALZHEIMER'S AWARENESS WEEK

Mr. HARKIN. Mr. President, 20 years ago, President Reagan signed a proclamation designating the first National Alzheimer's Awareness Week. Today, as part of this year's National Alzheimer's Disease Awareness Month, I would like to commend and thank all those who have worked to battle this terrible disease.

As the chairman of the Appropriations subcommittee that oversees funding for the National Institutes of Health, and someone who has watched many close friends succumb to Alzheimer's over the years, I have learned perhaps more than I wish I knew about this disease. In 1982, 2 million people suffered from Alzheimer's; today, the number is 4 million. By the year 2050, that number will rise to 14 million, and we will be paying $357 billion a year in health care costs, unless science can find a way to prevent or delay this disease.

Fortunately, that goal is in sight. Researchers are finally closing in on what causes Alzheimer's; they are using cutting-edge brain imaging to figure out how to diagnose it; and they are studying everything from folic acid and statins to Advil and gingko biloba to see if any of these drugs and supplements can help delay it.

Much of that research would not have been possible without the substantial increase in Federal funding that Senator SPECTER and I, working together on the Senate Labor, Health and Human Services, and Education Appropriations Subcommittee, have secured for NIH. In fiscal year 1998, when we began our bipartisan effort to double the NIH's budget, NIH spent $356 million on Alzheimer's disease. When Congress completes the doubling effort this year, that number will rise to almost $650 million.

But it is still not enough. We need to raise that total to $1 billion as soon as possible, if we're really going to be serious about reducing the physical and economic costs of Alzheimer's. According to experts, delaying the onset and progression of Alzheimer's for even 5 years could save as much as $50 billion in annual health care costs. President Reagan's son-in-law, Dennis C. Revell, makes an excellent case for investing more money in Alzheimer's research in an op-ed in today's Washington Times.

In the meantime, we are fortunate that so many people across this country are working to support Alzheimer's research and care. I have worked for many years with the national Alzheimer's Association, as well as with their local chapters in Iowa, and I can tell you firsthand that they will not rest until scientists find a cure. As the Nation recognizes Alzheimer's Disease Awareness Month throughout November, I thank them for their dedication.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ALZHEIMER'S DISEASE

(By Dennis C. Revell)

"That's the worst part of this disease. There's nobody to exchange memories with." (Nancy Reagan, Sept. 25, "60 Minutes II.")

Alzheimer's disease doesn't make special arrangements for anyone, even for the leader of the free world. In tragic irony, 20 years ago this week President Reagan launched a national campaign against Alzheimer's disease. In a historic White House ceremony, he drew national attention to Alzheimer's and defined it as a major health menace. He proclaimed November National Alzheimer's Disease Awareness Month, warning the American people of "the emotional, financial and social consequences of Alzheimer's disease." With vision and leadership, he argued for research as "the only hope for victims and families."

The brain is a miracle when it works, and a mystery when it fails. One of the most haunting, puzzling, and soon to be most costly of the brain's failures is Alzheimer's—a degenerative, progressive, and terminal brain disorder.

Most people think of Alzheimer's strictly as memory loss. It is much more, although memory loss alone would be scary enough. Memories are the records of our lives—the essential stuff of our identities and personalities—the very essence of what we share with those we love.

On Nov. 5, 1994, Ronald Reagan wrote a courageous letter to the American people about his own diagnosis of Alzheimer's, and his 1982 presidential campaign against the disease became his family's personal struggle.

We have made giant strides toward fulfilling his vision, and now this Congress and President Bush have the opportunity to finish the battle he began. Congress has steadily invested public funds in Alzheimer's research over the past 20 years and the Alzheimer's Association has added millions in private funds.

That investment in research is now paying off. Science is at the point where effective treatment and prevention of Alzheimer's is within reach. The research infrastructure is in place; the paths for further investigation are clear. The missing ingredient is money. A $1 billion federal investment now will pay big dividends in the future.

When Ronald Reagan sounded his battle cry against Alzheimer's, an estimated 2 million people were suffering from this awful disease. Today, the number has grown to more than 4 million, with an additional 19 million family members suffering the emotional and financial impact—24 hours a day, seven days a week, 365 days a year.

Unfortunately, over the next 50 years, as many as 14 million baby boomers will be the next large pool of victims, unless we find ways to further slow down or stop the changes in their brains that might already be taking place.

The threat to so many American families should be enough to urge us to action, but the economic impact of the disease drives us as well. In just 10 years, the annual cost of Alzheimer's disease to Medicare and Medicaid will rise from $50 billion to more than $82 billion. Since 1998, estimates of the annual cost of Alzheimer's disease to American business have risen from $33 billion to more than $61 billion.

During this Alzheimer's Awareness Month, we reflect upon the extraordinary progress we have made as a nation these past 20 years:

Twenty years ago, there were no treatments for Alzheimer's disease; today, four Alzheimer drugs have been approved, and researchers are working to bring even more promising treatments, including a potential vaccine, to market.

Twenty years ago, we had little information on risk factors to point the way to prevention; today, there is growing evidence that known risk factors for heart disease, including high blood pressure and high cholesterol, may also increase the risk for Alzheimer's.

Twenty years ago, only a handful of scientists were studying Alzheimer's; now, thousands of scientists around the world are racing to find the answers.

Twenty years ago, Alzheimer scientists were working in isolation; today, 33 Alzheimer's disease centers are funded by the National Institute on Aging, where scientists collaborate to speed the search.

We are so close. Thanks to the dynamics Ronald Reagan set in motion two decades ago, science has changed the view of Alzheimer's disease from one of helplessness to one of hope. But this is no time to sit back and rest on a sense of accomplishment.

The answer is still research, research, and more research. Individuals and families living with the disease research. Individuals and families living with the disease have joined the Alzheimer's Association in challenging Mr. Bush and Congress to increase the federal commitment to Alzheimer research.

We call on Congress to increase funding for the National Institutes of Health to $1 billion a year to continue the momentum in Alzheimer research. We call upon Mr. Bush to make this important cause his own by including in his budget for next year the necessary funds to accelerate the pace of research.

We are in a race against time. Without sufficient research resources now, we will lose that race.

We can change the course of Alzheimer's disease, for the 4 million people suffering today, for the 19 million family members who are caring for them, and for up to 14 million Americans who today face the fate that befell a man who means so much to us and to the world.

Testifying before the Senate about Alzheimer's disease shortly before her own death, Maureen Reagan took up her father's mission, calling upon Congress to "make this the last generation that would live without hope."

Both Ronald Reagan and Maureen always looked to a brighter horizon. Congress and Mr. Bush can ensure that we reach that horizon before the sun sets on another generation with Alzheimer's disease.

THE SCHOLAR RESCUE FUND ALUMNI RESEARCH

Mr. LEAHY. Mr. President, next year I intend to speak more about the Scholar Rescue Fund Alumni Research Program.

I am aware of this through my friendship with Dr. Henry Jarecki. I believe that it is something more Senators should be aware of, and something that would appeal to Senators in both parties. Perhaps one of the best ways to describe it would be to include in the RECORD remarks, by Dr. Jarecki, and I so ask unanimous consent to have those remarks printed.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Allan Goodman has, in introducing me, spoken of the fact that I accepted Henry Kaufman's mandate to help develop the IIE's newly-established Scholar Rescue Fund. Doing what Henry tells me to do is easy for me and this mandate was even easier: I have been a refugee and I am an academic; and the risks of free speech are tattooed on the skin of my relatives and on my mind. I wanted to start immediately.

When I came to talk to Allan about the program, he was as enthusiastic as I was but wondered whether we should wait with the start until we had the endowment funds to make sure that the program would last. His comments sounded so sensible that I didn't at first know what to say. But that, as people who know me, didn't last too long.

I told him how, in 1937, Franklin Roosevelt had convened a conference of representatives from 80 countries in Evian, France, to encourage them to accept Hitler's Jews, and how speaker after speaker had praised President Roosevelt's wonderful idea but said that, unfortunately, his particular country could not take part at that moment because of a unique problem they were having in his particular country just at that particular time. Finally, the representative of Rafael Trujillo, then known as the Butcher of Santo Domingo for having machine-gunned hundreds of Haitian refugees who tried to cross the border into the Dominican Republic, got up to speak. Trujillo was, understandably enough, in bad odor all over the world and so he tried to make amends by letting his representative announce that Trujillo had agreed to let 100,000 of the refugees settle in the Dominican Republic.

The world's refugee organizations then set to work to make sure that it all went well. They started by developing precise criteria: how many merchants, how many farmers, and what ages they should be; how many married and unmarried and a lot more. By the middle of 1938 they had developed their criteria and started to interview prospective candidates for the trip. By that time, it was a lot easier to interview candidates because many of them were already in concentration camps. Over the next 9 months, these careful choosers found 900 who could go to the Dominican Republic, where most of them settled in a small town called Sosua and survived the war. Over 99,000 were left behind to die.

When I got through with my story, Allan told me to get on with it and get on with it we have after I found generous kindred spirits in my fellow Trustee Jeffrey Epstein and in George Soros, both of whom I want not to thank in the name of persecuted scholars in over 60 countries from whom we now have requests for help. Sixty countries! What are they thinking of? How can benighted tyrants and despots be smart enough to know how powerful free-thinking scholars can be? And how they must intimidate them into silence. "They kill your voice even before they kill you," said Maimul Khan, a rescued scholar from Bangladesh who is here with us tonight.

I learned a lot from Allan's first reaction. It made me understand how important it would be to find financial and popular support for IIE programs that did not yet have endowment or government backing. Back in the 30's when we were raising money on our own, we made and carried out the decision to bring European scholars to the States. We only had enough money to bring out 300 of them but that was enough to help found a graduate facility at the New School here in New York.

This story from the thirties was just one of the many stories I heard when I first joined the Board of IIE a few years ago. I was impressed with the history of the Institute which has undertaken hundreds of educational programs in its 80 years of existence, including the "crown jewel" of such programs, the Fulbright Program that it has administered on behalf of the Department of State since that program's inception. With the help of its sponsors and donors, the IIE has had an essential role in the growth and development of hundreds of thousands of people who are today leaders in every field of endeavor—be it government, science, academe or business.

Just two weeks ago, three scientists were awarded the Nobel Prize; two of them for their work on neutrinos, particles so small that they are virtually impossible to detect. The one from Japan and the one from Italy were Fulbrighters who studied here in the Fifties. Last year, too, two Nobel Prize winners for economics were Fulbrighters.

In your program this evening is a list of all of the Fulbrighters and other IIE participants who, like our founders Elihu Root and Nicholas Murray Butler, have been awarded the Nobel Prize. It is an impressive roster of a small subset of the IIE alumni network.

While I was learning about our history, I discovered that my mentor and Chairman at Yale, the renowned psychiatrist Fritz Redlich, had first visited the United States in 1930 on an IIE program which brought him for a year from Vienna to the University of Iowa. Fritz told me that in 1938, when he recognized that he had to leave Vienna or go to a concentration camp, his sponsor at Iowa was the only American he knew who could provide him the "affidavit" required by the U.S. government—the document that I and all other refugees knew so well as committing the person who signed it to not letting the recipient end up on welfare, a charge to the state.

Fritz came here, became a professor at Yale, then head of the Department of Psychiatry and eventually Dean of the Yale Medical School. He was a brilliant and caring doctor who wrote extensively on whether the poor got the same treatment, or even the same diagnoses, as the rich. And he was, like me, an iconoclast. It was he who brought me to Yale, a fact that has had such a strong influence on my own life.

Fritz was, of course, not the only scholar who was rescued from Hitler's Germany and the countries falling to Nazi control. As I mentioned before, the Institute's "University in Exile" program brought more scholars to America, enough indeed to form the graduate faculty of the New School University here in New York, a university which to this day remains a vibrant academic institution.

The list of IIE alumni is not limited to scholars fleeing persecution or Nobel Prize winners, however; it would fill a "Who's Who" of world leaders: Valery Giscard d'Estang, former President of France; Margaret Thatcher, former Prime Minister of England; 10 Heads of State, 56 Ambassadors, 44 Nobel Laureates, 115 University presidents, and 400,000 more men and women who have been educationally enriched by the experience we helped them to have.

The accomplishments of the IIE Alumni Network have indeed been so illustrious that their stories seemed to me a natural way to explain to the world just why international education was so valuable and to obtain popular support for our educational and humanitarian programs. To make sure that an understanding of this network was available to us all, I accepted Tom Russo's and Allan Goodman's challenge to establish and codify an IIE Alumni database.

We will use this database to let the world know about the kinds of people who have made good, in part because of the programs designed and administered by the Institute. That awareness will help us to develop support for additional programs that are responsive to the needs of the current moment—like the Scholar Rescue initiative I and others have told you about.

I encouraged Dan Greespahn, who has done a terrific job heading the Alumni Research Program, to find out as much as he could about our alumni, both so that we could learn about them and so that they could help us develop our new programs. It was in the course of developing this Alumni Database that we encountered Ruth Gruber, about whom you will hear more momentarily.

And so there was a wonderful confluence of events: My mentor and close friend, Fritz Redlich, who led Yale University to the heights of scholarly achievement through encouraging the free flow of ideas, and Ruth Gruber, an outstanding humanitarian, journalist and author: both IIE alumni—Fritz coming here and Ruth going there, both in 1930.

Henry Kaufman, on whose vision all of this rests, suggested that we create an award to recognize some of the most accomplished of those alumni. What better way to do so than to name the award for someone who, for me at least, is the paradigm of what IIE strive for—Fritz Redlich.

(Fritz, will you please stand and be recognized.)

Fritz, in appreciation of what you have meant to me and to your thousands of students and in recognition of IIE's role in ensuring your safety here in the United States, we want to name our annual award the Fritz Redlich Alumni Award. Thank you for letting us do so.

Tonight we present the first Fritz Redlich Alumni Award to Ruth Gruber.

Our efforts to tell you about Ruth are made somewhat easier by our friends in the film industry who, in 2001, made a CBS television mini-series that detailed Ruth's rescue of 1000 refugees from Europe in 1944. In that film, the part of Ruth Gruber was played by the highly accomplished actress Natasha Richardson.

Ms. Richardson's performances on stage, screen and television—both here and abroad—have been recognized by the most prestigious awards in the entertainment industry. They began in 1986 when she received the London Drama Critics' Most Promising Newcomer Award. In 1992, she received the London Drama Critics' Best Actress Award. She received a Tony for her performance as Sally Bowles in Cabaret, as well as Outer Critics Circle, Drama League and Drama Desk Awards for Best Actress. And there are many, many more.

Natasha Richardson is with us this evening to introduce Ruth Gruber and to present her with the Fritz Redlich Alumni Award. Let's start Natasha's introduction of Ruth by taking a look at Natasha playing her in the film I told you about.

ADDITIONAL STATEMENTS

TRIBUTE TO N. JACK TAYLOR, JR.

● Mr. JOHNSON. Mr. President, I rise today to pay tribute to N. Jack Taylor, Jr., who has worked as a Congressional Fellow in my office since January of 2002. On behalf of my staff and the people of South Dakota, I would like to thank Jack for his hard work, his dedication, and his considerable contributions to my state and to this great nation.

Jack joined our staff to work on banking issues at a troubled time here in the Senate, when we faced significant physical threats in the wake of 9/11 and the Senate anthrax scares. Nevertheless, Jack left the Federal Deposit Insurance Corporation, his home for the past 15 years, to spend a year learning about the legislative process. And what a year it was.

Jack was on the front lines during the Senate debate over accounting reform, and he played a key role in our office's involvement in the Sarbanes-Oxley Accounting Reform and Investor Protection Act. He got a bit more than he bargained for by playing the lead staff role during floor action and the conference committee, but he performed with great aplomb and professionalism.

Jack has also been immensely valuable in raising our awareness of Native American banking issues. He took the lead in conceptualizing and organizing a hearing in the Senate Banking Financial Institutions Subcommittee on ways we might increase private capital in Indian Country. He brought together an impressive group of witnesses whose ideas I hope we can implement in the future. Jack also provided valuable assistance on a number of other tribal-related housing and banking issues.

Another noteworthy contribution of Jack's was his hard work in putting together S. 3034, the Check Truncation Act. While it may not be the most high-profile subject, check truncation would modernize our financial system in significant ways, and be particularly helpful in rural areas such as South Dakota where the physical transportation of checks is often difficult and expensive. Jack helped us to lead the charge to modernize our system, and I am hopeful we can complete action on that bill next year.

Finally, I would be remiss if I did not mention Jack's role in our continued efforts to pass comprehensive deposit insurance reform. Jack, who came to us from the FDIC's division of insurance, proved to be an invaluable in-house resource for my staff on matters related to deposit insurance. He was also willing to travel out to South Dakota to meet with bankers throughout the State to ensure that our bill reflects the needs of Main Street bankers across this country.

It is my pleasure and honor to stand before the Senate today to thank Jack Taylor publicly for his service to the United States Senate. I am pleased he will continue to serve our country by returning to the FDIC, which is lucky to have him.●

TRIBUTE TO COLONEL JOSEPH M. WILLGING

● Mr. THOMPSON. Mr. President, I rise to pay tribute to a U.S. Air Force officer, Colonel Joseph M. Willging. Colonel Willging currently serves as the Chief of the Environmental Law Division of the Judge Advocate General's Department in Arlington, Virginia. He will retire on May 1, 2003 from the Air Force after 25 years of service. Today, it is my privilege to recognize some of Colonel Willging's accomplishments, and to commend his service to the Air Force and our nation.

Colonel Willging was born in Minneapolis, MN, and entered the Air Force through the Air Force Reserve Officer Training Corps program. His early assignments included George Air Force Base, California, Royal Air Force Bentwaters Air Base, United Kingdom, Grand Forks Air Force Base, ND, and Offutt Air Force Base, Nebraska. He later served as the Staff Judge Advocate for Castle Air Force Base, California, Chief of the Environmental Law Division, Headquarters, Air Combat Command, Langley Air Force Base, Virginia, and the Deputy Legal Counsel to the Chairman of the Joint Chiefs of Staff at the Pentagon before arriving in 2000 in Arlington, VA for his current assignment.

Throughout his career, Colonel Willging has received numerous military decorations including the Defense Superior Service Medal, the Meritorious Service Medal with four oak-leaf clusters, the Joint Service Commendation Medal, the Air Force Commendations Medal, the Joint Service

Achievement Medal, and the Southwest Asia Service Medal. Additionally, he holds a law degree from the William Mitchell College of Law in Saint Paul and a Master of Laws in Environmental Law from George Washington University. He is also a graduate of Air Command and Staff College, and Air War College, Maxwell Air Force Base, Alabama, and earned the degree of Master of Science from the National War College, Fort McNair, Washington, DC. Colonel Willging is admitted to practice before the Supreme Court of Minnesota.

As Chief of the Environmental Law Division of the United States Air Force Judge Advocate General's Department, Colonel Willging has led an impressive organization of military and civilian lawyers, paralegals, and support personnel. Colonel Willging's leadership, judgment, and unwavering devotion to duty were instrumental in the successful resolution of numerous difficult issues facing the Air Force. At the same time, he was a key and trusted advisor to the Air Force engineering community, which relied heavily on his sound, timely, and cogent advice in resolving a host of complex issues.

I am pleased to have this opportunity to commend Colonel Willging for his many years of selfless service to the United States of America.●

REMARKS OF AMBASSADOR REED AT THE 9/11 SYMPOSIUM

● Mr. ENZI. Mr. President, I rise to recognize an important and moving statement made by Ambassador Joseph Verner Reed, Under-Secretary-General of the United Nations, on September 11, 2002. Ambassador Reed's remarks are a true example of the national strength, personal mourning, and international support that we all have experienced since September 2001. I ask that his remarks be printed in the RECORD.

The remarks follow.

REMARKS BY AMBASSADOR JOSEPH VERNER REED, UNDER-SECRETARY-GENERAL OF THE UNITED NATIONS

On behalf of the Secretary-General of the United Nations Kofi A. Annan, I bring greetings and good wishes on this solemn anniversary commemorating September 11, 2001—9/11—The Day of Terror.

The Secretary-General regrets that he could not be with us today. He is very much involved, as you know, with preparations of the 57th General Assembly as well as the ongoing task of pursuing the course of peace in the 17 Peace Keeping Missions around our troubled globe.

The Secretary-General is presiding at a commemoration of 9/11 on the Great Lawn at the United Nations with 191 member states participating.

First, allow me to salute the organizers of this International Symposium. The mission of the Virtue Foundation is as laudable as it is imperative.

"From Tragedy to Unity: A Celebration of the Human Spirit." That is the theme of this Symposium.

None of us can ever forget the tragedy and terror and sadness that 9/11 brought upon our nation, our society and the world. But, the prominent panelists in today's discussions in this hallowed Museum will not dwell on the past horror. Rather, their focus will be on healing and renewal and rekindling strength in our citizenry.

With this lofty, indeed noble—yet irrefutably appropriate—purpose in mind, today's Symposium will inspire all of us to rebuild and create a more cohesive and caring community.

Amid sorrow we will create anew. That is what our world needs now. Whether a life or a building or a spirit—there is a call now to rebuild—a need for a new beginning.

This anniversary day is also very much a Time of Remembrance.

None of us here in the Rainey Auditorium and across the length and breadth of our beautiful nation will ever forget that horrible moment a year ago today when we heard the unspeakable news. We will never forget where we were, whom we were with or what we were doing. 9/11 was the Opening Day of the 56th General Assembly of the United Nations. It was the day the United Nations celebrates the International Day of Peace. I was on my way to Headquarters. On hearing the news of the first crash I returned to our house joining my stunned wife in staring at the television. We shared the national experience of a quantum leap into a new, frightening and uncertain world. We immediately sensed this was the world we would now live in for the rest of our lives.

This past year has been a period of national mourning.

I hesitate to say but reality makes me do so—A sense of dread and sadness has gripped our nation in the searing emotional aftermath of the Day of Terror.

The world must never forget that September 11, 2001 was the bloodiest day on American soil since our civil war. Our flags are half-staff. The Congress has designated today Patriot Day to honor the sacrifice made by 3,000 innocent citizens on that tragic day. National character does not change in a day. 9/11 did not alter the American character, it merely revealed it—it forced—the emergency of a bedrock America of courage, resolve, resourcefulness and, above all, resilience. What the enemy did not know or anticipate was that beneath the outward normality of America in post-Cold War repose lay a sleeping giant that Admiral Yamamoto knew he had awakened on December 7, 1941 and that Osama bin Laden had no inkling he had awakened on September 11, 2001.

The world then witnessed an astonishing demonstration of resilience, the kind only a nation of continental size and prodigious productivity, of successful self-government and self-conscious spirituality could summon.

The anniversary of this stunning national 'state change'; will be respectfully celebrated in tears, sorrow and reflection. The death toll of the 9/11 attacks did not just affect New York and the United States. Though the overwhelming number of those who died was American citizens there were victims from 36 countries around the world. Our neighbor to the south, Mexico, with 27 who died, was the hardest hit of the foreign lands.

The old diplomatic refrain that "one man's terrorist is another man's freedom fighter" can no longer be argued. Ladies and Gentlemen—let me be perfectly clear: September 11 proved once and for all that "Terror is terror." Terror is inexcusable, it is indefensible, it is wrong.

That Day of Terror transformed "terrorism." In the past, in their madness, terrorists yearned for a lot of people watching, not a lot of people dead. Last year, the rules changed. Those terrorists—those assassins—sought to kill thousands as hundreds of millions watched in horror.

The murderers got what they wanted.

But, they and the rest of Osama bin Laden's al-Qaeda network miscalculated America's might and resolve.

This September 11 marks not just a day of infamy, but also the close of Year One of the War on Terrorism. And to win the war we need to demonstrate—as America has done in other great wars of necessity—patience, endurance, determination, and a willingness to bear any burden.

Their attack on the symbols of United States economic and military power stirred the world's only superpower to place terrorism at the heart of its—and the world's—foreign and domestic policy.

The message today is clear. The United States will not negotiate terrorism. Nor will it compromise with terrorists. Rather she will destroy them and all the evil for which they stand. Of that, I have no doubt.

We will never forget 9/11.

Today's Symposium, then, is an important one. Today is the day to begin to move from this tragedy to "unity and a celebration of the human spirit."

Thank you Director de Montebello for making this great Museum the home of this gathering. Thank you Dr. Salim and Dr. LaRovere for your initiative. To all the organizers, musicians, members of the staff of the Met and the distinguished participants who will be with us today I salute each of you.

Let us find healing and strength in remembrance. I pray that the coming year will bring us closer together—within our families and our communities—and ever more committed to caring for one another.

May we enjoy years of peace for our children, for the future, for all mankind.

Peace!●

TRIBUTE TO DR. MARCELO HOCHMAN OF CHARLESTON, SC, FOR HIS HUMANITARIAN EFFORTS

● Mr. HOLLINGS. Mr. President, the headlines always are the Israelis and the Arabs at each other's throats, so it's noteworthy when a Jewish doctor treats a Muslim child—gratis. I know of the expertise of Dr. Marcelo Hochman and I know of his humanitarianism. He has been doing it for years. I ask unanimous consent that this article from the November 17th Charleston Post and Courier be printed in the RECORD.

The article follows.

LOCAL SURGEON HELPING TURKISH BOY FACE WORLD

(By Allison L. Bruce)

BOY'S FAMILY SEARCHES WORLD FOR AID; FIND COMMUNITY OF HELP IN CHARLESTON

For 4-year-old Batuhan Itku, a trip to Charleston marks a new beginning.

The Turkish boy was born with a birthmark covering more than half of his face and causing severe disfigurement. He couldn't shut his right eye and a cleft lip make eating difficult.

After more than 30 doctors told Batuhan's parents, Levent and Ayla Itku, that they could not operate on Batuhan, Levent Itku said he and a friend from work created a Web page to see if other doctors elsewhere in the world could help.

Doctors from Canada, Germany and the United States responded to the site, but after Levent Itku sent medical information to them, only Dr. Marcelo Hochman remained.

Hochman is a facial plastic and reconstructive surgeon and a leading expert in treating hemangiomas. His practice is The Facial Surgery Center in Charleston.

He not only was willing to operate on Batuhan but also agreed to donate his services.

Levent Itku said he and his wife "couldn't believe what they heard . . . until the moment they came here and saw him (Hochman)," according to interpreter Yesim Otay. "At the beginning, they didn't have any hope. They thought it would be the same thing they heard before," Otay said, translating for Itku. Now, she said, "they have a great hope."

Batuhan's vascular birthmark is called a hemangioma, a condition that Hochman said affects about 10 percent of the population. They range from a pinpoint to large, severe deformations that usually affect the face, head and neck.

About 30 percent of hemangiomas require medical attention, Hochman said.

Common names for some forms of the birthmark include a portwine stain or strawberry.

For Batuhan, the hemangioma is severe and will require more than one operation.

"Had we seen him early on with aggressive medical treatment and laser treatment, perhaps he could have avoided this horrific disfigurement," Hochman said.

Hochman said doctors often tell families not to treat the condition.

"The prevailing advice parents get is to leave it alone, it will go away," he said. While that may be the right advice for some patients, Hochman said, he often sees children and adults who have been waiting for years for it to go away.

"What we're trying to do is change the way the primary care physicians see these lesions," he said. "There is hope for treatment. It is very common and lots of things can be done."

The Itkus are staying at the Ronald McDonald House downtown as Batuhan recovers from his first surgery. His stitches come out Monday.

Levent Itku said Batuhan is aware of everything Hochman did. After the surgery, he woke up one morning and patted his face, saying "Dr. Hochman did this to my face."

"He has a chance in his future life," Levent Itku said.

At the Ronald McDonald House, Batuhan—a bright, cheerful child—plays with a bag of toys and books. He finds a plastic drill, which he proceeds to use while making drill-like sounds on every piece of furniture available. He grins and laughs as his parents and others join in making the sounds with him.

He waves at people he knows at the house and constantly talks with his parents and guests.

His face shows signs of the first surgery. Hochman created an eye lid for Batuhan so he can close his eye for the first time. The cleft lip is also repaired so that he can eat better.

Batuhan's trip to Charleston for the surgery took a lot of coordination. Aside from Hochman donating his services, St Francis Hospital and local business owners also contributed. Patricia Dwight arranged for Batuhan and his family to get to the United States by collecting frequent flier miles donations. Dwight owns Adventure Travel and has lived in Turkey. After hearing about Batuhan's case, she made a point to visit the Itkus while she was visiting Istanbul.

"After meeting the family and seeing what incredible people the mother and father were, I was more inspired to help," she said. "They're dealing with it in such a remarkable way. Without them being the way they are, this would not have happened either."

On the Internet, she found out about a United Way program that uses frequent flier miles to provide transportation. With the help of several local donations, including a large donation of miles from Henry Cheves Jr., Dwight was able to bring the Itkus to the United States.

She also is leading the effort to create The Hemangioma Treatment Foundation. The foundation would help provide treatment of children and adults with vascular birthmarks and training for doctors in other companies.

Dwight said Batuhan's case was the catalyst for creating the foundation, which is currently under Trident United Way until it receives non-profit status.

A large part of Hochman's efforts in the last decade has been to educate other doctors about treating hemangiomas.

During the past 12 years, Hochman has traveled to other countries to operate on children with hemangiomas. He has traveled to Russia, Latin America and Mexico repeatedly.

Aside from demonstrating for doctors in other countries how the surgeries can be done, Hochman has edited a textbook on hemangiomas and hopes that more doctors in the United States also will explore the different kinds of treatment available.

He said he receives thousands of e-mails each year. Many of those come from overseas.

Two Costa Rican girls are coming to Hochman for treatment for hemangiomas this week.

Another 35 children in Costa Rica are waiting for treatment, as well as more children in Turkey.

Levent Itku said he wanted to thank all of the people who had helped his family, including Hochman, Dwight, the Ronald McDonald House and the Turkish community in Charleston, including Otay and Carol Arkok, who also helped with translation and took the family to dinner and shopping.

Dwight said at a time when Muslims and Jews are often in conflict, "here we have a marvelous example of interfaith cooperation . . . We have a marvelous man of one faith helping this needy child of another faith."

Hochman said that had never crossed his mind.

"I didn't even think about it until Patricia said, 'Isn't it wonderful that a Jewish doctor is treating a Muslim child?'" he said. "These people need help, and if we have the expertise, it's a privilege to help take care of them."

"These families endure so much. It feels good to be able to change that."●

MESSAGE FROM THE HOUSE

At 5:07 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 2621) to amend title 18, United States Code, with respect to consumer product protection.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3609) to amend title 49, United States Code, to enhance the security and safety of pipelines.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3833) to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3908) to reauthorize the North American Wetlands Conservation Act, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 4664) to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 5469) to amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–9596. A communication from the President of the United States, transmitting, consistent with the War Powers Act, a report relative to NATO-led international security force in Kosovo (KFOR) received on November 15, 2002; to the Committee on Foreign Relations.

EC–9597. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled "Cuban Immigration Policies"; to the Committee on Foreign Relations.

EC–9598. A communication from the Assistant Secretary, Bureau of Land Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations" (RIN1004–AD43) received October 15, 2002; to the Committee on Energy and Natural Resources.

EC–9599. A communication from the Federal Register Liaison Officer, Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Enhancement of Dental Benefits under the TRICARE Retiree Dental Program (TRDP)" (RIN0720–AA61) received on October 9, 2002; to the Committee on Armed Services.

EC–9600. A communication from the General Counsel, Department of Commerce, transmitting, the draft of a bill entitled "Marine Mammal Protection Act Amendments of 2002" received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9601. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737 Series Airplanes Docket No. 2001–NM–251" ((RIN2120–AA64)(2002–0435)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9602. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Eurocopter France Model AS332C, L, L1, and L2; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; AS–365N2; AS–365N3; SA330F, G, and J; SA–365C, C1, and C2; SA.316B and C and SA. 319B Helicopters Docket No. 2000–SW–55 [10–2–10–10]" ((RIN2120–AA64)(2002–0430)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9603. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Bell Helicopter Textron A division of tectron Canada model 222, 222B, 222U, 230, and 430 Helicopters Docket No. 2001–SW–73" ((RIN2120–AA64)(2002–0431)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9604. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Air Tractor, Inc. Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A Airplanes Docket No. 2002–CE–03 [10–1–10–10]" ((RIN2120–AA64)(2002–0428)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9605. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by Textron, Inc. for the armed forces of the United States; Docket No. 2001–SW–41 [10–2–10–10]" ((RIN2120–AA64)(2002–0429)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9606. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 767–200 and 300 Series Airplanes Powered by Pratt & Whitney JT9D series Engines; Docket No. 2001–NM–268 [10–1–10–10]" ((RIN2120–AA64)(2002–0426)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9607. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives-Boeing Model 747—200B, 300, 400, 400D, and 400F Series Airplanes Docket No. 2001–NM–22 [10–1–10–10]" ((RIN2120–AA64)(2002–0427)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9608. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Request for Comments; Sikorsky Aircraft Corporation Model S76A, B, and C Helicopters Docket No. 2002–SW–40 [10–3–10–10]" ((RIN2120–AA64)(2002–0432)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9609. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; SOCATA Groupe AEROSPATIALE Model TB 21 Airplanes Docket No. 2002–CE–16 [10–3–10–10" ((RIN2120–AA64)(2002–0434)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9610. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: breeze Eastern Aerospace Rescue hoists, Series BL–16600–160. Augusta A109, Bell 206, Bell 222, Bell 407, Europcopter France AS332, McDonnell Douglas MD–500, and Sikorsky S–61 Helicopters Docket No. 98–ANE–37 [10–3–10–10]" ((RIN2120–AA64)(2002–0433)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9611. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Regatta Regulations; SLR; Columbus Day Regatta, Biscayne Bay, Miami, Florida" ((RIN2115–AE46)(2002–0033)) received October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9612. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations; (Including 2 regulations)" ((RIN2115–AE47)(2002–0085)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9613. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations; Mystic River, MA" ((RIN2115–AE47)(2002–0086) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9614. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations; Miami River, Miami-Dade County, Florida" ((RIN2115–AE47)(2002–0087)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9615. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule, entitled "NMFS is prohibiting fishing with trawl gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management area (BSAI). This action is necessary to prevent exceeding the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the Catcher Vessel Operation Area (CVOA)" received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9616. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska-Closes Atka Mackerel Fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area" received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9617. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Closure of the thornyhead rockfish fishery in the Western Area of the Gulf of Alaska (GOA)" received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9618. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Clinical Chemistry and Clinical Toxicalogy Devices; Reclassification of Cyclosporine and Tacrolimus Assays" received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9619. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "NMFS announces changes to the regulations for the Area 2A sport halibut fisheries off the central coast of Oregon. This Action opens the all-depth sport halibut fisheries off the central Oregon coast for additional days on September 18 and 19. The intention of this action is to give Oregon anglers access to remaining 2002 halibut quota before the closure of West Coast sport halibut fisheries on September 30, 2002" received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9620. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "NMFS announces the closure of the fishery for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast north of Pt. Piedras Blanacas, CA (35 degrees 40 Minutes N. lat.) at 12:01 am local time on September 14, 2002. The closure will remain in effect until the reallocation of the remaining portion of the coast wide harvest guideline is required by the Coastal Pelagics Species Fishery Management Plan (FMP). That reallocation is expected to occur on or about October 1, 2002. The purpose of this action is to comply with the allocation procedure mandated by the FMP." received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9621. A communication from the Assistant Administrator, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries off West Coast States and in the

Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine" (RIN0648–AQ47) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9622. A communication from the Deputy Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "NOAA/NASA Joint Center for Satellite Data Assimilation Notice of Availability of Financial Assistance" (RIN0648–ZB24) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9623. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled "Revised Model Administrative Order on Consent for Removal Actions" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9624. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting , pursuant to law, a report entitled "Memorandum of Understanding between EPA and NRC: Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites" received on October 28, 2002 ; to the Committee on Environment and Public Works.

EC–9625. A communication from the Assistant Secretary, Fish & Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Chlorogalum purpureum, a Plant from the South Coast Ranges of California" (RIN1018–AG75) received on October 21, 2002; to the Committee on Environment and Public Works.

EC–9626. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Discretionary Bridge Candidate Rating Factor" (RIN2125–AE88); to the Committee on Environment and Public Works.

EC–9627. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting , pursuant to law, the report of a rule entitled "Unregulated Contaminant Monitoring Regulations: Approval of Analytical Method for Aeromonas. National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9628. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting , pursuant to law, the report of a rule entitled "Revision to the California State Implementation Plan, Ventura County Air Pollution" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9629. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Ventura County Air Pollution Control District, and Santa Barbara County Air Pollution Control District" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9630. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "OMB Approvals Under the Paperwork Reduction Act, Technical Amendment" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9631. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9632. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to Inspection and Maintenance (I/M) Regulations within the North Carolina State Implementation Plan" received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9633. A communication from the Acting Assistant Secretary, Department of the Army, transmitting, a report relative to the Water Resources Development Act (WRDA) of 2000; to the Committee on Environment and Public Works.

EC–9634. A communication from the Director, Office of Congressional Affairs, Office of the Chief Financial Officer, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled "Cost Recovery for Contested Hearing Involving U.S. Government National Security Initiatives" (RIN3150–AH03) received on October 17, 2002; to the Committee on Environment and Public Works.

EC–9635. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Uniform Resource Locators (URLs) for a document entitled "Consolidated Guidance on the Establishment, Management and Use of CERCLA Special Accounts" received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9636. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Uniform Resource Locators (URLs) for a document entitled "Memo encourages use of 'comfort/status' letters at RCRA facilities, where appropriate, and provides examples of Regional RCRA comfort/status letter" received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9637. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Uniform Resource Locators (URLs) for a document entitled "Superfund Accounts Receivable: Collection Action for Delinquent Accounts" received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9638. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's monthly report on the status of licensing and regulatory duties for August 2002; to the Committee on Environment and Public Works.

EC–9639. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to section 417 of the USA-PATRIOT Act (P.L. 107–56), the report relative to the "status of the implementation of machine-readable passports (MRPs) in countries participating in the Visa Waiver Program" received on November 7, 2002; to the Committee on the Judiciary.

EC–9640. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, a report relative to Reports, Testimony, Correspondence, and Other Publications for August 2002; to the Committee on Governmental Affairs.

EC–9641. A communication from the Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the report relative to the U.S. consumer Product Safety Commission's (CPSC) inventory of commercial activities for 2002; to the Committee on Governmental Affairs.

EC–9642. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, a report relative to Reports, Testimony, Correspondence, and Other Publications for September 2002; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–360. A joint resolution adopted by the Alaska State Legislature relative to the desecration of the United States Flag; to the Committee on the Judiciary.

LEGISLATIVE RESOLVE NO. 59

Be it resolved by the Legislature of the State of Alaska:

Whereas certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace, and the rights of expression and sacred values of others; and

Whereas there are symbols of our national soul, such as the Washington Monument, the United States Capitol Building, and memorials to our greatest leaders, that are the property of every American and are therefore worthy of protection from desecration and dishonor; and

Whereas the American Flag was most nobly born in the struggle for independence that began with "The Shot Heard Round the World" on a bridge in Concord, Massachusetts; and

Whereas, in the War of 1812, the American Flag stood boldly against foreign invasion, symbolized the stand of a young and brave nation against the mighty world power of that day and, in its courageous resilience, inspired our national anthem; and

Whereas, in the Second World War, the American Flag was the banner that led the American battle against facist imperialism from the depths of Pearl Harbor to the mountaintop on Iwo Jima, and from defeat in North Africa's Kasserine Pass to victory in the streets of Hitler's Germany; and

Whereas Alaska's star was woven into the fabric of the Flag in 1959, and that 49th star has become an integral part of the Union; and

Whereas the American Flag symbolizes the ideals that good and decent people fought for in Vietnam, often at the expense of their lives or at the cost of cruel condemnation upon their return home; and

Whereas the American Flag symbolizes the sacred values for which loyal Americans risked and often lost their lives in securing civil rights for all Americans, regardless of race, sex, or creed; and

Whereas the American Flag was carried to the moon as a banner of goodwill, vision, and triumph on behalf of all mankind; and

Whereas the American Flag was raised by New York City fire fighters atop the rubble of the World Trade Center and became the symbol of a nation challenged as it had never been before; and

Whereas the American Flag to this day is a most honorable and worthy banner of a nation that is thankful for its strengths and committed to curing its faults and remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

Whereas the law as interpreted by the United States Supreme Court no longer accords to the Stars and Stripes that reverence, respect, and dignity befitting the banner of that most noble experiment of a nation-state; and

Whereas House Joint Resolution 36, which passed the United States House of Representatives and has been referred to the United States Senate, proposes an amendment to the United States Constitution stating, "The Congress shall have power to prohibit the physical desecration of the flag of the United States"; and

Whereas Senate Joint Resolution 7, introduced in the United States Senate, proposes an amendment to the United States Constitution stating, "The Congress shall have power to prohibit the physical desecration of the flag of the United States"; and

Whereas it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency; be it

Resolved by the Alaska State Legislature, That the Congress of the United States is requested to pass House Joint Resolution 36 or Senate Resolution 7, or comparable legislation, and present to the legislatures of the several states an amendement to the Constitution of the United States that would specifically provide the Congress power to prohibit the physical desecration of the Flag of the United States; this request does not constitute a call for a constitutional convention; and be it further

Resolved, That the legislatures of the several states are invited to join with Alaska to secure ratification of the proposed amendment.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2862: A bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes. (Rept. No. 107–344).

NOMINATIONS DISCHARGED

The following nominations were discharged from the Committee on Environment and Public Works pursuant to the order of November 18, 2002:

APPALACHIAN REGIONAL COMMISSION

Anne B. Pope, of Tennessee, to be Federal Cochairman of the Appalachian Regional Commission.

Richard J. Peltz, of Pennsylvania, to be Alternative Federal Cochairman of the Appalachian Regional Commission.

The following nomination was discharged from the Committee on Commerce, Science, and Transportation pursuant to the order of November 18, 2002:

DEPARTMENT OF TRANSPORTATION

James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.

ADDITIONAL COSPONSORS

S. 549

At the request of Mr. CRAPO, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 549, a bill to ensure the availability of spectrum to amateur radio operators.

S. 2581

At the request of Mr. MILLER, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2581, a bill to conduct a study on the effectiveness of ballistic imaging technology and evaluate its effectiveness as a law enforcement tool.

S. 2721

At the request of Mr. SARBANES, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2721, a bill to improve the voucher rental assistance program under the United States Housing Act of 1937, and for other purposes.

S. 3000

At the request of Mr. HARKIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 3000, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities, and for other purposes.

S. 3018

At the request of Mr. BAUCUS, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 3018, a bill to amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare program, and for other purposes.

S. 3114

At the request of Mr. LEAHY, the names of the Senator from New York (Mrs. CLINTON), the Senator from Florida (Mr. NELSON) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 3114, a bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S. CON. RES. 138

At the request of Mr. REID, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. Con. Res. 138, a concurrent resolution expressing the sense of Congress that the Secretary of Health and Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests if demonstrated to be effective, and for other purposes.

AMENDMENTS SUBMITTED & PROPOSED

SA 4965. Mr. REID (for Mr. HATCH (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 754, to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs.

SA 4966. Mr. REID (for Mr. ROCKEFELLER (for himself, Mr. HOLLINGS, Mr. MCCAIN, and Mrs. HUTCHISON)) proposed an amendment to the bill S. 2951, to authorize appropriations for the Federal Aviation Administration, and for other purposes.

SA 4967. Mr. REID (for Mr. BAUCUS (for himself and Mr. GRASSLEY)) proposed an amendment to the bill H.R. 4070, to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

SA 4968. Mrs. HUTCHISON (for Mr. HOLLINGS (for himself and Mr. MCCAIN)) proposed an amendment to the bill S. 2949, to provide for enhanced aviation security, and for other purposes.

SA 4969. Mrs. HUTCHISON (for Mr. HOLLINGS (for himself, Mr. ROCKEFELLER, and Mr. MCCAIN)) proposed an amendment to amendment SA 4968 proposed by Mrs. HUTCHISON (for Mr. HOLLINGS (for himself and Mr. MCCAIN)) to the bill S. 2949, supra.

TEXT OF AMENDMENTS

SA 4965. Mr. REID (for Mr. HATCH (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 754, to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs; as follows:

On page 11, line 17, strike "or".

On page 11, line 18, strike the period and insert "; or".

On page 11, after line 18, insert the following:

(D) packaging and labeling contracts.

On page 13, line 17, strike all beginning with "Equitable" through line 23.

SA 4966. Mr. REID (for Mr. ROCKEFELLER (for himself, Mr. HOLLINGS, Mr. MCCAIN, and Mrs. HUTCHISON)) proposed an amendment to the bill S. 2951, to authorize appropriations for the Federal Aviation Administration, and for other purposes; as follows:

On page 3, beginning in line 21, strike "Transportation and" and insert "Transportation,".

On page 3, line 23, strike "Infrastructure." and insert "Infrastructure, and the House of Representatives Committee on Science.".

On page 4, strike lines 18 through 23, and insert the following:

The Federal Aviation Administration Administrator shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of concrete and asphalt airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements.

On page 5, beginning in line 22, strike "Transportation and" and insert "Transportation,".

On page 5, line 24, strike "Infrastructure." and insert "Infrastructure, and the House of Representatives Committee on Science.".

On page 8, strike lines 9 through 13, and insert the following:

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

SA 4967. Mr. REID (for Mr. BAUCUS (for himself and Mr. GRASSLEY)) proposed an amendment to the bill H.R. 4070, to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Social Security Program Protection Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

Sec. 101. Authority to reissue benefits misused by organizational representative payees.
Sec. 102. Oversight of representative payees.
Sec. 103. Disqualification from service as representative payee of persons convicted of offenses resulting in imprisonment for more than 1 year, of persons fleeing prosecution, custody, or confinement, and of persons violating probation or parole.
Sec. 104. Fee forfeiture in case of benefit misuse by representative payees.
Sec. 105. Liability of representative payees for misused benefits.
Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.

Subtitle B—Enforcement

Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees.

TITLE II—PROGRAM PROTECTIONS

Sec. 201. Issuance by Commissioner of Social Security of receipts to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries.
Sec. 202. Denial of title II benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole.
Sec. 203. Requirements relating to offers to provide for a fee a product or service available without charge from the Social Security Administration.
Sec. 204. Refusal to recognize certain individuals as claimant representatives.
Sec. 205. Penalty for corrupt or forcible interference with administration of Social Security Act.
Sec. 206. Use of symbols, emblems, or names in reference to social security or medicare.
Sec. 207. Disqualification from payment during trial work period upon conviction of fraudulent concealment of work activity.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

Sec. 301. Cap on attorney assessments.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

Sec. 401. Application of demonstration authority sunset date to new projects.
Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings.
Sec. 403. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings.
Sec. 404. Availability of Federal and State work incentive services to additional individuals.
Sec. 405. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program.

Subtitle B—Miscellaneous Amendments

Sec. 411. Elimination of transcript requirement in remand cases fully favorable to the claimant.
Sec. 412. Nonpayment of benefits upon removal from the United States.
Sec. 413. Reinstatement of certain reporting requirements.
Sec. 414. Clarification of definitions regarding certain survivor benefits.
Sec. 415. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner.
Sec. 416. Coverage under divided retirement system for public employees in Kentucky.
Sec. 417. Compensation for the Social Security Advisory Board.
Sec. 418. 60-month period of employment requirement for application of government pension offset exemption.

Subtitle C—Technical Amendments

Sec. 421. Technical correction relating to responsible agency head.
Sec. 422. Technical correction relating to retirement benefits of ministers.
Sec. 423. Technical corrections relating to domestic employment.
Sec. 424. Technical corrections of outdated references.
Sec. 425. Technical correction respecting self-employment income in community property States.
Sec. 426. Technical amendments relating to the Railroad Retirement and Survivors Improvement Act of 2001.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following new sentences: "In any case in which a representative payee that—

"(A) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)); or

"(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).".

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following new paragraph:

"(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this paragraph.".

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended by inserting after the first sentence the following new sentences: "In any case in which a representative payee that—

"(1) is not an individual; or

"(2) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2).".

(2) Misuse of benefits defined.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following new subsection:

"(j) Misuse of Benefits.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another qualified individual under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such other qualified individual. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this subsection.".

(3) Technical amendment.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking "for his or her benefit" and inserting "for his or her use and benefit".

(c) Title XVI Amendments.—

(1) Reissuance of benefits.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following new sentences: "In any case in which a representative payee that—

"(i) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)); or

"(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to the representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).".

(2) Exclusion of reissued benefits from resources.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking "and" at the end;

(B) in paragraph (13), by striking the period and inserting "; and"; and

(C) by inserting after paragraph (13) the following new paragraph:

"(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.".

(3) Misuse of benefits defined.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following new clause:

"(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this clause.".

(d) Effective Date.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) Certification of Bonding and Licensing Requirements for Nongovernmental Organizational Representative Payees.—

(1) Title II amendments.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking "a community-based nonprofit social service agency licensed or bonded by the State" in subclause (I) and inserting "a certified community-based nonprofit social service agency (as defined in paragraph (9))";

(B) in paragraph (3)(F), by striking "community-based nonprofit social service agencies" and inserting "certified community-based nonprofit social service agencies (as defined in paragraph (9))";

(C) in paragraph (4)(B), by striking "any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee" and inserting "any certified community-based nonprofit social service agency (as defined in paragraph (9))"; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following new paragraph:

"(9) For purposes of this subsection, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in such State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on such agency which may have been performed since the previous certification.".

(2) Title XVI amendments.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking "a community-based nonprofit social service agency licensed or bonded by the State" in subclause (I) and inserting "a certified community-based nonprofit social service agency (as defined in subparagraph (I))";

(B) in subparagraph (D)(ii)—

(i) by striking "or any community-based" and all that follows through "in accordance" in subclause (II) and inserting "or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance";

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margination accordingly); and

(iii) by striking "subclause (II)(bb)" and inserting "subclause (II)"; and

(C) by adding at the end the following new subparagraph:

"(I) For purposes of this paragraph, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.".

(3) Effective date.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of enactment of this Act.

(b) Periodic Onsite Review.—

(1) Title II amendment.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

"(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

"(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

"(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

"(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

"(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

"(i) the number of such reviews;

"(ii) the results of such reviews;

"(iii) the number of cases in which the representative payee was changed and why;

"(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

"(v) the number of cases discovered in which there was a misuse of funds;

"(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

"(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

"(viii) such other information as the Commissioner deems appropriate.".

(2) Title VIII amendment.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following new subsection:

"(k) Periodic Onsite Review.—(1) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

"(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

"(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

"(2) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

"(A) the number of such reviews;

"(B) the results of such reviews;

"(C) the number of cases in which the representative payee was changed and why;

"(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

"(E) the number of cases discovered in which there was a misuse of funds;

"(F) how any such cases of misuse of funds were dealt with by the Commissioner;

"(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

"(H) such other information as the Commissioner deems appropriate.".

(3) Title XVI Amendment.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

"(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

"(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

"(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

"(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

"(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

"(I) the number of the reviews;

"(II) the results of such reviews;

"(III) the number of cases in which the representative payee was changed and why;

"(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

"(V) the number of cases discovered in which there was a misuse of funds;

"(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

"(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

"(VIII) such other information as the Commissioner deems appropriate.".

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR, OF PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND OF PERSONS VIOLATING PROBATION OR PAROLE.

(a) Title II Amendments.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking "and" at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

"(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

"(V) obtain information concerning whether such person is a person described in clause (iv) or (v) of section 202(x)(1)(A), and".

(2) in subparagraph (C)(i)(II), by striking "subparagraph (B)(i)(IV),," and inserting "subparagraph (B)(i)(VI)" and striking "section 1631(a)(2)(B)(ii)(IV)" and inserting "section 1631(a)(2)(B)(ii)(VI)"; and

(3) in subparagraph (C)(i)—

(A) by striking "or" at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following new subclauses:

"(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

"(V) such person is person described in clause (iv) or (v) of section 202(x)(1)(A).".

(b) Title VIII Amendments.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking "and" at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following new subparagraphs:

"(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

"(E) obtain information concerning whether such person is a person described in paragraph (2) or (3) of section 804(a); and"; and

(2) in subsection (d)(1)—

(A) by striking "or" at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

"(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

"(E) such person is a person described in paragraph (2) or (3) of section 804(a).".

(c) Title XVI Amendments.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

(A) by striking "and" at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

"(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

"(V) obtain information concerning whether such person is a person described in section 1611(e)(4); and";

(2) in clause (iii)(II)—

(A) by striking "clause (ii)(IV)" and inserting "clause (ii)(VI)"; and

(B) by striking "section 205(j)(2)(B)(i)(IV)" and inserting "section 205(j)(2)(B)(i)(VI)"; and

(3) in clause (iii)—

(A) by striking "or" at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

(C) by adding at the end the following new subclauses:

"(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

"(V) such person is a person described in section 1611(e)(4).".

(d) Effective Date.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of enactment of this Act.

(e) Report to Congress.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) Title II Amendments.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking "A" and inserting "Except as provided in the next sentence, a"; and

(2) in the second sentence, by striking "The Secretary" and inserting the following:

"A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner".

(b) Title XVI Amendments.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking "A" and inserting "Except as provided in the next sentence, a"; and

(2) in the second sentence, by striking "The Commissioner" and inserting the following: "A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner".

(c) Effective Date.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after December 31, 2002.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) Title II Amendments.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking "paragraph (9)" and inserting "paragraph (10)";

(3) in paragraph (6)(A)(ii), by striking "paragraph (9)" and inserting "paragraph (10)"; and

(4) by inserting after paragraph (6) the following new paragraph:

"(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

"(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.".

(b) Title VIII Amendment.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following new subsection:

"(l) Liability for Misused Amounts.—

"(1) In general.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

"(2) Limitation.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.".

(c) Title XVI Amendments.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

(1) in subparagraph (G)(i)(II), by striking "section 205(j)(9)" and inserting "section 205(j)(10)"; and

(2) by striking subparagraph (H) and inserting the following:

"(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

"(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.".

(d) Effective Date.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after December 31, 2002.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) Title II Amendments.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following new subparagraph:

"(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.".

(b) Title VIII Amendments.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

"(3) Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.".

(c) Title XVI Amendment.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following new clause:

"(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.".

(d) Effective Date.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) In General.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following new paragraph:

"(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to violations committed after the date of enactment of this Act.

TITLE II—PROGRAM PROTECTIONS

SEC. 201. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

Effective as soon as possible, but not later than 1 year after the date of enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

SEC. 202. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking "Prisoners" and all that follows and inserting the following: "Prisoners, Certain Other Inmates of Publicly Funded Institutions, and Fugitives";

(2) in paragraph (1)(A)(ii)(IV), by striking "or" at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

"(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State, or

"(v) is violating a condition of probation or parole imposed under Federal or State law.

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv), the Commissioner may, for good cause shown, pay such withheld benefits to the individual."; and

(5) in paragraph (3), by adding at the end the following new subparagraph:

"(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

"(i) the beneficiary—

"(I) is described in clause (iv) or (v) of paragraph (1)(A); and

"(II) has information that is necessary for the officer to conduct the officer's official duties; and

"(ii) the location or apprehension of the beneficiary is within the officer's official duties.".

(b) REGULATIONS.—Not later than the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act, the Commissioner of Social Security shall promulgate regulations governing payment by the Commissioner, for good cause shown, of withheld benefits, pursuant to the last sentence of section 202(x)(1)(A) of the Social Security Act (as amended by subsection (a)).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act.

SEC. 203. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

"(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

"(i) explains that the product or service is available free of charge from the Social Security Administration, and

"(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

"(B) Subparagraph (A) shall not apply to any offer—

"(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

"(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI."; and

(2) in the heading, by striking "PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE" and inserting "PROHIBITIONS RELATING TO REFERENCES".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of enactment of this Act.

SEC. 204. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: "Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a nonattorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.".

SEC. 205. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following new section:

"ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

"SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or both. In this subsection, the term 'threats of force' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.".

SEC. 206. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting "'Centers for Medicare & Medicaid Services'," after "'Health Care Financing Administration',", by striking "or 'Medicaid'," and inserting "'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan'," and by inserting "'CMS'," after "'HCFA',";

(2) in subparagraph (B), by inserting "Centers for Medicare & Medicaid Services," after "Health Care Financing Administration," each place it appears; and

(3) in the matter following subparagraph (B), by striking "the Health Care Financing Administration," each place it appears and inserting "the Centers for Medicare & Medicaid Services,".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items sent after 180 days after the date of enactment of this Act.

SEC. 207. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

(a) IN GENERAL.—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following new paragraph:

"(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

"(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

"(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

"(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by inserting ", except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences" after "subparagraph (B)"; and

(2) by adding at the end the following new sentence: "In the case of any calendar year beginning after 2003, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $10 shall be rounded to the next lowest multiple of $10, but in no case less than $75.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of enactment of this Act.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking "conducted under subsection (a)" and inserting "initiated under subsection (a) on or before December 17, 2004"; and

(2) in subsection (d)(2), by amending the first sentence to read as follows: "The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2004.".

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking "(42 U.S.C. 401 et seq.)," and inserting "(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,".

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDED FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

"(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.".

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

"(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

"(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

"(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

"(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

"(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

"(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

"(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

"(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

"(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

"(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.".

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking "secure or regain" and inserting "secure, maintain, or regain".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19) is amended by adding at the end, after and below subparagraph (E), the following new sentence:

"An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) IN GENERAL.—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking "and a transcript" and inserting "and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 202(n) of the Social Security Act (42 U.S.C. 402(n)(1), (2)) are each amended by striking "or (1)(E)".

(b) EFFECTIVE DATE.—The amendment made by this section to section 202(n)(1) of the Social Security Act shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice from the Attorney General after the date of enactment of this Act. The amendment made by this section to section 202(n)(2) of the Social Security Act shall apply with respect to removals occurring after the date of enactment of this Act.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31

U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting "except as provided in paragraph (2)," before "she was married";

(4) by inserting "(1)" after "(c)"; and

(5) by adding at the end the following new paragraph:

"(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

"(A) the individual had been married prior to the individual's marriage to the surviving wife,

"(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

"(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

"(D) the prior wife continued to remain institutionalized up to the time of her death, and

"(E) the individual married the surviving wife within 60 days after the prior wife's death.".

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting "except as provided in paragraph (2)," before "he was married";

(4) by inserting "(1)" after "(g)"; and

(5) by adding at the end the following new paragraph:

"(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

"(A) the individual had been married prior to the individual's marriage to the surviving husband,

"(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

"(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

"(D) the prior husband continued to remain institutionalized up to the time of his death, and

"(E) the individual married the surviving husband within 60 days after the prior husband's death.".

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking "clause (5) of subsection (c) or clause (5) of subsection (g)" and inserting "clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking "to taxes or contributions for similar purposes under" and inserting "exclusively to the laws applicable to".

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting "Kentucky," after "Illinois,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) IN GENERAL.—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

"Compensation, Expenses, and Per Diem

"(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which the member is engaged in performing a function of the Board. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.".

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as of January 1, 2002.

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) WIFE'S INSURANCE BENEFITS.—Section 202(b)(4)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A)) is amended by striking "if, on" and inserting "if, during any portion of the last 60 months of such service prior to".

(b) HUSBAND'S INSURANCE BENEFITS.—Section 202(c)(2)(A) of such Act (42 U.S.C. 402(c)(2)(A)) is amended by striking "if, on" and inserting "if, during any portion of the last 60 months of such service prior to".

(c) WIDOW'S INSURANCE BENEFITS.—Section 202(e)(7)(A) of such Act (42 U.S.C. 402(e)(7)(A)) is amended by striking "if, on" and inserting "if, during any portion of the last 60 months of such service prior to".

(d) WIDOWER'S INSURANCE BENEFITS.—Section 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is amended by striking "if, on" and inserting "if, during any portion of the last 60 months of such service prior to".

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g)(4)(A) of the such Act (42 U.S.C. 402(g)(4)(A)) is amended by striking "if, on" and inserting "if, during any portion of the last 60 months of such service prior to".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of enactment of this Act, except that such amendments shall not apply to individuals whose last day of employment while in the service of any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act (42 U.S.C. 418(b)(2))) constitutes covered employment (as defined in section 210 of such Act (42 U.S.C. 410)) and occurs on or before June 30, 2003, provided that such period of covered employment for such governmental entity began on or before December 31, 2002.

Subtitle C—Technical Amendments

SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking "Secretary" the first place it appears and inserting "Commissioner of Social Security"; and

(2) by striking "Secretary" each subsequent place it appears and inserting "Commissioner".

SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting ", but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a church plan (as defined in section 414(e) of such Code) after the individual retires" before the semicolon.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking "described in subsection (g)(5)" and inserting "on a farm operated for profit".

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking "described in section 210(f)(5)" and inserting "on a farm operated for profit".

(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking "or is domestic service in a private home of the employer".

SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF TERMINOLOGY AND CITATIONS RESPECTING REMOVAL FROM THE

United States.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by section 412) is amended further—

(1) by striking "deportation" each place it appears and inserting "removal";

(2) by striking "deported" each place it appears and inserting "removed";

(3) in paragraph (1) (in the matter preceding subparagraph (A)), by striking "under section 241(a) (other than under paragraph (1)(C) thereof)" and inserting "under section 237(a) (other than paragraph (1)(C) thereof) or 212(a)(6)(A)";

(4) in paragraph (2), by striking "under any of the paragraphs of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) thereof)" and inserting "under any of the paragraphs of section 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) thereof) or under section 212(a)(6)(A) of such Act";

(5) in paragraph (3)—

(A) by striking "paragraph (19) of section 241(a)" and inserting "subparagraph (D) of section 237(a)(4)"; and

(B) by striking "paragraph (19)" and inserting "subparagraph (D)"; and

(6) in the heading, by striking "Deportation" and inserting "Removal".

(b) Correction of Citation Respecting the Tax Deduction Relating to Health Insurance Costs of Self-Employed Individuals.—Section 211(a)(15) of such Act (42 U.S.C. 411(a)(15)) is amended by striking "section 162(m)" and inserting "section 162(l)".

(c) Elimination of Reference to Obsolete 20-Day Agricultural Work Test.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking "and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis".

SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) Social Security Act Amendment.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking "all of the gross income" and all that follows and inserting "the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;".

(b) Internal Revenue Code of 1986 Amendment.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking "all of the gross income" and all that follows and inserting "the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and".

SEC. 426. TECHNICAL AMENDMENTS RELATING TO THE RAILROAD RETIREMENT AND SURVIVORS IMPROVEMENT ACT OF 2001.

(a) Quorum Rules.—Section 15(j)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(7)) is amended by striking "entire Board of Trustees" and inserting "Trustees then holding office".

(b) Transfers.—

(1) Section 15(k) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(k)) is amended by adding at the end the following: "At the direction of the Railroad Retirement Board, the National Railroad Retirement Investment Trust shall transfer funds to the Railroad Retirement Account.".

(2) Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended—

(A) by inserting "or the Railroad Retirement Account" after "National Railroad Retirement Investment Trust" the second place it appears;

(B) by inserting "or the Railroad Retirement Board" after "National Railroad Retirement Investment Trust" the third place it appears; and

(C) by inserting "or the Railroad Retirement Board" after "the Trust".

(c) Investment Authority.—Section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) is amended by striking "shall" and inserting "may".

(d) Clerical.—

(1) Subparagraphs (C) and (D) of section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) are each amended by striking "assets in the Trust" and inserting "assets of the Trust".

(2) Paragraph (5) of section 15(j) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(5)) is amended—

(A) in subparagraph (B), by striking "trustee's" each place it appears and inserting "Trustee's";

(B) in subparagraph (C), by striking "trustee" and "trustees" each place it appears and inserting "Trustee" and "Trustees", respectively; and

(C) in the matter preceding clause (i) of subparagraph (D), by striking "trustee" and inserting "Trustee".

SA 4968. Mrs. HUTCHISON (for Mr. Hollings (for himself and Mr. McCain)) proposed an amendment to the bill S. 2949, to provide for enhanced aviation security, and for other purposes; as follows:

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(A) Short Title.—This Act may be cited as the "Aviation Security Improvement Act".

(b) Amendment of Title 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.
Sec. 2. Table of contents.
Title I—Air Cargo Security
Sec. 101. Inspection of cargo carried aboard passenger aircraft.
Sec. 102. Air cargo shipping.
Sec. 103. Cargo carried aboard passenger aircraft.
Sec. 104. Training program for cargo handlers.
Sec. 105. Cargo carried aboard all-cargo aircraft.
Title II—Passenger Identification
Sec. 201. Passenger identification.
Sec. 202. Passenger identification verification.
Title III—Circumvention of Airport Security
Sec. 301. Prohibition on unauthorized circumvention of airport security systems and procedures.
Title VI—Blast Resistant Cargo Container Technology
Sec. 401. Blast-resistant cargo container technology.
Title V—Flight Schools
Sec. 501. Modification of requirements regarding training to operate aircraft.
Title VI—Miscellaneous
Sec. 601. FAA Notice to Airmen FDC 2/0199.
Title VII—Technical Corrections
Sec. 701. Technical corrections.

TITLE I—AIR CARGO SECURITY

SEC. 101. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) is amended to read as follows: "(f) Cargo.

"(1) In general.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

"(A) passenger aircraft operated by an air carrier for foreign air carrier in air transportation or intrastate air transportation; or

"(B) all-cargo aircraft in air transportation and intrastate air transportation.

"(2) Strategic plan.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).".

SEC. 102. AIR CARGO SHIPPING.

(a) In General.—Subchapter I of chapter 449, is amended by adding at the end the following:

§ 44921. Regular inspections of air cargo shipping facilities

"The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.".

(b) Additional Inspectors.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) Conforming Amendment.—The chapter analysis for chapter 449 is amended by adding at the end the following:

"44921. Regular inspections of air cargo shipping facilities".

SEC. 103. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) In General.—Subchapter I of chapter 449, is further amended by adding at the end the following:

§ 44922. Air cargo security

"(a) Database.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

"(b) Indirect air carriers.

"(1) Random Inspections.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

"(2) Ensuring compliance.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

"(3) Notice of failures.—The Under Secretary shall notify the secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

"(4) Suspension or revocation of certificate.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

"(5) Indirect air carrier.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

"(c) Consideration of Community Needs.—In implementing air cargo security requirement under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.".

(b) Assessment of Indirect Air Carrier Program.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) Report to Congress on Random Audits.—The Under Secretary of Transportation of Security shall report to the Senate Committee on Commerce, Science, and Transportation and House of Representatives Committees on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) Authorization of Appropriations.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) Conforming Amendment.—The chapter analysis for chapter 449, as amended by section 102, is amended by adding at the end the following:

"44922. Air cargo security".

SEC. 104. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 105. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) In General.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed abroad such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) Plan Requirements.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported abroad all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(e) Confidential Industry Review and Comment.

(1) Circulation of proposed program.

The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) Comment period.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) Final program.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) Suspension of procedural norms.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

TITLE II—PASSENGER IDENTIFICATION

SEC. 201. PASSENGER IDENTIFICATION.

(a) In General.—Subchapter I of chapter 449, as amended by title II of this Act, is further amended by adding at the end the following:

"§ 44923. Passenger identification

"(a) In General.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

"(b) Air Carrier Programs.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.".

(b) Conforming Amendment.—The chapter analysis for chapter 449, is amended by adding at the end the following:

"44923. Passenger identification".

SEC. 202. PASSENGER IDENTIFICATION VERIFICATION.

(a) Requirement.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44924. Passenger identification verification

"(a) Program Required.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

"(b) Technologies Employed.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

"(c) Commencement.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.".

(b) Conforming Amendment.—The chapter analysis for chapter 449 is amended by adding at the end the following:

"44924. Passenger identification verification".

TITLE III—CIRCUMVENTION OF AIRPORT SECURITY

SEC. 301. PROHIBITION ON UNAUTHORIZED CIRCUMVENTION OF AIRPORT SECURITY SYSTEMS AND PROCEDURES.

(a) Prohibition.—Section 46503 is amended—

(1) by inserting "(a) Interference With Security Screening Personnel.—" before "An individual"; and

(2) by adding at the end the following new subsection:

"(b) Unauthorized Circumvention of Security Systems and Procedures.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.".

(b) Conforming and Clerical Amendments.—

(1) The section heading of that section is amended to read as follows:

"§ 46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures".

(2) The chapter analysis for chapter 465 is amended by striking the item relating to section 46503 and inserting the following:

"46503. Inference with security screening personnel; unauthorized circumvention of security systems or procedures".

TITLE IV—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

SEC. 401. BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result (particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology; and

(3) provides recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

TITLE V—FLIGHT SCHOOLS

SEC. 501 MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Subsection (a) of section 44939 is amended—

(1) by resetting the text of subsection (a) after

"(a) WAITING PERIOD.—" as a new paragraph 2 ems from the left margin;

(2) by striking "A person" in that new paragraph and inserting "(1) IN GENERAL.—A person";

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking "any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more" and inserting "an aircraft";

(5) by striking "paragraph (1)" in paragraph (1)(B), as redesignated, and inserting "subparagraph (A)" and

(6) by adding at the end the following:

"(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

"(A) has earned a Federal Aviation Administration type rating in an aircraft; or

"(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.".

(b) COVERED TRAINING.—Section 44936(c) is amended to read as follows:

"(c) COVERED TRAINING.

"(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, in a simulator, and any other form or aspect of training.

"(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.".

(c) PROCEDURES.

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 113 of the Aviation and Transportation Security Act.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General of the United States shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, as amended by this section, in reducing risks to aviation and national security.

TITLE VI—MISCELLANEOUS

SEC. 601. FAA NOTICE TO AIRMEN FDC 2/0199.

(a) IN GENERAL.—The Secretary of Transportation—

(1) shall maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notice to Airmen FDC 2/0199 (including any local Notices to Airmen of similar effect or import), as those restrictions are in effect on the date of enactment of this Act, for a period of 180 days after that date;

(2) shall rescind immediately any waivers or exemptions from those restrictions that are in effect on the date of enactment of this Act; and

(3) may not grant any waivers or exemptions from those restrictions, except—

(A) as authorized by the air traffic control for operational or safety purposes;

(B) for operational purposes of an event, stadium, or other venue, including (in the case of a sporting event) equipment or parts, transport of team members, officials of the governing body and immediate family members of team members and officials to and from the event, stadium, or other venue;

(C) for broadcast coverage for any broadcast rights holder;

(D) for safety and security purposes of the event, stadium, or other venue; or

(E) to operate an aircraft in restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic procedures.

(b) WAIVERS.—Beginning no earlier than 180 days after the date of enactment of this Act, the Secretary may modify or terminate such restrictions, or issue waivers or exemptions from such restrictions, if the Secretary promulgates, after public notice and an opportunity for comment, a rule setting for the standards under which the Secretary may grant a waiver or exemption. Such standards shall provide a level of security at least equivalent to that provided by the waiver policy applied by the Secretary as of the date of enactment of this Act.

(c) BROADCAST CONTRACTS NOT AFFECTED.—Nothing in this section shall be construed to affect contractual rights pertaining to any broadcasting agreement.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. TECHNICAL CORRECTIONS.

(a) Section 114(j)(1)(D) is amended by inserting "Under" before "Secretary".

(b) Section 115(c)(1) is amended—

(1) by striking "and ratify or disapprove"; and

(2) by striking "security" the second place it appears and inserting "Security".

(c) Section 40109(b) is amended by striking "40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935–44937" and inserting "40103(b)(1) and (2) and 40119".

(d) Section 44901(e) is amended by striking "subsection (b)(1)(A)" and inserting "subsection (d)(1)(A)".

(e) Section 44901(g)(2) is amended by striking "Except at airports required to enter into agreements under subsection (c), the" and inserting "the".

(f) Section 44903 is amended—

(1) by striking "Administrator" in subsection (c)(3) and inserting "Under Secretary"; and

(2) by redesignating the second subsection (h), subsection (i), and the third subsection (h) as subsections (i), (j), and (k), respectively.

(g) Section 44909 is amended—

(1) by striking "Not later than March 16, 1991, the" in subsection (a)(1) and inserting "The"; and

(2) by inserting "of Transportation for Security" after "Under Secretary" in subsection (c)(2)(F).

(h) Section 44935 is amended—

(1) by striking "States;" in subsection (e)(2)(a)(ii) and inserting "States or described in subparagraph (C);";

(2) by redesignating subparagraph subsection (e)(2)(C) as subparagraph (D);

(3) by inserting after subsection (e)(2)(B) the following:

"(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

"(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

"(ii) was born in a territory of the United States;

"(iii) was honorably discharged from service in the Armed Forces of the United States; or

"(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107–71).";

"(4) by inserting "and" after the semicolon in subsection (e)(2)(A) (iii);

"(5) by striking "establish; and" in subsection (e)(2)(A)(iv) and inserting "establish;

"(6) by striking subsection (e)(2)(A)(v);

"(7) by adding at the end of subsection (f)(1) the following:

"(E) The individual shall be able to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol."; and

"(8) by redesignating the second subsection (i) as subsection (k).

"(i) Section 44936(a)(1)(A) is amended by striking "Transportation Security," and inserting "Security,".

"(j) Section 44940 is amended—

"(1) by striking "Federal law enforcement personnel pursuant to section 44903(h)." in subsection (a)(1)(G) and inserting "law enforcement personnel pursuant to this title.";

"(2) by inserting "FOR" after "RULES" in the caption of subsection (d)(2); and

"(3) by striking subsection (d)(4) and inserting the following:

"(4) Fee collection.—Fees may be collected under this section as provided in advance in appropriations Acts.".

"(k) Section 46301(a) is amended by adding at the end the following:

"(8) Aviation security violations.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is $10,000, except that the maximum civil penalty is $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).".

(l) Section 46301(d)(2) is amended—

(1) by striking "46302, 46303," in the first sentence;

(2) by striking the second sentence and inserting "The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(c)(1)(C)–(F), 44908, and 44909), section 46302, 463403, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.".

(m) Section 46301(g) is amended by striking "Secretary" and inserting "Secretary, the Under Secretary of Transportation for Security,".

(n) Chapter 465 is amended—

(1) by striking "**screening**" in the caption of section 46503; and

(2) by striking "screening" in the item relating to section 46503 in the chapter analysis.

(o) Section 47115(i) is amended by striking "non-federal" each place it appears and inserting "non-Federal".

(p) Section 48107 is amended by striking "section 44912(a)(4)(A)." and inserting "section 44912(a)(5)(A).".

(q) Sections 44903(i)(1) (as redesignated), 44942(b), and 44943(c) are each amended by striking "Under Secretary for Transportation Security" each place it appears and inserting "Under Secretary".

(r) Section 44936 is amended by adding at the end the following:

"(f) Protection of Privacy of Applicants and Employees.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.".

(s) Sections 44942(a)(1) and 44943(a) are each amended by striking "Under Secretary for Transportation security" and inserting "Under Secretary of Transportation for Security".

(t) Subparagraphs (B) and (C) of section 44936(a)(1) are each amended by striking "Under Secretary of Transportation for Transportation Security" and inserting "Under Secretary".

(u) Section 44943(c) is amended by inserting "and Transportation" after "Aviation".

(v) Section 44942(b) is amended—

(1) by striking "(1) Performance plan and report.—";

(2) redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) redesignating clauses (i) and (ii) of paragraph (1), as redesignated, as subparagraphs (A) and (B), respectively.

(w) The chapter analysis for chapter 449 is amended by inserting after the item relating to section 44941 the following:

"44942. Performance goals and objectives
"44943. Performance management plans".

(x) Section 44944(a)(1) is amended by striking "Under Secretary of Transportation for Transportation Security" and inserting "Under Secretary of Transportation for Security".

(y) Section 106(b)(2)(B) of the Aviation and Transportation Security Acts is amended by inserting "Under" before "Secretary".

(z) Section 119(c) of the Aviation and Transportation Security Act is amended by striking "section 47192(3)(J)" and inserting "section 47102(3)(J)".

(aa) Section 132(a) of the Aviation and Transportation Security Act is amended by striking "12,500 pounds or more." and inserting "more than 12,500 pounds.".

SA 4969. Mrs. HUTCHISON (for Mr. Hollings (for himself, Mr. Rockefeller, and Mr. McCain)) proposed an amendment to amendment SA 4968 proposed by Mrs. Hutchison (for Mr. Hollings (for himself, and Mr. McCain)) to the bill S. 2949, to provide for enhanced aviation security, and for other purposes; as follows:

At the end of the bill, add the following:

TITLE VIII—NTSB AUTHORIZATION

SEC. 801. SHORT TITLE.

This title may be cited as the "National Transportation Safety Board Reauthorization Act of 2002".

SEC. 802. AUTHORIZATION OF APPROPRIATIONS.

(a) Fiscal Years 2003–2005.—Section 1118(a) of title 49, United States Code, is amended—

(1) by striking "and"; and

(2) by striking "such sums to" and inserting the following: "$73,325,000 for fiscal year 2003, $84,999,000 for fiscal year 2004, and $89,687,000 for fiscal year 2005. Such sums shall".

(b) Emergency Fund.—Section 1118(b) of such title is amended by striking the second sentence and inserting the following: "In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $3,000,000.".

(c) NTSB Academy.—Section 1118 of such title is amended by adding at the end the following:

"(c) Academy.—

"(1) Authorization.—There are authorized to be appropriated to the Board for necessary expenses of the National Transportation Safety Board Academy, not otherwise provided for, $3,347,000 for fiscal year 2003, $4,896,000 for fiscal year 2004, and $4,995,000 for fiscal year 2005. Such sums shall remain available until expended.

"(2) Fees.—The Board may impose and collect such fees as it determines to be appropriate for services provided by or through the Academy.

"(3) Receipts credited as offsetting collections.—Notwithstanding section 3302 of title 31, any fee collected under this paragraph—

"(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

"(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

"(C) shall remain available until expended.

"(4) Refunds.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.".

(d) Report on Academy Operations.—The National Transportation Safety Board shall transmit an annual report to the Congress on the activities and operations of the National Transportation Safety Board Academy.

SEC. 803. ASSISTANCE TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) Relinquishment of Investigative Priority.—Section 1136 of title 49, United States Code, is amended by adding at the end the following:

"(j) Relinquishment of Investigative Priority.—

"(1) General rule.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

"(2) Board assistance.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.".

(b) Revision of MOU.—Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 804. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

Section 1113(b) of title 49, United States Code, is amended—

(1) by striking "Statutes;" in paragraph (1)(B) and inserting "Statutes, and, for investigations conducted under section 1131, enter into such agreements or contracts without regard to any other provision of law requiring competition if necessary to expedite the investigation;"; and

(2) by adding at the end the following:

"(3) The Board, as a component of its annual report under section 1117, shall include an enumeration of each contract for $25,000 or more executed under this section during the preceding calendar year.".

TITLE IX—CHILD PASSENGER SAFETY

SEC. 901. SHORT TITLE.

This title may be cited as "Anton's Law".

SEC. 902. IMPROVEMENT OF SAFETY OF CHILD RESTRAINTS IN PASSENGER MOTOR VEHICLES.

(a) In General.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

(b) Elements for Consideration.—In the rule-making proceeding required by subsection (a), the Secretary shall—

(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for

use in passenger motor vehicles for the restraint of children weighing more than 40 pounds, under the requirements established in the rulemaking proceeding;

(2) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices;

(3) consider whether to develop a solution for children weighing more than 40 pounds who only have access to seating positions with lap belts, such as allowing tethered child restraints for such children; and

(4) review the definition of the term "booster seat" in Federal motor vehicle safety standard No. 213 under section 571.213 of title 49, Code of Federal Regulation, to determine if it is sufficiently comprehensive.

(c) COMPLETION.—The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act.

SEC. 903. REPORT ON DEVELOPMENT OF CRASH TEST DUMMY SIMULATING A 10-YEAR OLD CHILD.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the current schedule and status of activities of the Department of Transportation to develop, evaluate, and certify a commercially available dummy that simulates a 10-year old child for use in testing the effectiveness of child restraints used in passenger motor vehicles.

SEC. 904. REQUIREMENTS FOR INSTALLATION OF LAP AND SHOULDER BELTS

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to amend Federal motor vehicle safety standard No. 208 under section 571.208 of title 49, Code of Federal Regulations, relating to occupant crash protection, in order to—

(1) require a lap and shoulder belt assembly for each rear designated seating position in a passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement; and

(2) apply the requirement to passenger motor vehicles in phases in accordance with the subsection (b).

(b) IMPLEMENTATION SCHEDULE.—The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule.

(c) REPORT ON DETERMINATION TO EXCLUDE.

(1) REQUIREMENT.—If the Secretary determines under subsection (a)(1) that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of motor vehicle, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report specifying the reasons for the determination.

(2) DEADLINE.—The report under paragraph (1) shall be submitted, if at all, not later than 30 days after the date on which the Secretary issues a final rule under subsection (a).

SEC. 905. TWO-YEAR EXTENSION OF CHILD PASSENGER PROTECTION EDUCATION GRANTS PROGRAM.

Section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note; 112 Stat. 328) is amended by striking "and 2001." and inserting "through 2004."

SEC. 906. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

"§ 412. Grant program for improving child passenger safety programs

"(a) STANDARDS AND REQUIREMENTS REGARDING CHILD RESTRAINT LAWS.—Not later than October 1, 2003, the Secretary shall establish appropriate criteria applicable to child restraint laws for purposes of eligibility for grants under this seciton. The criteria shall be consistent with the provisions of Anton's Law.

"(b) REQUIREMENT TO MAKE GRANTS.

"(1) IN GENERAL.—The Secretary shall make a grant to each State and Indian tribe that, as determined by the Secretary, has a child restraint law in effect on September 30, 2004.

"(2) LIMITATION ON NUMBER OF GRANTS. Not more than one grant may be made to a State or Indian tribe under this section.

"(3) COMMENCEMENT.—The requirement in paragraph (1) shall commence on October 1, 2004.

"(c) GRANT AMOUNT.—The amount of the grant to a State or Indian tribe under this section shall be the amount equal to five times the amount provided to the State or Indian tribe, as the case may be, under section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note) in fiscal year 2003.

"(d) USE OF GRANT AMOUNTS.—

"(1) IN GENERAL.—A State or Indian tribe shall use any amount received by the State or Indian tribe, as the case may be, under this section to carry out child passenger protection programs for children under the age of 16 years, including programs for purposes as follows:

"(A) To educate the public concerning the proper use and installation of child restraints, including booster seats.

"(B) To train and retain child passenger safety professionals, police officers, fire and emergency medical personnel, and educators concerning all aspects of the use of child restraints.

"(C) To provide child restraint systems, including booster seats and the hardware needed for their proper installation, to families that cannot otherwise afford such systems.

"(D) To support enforcement of the child restraint law concerned.

"(2) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a program under paragraph (1) that is carried out using amounts from a grant under this section may not exceed 80 percent of the cost of the program.

"(e) ADMINISTRATIVE EXPENSES.—The amount of administrative expenses under this section in any fiscal year may not exceed the amount equal to five percent of the amount available for making grants under this section in the fiscal year.

"(f) APPLICABILITY OF CHAPTER 1.—The provisions of section 402(d) of this title shall apply to funds authorized to be appropriated to make grants under this section as if such funds were highway safety funds authorized to be appropriated to carry out section 402 of this title.

"(g) DEFINITIONS.—In this section:

"(1) CHILD RESTRAINT LAW.—The term 'child restraint law' means a law that—

"(A) satisfies standards established by the Secretary under Anton's Law for the proper restraint of children who are over the age of 3 years or who weigh at least 40 pounds;

"(B) prescribes a penalty for operating a passenger motor vehicle in which any occupant of the vehicle who is under the age of 16 years is not properly restrained in an appropriate restraint system (including seat belts, booster seats used in combination with seat belts, or other child restraints); and

"(C) meets any criteria established by the Secretary under subsection (a) for purposes of this section.

"(2) PASSENGER MOTOR VEHICLE.—The term 'passenger motor vehicle' has the meaning given that term in section 405(f)(5) of this title.

"(3) STATE.—The term 'State' has the meaning given in section 101 of this title and includes any Territory or possession of the United States.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 411 the following new item:

"412. Grant program for improving child passenger safety programs.".

SEC. 907. DEFINITIONS.

In this title:

(1) CHILD RESTRAINT.—The term "child restraint" means any product designed to provide restraint to a child (including booster seats and other products used with a lap and shoulder belt assembly) that meets applicable Federal motor vehicle safety standards prescribed by the National Highway Traffic Safety Administration.

(2) PRODUCTION YEAR.—The term "production year" means the 12-month period between September 1 of a year and August 31 of the following year.

(3) PASSENGER MOTOR VEHICLE.—The term "passenger motor vehicle" has the meaning given that term in section 405(f)(5) of title 23, United States Code.

SEC. 908. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this title, including the making of grants under section 412 of title 23, United States Code, as added by section 906.

PRIVILEGE OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that Marit Delozier and Brian Greer, law clerks with the Judiciary Committee, be allowed floor privileges during the pendency of and vote on the Shedd nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that Alaine Perry, a detailee with the Finance Committee, be granted floor privileges for the duration of consideration of H.R. 4070.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session and that the Environment Committee be discharged from further consideration of the following nominations: Ann Pope to be Federal Cochairman of the Appalachian Regional Commission; Richard Peltz to be alternative Federal Cochairman of the Appalachian Regional Commission; that the Senate proceed to the consideration of the nominees; the nominees be confirmed; the motions to reconsider be laid on the table, any statements thereon be printed at the appropriate place in the RECORD as if read, and that the President be immediately notified of the Senate's action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

Anne B. Pope, of Tennessee, to be Federal Cochairman of the Appalachian Regional Commission.

Richard J. Peltz, of Pennsylvania, to be Alternative Federal Cochairman of the Appalachian Regional Commission.

NOMINATION OF JAMES M. LOY, TO BE UNDER SECRETARY OF TRANSPORTATION FOR SECURITY

Mr. REID. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of the following nomination: James M. Loy, to be Under Secretary of Transportation for Security; that the Senate proceed to the immediate consideration of the nomination; that the nomination be confirmed; the motion to reconsider be laid on the table; that any statements thereon be printed in the RECORD as if read; that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination was considered and confirmed, as follows:

James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.

EXPRESSING THE SENSE OF CONGRESS REGARDING SECURITY, RECONCILIATION, AND PROSPERITY FOR ALL CYPRIOTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 539, S. Con. Res. 122.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 122) expressing the sense of the Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union, which will provide significant rights and obligations for all Cypriots, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution which had been reported from the Committee on Foreign Relations with an amendment and an amendment to the preamble, as follows:

(Strike the parts shown in black brackets and insert the parts shown in italic.)

S. CON. RES. 122

[Whereas the status quo on Cyprus remains unacceptable;

[Whereas a just and lasting resolution of the Cyprus problem, on the basis of United Nations Security Council resolutions, must safeguard the security and fundamental rights of all citizens of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

[Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

[Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

[Whereas membership in the European Union will guarantee each citizen of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

[Whereas membership in the European Union will bring significant benefits to both the Greek-Cypriot and Turkish-Cypriot communities, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

[Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that "a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition";

[Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus consistent with relevant United Nations Security Council resolutions and to continue to work toward the resumption of talks;

[Whereas resolution of the Cyprus problem is in the strategic interests of the United States, given the important location of Cyprus at the crossroads of Europe, Africa, and Asia; and

[Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it]

Whereas the current status quo on Cyprus remains unacceptable and the reunification of Cyprus remains a desirable foreign policy objective;

Whereas a just and lasting resolution of the Cyprus problem, in full consideration of United Nations Security Council resolutions and international treaties, must safeguard the security and fundamental rights of the population of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

Whereas membership in the European Union will guarantee each citizen of the Republic of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

Whereas membership in the European Union will bring significant benefits to both Greek-Cypriots and Turkish-Cypriots, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that "a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition . . . [i]n this the Council will take account of all relevant factors";

Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus in full consideration of relevant United Nations Security Council resolutions and international treaties;

Whereas the Greek and Turkish Cypriot leadership began direct talks on January 16, 2002, with the United Nations Special Advisor in attendance and the European Council at the Seville Conference in June 2002 called on the Greek and Turkish Cypriot leaders to intensify and expedite their talks in order to seize the unique opportunity to reach a comprehensive settlement; and

Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), [*That it is the sense of Congress that—*

[(1) the unacceptable status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicommunal federal Cyprus, on the basis of United Nations Security Council resolutions;

[(2) the accession of Cyprus to the European Union would act as a catalyst for the solution of the Cyprus problem without the latter being a precondition for accession;

[(3) membership of Cyprus to the European Union should be strongly supported;

[(4) all Cypriots be urged to support and encourage efforts to bring Cyprus into the European Union; and

[(5) the various agencies of the United States Government should pursue vigorously and as an issue of high and urgent priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.]

That it is the sense of Congress that—

(1) the current status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicommunal federal Cyprus, with full consideration of United Nations Security Council resolutions and international treaties;

(2) the direct and intensive negotiations between the Greek and Turkish Cypriot leaders, which began in January 2002, and which are continuing on a regular basis, have been most welcome and are encouraged to continue until a comprehensive settlement has been achieved;

(3) while a successful resolution of the Cyprus problem would facilitate the accession of Cyprus to the European Union, in the absence of such a resolution, the accession of Cyprus to the European Union could act as a further catalyst for the solution of the Cyprus problem without the latter being a precondition for accession and with all relevant factors being considered;

(4) membership of the Republic of Cyprus in the European Union should be strongly supported;

(5) all Cypriots be urged to support and encourage efforts to bring the Republic of Cyprus into the European Union; and

(6) the various agencies of the United States Government in support of United Nations efforts to facilitate a settlement should pursue as an issue of high priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment to the concurrent resolution be agreed to; the concurrent resolution be agreed to, as amended; the amendment to the preamble be agreed to; the preamble, as amended, be agreed to; the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment was agreed to.

The concurrent resolution (S. Con. Res. 122), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

S. CON. RES. 122

Whereas the current status quo on Cyprus remains unacceptable and the reunification of Cyprus remains a desirable foreign policy objective;

Whereas a just and lasting resolution of the Cyprus problem, in full consideration of United Nations Security Council resolutions and international treaties, must safeguard the security and fundamental rights of the population of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

Whereas membership in the European Union will guarantee each citizen of the Republic of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

Whereas membership in the European Union will bring significant benefits to both Greek-Cypriots and Turkish-Cypriots, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that "a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition . . . [i]n this the Council will take account of all relevant factors";

Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus in full consideration of relevant United Nations Security Council resolutions and international treaties;

Whereas the Greek and Turkish Cypriot leadership began direct talks on January 16, 2002, with the United Nations Special Advisor in attendance and the European Council at the Seville Conference in June 2002 called on the Greek and Turkish Cypriot leaders to intensify and expedite their talks in order to seize the unique opportunity to reach a comprehensive settlement; and

Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the current status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicommunal federal Cyprus, with full consideration of United Nations Security Council resolutions and international treaties;

(2) the direct and intensive negotiations between the Greek and Turkish Cypriot leaders, which began in January 2002, and which are continuing on a regular basis, have been most welcome and are encouraged to continue until a comprehensive settlement has been achieved;

(3) while a successful resolution of the Cyprus problem would facilitate the accession of Cyprus to the European Union, in the absence of such a resolution, the accession of Cyprus to the European Union could act as a further catalyst for the solution of the Cyprus problem without the latter being a precondition for accession and with all relevant factors being considered;

(4) membership of the Republic of Cyprus in the European Union should be strongly supported;

(5) all Cypriots be urged to support and encourage efforts to bring the Republic of Cyprus into the European Union; and

(6) the various agencies of the United States Government in support of United Nations efforts to facilitate a settlement should pursue as an issue of high priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.

VETERANS BENEFITS ACT OF 2002

Mr. REID. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 2237) to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 2237) entitled "An Act to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes", do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Veterans Benefits Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

Sec. 101. Retention of CHAMPVA for surviving spouses remarrying after age 55.
Sec. 102. Clarification of entitlement to special monthly compensation for women veterans who have service-connected loss of breast tissue.
Sec. 103. Specification of hearing loss required for compensation for hearing loss in paired organs.
Sec. 104. Assessment of acoustic trauma associated with military service from World War II to present.

TITLE II—MEMORIAL AFFAIRS

Sec. 201. Prohibition on certain additional benefits for persons committing capital crimes.

Sec. 202. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.
Sec. 203. Application of Department of Veterans Affairs benefit for Government markers for marked graves of veterans at private cemeteries to veterans dying on or after September 11, 2001.
Sec. 204. Authorization of placement of a memorial in Arlington National Cemetery honoring World War II veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

Sec. 301. Increase in aggregate annual amount available for State approving agencies for administrative expenses for fiscal years 2003 through 2007.
Sec. 302. Authority for Veterans' Mortgage Life Insurance to be carried beyond age 70.
Sec. 303. Authority to guarantee hybrid adjustable rate mortgages.
Sec. 304. Increase in amount payable as Medal of Honor special pension.
Sec. 305. Extension of protections under the Soldiers' and Sailors' Civil Relief Act of 1940 to National Guard members called to active duty under title 32, United States Code.
Sec. 306. Extension of income verification authority.
Sec. 307. Fee for loan assumption.
Sec. 308. Technical and clarifying amendments.
Sec. 309. Codification of cost-of-living adjustment provided in Public Law 107–247.

TITLE IV—JUDICIAL MATTERS

Sec. 401. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.
Sec. 402. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.
Sec. 403. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

SEC. 101. RETENTION OF CHAMPVA FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55.

(a) EXCEPTION TO TERMINATION OF BENEFITS UPON REMARRIAGE.—Paragraph (2) of section 103(d) is amended—

(1) by inserting "(A) after "(2)"; and

(2) by adding at the end the following:

"(B) The remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.".

(b) APPLICATION FOR BENEFITS.—In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of the amendments made by subsection (a) only if an application for such medical care is received by the Secretary of Veterans Affairs during the one-year period ending on the effective date specified in subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.

SEC. 102. CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE.

Section 1114(k) is amended by striking "one or both breasts (including loss by mastectomy)" and inserting "25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue".

SEC. 103. SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

Section 1160(a)(3) is amended—

(1) by striking "total deafness" the first place it appears and inserting "deafness compensable to a degree of 10 percent or more"; and

(2) by striking "total deafness" the second place it appears and inserting "deafness".

SEC. 104. ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT.

(a) ASSESSMENT BY NATIONAL ACADEMY OF SCIENCES.—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the activities specified in this section. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(b) DUTIES UNDER AGREEMENT.—Under the agreement under subsection (a), the National Academy of Sciences shall do the following:

(1) Review and assess available data on hearing loss that could reasonably be expected to have been incurred by members of the Armed Forces during the period from the beginning of World War II to the date of the enactment of this Act.

(2) Identify the different sources of acoustic trauma that members of the Armed Forces could reasonably be expected to have been exposed to during the period from the beginning of World War II to the date of the enactment of this Act

(3) Determine how much exposure to each source of acoustic trauma identified under paragraph (2) is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level.

(4) Determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(A) immediate or delayed onset;

(B) cumulative;

(C) progressive; or

(D) any combination of subparagraph (A), (B), and (C).

(5) Identify age, occupational history, and other factors which contribute to an individual's noise-induced hearing loss.

(6) Identify—

(A) the period of time at which audiometric measures used by the Armed Forces became adequate to evaluate individual hearing threshold shift; and

(B) the period of time at which hearing conservation measures to prevent individual hearing threshold shift were available to members of the Armed Forces, shown separately for each of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and, for each such service, shown separately for members exposed to different sources of acoustic trauma identified under paragraph (2).

(c) REPORT.—Not later than 180 days after the date of the entry into the agreement referred to in subsection (a), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subsection (b).

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of decisions issued by the Secretary in each of fiscal years 2000, 2001, and 2002 on claims for disability compensation for hearing loss, tinnitus, or both.

(B) Of the decisions referred to in subparagraph (A)—

(i) the number in which compensation was awarded, and the number in which compensation was denied, set forth by fiscal year; and

(ii) the total amount of disability compensation paid on such claims during each such fiscal year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department of Veterans Affairs health care facilities during fiscal years specified in subparagraph (A) for hearing-related disorders, set forth by the number of veterans per year.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

TITLE II—MEMORIAL AFFAIRS

SEC. 201. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

"(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.".

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

"(g) A flag may not be furnished under this section in the case of a person described in section 2411(b) of this title.".

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

"(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

"(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

"(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 202. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking "The prohibition" and inserting "In the case of a person described in subsection (b)(1) or (b)(2), the prohibition"; and

(2) by striking "or finding under subsection (b)" and inserting "referred to in subsection (b)(1) or (b)(2), as the case may be,".

SEC. 203. APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001.

(a) IN GENERAL.—Subsection (d) of section 502 of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 995; 38 U.S.C. 2306 note) is amended by striking "the date of the enactment of this Act" and inserting "September 11, 2001".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of such section 502.

SEC. 204. AUTHORIZATION OF PLACEMENT OF A MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE.

The Secretary of the Army is authorized to place in Arlington National Cemetery a memorial marker honoring veterans who fought in the battle in the European theater of operations during World War II known as the Battle of the Bulge.

TITLE III—OTHER MATTERS

SEC. 301. INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003 THROUGH 2007.

The first sentence of section 3674(a)(4) is amended by inserting before the period at the end the following: ", for fiscal year 2003, $14,000,000, for fiscal year 2004, $18,000,000, for fiscal year 2005, $18,000,000, for fiscal year 2006, $19,000,000, and for fiscal year 2007, $19,000,000".

SEC. 302. AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70.

Section 2106 is amended—

(1) in subsection (a), by inserting "age 69 or younger" after "any eligible veteran"; and

(2) in subsection (i), by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

SEC. 303. AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.

(a) TWO-YEAR DEMONSTRATION PROJECT TO GUARANTEE CERTAIN ADJUSTABLE RATE MORTGAGES.—Chapter 37 is amended by inserting after section 3707 the following new section:

"§3707A. Hybrid adjustable rate mortgages

"(a) The Secretary shall carry out a demonstration project under this section during fiscal years 2004 and 2005 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act in accordance with the provisions of this section with respect to hybrid adjustable rate mortgages described in subsection (b).

"(b) Adjustable rate mortgages that are guaranteed under this section shall be adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

"(1) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

"(2) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (1); and

"(3) comply in such initial adjustment, and any subsequent adjustment, with subsection (c).

"(c) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

"(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

"(2) be made by adjusting the monthly payment on an annual basis;

"(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

"(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

"(d) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

"(1) the status of the interest rate index referred to in subsection (c)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

"(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

"(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

"(4) such other factors as the Secretary finds appropriate.

"(e) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 is amended by inserting after the item relating to section 3707 the following new item:

"3707A. Hybrid adjustable rate mortgages.".

SEC. 304. INCREASE IN AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking "$600" and inserting "$1,000, as adjusted from time to time under subsection (e)".

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following new subsection:

"(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).".

(c) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—That section is further amended by adding after subsection (e), as added by subsection (b) of this section, the following new subsection:

"(f)(1) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

"(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor) in effect at the beginning of such month.".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on September 1, 2003. No payment may be made pursuant to subsection (f) of section 1562 of title 38, United States Code, as added by subsection (c) of this section, before October 1, 2003.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2003.

SEC. 305. EXTENSION OF PROTECTIONS UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking "and all" and inserting "all"; and

(B) by inserting before the period the following: ", and all members of the National Guard on service described in the following sentence"; and

(2) in the second sentence, by inserting before the period the following: ", and, in the case of a member of the National Guard, shall include service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds".

SEC. 306. EXTENSION OF INCOME VERIFICATION AUTHORITY.

Section 6103(l)(7)(D) of the Internal Revenue Code of 1986 is amended by striking "September 30, 2003" in the second sentence after clause (ix) and inserting "September 30, 2008".

SEC. 307. FEE FOR LOAN ASSUMPTION.

(a) IN GENERAL.—For the period described in subsection (b), the Secretary of Veterans Affairs shall apply section 3729(b)(2)(I) of title 38, United States Code, by substituting "1.00" for "0.50" each place it appears.

(b) PERIOD DESCRIBED.—The period referred to in subsection (a) is the period that begins on the date that is 7 days after the date of the enactment of this Act and ends on September 30, 2003.

SEC. 308. TECHNICAL AND CLARIFYING AMENDMENTS.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS FOR EDUCATION BENEFITS.—Section 3011(a)(1)(C)(ii) is amended by striking "on or".

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking "employment in a high technology industry" and inserting "employment in a high technology occupation in a high technology industry".

(2)(A) The heading for section 3014A is amended to read as follows:

"§3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry".

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

"3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.".

(c) Source of Funds for Increased Usage of Montgomery GI Bill Entitlement Under Entitlement Transfer Authority.—(1) Section 3035(b) is amended—

(A) in paragraph (1), by striking "paragraphs (2) and (3) of this subsection," and inserting "paragraphs (2), (3), and (4),"; and

(B) by adding at the end the following new paragraph:

"(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.".

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), to which such amendments relate.

(d) Licensing or Certification Tests.—Section 3689(c)(1)(B) is amended by striking "the test" and inserting "such test, or a test to certify or license in a similar or related occupation,".

(e) Period of Eligibility for Survivors' and Dependents' Assistance Education Benefits.—(1) Section 3512(a) is amended—

(A) in paragraph (3)—

(i) by striking "paragraph (4)" in the matter preceding subparagraph (A) and inserting "paragraph (4) or (5)"; and

(ii) by striking "subsection (d)" in subparagraph (C)(i) and inserting "subsection (d), or any date between the two dates described in subsection (d)";

(B) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(C) by inserting after paragraph (3) the following new paragraph (4):

"(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;"; and

(D) in paragraph (6), as so redesignated, by striking "paragraph (4)" and inserting "paragraph (5)".

(2) The amendments made by this subsection shall take effect November 1, 2000.

(f) Loan Fees.—(1) Section 3703(e)(2)(A) is amended by striking "3729(b)" and inserting "3729(b)(2)(I)".

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 402 of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106–419; 114 Stat. 1861).

(g) Additional Miscellaneous Technical Amendments to Title 38, United States Code.—(1)(A) The tables of chapters preceding part I and at the beginning of part IV are each amended by striking "5101" in the item relating to chapter 51 and inserting "5100".

(B) The table of parts preceding part I is amended by striking "5101" in the item relating to part IV and inserting "5100".

(2) Section 107(d)(2) is amended by striking "the date of the enactment of this subsection" and inserting "November 1, 2000,".

(3) Section 1701(10)(A) is amended by striking "the date of the enactment of the Veterans' Millennium Health Care and Benefits Act" and inserting "November 30, 1999,".

(4) Section 1705(c)(1) is amended by striking "Effective on October 1, 1998, the Secretary" and inserting "The Secretary".

(5) Section 1707(a) is amended by inserting "(42 U.S.C. 14401 et seq.)" before the period at the end.

(6) Section 1710(e)(1)(D) is amended by striking "the date of the enactment of this subparagraph" and inserting "November 11, 1998".

(7) Section 1729B(b) is amended by striking "the date of the enactment of this section" and inserting "November 30, 1999,".

(8) Section 1781(d) is amended—

(A) in paragraph (1)(B)(i), by striking "as of the date" and all that follows through "of 2001" and inserting "as of June 5, 2001"; and

(B) in paragraph (4), by striking "paragraph" and inserting "subsection".

(9) Section 3018C(e)(2)(B) is amended by striking the comma after "April".

(10) Section 3031(a)(3) is amended by striking "the date of the enactment of this paragraph" and inserting "December 27, 2001".

(11) Section 3485(a)(4) is amended in subparagraphs (A), (C), and (F), by striking "the five-year period beginning on the date of the enactment of the Veterans Education and Benefits Expansion Act of 2001" and inserting "the period preceding December 27, 2006".

(12) Section 3734(b)(2) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B) (C), (D), and (E), respectively.

(13) Section 7315(a) is amended by inserting "Veterans Health" in the first sentence after "in the".

(h) Public Law 107–103.—Effective as of December 27, 2001, and as if included therein as originally enacted, section 103(c) of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 979) is amended by inserting closing quotation marks at the end of the text inserted by the amendment made by paragraph (2).

(i) Public Law 102–86.—Section 403(e) of the Veterans' Benefits Programs Improvement Act of 1991 (Public Law 102–86; 105 Stat. 424) is amended by striking "section 321" and all that follows through "and 484)" and inserting "subchapter II of chapter 5 of title 40, United States Code, sections 541 through 555 and 1302 of title 40, United States Code".

SEC. 309. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 107–247.

(a) Veterans' Disability Compensation.—Section 1114 is amended—

(1) by striking "$103" in subsection (a) and inserting "$104";

(2) by striking "$199" in subsection (b) and inserting "$201";

(3) by striking "$306" in subsection (c) and inserting "$310";

(4) by striking "$439" in subsection (d) and inserting "$445";

(5) by striking "$625" in subsection (e) and inserting "$633";

(6) by striking "$790" in subsection (f) and inserting "$801";

(7) by striking "$995" in subsection (g) and inserting "$1,008";

(8) by striking "$1,155" in subsection (h) and inserting "$1,171";

(9) by striking "$1,299" in subsection (i) and inserting "$1,317";

(10) by striking "$2,163" in subsection (j) and inserting "$2,193";

(11) in subsection (k)—

(A) by striking "$80" both places it appears and inserting "$81"; and

(B) by striking "$2,691" and "$3,775" and inserting "$2,728" and "$3,827", respectively;

(12) by striking "$2,691" in subsection (l) and inserting "$2,728";

(13) by striking "$2,969" in subsection (m) and inserting "$3,010";

(14) by striking "$3,378" in subsection (n) and inserting "$3,425";

(15) by striking "$3,775" each place it appears in subsections (o) and (p) and inserting "$3,827";

(16) by striking "$1,621" and "$2,413" in subsection (r) and inserting "$1,643" and "$2,446", respectively; and

(17) by striking "$2,422" in subsection (s) and inserting "$2,455".

(b) Additional Compensation for Dependents.—Section 1115(1) is amended—

(1) by striking "$124" in subparagraph (A) and inserting "$125";

(2) by striking "$213" in subparagraph (B) and inserting "$215";

(3) by striking "$84" in subparagraph (C) and inserting "$85";

(4) by striking "$100" in subparagraph (D) and inserting "$101";

(5) by striking "$234" in subparagraph (E) and inserting "$237"; and

(6) by striking "$196" in subparagraph (F) and inserting "$198".

(c) Clothing Allowance for Certain Disabled Veterans.—Section 1162 is amended by striking "$580" and inserting "$588".

(d) Dependency and Indemnity Compensation for Surviving Spouses.—(1) Section 1311(a) is amended—

(A) by striking "$935" in paragraph (1) and inserting "$948"; and

(B) by striking "$202" in paragraph (2) and inserting "$204".

(2) The table in section 1311(a)(3) is amended to read as follows:

"Pay grade	Monthly rate	Pay grade	Monthly rate
E–1	$948	W–4	$1,134
E–2	948	O–1	1,001
E–3	948	O–2	1,035
E–4	948	O–3	1,107
E–5	948	O–4	1,171
E–6	948	O–5	1,289
E–7	980	O–6	1,453
E–8	1,035	O–7	1,570
E–9	[1]1,080	O–8	1,722
W–1	1,001	O–9	1,843
W–2	1,042	O–10	[2]2,021
W–3	1,072		

"[1] If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,165.

"[2] If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,168.".

(3) Section 1311(b) is amended by striking "$234" and inserting "$237".

(4) Section 1311(c) is amended by striking "$234" and inserting "$237".

(5) Section 1311(d) is amended by striking "$112" and inserting "$113".

(e) Dependency and Indemnity Compensation for Children.—(1) Section 1313(a) is amended—

(A) by striking "$397" in paragraph (1) and inserting "$402";

(B) by striking "$571" in paragraph (2) and inserting "$578";

(C) by striking "$742" in paragraph (3) and inserting "$752"; and

(D) by striking "$742" and "$143" in paragraph (4) and inserting "$752" and "$145", respectively.

(2) Section 1314 is amended—

(A) by striking "$234" in subsection (a) and inserting "$237";

(B) by striking "$397" in subsection (b) and inserting "$402"; and

(C) by striking "$199" in subsection (c) and inserting "$201".

TITLE IV—JUDICIAL MATTERS

SEC. 401. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended—

(1) by inserting "adverse to the claimant" after "material fact"; and

(2) by inserting "or reverse" after "and set aside".

(b) REQUIREMENTS FOR REVIEW.—Subsection (b) of that section is amended to read as follows:

"(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

"(1) take due account of the Secretary's application of section 5107(b) of this title; and

"(2) take due account of the rule of prejudicial error.".

(c) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.

SEC. 402. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—Section 7292(a) is amended by inserting "a decision of the Court on a rule of law or of" in the first sentence after "the validity of".

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 403. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

Amend the title so as to read "An Act to amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes.".

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the amendment of the House, and that a statement of Senator ROCKEFELLER be printed in the RECORD as if read.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I urge the Senate to pass S. 2237, the proposed "Veterans Benefits Act of 2002."

Mr. President, the pending measure is the final compromise version of an omnibus bill that would improve a variety of veterans benefits, from pensions for heroes awarded the Medal of Honor to fairness in evaluating the disabilities of veterans with hearing loss. I will briefly highlight some of the provisions of which I am most proud, and refer my colleagues seeking more detail to the Joint Explanatory Statement accompanying this statement.

S. 2237, which I will refer to as the "Compromise Agreement," would eliminate many inequities and obstacles that affect veterans and their families. I thank Ranking Member ARLEN SPECTER and his staff for their efforts on behalf of our Nation's veterans, and my colleagues in the House for working with our Committee staff to craft this agreement.

I would also like to take this moment to note the loss of a dear colleague, a dedicated advocate for veterans. Many have eulogized Senator Paul Wellstone in the past few weeks, and I do not need to tell my colleagues of his passion, his energy, and his unwavering commitment to shout on behalf of those who cannot speak for themselves. However, few have noted his work on behalf of America's veterans, particularly those most neglected by a Nation that has not always kept its promises. Senator Wellstone worked on behalf of homeless veterans, veterans suffering from the mental illnesses that can be the silent legacy of the battlefield, and for those who returned from war to fight their own government's denials about the invisible wounds caused by chemicals and radiation. Paul Wellstone may have launched his political career in protest of the Vietnam War, but as a Senator, he chose to fight for those who served. It is up to all of us now to carry on his work.

As veterans and their families—like the rest of Americans expect to enjoy—lengthening life spans, we must regularly review and update laws crafted in earlier times. Last year, I proudly authored legislation to allow survivors of severely disabled veterans to continue receiving VA healthcare coverage through the program called CHAMPVA after age 65. Section 101 of the Compromise Agreement would take this further, allowing the eligible surviving spouses of veterans who died from service-connected disabilities or in the line of duty to retain their eligibility for CHAMPVA benefits even if they remarry after age 55. Those who sacrificed so much for their Nation throughout their lives should not be further penalized by losing the special healthcare safety net that CHAMPVA offers.

Mr. President, Congress last year authorized VA to offer special monthly compensation to women who had lost one or both breasts as a result of military service. VA's subsequently promulgated regulations limited eligibility for this benefit to women who had undergone simple or radical mastectomy. Even if this restriction plays no role in a woman's medical decisions, it implies unfairly that tissue-sparing treatments create no physical, emotional, or financial obstacles to a woman's health. Section 102 of the Compromise Agreement would extend this eligibility to women veterans who have endured service-connected loss of 25 percent or more of a breast's tissue, or radiation treatment to a breast. As women comprise a growing percentage of our Armed Services, we must ensure that they receive fair recognition for their sacrifices, and equitable assistance in overcoming the medical challenges that they face.

I am enormously proud that the Compromise Agreement would help veterans who have both service-connected and unrelated hearing loss expect a fair disability rating. Currently, VA can consider whether a veteran has bilateral damage to "paired" organs or extremities—such as kidneys, lungs, feet, or hands—when rating the veteran's disability, even if only one of the paired organs was injured through military service. However, VA can only consider how non-service-connected hearing loss might further disable a veteran if he or she suffers total deafness in both ears. Section 103 of the Compromise Agreement would allow VA to consider whether a veteran suffers from partial non-service-connected hearing loss in one ear when evaluating disability caused by compensable service-connected hearing loss in the other ear. This would not only extend the same special consideration to damage to the ears that VA gives to other paired organs, but would assist veterans whose hearing loss has been made even worse due to military service.

This provision represents an important step for veterans with hearing loss, but other challenges remain. America's aging veterans suffer increasingly from hearing loss and tinnitus, and the number of disability claims for hearing disorders submitted to VA continues to climb. Many veterans who left service decades ago received an ineffective hearing examination at separation, or no evaluation at all, leaving VA with a legacy of incomplete records and uncertain clinical evidence. This affects not only veterans with hearing loss, but all veterans who must wait for VA to process a staggering burden of hearing loss claims without a clear scientific standard on past exposures.

Section 104 of the Compromise Agreement would require VA to contract with the National Academy of Sciences to review evidence on hearing damage suffered during military service from World War II to the present. As part of this study, scientists would determine when the audiometric testing and hearing conservation programs initiated by the military services became adequate for VA to assess whether an individual veteran had hearing loss at or prior to separation. The Compromise Agreement would also require VA to review its own records on hearing loss or tinnitus in veterans, including the cost of adjudicating these claims under the current system and the cost of treating hearing disorders. These reports together should provide VA's Secretary with critical tools to decide how to assist veterans whose hearing loss may have resulted from damage suffered years ago quickly and fairly.

Mr. President, Section 304 of the Compromise Agreement would increase the special pension granted to recipients of the Medal of Honor as a token of recognition for their extraordinary heroism from $600 to $1000, and adjust this pension annually with inflation. The agreement would also provide a one-time payment to Medal of Honor recipients who—due to a time lag between the date of the act of valor and the actual awarding of the Medal of Honor—received this pension only after a delay.

The next section of the Compromise Agreement grew from legislation introduced by Senator Paul Wellstone, another example of his advocacy on behalf of those who serve this Nation. The Soldiers' and Sailors' Relief Act of 1940 (SSCRA) applies to servicemembers, including National Guard Members, who serve on active duty under title 10 of the United States code. It suspends enforcement of certain civil liabilities against servicemembers on active duty so that they can devote their concentration to their duties.

National Guard members may also be called to active duty by their State Governors under title 32. National Guard missions under title 32 are funded by the federal government "to perform training and other duty." However, if the National Guard members are called up under title 32, rather than title 10, they are not entitled to SSCRA protections.

In the days following September 11, 2001, under the direction of the President, the Federal Aviation Administration and the Secretary of Defense coordinated the use of National Guard members at commercial airports. These National Guard members, called to active duty from four to six months, clearly served a national mission. However, because they were called up under title 32, they were not entitled to SSCRA protections.

Section 305 of the Compromise Agreement would extend SSCRA protections to include National Guard members called to active service for more than 30 consecutive days in response to a national emergency declared by the President, even if they serve under title 32. This provision is intended to protect members of the National Guard when called up under circumstances similar to those following last September's terrorist attacks.

Mr. President, it is time to amend the Soldiers' and Sailors' Relief Act of 1940 to reflect the critical role that National Guard members now play in protecting this Nation. These National Guard members have increasingly been called onto active duty since September 11th. Like all active duty servicemembers, National Guard members deserve these rights and legal protections to allow them to concentrate on national defense. Paul Wellstone recognized this, and took steps to make sure that those who don the uniform to protect our freedoms—at home or abroad—have earned our protection.

The Compromise Agreement would also ensure that veterans receive a full judicial review when appealing claims denied by VA. The "benefit of the doubt" rule, the standard applicable to proceedings before VA, states that a veteran's claim is granted unless the preponderance of the evidence is against the claimant. This rule, unique in administrative law, recognizes the tremendous sacrifices made by the men and women who have served in our Armed Forces. A number of veterans service organizations have expressed concern that the current appellate process is overly deferential to VA findings of fact that are adverse to veteran claimants. Specifically, these groups argue that the "clearly erroneous" standard applied by the U.S. Court of Appeals for Veterans Claims (CAVC) when reviewing Board of Veterans' Appeals (BVA) cases results in veterans' claims receiving only cursory review on appeal, not allowing for full application of the "benefit of the doubt" rule.

Section 401 of the Compromise Agreement would maintain the current "clearly erroneous" standard of review, but modify the requirements of the review the court must perform when making determinations under section 7261(a) of title 38. CAVC would be specifically required to examine the record of proceedings—that is, the record on appeal—before the Secretary and BVA. Section 401 would also provide special emphasis during the judicial process to the "benefit of the doubt" provisions of section 5107(b) as CAVC makes findings of fact in reviewing BVA decisions. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the "benefit of doubt" provision. The addition of the words "or reverse" after "and set aside" in section 7261(a)(4) is intended to emphasize that CAVC should reverse clearly erroneous findings when appropriate, rather than remand the case. This new language in section 7261 would overrule the recent U.S. Court of Appeals for the Federal Circuit decision of Hensley v. West, which emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding "is entitled on review to substantial deference." However, nothing in this new language is inconsistent with the existing section 7261(c), which precludes the court from conducting trial de novo when reviewing BVA decisions, that is, receiving evidence that is not part of the record before BVA.

Section 402 of the Compromise Agreement would also expand the Federal Circuit's authority to review CAVC decisions based on rules of law that are not derived from a specific statute or regulation. This change would allow the Federal Circuit to review comprehensively any CAVC decisions of law that adversely affect appellate reviews of veterans' claims.

Currently, attorneys and non-attorney practitioners supervised by attorneys who represent certain claimants may receive compensation for their services under the Equal Access to Justice Act. Section 403 of the Compromise Agreement would allow non-attorney practitioners admitted to practice before the CAVC, such as veterans service organization representatives, to be awarded fees under this act without the signature of a supervising attorney. This would make organizations that provide invaluable assistance to veterans eligible for richly deserved compensation.

The Joint Explanatory Statement contains language responding to the Executive Branch's interpretation that the CAVC is part of the Executive Branch, and subject to rescissions of budget pursuant to section 1403 of Public Law 107-206. I wish to reiterate that it is the Committees' intent to clarify that the CAVC is not part of the Executive Branch. The Committees have previously stated as much, finding in reports in both the House and Senate that the "Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch." It is my hope that the Committees will not have to address this issue again through legislation or other means.

Mr. President, in conclusion, I want to thank Senator SPECTER and his benefits staff—Bill Tuerk, Jon Towers, David Goetz, and Chris McNamee—for diligently working with me and my benefits staff—Mary Schoelen, Julie Fischer, Chris Reinard, and Dahlia Melendrez—to craft this legislation during such an incredible year. I urge my colleagues to support this bipartisan commitment to our Nation's veterans, and to send a strong message of support to the men and women who now serve in uniform by caring for those who served before.

I ask unanimous consent that the joint explanatory statement be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

EXPLANATORY STATEMENT ON HOUSE AMENDMENT TO SENATE BILL, S. 2237

S. 2237, as amended, the "Veterans Benefits Act of 2002," reflects a Compromise Agreement the Senate and House Committees on Veterans' Affairs have reached on the following bills considered in the House and Senate during the 107th Congress: S. 2237 ("Senate Bill"), H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, and H.R. 5055 ("House Bills"). S. 2237, as amended, passed the Senate on September 26, 2002; H.R. 2561 and H.R. 3423, as amended, passed the House on December 20, 2001; H.R. 4085, as amended, passed the House on May 21, 2002; and H.R. 4940, as amended, and H.R. 5055 passed the House on July 22, 2002.

The Senate and House Committees on Veterans' Affairs have prepared the following explanation of S. 2237, as amended, ("Compromise Agreement"). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2237, H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, H.R. 5055, are noted in this document, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

RETENTION OF CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55

Current law

Section 103(d) of title 38, United States Code, prohibits a surviving spouse who has remarried from receiving dependency and indemnity compensation ("DIC"), VA health insurance under the Civilian Health and Medical Program of the Department of Veterans Affairs ("CHAMPVA"), home loan, and education benefits. These benefits may be reinstated in the event the subsequent remarriage is terminated.

House bill

Section 3 of H.R. 4085 would allow a surviving spouse who remarries after attaining age 65 to retain DIC, CHAMPVA health insurance, home loan, and education benefits. Spouses who remarried at age 65 or older prior to enactment of the bill would have one year from the date of enactment to apply for reinstatement of DIC and related benefits. The amount of DIC would be paid with no reduction of certain other benefits to which the surviving spouse might be entitled.

SENATE BILL

The Senate Bill contains no comparable provision.

Compromise agreement

Section 101 of the Compromise Agreement would provide that a surviving spouse, upon remarriage after attaining age 55, would retain CHAMPVA eligibility. Surviving spouses who remarried after attaining age 55 but prior to enactment of this Act would have one year to apply for reinstatement of this benefit. The Committees expect the Secretary will maintain data concerning the number of surviving spouses who become eligible or retain eligibility under this provision.

The Committees intend in the 108th Congress to consider full restoration of benefits for surviving spouses who remarry after attaining age 55.

CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE

Current law

Section 1114(k) of title 38, United States Code, authorizes the Department of Veterans Affairs ("VA") to provide special monthly compensation to any woman veteran who "has suffered the anatomical loss of one or both breasts (including loss by mastectomy)" as a result of military service. Regulations published at section 4.116 of title 38, Code of Federal Regulations, have limited this compensation to "Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined under this section, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not."

Senate bill

Section 101 of S. 2237 would amend section 1114(k) of title 38, United States Code, to specify that women veterans who have suffered the anatomical loss of half of the tissue of one or both breasts in or as a result of military service may be eligible for special monthly compensation.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 102 of the Compromise Agreement follows the Senate language, and would amend it to extend eligibility to women veterans who have suffered the anatomical loss of 25 percent or more of tissue from one or both breasts (including loss by mastectomy or partial mastectomy) or who received radiation treatment of breast tissue. The Committees intend that this change should extend eligibility for special monthly compensation to women veterans whose medical treatments (other than "cosmetic surgery") or injuries have resulted in a significant change in size, form, function, or appearance of one or both breasts.

SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS

Current law

Under section 1160 of title 38, United States Code, special consideration is extended to a veteran's service-connected disabilities in "paired organs or extremities," such as kidneys, lungs, feet, or hands. For these paired organs or extremities, VA is authorized when rating disability to consider any degree of damage to both organs, even if only one resulted from military service. Total impairment is not a requirement for kidneys, hands, feet, or lungs. Proportional impairment, such as "the loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of non-service-connected disability," is specifically provided for in subsections (2), (4), and (5) of section 1160(a) of title 38, United States Code. However, total deafness in both ears is required under section 1160(a)(3) of title 38, United States Code, for special consideration of hearing loss.

Senate bill

Section 102 of S. 2237 would eliminate the word "total" from section 1160(a)(3) of title 38, United States Code, and allow VA to consider partial non-service-connected hearing loss in one ear when rating disability for veterans with compensable service-connected hearing loss in the other ear.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 103 of the Compromise Agreement follows the Senate language.

ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT

Current law

There is no applicable current law.

Senate bill

Section 103(a) of S. 2237 would authorize the Secretary to establish a presumption of service connection for hearing loss or tinnitus in veterans who served in certain military occupational specialties during specific periods of time if VA finds that evidence warrants such a presumption. Section 103(b) would extend presumption rebuttal provisions in title 38, United States Code, to cover service-connected hearing loss, should such a presumption be established.

Section 103(c) of the Senate Bill would require VA to enter into a contract with the National Academy of Sciences ("NAS") or an equivalent scientific organization to review scientific evidence on forms of acoustic trauma that could contribute to hearing disorders for personnel serving in specific military occupational specialties. Section 103(c)(2)(B) of the Senate Bill would direct NAS to identify forms of acoustic trauma likely to cause hearing damage in servicemembers, and, in section 103(c)(2)(C), to determine whether such damage would be immediate, cumulative, or delayed. Section 103(c)(2)(D) of the Senate Bill would require NAS to assess when audiometric data collected by the military services became adequate to allow an objective assessment of individual exposure by VA, examining a representative sample of records from World War II to present by period of service. Section 103(c)(2)(E) of the Senate Bill would require NAS to identify military occupational specialties in which servicemembers are likely to be exposed to sufficient acoustic trauma to cause hearing disorders.

Section 103(d) of S. 2237 would require VA to report on medical care provided to veterans for hearing disorders from fiscal years 1999–2001; on the number of disability compensation claims received and granted for hearing loss, tinnitus, or both during those years; and an estimate of the total cost to VA of adjudicating those claims in full-time employee equivalents.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 104 of the Compromise Agreement would strike sections 103(a) and 103(b) of the Senate Bill authorizing a presumption of service connection. The Compromise Agreement follows the Senate language requiring VA to enter into a contract with NAS, but would change the focus of the study to assessment of acoustic trauma associated with military service from World War II to present.

The Compromise Agreement would strike sections 103(c)(2)(B), 103(c)(2)(D), 103(c)(2)(E), and all references to military occupational specialties. The Compromise Agreement follows the Senate language requiring NAS to determine how much exposure to acoustic trauma or noise damage during military service might cause or contribute to hearing loss, hearing threshold shift, or tinnitus, and whether this damage may be immediate- or delayed-onset, cumulative, progressive, or a combination of these.

The Compromise Agreement would preserve provisions requiring NAS to assess when audiometric measures became adequate to assess individual hearing threshold shift reliably and when sufficiently protective hearing conservation measures became available. It would also add a third provision requiring NAS to identify age, occupational history, and other factors which could contribute to an individual's noise-induced hearing loss.

In assessing when audiometric data collected by the military became adequate for VA to evaluate if a veteran's hearing threshold shift could be detected at or prior to separation, the Committees intend for NAS to review and report on a representative sample of individual records. This should reflect not only an appropriate distribution of individuals among the various Armed Forces, but within each military service branch so that these records represent servicemembers who might reasonably be expected to have different levels of noise exposure in the course of their duties. The representative sample should also include records of servicemembers discharged during or after distinct periods of war or conflict and consider the environment in which they served in order to gauge how adequately each branch collected audiometric data following World War II, the Korean conflict, the Vietnam era, and during and following the Persian Gulf War.

The Compromise Agreement would generally follow the Senate language requiring VA to report on hearing loss claims and medical treatment for hearing disorders. The Compromise Agreement would amend this language to refer to the number of decisions issued and their results, rather than claims submitted in fiscal years 2000 through 2002, and would remove references to military occupational specialties.

TITLE II—MEMORIAL AFFAIRS

PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES

Current law

Sections 2411 and 2408(d) of title 38, United States Code, prohibit persons who are convicted of capital crimes from interment or memorialization in National Cemetery Administration cemeteries, Arlington National Cemetery ("ANC"), or a State cemetery that receives VA grant funding. Section 5313 of title 38, United States Code, further limits VA benefits available to veterans who die while fleeing prosecution or after being convicted of a capital crime.

Senate bill

Section 402 of S. 2237 would prohibit the issuance of Presidential Memorial Certificates, flags, and memorial headstones or grave markers to veterans convicted of or fleeing from prosecution for a State or Federal capital crime.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 201 of the Compromise Agreement follows the Senate language.

PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES

Current Law

Section 2411 of title 38, United States Code, prohibits interment or memorialization in National Cemetery Administration cemeteries or in Arlington National Cemetery ("ANC") of any person convicted of a capital crime. This section further prohibits interment or memorialization of persons found by the Secretary of Veterans Affairs or the Secretary of the Army to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution. In such cases, the Secretary of Veterans Affairs or the Secretary of the Army must receive notice from the Attorney General of the United States, or the appropriate State official, of the Secretary's own finding before the prohibition shall apply.

Senate bill

Section 403 of S. 2237 would eliminate the requirement that the Secretary of Veterans Affairs or the Secretary of the Army be notified of a finding by the Attorney General or the appropriate State official in cases of persons who are found to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 202 of the Compromise Agreement follows the Senate language.

APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001

Current law

Section 2306(d)(1) provides that the Secretary shall furnish a government marker to those families who request one for the marked grave of a veteran buried at a private cemetery, who died on or after December 27, 2001.

House bill

Section 6 of H.R. 4940 would make section 2306(d)(1) retroactive to veterans who died on or after September 11, 2001.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 203 of the Compromise Agreement follows the House language.

AUTHORIZATION OF PLACEMENT OF MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE

Current law

Section 2409 of title 38, United States Code, authorizes the Secretary of Army to erect appropriate memorials or markers in Arlington National Cemetery to honor the memory of members of the Armed Forces.

House bill

H.R. 5055 would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge during World War II. The Secretary of the Army would have exclusive authority to approve an appropriate design and site within ANC for the memorial.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 204 of the Compromise Agreement would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003, 2004, 2005, 2006, AND 2007

Current law

Section 3674(a)(4) of title 38, United States Code, funds State approving agencies. From fiscal years 1995 to 2000, State approving agency ("SAA") funding was capped, with no annual increase, at $13 million. Public Law 106-419 increased SAA funding to $14 million for fiscal years 2001 and 2002. Under current law, the authorization amount was reduced to $13 million as of October 1, 2002. SAAs are the agencies that determine which schools, courses, and training programs qualify as eligible for veterans seeking to use their GI Bill benefits.

Senate bill

Section 201 of S. 2237 would restore SAA funding to $14 million per year and would increase it to $18 million per year during fiscal years 2003, 2004, and 2005.

House bill

Section 6 of H.R. 4085 contains an identical provision.

Compromise agreement

Section 301 of the Compromise Agreement would restore SAA funding at $14 million for fiscal year 2003, $18 million for fiscal year 2004, $18 million for fiscal year 2005, $19 million for fiscal year 2006, and $19 million for fiscal year 2007.

AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70

Current law

Section 2106(i)(2) of title 38, United States Code, provides that Veterans' Mortgage Life Insurance ("VMLI") shall be terminated on the veteran's seventieth birthday. VMLI is designed to provide financial protection to cover eligible veterans' home mortgages in the event of death. VMLI is issued only to those severely disabled veterans who have received grants for Specially Adapted Housing from the Department of Veterans Affairs.

House bill

Section 5(b) of H.R. 4085 would permit veterans eligible for specially-adapted housing grants to continue their VMLI coverage beyond age 70. No new policies would be issued after age 70.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 302 of the Compromise Agreement follows the House language.

AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES

Current law

There is no authorization in current law for VA to guarantee adjustable rate mortgages ("ARMs") and hybrid adjustable rate mortgages ("hybrid ARMs"). A hybrid ARM combines features of fixed rate mortgages and adjustable rate mortgages. A hybrid ARM has a fixed rate of interest for at least the first 3 years of the loan, with an annual interest rate adjustment after the fixed rate has expired.

Senate bill

Section 301 of S. 2237 would authorize VA to establish a three-year pilot program to guarantee hybrid ARMs and reauthorize a fiscal year–1993 to 1995 pilot program to guarantee conventional ARMs. This authority would begin in fiscal year 2003 and expire at the end of fiscal year 2005.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 303 of the Compromise Agreement would authorize VA to guarantee hybrid ARMs for a period of two years. The effective date of this provision would be October 1, 2003.

INCREASE IN THE AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION

Current law

Section 1562 of title 38, United States Code, provides a special pension of $600 per month to recipients of the Medal of Honor. Eligibility to receive the Medal of Honor special pension is contingent upon having first been awarded the Medal of Honor.

Senate bill

Section 104 of S. 2237 would increase the Medal of Honor special pension from $600 to $1,000 per month. Beginning in January 2003, the pension amount would be adjusted annually to maintain the value of the pension in the face of the rising cost of living. The amount of this adjustment would match the percentage of the cost-of-living adjustment paid to Social Security recipients. The Senate Bill would also provide for a one-time, lump-sum payment in the amount of special pension the recipient would have received between the date of the act of valor and the date that the recipient's pension actually commenced.

House bill

H.R. 2561 would increase the special pension payable to Medal of Honor recipients from $600 to $1,000 per month, and provide a lump sum payment for existing Medal of Honor recipients in an amount equal to the total amount of special pension that the person would have received had the person received special pension during the period beginning the first day of the month that began after the act giving rise to the receipt of the Medal of Honor, and ending with the last day of the month preceding the month that such person's special compensation commenced. H.R. 2561 also would provide criminal penalties for the unauthorized purchase or possession of the Medal and for making a false representation as a Medal recipient.

Compromise agreement

Section 304 of the Compromise Agreement follows the Senate language, but would modify the effective date of the provision to September 1, 2003. It is the Committee's understanding that the first month a Medal of Honor recipient would receive special pension is October 2003.

It is the Committees' intent that the lump sum payment of special pension be determined using the rates of special pension and the laws of eligibility in effect (including applicable age requirements) for months beginning after an individual's act of gallantry. Excluded from this rule would be the law of eligibility requiring an individual to have been awarded a Medal of Honor.

EXTENSION OF PROTECTIONS UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE

Current law

The Soldiers' and Sailors' Civil Relief Act of 1940 ("SSCRA"), sections 510 et seq., of title 50, United States Code Appendix, suspends enforcement of certain civil liabilities and provides certain rights and legal protections to servicemembers who have been called up to active duty under title 10, United States Code. However, these protections do not extend to National Guard members called to duty under section 502(f) of title 32, United States Code, "to perform training or other duty." Certain homeland security duties performed under title 32, United States Code, such as protecting the nation's airports, have been carried out at the request and expense of the Federal government with National Guard members under the command of their state governors.

Senate bill

Section 401 of S. 2237 would expand SSCRA protections to include those National Guard members serving full-time, upon an order of the Governor of a State at the request of the head of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, under 502(f) of title 32, United States Code for homeland security purposes.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 305 of the Compromise Agreement would provide that when members of the National Guard are called to active service for more than 30 consecutive days under section 502(f) of title 32, United States Code, to respond to a national emergency declared by the President, coverage under the provisions of the SSCRA would be available. The Committees note that this provision is intended to extend protections of the SSCRA to members of the National Guard when called to duty under circumstances similar to those following the terrorist attacks of September 11, 2001.

EXTENSION OF INCOME VERIFICATION AUTHORITY

Current law

Section 6103(l)(7)(D) of the Internal Revenue Code gives the Internal Revenue Service ("IRS") authority to furnish income information to the VA from IRS records so that VA might determine eligibility for VA need-based pension, parents dependency and indemnity compensation, and priority for VA health-care services. This provision currently expires on September 30, 2003, pursuant to Public Law 105–33.

Section 5317 of title 38, United States Code, provides parallel authority for VA to use IRS information and requires VA to notify applicants for needs-based benefits that income information furnished by the applicant may be compared with the information obtained from the Departments of Health and Human Services and Treasury under section 6103(l)(7)(D). This parallel authority is scheduled to expire on September 30, 2008, pursuant to Public Law 106–409.

Senate bill

Section 106(a) of S. 2237 would extend section 6103(l)(7)(D) of the Internal Revenue Code through September 30, 2011. Section 106(b) would extend section 5317 of title 38, United States Code, through September 30, 2011.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 306 of the Compromise Agreement would extend section 6103(l)(7)(D) of the Internal Revenue Code through September 30, 2008.

FEE FOR LOAN ASSUMPTION

Current law

Section 3729(b)(2)(I) of title 38, United States Code, requires a 0.50 percent loan fee for active-duty servicemembers, veterans, Reservists, and others participating in loan assumptions under section 3714.

Senate bill

The Senate Bill contains no comparable language.

House bill

The House Bills contain no comparable language.

Compromise agreement

Section 307 of the Compromise Agreement would increase the loan fee for assumptions for loans closed more than 7 days after enactment in fiscal year 2003 from 0.50 percent to 1.0 percent. The Committees intend this fee increase to expire at the end of fiscal year 2003.

TITLE IV—JUDICIAL MATTERS

The U.S Court of Appeals for Veterans Claims ("CAVC") is an Article I Court of limited jurisdiction. It has come to the Committees' attention that the Administration has disregarded Congressional intent in interpreting the CAVC to be part of the Executive Branch and subject to rescissions of Executive Branch agency budgets, pursuant to section 1403 of Public Law 107–206. The Committees note that while the budget for the Court is included in the President's budget, the Executive Branch has no authority to review it. Public Law 100–687, section 4082(a). It is the Committees' intent to clarify that the CAVC is not part of the Executive Branch. The Committees have so stated on other occasions, e.g., "The Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch." House of Representatives Report 107–156, July 24, 2001, and Senate Report 107–86, October 15, 2001.

STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS

Current law

Under section 7261(a)(4) of title 38, United States Code, the Court of Appeals for Veterans Claims applies a "clearly erroneous" standard of review to findings of fact made by the Board of Veterans' Appeals ("BVA"). The "clearly erroneous" standard has been defined as requiring CAVC to uphold BVA findings of fact if the findings are supported by "a plausible basis in the record . . . even if [CAVC] might not have reached the same factual determinations." Wensch v. Principi, 15 Vet. App. 362, 366–68 (2001). The recent U.S. Court of Appeals for the Federal Circuit decision of Hensley v. West, 212 F.3d 1255 (Fed. Cir. 2000) emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding "is entitled on review to substantial deference." Id. at 1263.

Section 5107(b) of title 38, United States Code, provides that VA must find for the claimant when, in considering the evidence of record, there is an approximate balance of positive and negative evidence regarding any material issue including the ultimate merits of the claim. This "benefit of the doubt" standard applicable to proceedings before VA is unique in administrative law. Under the benefit of the doubt rule, unless the preponderance of the evidence is against the claimant, the claim is granted. Gilbert v. Derwinski, 1 Vet. App. 49 (1990) and Forshey v. Principi, 284 F.3d 1335 (Fed. Cir. 2002).

Senate bill

Section 501 of S. 2237 would amend section 7261(a)(4) of title 38 to change the standard of review CAVC applies to BVA findings of fact from "clearly erroneous" to "unsupported by substantial evidence." Section 502 would also cross-reference section 5107(b) in order to emphasize that the Secretary's application of the "benefit of the doubt" to an appellant's claim would be considered by CAVC on appeal.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 401 of the Compromise Agreement follows the Senate language with the following amendments.

The Compromise Agreement would modify the standard of review in the Senate bill in subsection (a) by deleting the change to a "substantial evidence" standard. It would modify the requirements of the review the Court must perform when it is making determinations under section 7261(a) of title 38, United States Code. Since the Secretary is precluded from seeking judicial review of decisions of the Board of Veterans Appeals, the addition of the words "adverse to the claimant" in subsection (a) is intended to clarify that findings of fact favorable to the claimant may not be reviewed by the Court. Further, the addition of the words "or reverse" after "and set aside" is intended to emphasize that the Committees expect the Court to reverse clearly erroneous findings when appropriate, rather than remand the case.

New subsection (b) would maintain language from the Senate bill that would require the Court to examine the record of proceedings before the Secretary and BVA and the special emphasis during the judicial process on the benefit of the doubt provisions of section 5107 (b) as it makes findings of fact in reviewing BVA decisions. This would not alter the formula of the standard of review on the Court, with the uncertainty of interpretation of its application that would accompany such a change. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the "benefit of doubt" provision.

The Compromise Agreement would also modify the effective date of this provision to apply to cases that have not been decided prior to the enactment of this Act. This provision would not apply to cases in which a decision has been made, but are not final because the time to request panel review or to appeal to the U.S. Court of Appeals for the Federal Circuit ("Federal Circuit") has not expired.

REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW

Current law

Under section 7292(a) of title 38, United States Code, the Federal Circuit may only review CAVC decisions involving questions of law "with respect to the validity of any statute or regulation." It does not explicitly have the authority to hear appeals of CAVC decisions that are not clearly legal interpretations of statutes or regulations.

Senate bill

Section 502 of S. 2237 would amend sections 7292(a) and (c) of title 38, United States Code, to specifically provide for appellate review of a CAVC decision on any rule of law.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 402 of the Compromise Agreement follows the Senate language.

AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT TO NON-ATTORNEY PRACTITIONERS

Current law

Currently, section 2412(d) of title 28, United States Code, the Equal Access to Justice Act ("EAJA"), shifts the burden of attorney fees from the citizen to the government in cases where the government's litigation position is not substantially justified and the citizen qualifies under certain income and asset criteria. Qualified non-attorneys admitted to practice before the CAVC may only receive fees if the EAJA application is signed by an attorney.

Senate bill

Section 503 of S. 2237 would allow qualified non-attorneys admitted to practice before the CAVC to be awarded fees under EAJA for representation provided to VA claimants without the requirement that an attorney sign the EAJA application.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 403 of the Compromise Agreement follows the Senate language.

The Committees expect that in determining the amount of reasonable fees payable to non-attorney practitioners, the Court will apply the usual rules applicable to fees for the work of other non-attorneys such as paralegals and law students based upon prevailing market rates for the kind and quality of the services furnished. 28 U.S.C. 2412 (d) (2)(A). *See, Sandoval* v. *Brown*, 9 Vet. App. 177, 181 (1996).

LEGISLATIVE PROVISIONS NOT ADOPTED

ARLINGTON NATIONAL CEMETERY

Current law

Eligibility for burial at Arlington National Cemetery is governed by federal regulations at section 553.15 of title 32, Code of Federal Regulations. The following categories of persons are eligible for in-ground burial: active duty members of the Armed Forces, except those members serving on active duty for training; retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive retirement pay; former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty and would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation; honorably discharged members of the Armed Forces awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who served honorably and who died on or after November 30, 1993; provided they were honorably discharged from the Armed Forces, elected federal officials (the President, Vice President, and Members of Congress), federal cabinet secretaries and deputies, agency directors and certain other high federal officials (level I and II executives), Supreme Court Justices, and chiefs of certain diplomatic missions; the spouse, widow or widower, minor child (under 21 years of age) and, at the discretion of the Secretary of the Army, certain unmarried adult children, and certain surviving spouses.

House bill

H.R. 4940 would codify eligibility criteria for in-ground burial at Arlington National Cemetery: members of the Armed Forces who die on active duty; retired members of the Armed Forces, including reservists who served on active duty; members or former members of a reserve component who, but for age, would have been eligible for retired pay; members of a reserve component who die in the performance of duty while on active duty training or inactive duty training; former members of the Armed Forces who have been awarded the Medal of Honor, Distinguished Service Cross (Air Force Cross or Navy Cross), Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who die on or after November 30, 1993; the President or any former President; members of the Guard or Reserves who served on active duty, who are eligible for retirement, but who have not yet retired; the spouse, surviving spouse, minor child and at the discretion of the Superintendent of Arlington, certain unmarried adult children. Veterans who do not meet these requirements might qualify for the placement of their cremated remains in Arlington's columbarium.

H.R. 4940 would also provide the President the authority to grant a waiver for burial at Arlington in the case of an individual not otherwise eligible for burial under the criteria outlined above but whose acts, service, or contributions to the Armed Forces were so extraordinary as to justify burial at Arlington. The President would be allowed to delegate the waiver authority only to the Secretary of the Army.

H.R. 4940 would codify existing regulatory eligibility for interment of cremated remains in the columbarium at Arlington (generally, this includes all veterans with honorable service and their dependents), clarify that only memorials honoring military service may be placed at Arlington and set a 25-year waiting period for such memorials, and clarify that in the case of individuals buried in Arlington before the date of enactment, the surviving spouse is deemed to be eligible if buried in the same gravesite.

Senate bill

The Senate Bill contains no comparable provision.

INCREASE OF VETERANS' MORTGAGE LIFE INSURANCE ("VMLI") COVERAGE TO $150,000

Current law

Section 2106(b) of title 38, United States Code, provides that VMLI may not exceed $90,000.

House bill

Section 5(a) of H.R. 4085 would increase the maximum amount of coverage available under Veterans' Mortgage Life Insurance from $90,000 to $150,000. This would increase the amount of the outstanding mortgage, which would be payable if the veteran were to die before the mortgage is paid in full.

Senate bill

The Senate Bill contains no comparable provision.

UNIFORM HOME LOAN GUARANTY FEES FOR QUALIFYING MEMBERS OF THE SELECTED RESERVE AND ACTIVE DUTY VETERANS

Current law

Section 3729(b) of title 38, United States Code, provides the amounts in fees to be collected from each person participating in VA's Home Loan Guaranty Program.

Currently, members of the Selected Reserve pay a 0.75 percent higher funding fee under the home loan program than other eligible veterans.

House bill

Section 4 of H.R. 4085 would amend the Loan Fee Table in section 3729(b) of title 38, United States Code, to provide for uniformity in the funding fees charged to members of the Selected Reserve and active duty veterans for VA home loans. The fee would be reduced for the period beginning on October 1, 2002, and ending on September 30, 2005.

Senate bill

The Senate Bill contains no comparable provision.

PROHIBIT ASSIGNMENT OF MONTHLY VETERANS BENEFITS AND CREATE AN EDUCATION AND OUTREACH CAMPAIGN ABOUT FINANCIAL SERVICES AVAILABLE TO VETERANS

Current law

Section 5301 of title 38, United States Code, currently prohibits the assignment or attachment of a veteran's disability compensation or pension benefits. In recent years, private companies have offered contracts to veterans that exchange up-front lump sums for future benefits.

Senate bill

Section 105 of S. 2237 would clarify the applicability of the prohibition on assignment of veterans benefits through agreements regarding future receipt of compensation, pension, or dependency and indemnity compensation. This provision would make violation of this prohibition punishable by a fine and up to one year in jail. This provision would also require VA to create a five-year education and outreach campaign to inform veterans about available financial services.

House bill

The House Bills contain no comparable provision.

CLARIFICATION OF RETROACTIVE APPLICATION OF PROVISIONS OF THE VETERANS CLAIMS ASSISTANCE ACT

Current law

Public Law 106-475, the Veterans Claims Assistance Act of 2000 ("VCAA"), restored and enhanced VA's duty to assist claimants in developing their claims for veterans benefits. Specifically, section 3(a) of the VCAA requires VA to take certain steps to assist claimants.

Two recent decisions by the U.S. Court of Appeals for the Federal Circuit have found that the provisions in the VCAA pertaining to VA's duty to assist cannot be applied retroactively to claims pending at the time of its enactment. In Dyment v. Principi, 287 F.3d 1377 (Fed. Cir. 2002), the Federal Circuit stated: "The Supreme Court has held that a federal statute will not be given retroactive effect unless Congress has made its contrary intention clear. There is nothing in the VCAA to suggest that section 3(a) was intended to applied [sic] retroactively." In Bernklau v. Principi, 291 F.3d 795, 806 (Fed. Cir. 2002), the Court again concluded: "[S]ection 3(a) of the VCAA does not apply retroactively to require that proceedings that were complete before the Department of Veterans Affairs and were on appeal to the Court of Appeals for Veterans Claims or this court be remanded for readjudication under the new statute."

Senate bill

Section 504 of S. 2237 would apply section 3 of VCAA retroactively to cases that were ongoing either at various adjudication levels within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment. Section 505 of the Senate Bill would provide for claims decided between the handing down of the *Dyment* case and enactment of this provision to receive the full notice, assistance, and protection afforded under the VCAA.

House bill

The House Bills contain no comparable provision.

MEASURES INDEFINITELY POSTPONED—S. 2828, S. 2840, S. 2918, S. 2929, S. 2931

Mr. REID. Mr. President, I ask unanimous consent that the following calendar items be indefinitely postponed: Calendar Nos. 711, 712, 713, 714, and 715.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, for the information of the Senate, these items are Senate-numbered items and are Post Office designations. The House version of the bills have passed the Senate and been signed into law.

SUPPORTING GOALS OF RED RIBBON WEEK IN PROMOTING DRUG-FREE COMMUNITIES

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of H. Con. Res. 84, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res 84) supporting the goals of Red Ribbon Week in promoting drug-free communities.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution and the preamble be agreed to en bloc; that the motions to reconsider be laid upon the table en bloc, without any intervening action or debate; and that any statements relating to the concurrent resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 84) was agreed to.

The preamble was agreed to.

DRUG COMPETITION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 431, S. 754.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 754) to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in Italic.]

S. 754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Drug Competition Act of 2001".

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) prescription drug costs are increasing at an alarming rate and are a major worry of senior citizens and American families;

[(2) there is a potential for drug companies owning patents on brand-name drugs to enter into private financial deals with generic drug companies in a manner that could tend to restrain trade and greatly reduce competition and increase prescription drug costs for American citizens; and

[(3) enhancing competition between generic drug manufacturers and brand name manufacturers can significantly reduce prescription drug costs to American families.

[SEC. 3. PURPOSE.

[The purposes of this Act are—

[(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies owning patents on branded drugs and companies who could manufacture generic or bioequivalent versions of such branded drugs; and

[(2) by providing timely notice, to—

[(A) enhance the effectiveness and efficiency of the enforcement of the antitrust laws of the United States; and

[(B) deter pharmaceutical companies from engaging in anticompetitive actions or actions that tend to unfairly restrain trade.

[SEC. 4. DEFINITIONS.

[In this Act:

[(1) AGREEMENT.—The term "agreement" means an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

[(2) ANTITRUST LAWS.—The term "antitrust laws" has the same meaning as in section 1 of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

[(3) ANDA.—The term "ANDA" means an Abbreviated New Drug Application, as defined under section 505(j) of the Federal Food, Drug and Cosmetic Act.

[(4) BRAND NAME DRUG COMPANY.—The term "brand name drug company" means a person engaged in the manufacture or marketing of a drug approved under section 505(b) of the Federal Food, Drug and Cosmetic Act.

[(5) COMMISSION.—The term "Commission" means the Federal Trade Commission.

[(6) FDA.—The term "FDA" means the United States Food and Drug Administration.

[(7) GENERIC DRUG.—The term "generic drug" is a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug and Cosmetic Act.

[(8) GENERIC DRUG APPLICANT.—The term "generic drug applicant" means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug and Cosmetic Act.

[(9) NDA.—The term "NDA" means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(b) et seq.)

[SEC. 5. NOTIFICATION OF AGREEMENTS AFFECTING THE SALE OR MARKETING OF GENERIC DRUGS.

[A brand name drug manufacturer and a generic drug manufacturer that enter into an agreement regarding the sale or manufacture of a generic drug equivalent of a brand name drug that is manufactured by that brand name manufacturer and which agreement could have the effect of limiting—

[(1) the research, development, manufacture, marketing or selling of a generic drug product that could be approved for sale by the FDA pursuant to the ANDA; or

[(2) the research, development, manufacture, marketing or selling of a generic drug product that could be approved by the FDA; [both shall file with the Commission and the Attorney General the text of the agreement, an explanation of the purpose and scope of the agreement and an explanation of whether the agreement could delay, restrain, limit, or in any way interfere with the production, manufacture or sale of the generic version of the drug in question.

[SEC. 6. FILING DEADLINES.

[Any notice, agreement, or other material required to be filed under section 5 shall be filed with the Attorney General and the FTC not later than 10 business days after the date the agreements are executed.

[SEC. 7. ENFORCEMENT.

[(a) CIVIL FINE.—Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this Act shall be liable for a civil penalty of not more than $20,000 for each day during which such person is in violation of this Act. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

[(b) COMPLIANCE AND EQUITABLE RELIEF.—If any person, or any officer, director, partner, agent, or employee thereof, fails to comply with the notification requirement under section 5 of this Act, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Commission or the Assistant Attorney General.

[SEC. 8. RULEMAKING.

[The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this Act—

[(1) may require that the notice described in section 5 of this Act be in such form and contain such documentary material and information relevant to the agreement as is necessary and appropriate to enable the Commission and the Assistant Attorney General to determine whether such agreement may violate the antitrust laws;

[(2) may define the terms used in this Act;

[(3) may exempt classes of persons or agreements from the requirements of this Act; and

[(4) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this Act.

[SEC. 9. EFFECTIVE DATES.

[This Act shall take effect 90 days after the date of enactment of this Act.]

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Drug Competition Act of 2001".

SEC. 2. FINDINGS.

Congress finds that—

(1) prescription drug prices are increasing at an alarming rate and are a major worry of many senior citizens and American families;

(2) there is a potential for companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs to enter into financial deals that could tend to restrain trade and greatly reduce competition and increase prescription drug expenditures for American citizens; and

(3) enhancing competition among these companies can significantly reduce prescription drug expenditures for Americans.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs; and

(2) by providing timely notice, to enhance the effectiveness and efficiency of the enforcement of the antitrust and competition laws of the United States.

SEC. 4. DEFINITIONS.

In this Act:

(1) ANDA.—The term "ANDA" means an Abbreviated New Drug Application, as defined under section 201(aa) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(aa)).

(2) ASSISTANT ATTORNEY GENERAL.—The term "Assistant Attorney General" means the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(3) BRAND NAME DRUG.—The term "brand name drug" means a drug approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)).

(4) BRAND NAME DRUG COMPANY.—The term "brand name drug company" means the party that received Food and Drug Administration approval to market a brand name drug pursuant to an NDA, where that drug is the subject of an ANDA, or a party owning or controlling enforcement of any patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations of the Food and Drug Administration for that drug, under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

(5) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(6) GENERIC DRUG.—The term "generic drug" means a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(7) GENERIC DRUG APPLICANT.—The term "generic drug applicant" means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(8) NDA.—The term "NDA" means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b) et seq.)

SEC. 5. NOTIFICATION OF AGREEMENTS.

(a) IN GENERAL.—

(1) REQUIREMENT.—A generic drug applicant that has submitted an ANDA containing a certification under section 505(j)(2)(vii)(IV) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(vii)(IV)) and a brand name drug company that enter into an agreement described in paragraph (2), prior to the generic drug that is the subject of the application entering the market, shall each file the agreement as required by subsection (b).

(2) DEFINITION.—An agreement described in this paragraph is an agreement regarding—

(A) the manufacture, marketing or sale of the brand name drug that is the subject of the generic drug applicant's ANDA;

(B) the manufacture, marketing or sale of the generic drug that is the subject of the generic drug applicant's ANDA; or

(C) the 180-day period referred to in section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)(iv)) as it applies to such ANDA or to any other ANDA based on the same brand name drug.

(b) FILING.—

(1) AGREEMENT.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any such agreement, except that the generic drug applicant and the brand-name drug company shall not be required to file an agreement that solely concerns—

(A) purchase orders for raw material supplies;

(B) equipment and facility contracts; or

(C) employment or consulting contracts.

(2) OTHER AGREEMENTS.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any other agreements not described in subsection (a)(2) between the generic drug applicant and the brand name drug company which are contingent upon, provide a contingent condition for, or are otherwise related to an agreement which must be filed under this Act.

(3) DESCRIPTION.—In the event that any agreement required to be filed by paragraph (1) or (2) has not been reduced to text, both the generic drug applicant and the brand name drug company shall file written descriptions of the non-textual agreement or agreements that must be filed sufficient to reveal all of the terms of the agreement or agreements.

SEC. 6. FILING DEADLINES.

Any filing required under section 5 shall be filed with the Assistant Attorney General and the Commission not later than 10 business days after the date the agreements are executed.

SEC. 7. DISCLOSURE EXEMPTION.

Any information or documentary material filed with the Assistant Attorney General or the

Commission pursuant to this Act shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTY.—Any brand name drug company or generic drug applicant which fails to comply with any provision of this Act shall be liable for a civil penalty of not more than $11,000, for each day during which such entity is in violation of this Act. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

(b) COMPLIANCE AND EQUITABLE RELIEF.—If any brand name drug company or generic drug applicant fails to comply with any provision of this Act, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Assistant Attorney General or the Commission. Equitable relief under this subsection may include an order by the district court which renders unenforceable, by the brand name drug company or generic drug applicant failing to file, any agreement that was not filed as required by this Act for the period of time during which the agreement was not filed by the company or applicant as required by this Act.

SEC. 9. RULEMAKING.

The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5 United States Code, consistent with the purposes of this Act—

(1) may define the terms used in this Act;

(2) may exempt classes of persons or agreements from the requirements of this Act; and

(3) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this Act.

SEC. 10. SAVINGS CLAUSE.

Any action taken by the Assistant Attorney General or the Commission, or any failure of the Assistant Attorney General or the Commission to take action, under this Act shall not bar any proceeding or any action with respect to any agreement between a brand name drug company and a generic drug applicant at any time under any other provision of law, nor shall any filing under this Act constitute or create a presumption of any violation of any antitrust or competition laws.

SEC. 11. EFFECTIVE DATE.

This Act shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) shall apply to agreements described in section 5 that are entered into 30 days after the date of enactment of this Act.

Mr. LEAHY. Mr. President, I am pleased that the Senate has, at long last, taken up the Drug Competition Act of 1002, S. 754. Prescription drug prices are rapidly increasing, and are a source of considerable concern to many Americans, especially senior citizens and families. Generic drug prices can be as much as 80 percent lower than the comparable brand name version.

While the Drug Competition Act is a small bill in terms of length, it is a large one in terms of impact. It will ensure that law enforcement agencies can take quick and decisive action against companies that are driven more by greed than by good sense. It gives the Federal Trade Commission and the Justice Department access to information about secret deals between drug companies that keep generic drugs off the market. This is a practice that hurts American families, particularly senior citizens, by denying them access to low-cost generic drugs, and further inflating medical costs.

This has been a genuine bipartisan effort, and I must thank all my colleagues, including Senator HATCH who has a long-standing interest in these issues, subcommittee Chairman KOHL who has worked with me from the start on this effort, and particularly Senator GRASSLEY, who has worked hard to reach consensus on this bill that will help protect consumers.

The issue of drug companies paying generic companies not to compete was exposed in recent years by the FTC, and by articles in major newspapers, including an editorial in the July 26, 2000, the New York Times, titled "Driving Up Drug Prices." This editorial concluded that the problem "needs help from Congress to close loopholes in federal law." And while the FTC has sued pharmaceutical companies that have made such secret and anticompetitive deals, as the then-Director of the Bureau of Competition Molly Boast testified before the Judiciary Committee in May 2001, the antitrust enforcement agencies are only finding out about such deals by luck, or by accident. Most recently, the FTC has issued a comprehensive study of the generic pharmaceutical industry which explicitly supported passage of S. 754.

Under current law, the first generic manufacturer that gets permission to sell a generic drug before the patent on the brand-name drug expires, enjoys protection from competition for 180 days—a headstart on other generic companies. That was a good idea—but the unfortunate loophole exploited by a few is that secret deals can be made that allow the manufacturer of the generic drug to claim the 180-day grace period—to block other generic drugs from entering the market—while, at the same time, getting paid by the brand-name manufacturer to not sell the generic drug.

The bill closes this loophole for those who want to cheat the public, but keeps the system the same for companies engaged in true competition. The deals would be reviewed only by those agencies—the agreements would not be available to the public. I think it is important for Congress not to overact and throw out the good with the bad. Most generic companies want to take advantage of this 180-day provision and deliver quality generic drugs at much lower costs for consumers. We should not eliminate the incentive for them. Instead, we should let the FTC and Justice look at every deal that could lead to abuse, so that only the deals that are consistent with the intent of that law will be allowed to stand. This bill accomplishes precisely that goal, and helps ensure effective and timely access to generic pharmaceuticals that can lower the cost of prescription drugs for seniors, for families, and for all of us.

Mr. REID. Mr. President, I ask unanimous consent that the Hatch-Leahy amendment which is at the desk be agreed to; that the committee amendment, as amended, be agreed to; that the bill, as amended, be read the third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4965) was agreed to, as follows:

AMENDMENT NO. 4965

On page 11, line 17, strike "or".

On page 11, line 18, strike the period and insert "; or".

On page 11, after line 18, insert the following: (D) packaging and labeling contracts.

On page 13, line 17, strike all beginning with "Equitable" through line 23.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 754), as amended, was read the third time and passed, as follows:

S. 754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the "Drug Competition Act of 2002".

SEC. 2. FINDINGS.

Congress finds that—

(1) prescription drug prices are increasing at an alarming rate and are a major worry of many senior citizens and American families;

(2) there is a potential for companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs to enter into financial deals that could tend to restrain trade and greatly reduce competition and increase prescription drug expenditures for American citizens; and

(3) enhancing competition among these companies can significantly reduce prescription drug expenditures for Americans.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs; and

(2) by providing timely notice, to enhance the effectiveness and efficiency of the enforcement of the antitrust and competition laws of the United States.

SEC. 4. DEFINITIONS.

In this Act:

(1) ANDA.—The term "ANDA" means an Abbreviated New Drug Application, as defined under section 201(aa) of the Federal

Food, Drug, and Cosmetic Act (21 U.S.C. 321(aa)).

(2) ASSISTANT ATTORNEY GENERAL.—The term "Assistant Attorney General" means the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(3) BRAND NAME DRUG.—The term "brand name drug" means a drug approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)).

(4) BRAND NAME DRUG COMPANY.—The term "brand name drug company" means the party that received Food and Drug Administration approval to market a brand name drug pursuant to an NDA, where that drug is the subject of an ANDA, or a party owning or controlling enforcement of any patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations of the Food and Drug Administration for that drug, under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

(5) COMMISSION.—The term "Commission" means the Federal Trade Commission.

(6) GENERIC DRUG.—The term "generic drug" means a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(7) GENERIC DRUG APPLICANT.—The term "generic drug applicant" means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(8) NDA.—The term "NDA" means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b) et seq.)

SEC. 5. NOTIFICATION OF AGREEMENTS.

(a) IN GENERAL.—

(1) REQUIREMENT.—A generic drug applicant that has submitted an ANDA containing a certification under section 505(j)(2)(vii)(IV) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(vii)(IV)) and a brand name drug company that enter into an agreement described in paragraph (2), prior to the generic drug that is the subject of the application entering the market, shall each file the agreement as required by subsection (b).

(2) DEFINITION.—An agreement described in this paragraph is an agreement regarding—

(A) the manufacture, marketing or sale of the brand name drug that is the subject of the generic drug applicant's ANDA;

(B) the manufacture, marketing or sale of the generic drug that is the subject of the generic drug applicant's ANDA; or

(C) the 180-day period referred to in section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)(iv)) as it applies to such ANDA or to any other ANDA based on the same brand name drug.

(b) FILING.—

(1) AGREEMENT.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any such agreement, except that the generic drug applicant and the brand-name drug company shall not be required to file an agreement that solely concerns—

(A) purchase orders for raw material supplies;

(B) equipment and facility contracts;

(C) employment or consulting contracts; or

(D) packaging and labeling contracts.

(2) OTHER AGREEMENTS.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any other agreements not described in subsection (a)(2) between the generic drug applicant and the brand name drug company which are contingent upon, provide a contingent condition for, or are otherwise related to an agreement which must be filed under this Act.

(3) DESCRIPTION.—In the event that any agreement required to be filed by paragraph (1) or (2) has not been reduced to text, both the generic drug applicant and the brand name drug company shall file written descriptions of the non-textual agreement or agreements that must be filed sufficient to reveal all of the terms of the agreement or agreements.

SEC. 6. FILING DEADLINES.

Any filing required under section 5 shall be filed with the Assistant Attorney General and the Commission not later than 10 business days after the date the agreements are executed.

SEC. 7. DISCLOSURE EXEMPTION.

Any information or documentary material filed with the Assistant Attorney General or the Commission pursuant to this Act shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTY.—Any brand name drug company or generic drug applicant which fails to comply with any provision of this Act shall be liable for a civil penalty of not more than $11,000, for each day during which such entity is in violation of this Act. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

(b) COMPLIANCE AND EQUITABLE RELIEF.—If any brand name drug company or generic drug applicant fails to comply with any provision of this Act, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Assistant Attorney General or the Commission.

SEC. 9. RULEMAKING.

The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5 United States Code, consistent with the purposes of this Act—

(1) may define the terms used in this Act;

(2) may exempt classes of persons or agreements from the requirements of this Act; and

(3) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this Act.

SEC. 10. SAVINGS CLAUSE.

Any action taken by the Assistant Attorney General or the Commission, or any failure of the Assistant Attorney General or the Commission to take action, under this Act shall not bar any proceeding or any action with respect to any agreement between a brand name drug company and a generic drug applicant at any time under any other provision of law, nor shall any filing under this Act constitute or create a presumption of any violation of any antitrust or competition laws.

SEC. 11. EFFECTIVE DATE.

This Act shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) shall apply to agreements described in section 5 that are entered into 30 days after the date of enactment of this Act.

CONSUMER PRODUCT SAFETY ACT AMENDMENT

Mr. REID. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 727 and that the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 727) to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 727) was read the third time and passed.

CHILD SAFETY ENHANCEMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5504.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5504) to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5504) was read the third time and passed.

FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING AND DEVELOPMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 697, S. 2951, a bill to authorize appropriations for the Federal Aviation Administration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2951) to authorize appropriations for the Federal Aviation Administration, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I understand Senators ROCKEFELLER, HOLLINGS, MCCAIN, and HUTCHISON of Texas have an amendment at the desk, and I ask that the amendment be considered and agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4966) was agreed to, as follows:

AMENDMENT NO. 4966

(Purpose: To include the House of Representatives Committee on Science as a recipient of each of all the required reports, and to make other minor changes)

On page 3, beginning in line 21, strike "Transportation and" and insert "Transportation,".

On page 3, line 23, strike "Infrastructure." and insert "Infrastructure, and the House of Representatives Committee on Science.".

On page 4, strike lines 18 through 23, and insert the following:

The Federal Aviation Administration Administrator shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of concrete and asphalt airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements.

On page 5, beginning in line 22, strike "Transportation and" and insert "Transportation,".

On page 5, line 24, strike "Infrastructure." and insert "Infrastructure, and the House of Representatives Committee on Science.".

On page 8, strike lines 9 through 13, and insert the following:

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

The bill (S. 2951), as amended, was read the third time and passed, as follows:

S. 2951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Aviation Administration Research, Engineering, and Development Act of 2002".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNTS AUTHORIZED.—Section 48102(a) of title 49, United States Code, is amended—

(1) by striking "and" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting a semicolon; and

(3) by adding at the end the following:

"(9) for fiscal year 2003, $261,000,000, including—

"(A) $211,000,000 to improve aviation safety;

"(B) $18,000,000 to improve the efficiency of the air traffic control system;

"(C) $16,000,000 to reduce the environmental impact of aviation; and

"(D) $16,000,000 to improve the efficiency of mission support;

"(10) for fiscal year 2004, $274,000,000, including—

"(A) $221,000,000 to improve aviation safety;

"(B) $19,000,000 to improve the efficiency of the air traffic control system;

"(C) $17,000,000 to reduce the environmental impact of aviation; and

"(D) $17,000,000 to improve the efficiency of mission support; and

"(11) for fiscal year 2005, $287,000,000, including—

"(A) $231,000,000 to improve aviation safety;

"(B) $20,000,000 to improve the efficiency of the air traffic control system;

"(C) $18,000,000 to reduce the environmental impact of aviation; and

"(D) $18,000,000 to improve the efficiency of mission support.".

SEC. 3. COORDINATION OF NATIONAL AVIATION SAFETY AND SECURITY RESEARCH PROGRAMS.

(a) DEVELOPMENT OF PLAN.—Not later than June 30, 2003, the National Aeronautics and Space Administration Administrator, the Federal Aviation Administration Administrator, and the Under Secretary of Transportation for Security shall prepare and transmit an updated integrated civil aviation research and development plan to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science.

(b) CONTENTS.—The updated integrated civil aviation research and development plan shall include—

(1) identification of the respective aviation research and development requirements, roles, and responsibilities of the National Aeronautics and Space Administration, the Federal Aviation Administration, and the Transportation Security Administration; and

(2) review of steps they could take to facilitate the transfer and adoption of new technologies in an operational environment, including consideration of increasing the exchange of research staff, providing greater details on funding at the project level in joint plans, and providing for greater use of technology readiness in program plans and budgets to help frame the maturity of new technologies and determine when they can be implemented.

SEC. 4. RESEARCH PROGRAM TO IMPROVE AIRFIELD PAVEMENTS.

The Federal Aviation Administration Administrator shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of concrete and asphalt airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements. The Administrator may use grants or cooperative agreements in carrying out this section. Nothing in this section requires the Administrator to prioritize an airfield pavement research program above safety, security, Flight 21, environment, or energy research programs.

SEC. 5. ENSURING APPROPRIATE STANDARDS FOR AIRFIELD PAVEMENTS.

(a) IN GENERAL.—The Federal Aviation Administration Administrator shall review and determine whether the Federal Aviation Administration's standards used to determine the appropriate thickness for asphalt and concrete airfield pavements are in accordance with the Federal Aviation Administration's standard 20-year-life requirement using the most up-to-date available information on the life of airfield pavements. If the Administrator determines that such standards are not in accordance with that requirement, the Administrator shall make appropriate adjustments to the Federal Aviation Administration's standards for airfield pavements.

(b) REPORT.—Within 1 year after the date of enactment of this Act, the Administrator shall report the results of the review conducted under subsection (a) and the adjustments, if any, made on the basis of that review to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science.

SEC. 6. AIR TRAFFIC MANAGEMENT RESEARCH AND DEVELOPMENT INITIATIVE.

(a) OBJECTIVE.—The Federal Aviation Administration Administrator, in coordination with the National Aeronautics and Space Administration Administrator, shall participate in a national initiative with the objective of defining and developing an air traffic management system designed to meet national long-term aviation security, safety, and capacity needs. The initiative should result in a multiagency blueprint for acquisition and implementation of an air traffic management system that would—

(1) build upon current air traffic management and infrastructure initiatives;

(2) improve the security, safety, quality, and affordability of aviation services;

(3) utilize a system of systems approach;

(4) develop a highly integrated, secure common information network to enable common situational awareness for all appropriate system users; and

(5) ensure seamless global operations for system users.

(b) IMPLEMENTATION.—In implementing subsection (a), the Federal Aviation Administration Administrator, in coordination with the National Aeronautics and Space Administration Administrator, shall work with other appropriate Government agencies and industry to—

(1) develop system performance requirements;

(2) determine an optimal operational concept and system architecture to meet such requirements;

(3) utilize new modeling, simulation, and analysis tools to quantify and validate system performance and benefits;

(4) ensure the readiness of enabling technologies; and

(5) develop a transition plan for successful implementation into the National Airspace System.

SEC. 7. ASSESSMENT OF WAKE TURBULENCE RESEARCH AND DEVELOPMENT PROGRAM.

(a) ASSESSMENT.—The Federal Aviation Administration Administrator shall enter into an arrangement with the National Research Council for an assessment of the Federal Aviation Administration's proposed wake turbulence research and development program. The assessment shall address—

(1) research and development goals and objectives;

(2) research and development objectives that should be part of Federal Aviation Administration's proposed program;

(3) proposed research and development program's ability to achieve the goals and objectives of the Federal Aviation Administration, and of the National Research Council, the schedule, and the level of resources needed; and

(4) the roles other Federal agencies, such as National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, should play in wake turbulence research and development, and coordination of these efforts.

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Aviation Administration Administrator for fiscal year 2003, $500,000 to carry out this section.

SEC. 8. DEVELOPMENT OF ANALYTICAL TOOLS AND CERTIFICATION METHODS.

The Federal Aviation Administration may conduct research to promote the development of analytical tools to improve existing certification methods and to reduce the overall costs to manufacturers for the certification of new products.

SEC. 9. CABIN AIR QUALITY RESEARCH PROGRAM.

In accordance with the recommendation of the National Academy of Sciences in its report entitled "The Airliner Cabin Environment and the Health of Passengers and Crew", the Federal Aviation Administration may establish a research program to answer questions about cabin air quality of aircraft.

SEC. 10. RESEARCH TO IMPROVE CAPACITY AND REDUCE DELAYS.

The Administrator may include, as part of the Federal Aviation Administration research program, a systematic review and assessment of the specific causes of airport delay at the 31 airports identified in the Airport Benchmarking Study, on an airport-by-airport basis.

DIRECTING LAND CONVEYANCE TO CHATHAM COUNTY, GEORGIA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 615, H.R. 2595.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2595) to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2595) was read the third time and passed.

SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration and the Senate proceed to the consideration of H.R. 4070.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

A bill (H.R. 4070) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. BAUCUS. Mr. President, I rise today to urge my colleagues to support the Senate version of H.R. 4070, the "Social Security Program Protection Act of 2002." H.R. 4070 is bipartisan legislation developed by Ways and Means Social Security Subcommittee Chairman SHAW and ranking member MATSUI. H.R. 4070 passed the House unanimously by a vote of 425 to 0. In keeping with the bipartisan tradition of the Senate Finance Committee and with the bipartisan origins of this legislation, Senator GRASSLEY and I have worked together to further refine this legislation for Senate consideration.

The House-passed version of H.R. 4070 makes a number of important changes to the Social Security and Supplemental Security Income, SSI, programs. These changes will accomplish a number of important goals: they will enhance the financial security of some of the most vulnerable beneficiaries of these programs, increase protections to seniors from deceptive practices by individuals in the private sector, improve program integrity, thereby saving money for the Social Security and Medicare Trust Funds and taxpayers, and reduce disincentives to employment for disabled individuals.

One of the most important results of this legislation will be to enhance the financial security of the almost 7 million Social Security and SSI beneficiaries who are not capable of managing their own financial affairs due to advanced age or disability. The Social Security Administration, SSA, currently appoints individuals or organizations to act as "representative payees" for such beneficiaries. Most of these representative payees perform their roles conscientiously. However, some do not. Indeed, there have even been instances of terrible abuse in this program.

It is imperative that Congress take action to guard vulnerable seniors and disabled individuals from such abuse. This legislation increases requirements for SSA to provide restitution to beneficiaries when representative payees defraud the beneficiaries of their benefits. The legislation also tightens the qualifications for representative payees, increases oversight of the program, and imposes stricter penalties on those who violate their responsibilities.

The legislation expands the protection to seniors and disabled individuals by increasing the list of references to Social Security, Medicare and Medicaid which cannot be used by private-sector individuals, companies and organizations to give a false impression of Federal endorsement. The legislation also protects seniors from those who deceptively attempt to charge them for services that the seniors could receive for free from SSA.

H.R. 4070 improves program integrity by expanding the current prohibition against paying benefits to fugitive felons. As part of the 1996 welfare reform law, Congress banned the payment of SSI benefits to these individuals. However, under current law, fugitive felons can still receive Social Security benefits under title II. This legislation prohibits the payment of title II Social Security benefits to fugitive felons.

H.R. 4070 also includes technical amendments to improve the effectiveness of the Ticket to Work and Work Incentives Improvement Act, legislation passed in 1999 to help beneficiaries with disabilities become employed and move toward self-sufficiency.

To these House-passed provisions, Senator GRASSLEY and I have added some new provisions that we feel are very important.

First, we added a program integrity provision which will give the SSA Inspector General additional tools to pursue individuals who commit fraud by concealing work activity while they are receiving disability benefits.

Second, we included a provision to make uniform an exemption to the Government Pension Offset. The Government Pension Offset, GPO, was enacted in order to equalize the treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by an amount equal to two-thirds of the government pension. However, as a recent GAO report highlighted, State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System, CSRS, a system that is not covered by Social Security, to the Federal Employee Retirement System, FERS, a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO. Our Senate version of H.R. 4070 makes the exemption to the Government Pension Offset the same for State and local government workers as for Federal Government workers.

Finally, we added four technical refinements to the Railroad Retirement and Survivors' Improvement Act of 2001. These changes will help to promote the efficient implementation of that important legislation which became law last year.

I believe that each of the provisions of H.R. 4070, as passed by the House, and each of the provisions that Senator GRASSLEY and I have added deserve the support of the Senate. Moreover, in an attempt to expedite congressional passage of this legislation, the changes that Senator GRASSLEY and I want to make to the House-passed bill have already been worked out with both the chairman and the ranking member of the Social Security Subcommittee of the House Ways and Means Committee. Indeed, I have a statement that has been agreed to by the chairman and the ranking member of the Social Security Subcommittee, as well as by the chairman and ranking member of the Senate Finance Committee. This statement provides details about each of the provisions of the legislation, as well as the rationale behind each provision. I am submitting this full statement for the record.

I would also like to point out that the legislation as a whole has net savings of more than $500 million over ten years for taxpayers, according to the non-partisan Congressional Budget Office. As a result, the Social Security and Medicare Trust Fund balances will increase by more than $500 million over that period, excluding increases from increased interest income. Moreover, over the next 75 years, this legislation will decrease—not increase—the long-run actuarial deficit for the Social Security Trust Funds, although by a negligible amount. This information comes from Office of the Independent Chief Actuary for the Social Security Administration. I am submitting the estimate from the office of the Chief Actuary of the Social Security Administration for the RECORD. I will submit the official written estimate from the Congressional Budget Office for the RECORD as soon as I receive it.

This legislation contains the types of improvements we can all agree on, as demonstrated by the overwhelming bipartisan vote in the House, and the bipartisan, bicameral agreement of the chairman and ranking members of the committees of jurisdiction. I wholeheartedly urge my colleagues in the Senate to approve these sensible and important changes.

Mr. President, I ask unanimous consent that a summary of the bill and a memorandum from the Social Security Administration be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

"THE SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002" SUMMARY

TITLE I. PROTECTION OF BENEFICIARIES

SUBTITLE A. REPRESENTATIVE PAYEES

SECTION 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES

Present law

The Social Security Act requires the reissuance of benefits misused by any representative payee when the Commissioner finds that the Social Security Administration (SSA) negligently failed to investigate and monitor the payee.

Explanation of provision

The new provision eliminates the requirement that benefits be reissued only upon a finding of SSA negligence in the case of misuse by an organizational payee or an individual payee representing 15 or more beneficiaries. Thus, the Commissioner would reissue benefits under Titles II, VIII and XVI in any case in which a beneficiary's funds are misused by an organizational payee or an individual payee representing 15 or more beneficiaries.

The new provision defines misuse as any case in which a representative payee converts the benefits entrusted to his or her care for purposes other than the "use and benefit" of the beneficiary, and authorizes the Commissioner to define "use and benefit" in regulation.

In crafting a regulatory definition for "use and benefit," the Commissioner should take special care to distinguish between the situation in which the representative payee violates his or her trust responsibility by converting the benefits to further the payee's own self interest, and the situation in which the payee faithfully serves the beneficiary by using the benefits in a way that principally aids the beneficiary but which also incidentally aids the payee or another individual. For instance, cases in which a representative payee uses the benefits entrusted to his or her care to help pay the rent on an apartment that he or she and the beneficiary share should not be considered misuse.

This provision applies to benefit misuse by a representative payee as determined by the Commissioner on or after January 1, 1995.

Reason for change

There have been a number of highly publicized cases involving organizational representative payees that have misused large sums of monies paid to them on behalf of the Social Security and Supplemental Security Income (SSI) beneficiaries they represented. In most instances, these organizations operated as criminal enterprises, bent not only on stealing funds from beneficiaries, but also on carefully concealing the evidence of their wrongdoing. These illegal activities went undetected until large sums had been stolen. If the Social Security Administration is not shown to be negligent for failing to investigate and monitor the payee, affected beneficiaries may never be repaid or may be repaid only when the representative payee committing misuse makes restitution to SSA.

Requiring the SSA to reissue benefit payments to the victims of misuse by organizational payees or individual payees serving 15 or more beneficiaries protects beneficiaries who are among the most vulnerable because they may have no family members or friends who are willing or able to manage their benefits for them. With respect to individual representative payees, the provision applies only to representative payees serving 15 or more beneficiaries. As with many cases involving organizational representative payees, these are cases which may be the hardest to detect. Moreover, extending the provision to cases involving individual payees serving fewer beneficiaries may lead to fraudulent claims of misuse. These claims, which often turn on information available only from close family members, would be difficult to assess. Similarly, extension of this provision to these cases could potentially encourage misuse or poor money management by these individual representative payees if they believed that the beneficiary could eventually be paid a second time by SSA.

The effective date would protect the interests of beneficiaries affected by these cases of egregious misuse that have been identified in recent years.

SECTION 102. OVERSIGHT OF REPRESENTATIVE PAYEES

Present law

Present law requires non-governmental fee-for-service organizational representative payees to be licensed or bonded. Periodic onsite reviews of representative payees by SSA is not required.

Explanation of provision

The new provision requires non-governmental fee-for-service organizational representative payees to be both licensed and bonded (provided that licensing is available in the State). In addition, such representative payees must submit yearly proof of bonding and licensing, as well as copies of any available independent audits that were performed on the payee in the past year.

The new provision also requires the Commissioner of Social Security to conduct periodic onsite reviews of: (1) a person who serves as a representative payee to 15 or more beneficiaries, (2) non-governmental fee-for-service representative payees (as defined in Titles II and XVI), and (3) any agency that serves as the representative payee to 50 or more beneficiaries. In addition, the Commissioner is required to submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the reviews conducted in the prior fiscal year.

The bonding, licensing, and audit provisions are effective on the first day of the 13th month following enactment of the legislation. The periodic on-site review provision is effective upon enactment.

Reason for change

Strengthening the bonding and licensing requirements for representative payees would add further safeguards to protect beneficiaries' funds. State licensing provides for some oversight by the State into the fee-for-service organization's business practices, and bonding provides some assurances that a surety company has investigated the organization and approved it for the level of risk associated with the bond for community-based non-profit social service agencies serving as representative payees.

On-site periodic visits should be conducted regularly to reduce misuse of funds. To the degree possible, appropriate auditing and accounting standards should be utilized in conducting such reviews.

SECTION 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN ONE YEAR, OF PERSONS FLEEING PROSECUTION, CUSTODY OR CONFINEMENT, AND OF PERSONS VIOLATING PROBATION OR PAROLE

Present law

Sections 205, 807, and 1631 of the Social Security Act disqualify individuals from being representative payees if they have been convicted of fraud under the Social Security Act.

Explanation of provision

The new provision expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: (1) has been convicted imprisonment for more than one year; (2) is fleeing to avoid prosecution, or custody or confinement after conviction; or (3) violated a condiction of probation or parole. An exception applies if the Commissioner of Social Security determines that a person who has been convicted of any offense resulting in imprisonment for more than one year would, notwithstanding such conviction, be an appropriate representative payee.

The new provision requires the Commissioner to submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate evaluating existing procedures and reviews conducted for representative payees to determine whether they are sufficient to protect benefits from being misused.

This provision is effective on the first day of the 13th month beginning after the date of enactment, except that the report to Congress is due no later than 270 days after the date of enactment.

Reason for change

Prohibiting persons convicted of offenses resulting in imprisonment for more than one year, of persons fleeing prosecution, custody or confinement, and of persons violating probation or parole from serving as representative payees, not just prohibiting those convicted of fraud under the Social Security Act, decreases the likelihood of mismanagement or abuse of beneficiaries' funds. Also, allowing such person to serve as representative payees places beneficiary payments in potential jeopardy and could raise serious questions about the SSA's stewardship of taxpayer funds. The agency's report to Congress will assist the committees of jurisdiction in both the House and Senate in their oversight of the representative payee program.

The criminal background information provided by those who apply to be representative payees should be the same as the information considered by the Commissioner to implement this provision.

SECTION 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES

Present law

Certain organizational representative payees are authorized to collect a fee for their services. The fee, which is determined by a statutory formula, is deducted from the beneficiary's benefit payments.

Explanation of provision

The new provision requires representative payees to forfeit the fee for those months during which the representative payee misused funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction. This provision applies to any month involving benefit misuse by a representative payee as determined by the Commissioner after December 31, 2002.

Reason for change

Payees who misuse their clients' funds are not properly performing the service for which the fee was paid and therefore such fees should be forfeited. Permitting the payee to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's needs.

SECTION 105. LIABILITIES OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS

Present law

Although the SSA has been provided with expanded authority to recover overpayments (such as the use of tax refund offsets, referral to contract collection agencies, notification of credit bureaus, and administrative offsets of future federal benefits payments), these tools cannot be used to recoup benefits misused by a representative payee.

Explanation of provision

The new provision treats benefits misused by a non-governmental representative payee (including all individual representative payees) as an overpayment to the representative payee, rather than the beneficiary, thus subjecting the representative payee to current overpayment recovery authorities. Any recovered benefits not already reissued to the beneficiary pursuant to section 101 of this legislation would be reissued to either the beneficiary or their alternate representative payee, up to the total amount misused. This provision applies to benefit misuse by a representative payee in any case where the Commissioner of Social Security makes a determination of misuse after December 31, 2002.

Reason for change

Although the SSA has been provided with expanded authority to recover overpayments, these tools cannot be used to recoup benefits misused by a representative payee. Treating benefits misused by non-governmental organization representative payees and all individual payees as overpayments to the representative payee would provide the SSA with additional means for recovering misused payments.

SECTION 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING

Present law

The Social Security Act requires representative payees to submit accounting reports to the Commissioner of Social Security detailing how a beneficiary's benefit payments were used. A report is required at least annually, but may be requested by the Commissioner at any time if the Commissioner has reason to believe the representative payee is misusing benefits.

Explanation of provision

The new provision authorizes the Commissioner of Social Security to require a representative payee to receive any benefits under Titles II, VIII, and XVI in person at a Social Security field office if the representative payee fails to provide an annual accounting of benefits report. The Commissioner would be required to provide proper notice and the opportunity for a hearing prior to redirecting benefits to the field office. This provision is effective 180 days after the date of enactment.

Reason for change

Accounting reports are an important means of monitoring the activities of representative payees to prevent fraud and abuse. Redirecting benefit payments to the field office would enable the agency to promptly address the failure of the representative payee to file a report.

SUBTITLE B: ENFORCEMENT

SECTION 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES

Present law

The Social Security Act authorizes the Commissioner to impose a civil monetary penalty (of up to $5,000 for each violation) along with an assessment (of up to twice the amount wrongly paid), upon any person who knowingly uses false information or knowingly omits information to wrongly obtain Title II, VIII or XVI benefits.

Explanation of provision

The new provision expands the application of civil monetary penalties to include misuse of Title II, VIII or XVI benefits by representative payees. A civil monetary penalty of up to $5,000 may be imposed for each violation, along with an assessment of up to twice the amount of misused benefits. This provision applies to violations occurring after the date of enactment.

Reason for change

Providing authority for SSA to impose civil monetary penalties along with an assessment of up to twice the amount of misused benefits, in addition to the SSA's present authority permitting recovery of misused funds, would provide the SSA with an additional means of addressing misuse by representative payees.

TITLE II. PROGRAM PROTECTIONS

SECTION 201. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS

Present law

Changes in work or earnings status can affect a Title II disability beneficiary's right to continued entitlement to disability benefits. Changes in the amount of earned income can also affect an SSI recipient's continued eligibility for SSI benefits or his or her monthly benefit amount.

The Commissioner has promulgated regulations that require Title II disability beneficiaries to report changes in work or earnings status (20 CFR, 404.1588), and regulations that require SSI recipients (or their representative payees) to report any increase or decrease in income (20 CFR, 416.704—416.714).

Explanation of provision

The new provision requires the Commissioner to issue a receipt to a disabled beneficiary (or representative of a beneficiary) who reports a change in his or her work or earnings status. The Commissioner is required to continue issuing such receipts until the Commissioner has implemented a centralized computer file that would record the date on which the disabled beneficiary (or representative) reported the change in work or earnings status.

This provision requires the Commissioner to begin issuing receipts as soon as possible, but no later than one year after the date of enactment. The Committees with jurisdiction over the Social Security Administration, the House Committee on Ways and Means and the Senate Committee on Finance (the Committees), are aware that SSA has developed software known as the Modernized Return to Work System (MRTW). This software will assist SSA employees in recording information about changes in work and earnings status and in making determinations of whether such changes affect continuing entitlement to disability benefits. The software also has the capability of automatically issuing receipts. SSA has informed the Committees that this software is already in use in some of the agency's approximately 1300 local field offices, and that SSA expects to put it into operation in the remainder of the field offices over the next year. The Committees expect that SSA field offices that are already using the MRTW system will immediately begin issuing receipts to disabled beneficiaries who report changes in work or earnings status, and that SSA will require the other field offices to begin issuing receipts as these offices begin using the MRTW system over the next year. For disabled Title XVI beneficiaries, if SSA issues a notice to the beneficiary immediately following the report of earnings that details the effect of the change in income on the monthly benefit amount, this notice would serve as a receipt.

Reason for change

Witnesses have testified before the Social Security Subcommittee and the Human Resources Subcommittee of the House Ways and Means Committee that SSA does not currently have an effective system in place for processing and recording Title II and Title XVI disability beneficiaries' reports of changes in work and earnings status. Issuing receipts to disabled beneficiaries who make such reports would provide them with proof that they had properly fulfilled their obligation to report these changes.

SECTION 202. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE

Present law

The welfare reform law ("Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104-193) included provisions making persons ineligible to receive SSI benefits during any month in which they are fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the same prohibition does not apply to Social Security benefits under Title II.

Explanation of provision

The new provision makes persons ineligible to receive Social Security benefits under Title II during any month in which they are fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the Commissioner may, for good cause, pay withheld benefits to persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony. Finally, the Commissioner, upon written request by law enforcement officials, shall assist such officials in apprehending fugitives by providing them with the address, Social Security number, and, if available to SSA, a photograph of the fugitive.

This provision is effective on the first day of the first month that begins on or after the date that is 9 months after the date of enactment.

Reason for change

The Inspector General has estimated that persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or in violation of a condition of probation or parole, receive at least $39 million in Title II Social Security benefits annually. The Inspector General has recommended that the law be changed to prohibit these individuals from receiving such benefits.

Under this provision, the Commissioner would be required to develop regulations within one year of the date of enactment with regard to the use of the "good cause" exception to withholding Title II benefits from persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony. The good cause exception will provide the Commissioner with the ability to pay benefits under unusual circumstances in which the Commissioner deems the withholding of benefits to be inappropriate. The Committees expect that one of the uses to be made by the Commissioner of this discretionary authority will be to deal with situations that arise when Social Security beneficiaries are found to be in flight from a warrant relating to a crime for which the beneficiary is ultimately not convicted. In such circumstances, it is expected that the absence of a conviction should serve as a basis for paying any benefits withheld from the beneficiary during a period of flight.

The Committees have been made aware of situations in which the violation of a condition of probation or parole could involve mitigating circumstances that may warrant further examination regarding the denial of benefits created by this section. The Committees plan to work with the Commissioner of Social Security to further examine such situations in order to evaluate whether the current good faith exception is sufficient.

SECTION 203. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION

Present law

Section 1140 of the Social Security Act prohibits or restricts various activities involving the use of Social Security and Medicare symbols, emblems, or references which give a false impression that an item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services), or the Department of Health and Human Services. It also provides for the imposition of civil monetary penalties with respect to violations of the section.

Explanation of provision

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from SSA free of charge. The new provision requires persons or companies offering such services to include in their solicitations a statement that the services which they provide for a fee are available directly from SSA free of charge. The statements would be required to comply with standards promulgated through regulation by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility. The amendment applies to solicitations made after the 6th month following the issuance of these standards. The new provision requires that the Commissioner promulgate regulations within 1 year after the date of enactment.

Reason for change

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from SSA free of charge. For example, SSA's Inspector General has encountered business entities that have offered assistance to individuals in changing their names (upon marriage) or in obtaining a Social Security number (upon the birth of a child) for a fee. These practices can mislead and deceive senior citizens, newlyweds, new parents, and other individuals seeking services who may not be aware that SSA provides these services for free.

SECTION 204. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES

Present law

An attorney in good standing is entitled to represent claimants before the Commissioner of Social Security. The Commissioner may prescribe rules and regulations governing the recognition of persons other than attorneys representing claimants before the Commissioner. Under present law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative.

Explanation of provision

The new provision authorizes the Commissioner to refuse to recognize as a representative, or disqualify as a representative, an attorney who has been disbarred or suspended from any court or bar, or who has been disqualified from participating in or appearing before any Federal program or agency. Due process (i.e., notice and an opportunity for a hearing) would be required before taking such action. Also, if a representative has been disqualified or suspended as a result of collecting an unauthorized fee, full restitution is required before reinstatement can be considered. This provision is effective upon the date of enactment.

Reason for change

This provision would provide additional protections for beneficiaries who may rely on representatives during all phases of their benefit application process. As part their ongoing oversight of claimant representatives, the Committees intend to review whether options to establish protections for claimants represented by non-attorneys should be considered.

SECTION 205. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF THE SOCIAL SECURITY ACT

Present law

No provision.

Explanation of provision

The new provision imposes a fine of not more than $5,000, and imprisonment of not more than 3 years, or both, for attempting to intimidate or impede—corruptly or by using force or threats of force—any Social Security Administration (SSA) officer, employee or contractor (including State employees of disability determination services and any individuals designated by the Commissioner) while they are acting in their official capacities under the Social Security Act. If the offense is committed only by threats of force, however, the offender is subject to a fine of not more than $3,000 and/or no more than one year in prison. This provision is effective upon enactment.

Reason for change

This provision extends to SSA employees the same protections provided to employees of the Internal Revenue Service under the Internal Revenue Code of 1954. These protections will allow SSA employees to perform their work with more confidence that they will be safe from harm.

The Internal Revenue Manual defines the term "corruptly" as follows: "'Corruptly' characterizes an attempt to influence any official in his or her official capacity under this title by any improper inducement. For example, an offer of a bribe or a passing of a bribe to an Internal Revenue employee for the purpose of influencing him or her in the performance of his or her official duties is corrupt interference with the administration of federal laws." (Internal Revenue Manual, [9.5] 11.3.2.2, 4-09-1999).

The Committees expect that judgment will be used in enforcing this section. Social Security and SSI disability claimants and beneficiaries, in particular, are frequently subject to multiple, severe life stressors, which may include severe physical, psychological, or financial difficulties. In addition, disability claimants or beneficiaries who encounter delays in approval of initial benefit applications or in post-entitlement actions may incur additional stress, particularly if they have no other source of income. Under such circumstances, claimants or beneficiaries may at times express frustration in an angry manner, without truly intending to threaten or intimidate SSA employees. In addition, approximately 25% of Social Security disability beneficiaries and 35% of disabled SSI recipients have mental impairments, and such individuals may be less able to control emotional outbursts. These factors should be taken into account in enforcing this provision.

SECTION 206. USE OF SYMBOLS, EMBLEMS OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE

Present law

Section 1140 of the Social Security Act prohibits (subject to civil penalties) the use of Social Security or Medicare symbols, emblems and references on any item in a manner that conveys the false impression that such item is approved, endorsed or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) or the Department of Health and Human Services.

Explanation of provision

The new provision expands the prohibition in present law to several other references to Social Security and Medicare. This provision applies to items sent after 180 days after the date of enactment.

Reason for change

Expansion of this list helps to ensure that individuals receiving any type of mail, solicitations or flyers bearing symbols, emblems or names in reference to Social Security or Medicare are not misled into believing that these agencies approved or endorsed the services or products depicted in the solicitations.

SECTION 207. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY

Present law

An individual entitled to disability benefits under Title II is entitled to a "trial work period" to test his or her ability to work. The trial work period allows beneficiaries to work with earnings above the substantial gainful activity level for up to 9 months (which need not be consecutive) without any loss of benefits. A month counts as a trial work period month if the individual earns above a level established by regulation (in 2002, this amount is $560 a month). If the individual does not use the full 9 months within a 60 month period, he or she is entitled to another 9 month trial work period.

SSA's Inspector General has pursued prosecution of Title II disability beneficiaries who fraudulently conceal work activity by applying several criminal statutes, including section 208(a) of the Social Security Act and sections 371 and 641 of Title 18 of the United States Code (Crimes and Criminal Procedures).

Explanation of provision

Under the new provision, an individual who is convicted of fraudulently concealing work activity during the trial work period would not be entitled to receive a disability benefit for trial work period months that occur prior to the conviction but within the same period of disability. If the individual had already been paid benefits for these months, he or she would be liable for repayment of these benefits, in addition to any restitution, penalties, fines, or assessments that were otherwise due.

In order to be considered to be fraudulently concealing work activity under this provision, the individual must have: (1) provided false information to SSA about his or her earnings during that period; (2) worked under another identity, including under the social security number of another person or a false social security number; or (3) taken other actions to conceal work activity with the intent to fraudulently receive benefits that he or she was not entitled to.

This provision is effective with respect to work activity performed after the date of enactment.

Reason for change

Under current law, if an individual is convicted of fraudulently concealing work activity, the dollar loss to the government is calculated based on the benefits that the individual would have received had he or she not concealed the work activity. During the trial work period, disability beneficiaries continue to receive their monthly benefit amount no matter how much they earn. Therefore, benefits received during the trial work period are not included in calculating the total dollar loss to the government.

Many United States Attorneys set dollar-loss thresholds that they use in determining which fraud cases to prosecute. As benefits received during the trial work period are not included in the dollar-loss totals, the dollar loss to the government may fall below the thresholds set by the United States Attorneys in cases involving fraudulent concealment of work by Title II disability beneficiaries. In such situations, the case would not be prosecuted even if the evidence of fraud was very clear.

This provision rectifies this situation by establishing that individuals convicted of fraudulently concealing work activity during the trial work period are not entitled to receive a benefit for trial work period months prior to the conviction (but within the same period of disability). As a result, in such cases the total dollar loss to the government that is calculated will be greater and more likely to meet the United States Attorneys' thresholds for prosecution.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

SECTION 301. CAP ON ATTORNEY REPRESENTATIVE ASSESSMENTS

Present law

The Social Security Act allows the fees of claimant representatives who are attorneys to be paid by the SSA directly to the attorney out of the claimant's past-due benefits for Title II claims. The SSA, by law, is permitted to charge an assessment at a rate not to exceed 6.3% of approved attorney fees, for the costs of determining, processing, withholding and distributing attorney representative fees for Title II claims.

Explanation of provision

The new provision imposes a cap of $75 on the 6.3% assessment on approved attorney representative fees for Title II claims, and this cap is indexed for inflation. This provision is effective 180 days after the date of enactment.

Reason for change

Testimony was given at a House oversight hearing in May 2001 on Social Security's processing of attorney representative's fees that the amount of the fee assessment is unfair to these attorneys, who provide an important service to claimants. The attorneys who receive fee payments from the agency have their gross revenue reduced by 6.3%, which is about a 20% reduction in the net revenue for most attorneys. As a result of this revenue loss and the time it takes for the SSA to issue the fee payments to attorneys, a number of attorneys have decided to take fewer or none of these cases. The cap on the amount of the assessment would help ensure that enough attorneys remain available to represent claimants before the Social Security Administration.

The Committees continue to be concerned about the agency's processing time for attorney representative fee payments and expect the SSA to further automate the payment process as soon as possible.

The Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate will request the General Accounting Office to conduct a study of claimant representation in the Social Security and Supplemental Security Income programs. The study will include an evaluation of the potential advantages and disadvantages of extending the fee withholding process to non-attorney representatives.

TITLE IV: MISCELLANEOUS AND TECHNICAL AMENDMENTS

SUBTITLE A: AMENDMENTS RELATING TO THE TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999

SECTION 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS

Present law

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. These projects can test: (1) alternative methods of treating work activity of individuals entitled to disability benefits; (2) the alteration of other limitations and conditions that apply to such individuals (such as an increase in the length of the trial work period); and (3) implementation of sliding scale benefit offsets. To conduct the projects, the Commissioner may waive compliance with the benefit requirements of Title II and Section 1148, and the HHS Secretary may waive the benefit requirements of Title XVIII. The Commissioner's authority to conduct demonstration projects terminates on December 17, 2004, five years after its enactment in the "Ticket to Work and Work Incentives Improvement Act of 1999"(P.L. 106-170, "Ticket to Work Act").

Explanation of provision

The new provision clarifies that the Commissioner is authorized to conduct demonstration projects that extend beyond December 17, 2004, if such projects are initiated on or before that date (i.e., initiated within the five-year window after enactment of the Ticket to Work Act). This provision is effective upon enactment.

Reason for change

The current five-year limitation on waiver authority restricts the options that may be tested to improve work incentives and return to work initiatives, as several potential options the Commissioner may test would extend past the current five-year limit. As developing a well-designed demonstration project can require several years, the current five-year authority may in some cases not allow sufficient time to both design the project and to conduct it long enough to obtain reliable data.

SECTION 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Present law

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. In addition, the Ticket to Work Act specifically directs the Commissioner to conduct demonstration projects for the purpose of evaluating a program for Title II disability beneficiaries under which benefits are reduced by $1 for each $2 of the beneficiary's earnings above a level determined by the Commissioner. To permit a thorough evaluation of alternative methods, section 302 of the Ticket to Work Act allows the Commissioner to waive compliance with the benefit provisions of Title II and allows the Secretary of Health and Human Services to waive compliance with the benefit requirements of Title XVIII.

Explanation of provision

The new provision allows the Commissioner to also waive requirements in Section 1148 of the Social Security Act, which governs the Ticket to Work and Self-Sufficiency Program (Ticket to Work Program), as they relate to Title II. This provision is effective upon enactment.

Reason for change

This additional waiver authority is needed to allow the Commissioner to effectively test the $1-for-$2 benefit offset in combination with return to work services under the Ticket to Work Program. Under the $1-for-$2 benefit offset, earnings of many beneficiaries may not be sufficient to completely eliminate benefits. However, under section 1148 of the Social Security Act, benefits must be completely eliminated before employment networks participating in the Ticket to Work Program are eligible to receive outcome payments. Therefore, employment networks are likely to be reluctant to accept tickets from beneficiaries participating in the $1-for-$2 benefit offset demonstration, making it impossible for SSA to effectively test the combination of the benefit offset and these return to work services. Additionally, section 1148 waiver authority was provided for the broad Title II disability demonstration authority under section 234 of the Social Security Act, but not for this mandated project.

SECTION 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Present law

The Ticket to Work Act provides that the benefits and administrative expenses of conducting the $1-for-$2 demonstration projects will be paid out of the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal Hospital Insurance and Federal Supplementary Medical Insurance (HI/SMI) trust funds, to the extent provided in advance in appropriations acts.

Explanation of provision

The new provision establishes that administrative expenses for the $1-for-$2 demonstration project will be paid out of otherwise available annually-appropriated funds, and that benefits associated with the demonstration project will be paid from the OASDI or HI/SMI trust funds. This provision is effective upon enactment.

Reason for change

For demonstration projects conducted under the broader Title II demonstration project authority under section 234 of the Social Security Act, administrative costs are paid out of otherwise available annually-appropriated funds, and benefits associated with the demonstration projects are paid from the OASDI or HI/SMI trust funds. This provision would make funding sources for the $1 for $2 demonstration project under the Ticket to Work Act consistent with funding sources for other Title II demonstration projects.

SECTION 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS

Present law

Section 1149 of the Social Security Act (the Act), as added by the Ticket to Work Act, directs SSA to establish a community-based work incentives planning and assistance program to provide benefits planning and assistance to disabled beneficiaries. To establish this program, SSA is required to award cooperative agreements (or grants or contracts) to State or private entities. In fulfillment of this requirement, SSA has established the Benefits Planning, Assistance, and Outreach (BPAO) program. BPAO projects now exist in every state.

Section 1150 of the Act authorizes SSA to award grants to State protection and advocacy (P&A) systems so that they can provide protection and advocacy services to disabled beneficiaries. Under this section, services provided by participating P&A systems may include: (1) information and advice about obtaining vocational rehabilitation (VR) and employment services; and (2) advocacy or other services that a disabled beneficiary may need to secure or regain employment. SSA has established the Protection and Advocacy to Beneficiaries of Social Security (PABSS) Program pursuant to this authorization.

To be eligible for services under either the BPAO or PABSS programs, an individual must be a "disabled beneficiary" as defined under section 1148(k) of the Act. Section 1148(k) defines a disabled beneficiary as an individual entitled to Title II benefits based on disability or an individual who is eligible for federal Supplemental Security Income (SSI) cash benefits under Title XVI based on disability or blindness.

Explanation of provision

The new provision expands eligibility for the BPAO and PABSS programs under section 1149 and 1150 of the Act to include not just individuals who are "disabled beneficiaries" under section 1148(k) of the Act, but also individuals who (1) are no longer eligible for SSI benefits because of an increase in earnings, but remain eligible for Medicaid; (2) receive only a State Supplementary payment (a payment that some States provide as a supplement to the federal SSI benefit); or (3) are in an extended period of Medicare eligibility under Title XVIII after a period of Title II disability has ended. The new provision also expands the types of services a P&A system may provide under section 1150 of the Act. Currently P&A systems may provide "advocacy or other services that a disabled beneficiary may need to secure or regain employment," while the new provision allows them to provide "advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain employment."

The amendment to section 1149, which affects the BPAO program, is effective with respect to grants, cooperative agreements or contracts entered into on or after the date of enactment. The amendments to section 1150, which affect the PABSS program, are effective for payments provided after the date of the enactment.

Reason for change

The Committees recognize that Social Security and SSI beneficiaries with disabilities face a variety of barriers and disincentives to becoming employed and staying in their jobs. The intent of this provision, as with the Ticket to Work Act, is to encourage disabled individuals to work.

The definition of "disabled beneficiary" under section1148(k) of the Act does not include several groups of beneficiaries, including individuals who are no longer eligible for SSI benefits because of an earnings increase but remain eligible for Medicaid; individuals receiving only a State Supplementary payment; and individuals who are in an extended period of Medicare eligibility. The Committees believe that BPAO and PABSS services should be available to all of these disabled beneficiaries regardless of Title II or SSI payment status. Beneficiaries may have progressed beyond eligibility for federal cash benefits but still be in need of information about the effects of work on their benefits, or in need of advocacy or other services to help them maintain or regain employment. Extending eligibility for the BPAO and PABSS programs to beneficiaries who are receiving State Supplemental payments or are still eligible for Medicare or Medicaid, but who are no longer eligible for federal cash benefits, will help to prevent these beneficiaries from returning to the federal cash benefit rolls and help them to reach their optimum level of employment.

The Committees also intend that PABSS services be available to provide assistance to beneficiaries who have successfully obtained employment but who continue to encounter job-related difficulties. Therefore, the new provision extends the current PABSS assistance (which is available for securing and regaining employment) to maintaining employment—thus providing a continuity of services for disabled individuals throughout the process of initially securing employment, the course of their being employed and, if needed, their efforts to regain employment. This provision would ensure that disabled individuals would not face a situation in which they would have to wait until they lost their employment in order to once again be eligible to receive PABSS services. Payments for services to maintain employment would be subject to Section 1150(c) of the Social Security Act. The Committees will continue to monitor the implementation of PABSS programs to ensure that assistance is directed to all areas in which beneficiaries face obstacles in securing, maintaining, or regaining work.

SECTION 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

Present law

Under section 52 of the Internal Revenue Code (IRC), employers may claim a Work Opportunity Tax Credit (WOTC) if they hire, among other individuals, individuals with disabilities who have been referred by a State vocational rehabilitation (VR) agency.

For an individual to qualify as a vocational rehabilitation referral under section 51(d)(6)(B) of the IRC, the individual must be receiving or have completed vocational rehabilitation services pursuant to: (i) "an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973;" or (ii) "a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code." (IRC, section 51(d)(6)(B).

The WOTC is equal to 40% of the first $6,000 of wages paid to newly hired employees during their first year of employment when the employee is retained for at least 400 work hours. As such, the maximum credit per employee is $2,400, but the credit may be less depending on the employer's tax bracket. A lesser credit rate of 25% is provided to employers when the employee remains on the job for 120–399 hours. The amount of the credit reduces the company's deduction for the employee's wages.

The Ticket to Work Act established the Ticket to Work and Self-Sufficiency Program (Ticket to Work Program) under section 1148 of the Social Security Act. Under this program, SSA provides a "ticket" to eligible Social Security Disability Insurance beneficiaries and Supplemental Security Income beneficiaries with disabilities that allows them to obtain employment and other support services from an approved "employment network" of their choice. Employment networks may include State, local, or private entities that can provide directly, or arrange for other organizations or entities to provide, employment services, VR services, or other support services. State VR agencies have the option of participating in the Ticket to Work Program as employment networks. Employment networks must work with each beneficiary they serve to develop an individual work plan (IWP) for that beneficiary that outlines his or her vocational goals, and the services needed to achieve those goals. For VR agencies that participate in the Ticket to Work Program, the individualized written plan for employment (as specified under (i) in paragraph one above) serves in lieu of the IWP.

Under current law, an employer hiring a disabled individual referred by an employment network does not qualify for the WOTC unless the employment network is a State VR agency.

Explanation of provision

The new provision allows employers who hire disabled workers through referrals by employment networks under section 1148 of the Social Security Act to qualify for the WOTC. Specifically, it provides that, for purposes of section 51(d)(6)(B)(i) of the IRC of 1986, an IWP under section 1148 of the Social Security Act shall be treated as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.

This provision is effective as if it were included in section 505 of the Ticket to Work Act.

Reason for change

The Ticket to Work Program was designed to increase choice available to beneficiaries when they select providers of employment services. Employers hiring individuals with disabilities should be able to qualify for the WOTC regardless of whether the employment referral is made by a public or private service provider. This amendment updates eligibility criteria for the WOTC to conform to the expansion of employment services and the increase in number and range of VR providers as a result of the enactment of the Ticket to Work Act.

SUBTITLE B. MISCELLANEOUS AMENDMENTS

SECTION 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT

Present Law

The Social Security Act requires SSA to file a hearing transcript with the District Court for any SSA hearing that follows a court remand of an SSA decision.

Explanation of provision

The new provision clarifies that SSA is not required to file a transcript with the court when SSA, on remand, issues a decision fully favorable to the claimant. This provision is effective upon enactment.

Reason for change

A claimant whose benefits have been denied is provided a transcript of a hearing to be used when the claimant appeals his case in Federal District court. If the Administrative Law Judge issues a fully favorable decision, then transcribing the hearing is unnecessary since the claimant would not appeal this decision.

SECTION 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES

Present law

In most cases, the Social Security Act prohibits the payment of Social Security benefits to non-citizens who are deported from the United States. However, the Act does not prohibit the payment of Social Security benefits to non-citizens who are deported for smuggling other non-citizens into the United States.

Explanation of provision

The new provision requires SSA to suspend benefits of beneficiaries who are removed from the United States for smuggling aliens. This provision applies to individuals for whom the Commissioner receives a removal notice from the Attorney General after the date of enactment.

Reason for change

Individuals who are removed from the United States for smuggling aliens have committed an act that should prohibit them from receiving Social Security benefits.

SECTION 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS

Present law

The Federal Reports Elimination and Sunset Act of 1995 "sunsetted" most annual or periodic reports from agencies to Congress that were listed in a 1993 House inventory of congressional reports.

Explanation of provision

The new provision reinstates the requirements for several periodic reports to Congress that were subject to the 1995 "sunset" Act, including annual reports on the financial solvency of the Social Security and Medicare programs (the Board of Trustees' reports on the OASDI, HI, and SMI trust funds) and annual reports on certain aspects of the administration of the Title II disability program (the SSA Commissioner's reports on pre-effectuation reviews of disability determinations and continuing disability reviews). The provision is effective upon enactment.

Reason for change

The reports to be reinstated provide Congress with important information needed to evaluate and oversee the Social Security and Medicare programs.

SECTION 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS

Present law

Under the definitions of "widow" and "widower" in Section 216 of the Social Security Act, a widow or widower must have been married to the deceased spouse for at least nine months before his or her death in order to be eligible for survivor benefits.

Explanation of provision

The new provision creates an exception to the nine-month requirement for cases in which the Commissioner finds that the claimant and the deceased spouse would have been married for longer than nine months but for the fact that the deceased spouse was legally prohibited from divorcing a prior spouse who was in a mental institution. The provision is effective for benefit applications filed after the date of enactment.

Reason for change

This provision allows the Commissioner to issue benefits in certain unusual cases in which the duration of marriage requirement could not be met due to a legal impediment over which the individual had no control and the individual would have met the legal requirements were it not for the legal impediment.

SECTION 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER

Present law

In cases where there is an agreement with a foreign country (i.e., a totalization agreement), a worker's earnings are exempt from United States Social Security payroll taxes when those earnings are subject to the foreign country's retirement system.

Explanation of provision

The new provision clarifies the legal authority to exempt a worker's earnings from United States Social Security tax in cases where the earnings were subject to a foreign country's retirement system in accordance with a U.S. totalization agreement, but the foreign country's law does not require compulsory contributions on those earnings. The provision establishes that such earnings are exempt from United States Social Security tax whether or not the worker elected to make contributions to the foreign country's retirement system.

The provision is effective upon enactment.

Reason for change

In U.S. totalization agreements, a person's work is generally subject to the Social Security laws of the country in which the work is performed. In most cases the worker, whether subject to the laws of the United States or the other country, is compulsorily covered and required to pay contributions in accordance with the laws of that country. In some instances, however, work that would be compulsorily covered in the U.S. is excluded from compulsory coverage in the other country (such as Germany). In such cases, the IRS has questioned the exemption from U.S. Social Security tax for workers who elect not to make contributions to the foreign country's retirement system. This provision would remove any question regarding the exemption and would be consistent with the general philosophy behind the coverage rules of totalization agreements.

SECTION 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY

Present law

Under Section 218 of the Social Security Act, a State may choose whether or not its

State and local government employees who are covered by an employer-sponsored pension plan may also participate in the Social Security Old-Age, Survivors, and Disability Insurance program. (In this context, the term "employer-sponsored pension plan" refers to a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision of a State such as a town. Under current law, State or local government employees not covered by an employer-sponsored pension plan already are, with a few exceptions, mandatorily covered by Social Security.)

Social Security coverage for employees covered under a State or local government employer-sponsored pension plan is established through an agreement between the State and the federal government. In most States, before the agreement can be made, employees who are members of the employer-sponsored pension plan must agree to Social Security coverage by majority vote in referendum. If the majority vote is in favor of Social Security coverage, then the entire group, including those voting against such coverage, will be covered by Social Security. If the majority vote is against Social Security coverage, then the entire group, including those voting in favor of such coverage and employees hired after the referendum, will not be covered by Social Security.

In certain States, however, if employees who already are covered in an employer-sponsored pension plan are not in agreement about whether to participate in the Social Security system, coverage can be extended only to those who choose it, provided that all newly hired employees of the system are mandatorily covered under Social Security. To establish such a divided retirement system, the state must conduct a referendum among members of the employer-sponsored pension plan. After the referendum, the retirement system is divided into two groups, one composed of members who elected Social Security coverage and those hired after the referendum, and the other composed of the remaining members of the employer-sponsored pension plan. Under Section 218(d)(6)(c) of the Social Security Act, 21 states currently have authority to operate a divided retirement system.

Explanation of provision

The new provision permits the state of Kentucky to join the 21 other states in being able to offer a divided retirement system. This system would permit current state and local government workers in an employer-sponsored pension plan to elect Social Security coverage on an individual basis. Those who do not wish to be covered by Social Security would continue to participate exclusively in the employer-sponsored pension plan.

The governments of the City of Louisville and Jefferson County will be merged in January 2003 and a new retirement system will be formed. Under the new provision, each employee under the new system could choose whether or not to participate in the Social Security system in addition to their employer-sponsored pension plan. As under current law, all employees newly hired to the system after the divided system is in place would be covered automatically under Social Security.

This provision is effective on January 1, 2003.

Reason for change

The governments of the City of Louisville and Jefferson County, Kentucky will merge in January, 2003. Currently, some officers and firefighters in employer-sponsored pension plans provided by these governments are covered by Social Security, while others are not. In order to provide fair and equitable coverage to all officers and firefighters, a divided retirement system, such as that currently authorized in 21 other states, was seen as the best solution. Otherwise, upon creation of the new retirement system, a referendum would be held to determine by majority vote whether or not the group would participate in Social Security. As the number of non-covered employees will exceed the number of Social Security-covered employees under the new retirement system, in the absence of this new provision, those employees covered by Social Security could lose that coverage. The Kentucky General Assembly has adopted a bill that will allow the new divided retirement system to go forward following enactment of this provision.

SECTION 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD

Present law

The Social Security Advisory Board is an independent, bipartisan Board established by the Congress under section 703 of the Social Security Act. The 7-member Board is appointed by the President and the Congress to advise the President, the Congress and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs. Section 703(f) of the Social Security Act provides that members of the Board serve without compensation, except that, while engaged in Board business away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for persons in the Government who are employed intermittently.

Explanation of provision

The new provision establishes that compensation for Social Security Advisory Board members will be provided, at the daily rate of basic pay for level IV of the Executive Schedule, for each day (including travel time) during which the member is engaged in performing a function of the Board. This provision is effective on January 1, 2002.

Reason for change

Other government advisory boards—such as the Employee Retirement Income Security Act Advisory Council, the Pension Benefit Guaranty Corporation Advisory Committee and the Thrift Savings Plan Board—provide compensation for their members. This provision allows for similar treatment of Social Security Advisory Board members with respect to compensation.

SECTION 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION

Present law

The Government Pension Offset (GPO) was enacted in order to equalize treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by two-thirds of the government pension.

However, under what's known as the "last day rule," State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System (CSRS), a system that is not covered by Social Security, to the Federal Employee Retirement System (FERS), a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO.

Explanation of provision

The new provision requires that State and local government workers be covered by Social Security during their last 5 years of employment in order to be exempt from the GPO. The provision is effective for applications filed after the month of enactment. However, the provision would not apply to individuals whose last day of employment for the State or local governmental entity was covered by Social Security and occurs on or before June 30, 2003, provided that such period of covered employment began on or before December 31, 2002.

Reason for change

The change will establish uniform application of the GPO exemption for all local, State, and federal government workers.

SUBTITLE C. TECHNICAL AMENDMENTS

SECTION 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD

Present law

Section 1143 of the Social Security Act directs "the Secretary of Health and Human Services" to send periodic Social Security Statements to individuals.

Explanation of provision

The new provision makes a technical correction to this section by inserting a reference to the Commissioner of Social Security in place of the reference to the Secretary of Health and Human Services. This provision is effective upon enactment.

Reason for change

The "Social Security Independence and Program Improvements Act of 1994" (P.L. 103-296) made the Social Security Administration an independent agency separate from the Department of Health and Human Services. This provision updates Section 1143 to reflect that change.

SECTION 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS

Present law

Section 1456 of the "Small Business Job Protection Act of 1996" (P.L. 104-188) established that certain retirement benefits received by ministers and members of religious orders (such as the rental value of a parsonage or parsonage allowance) are not subject to Social Security payroll taxes under the Internal Revenue Code. However, under Section 211 of the Social Security Act, these retirement benefits are treated as net earnings from self-employment for the purpose of acquiring insured status and calculating Social Security benefit amounts.

Explanation of provision

The new provision makes a conforming change to exclude these benefits received by retired clergy from Social Security-covered earnings for the purpose of acquiring insured status and calculating Social Security benefit amounts. This provision is effective for years beginning before, on, or after December 31, 1994. This effective date is the same as the effective date of Section 1456 of P.L. 104-188.

Reason for change

P.L. 104-188 provided that certain retirement benefits received by ministers and members of religious orders are not subject to payroll taxes. However, a conforming change was not made to the Social Security Act to exclude these benefits from being counted as wages for the purpose of acquiring insured status and calculating Social Security benefit amounts. This income is therefore not treated in a uniform manner. This provision would conform the Social Security Act to the Internal Revenue Code with respect to such income.

SECTION 423. TECHNICAL CORRECTION RELATING TO DOMESTIC EMPLOYMENT

Present law

Present law is ambiguous concerning the Social Security coverage and tax treatment of domestic service performed on a farm. Domestic employment on a farm appears to be subject to two separate coverage thresholds (one for agricultural labor and another for domestic employees).

Explanation of provision

The new provision clarifies that domestic service on a farm is treated as domestic employment, rather than agricultural labor, for Social Security coverage and tax purposes. This provision is effective upon enactment.

Reason for change

Prior to 1994, domestic service on a farm was treated as agricultural labor and was subject to the coverage threshold for agricultural labor. According to SSA, in 1994, when Congress amended the law with respect to domestic employment, the intent was that domestic employment on a farm would be subject to the coverage threshold for domestic employees instead of the threshold for agricultural labor. However, the current language is unclear, making it appear as if farm domestics are subject to both thresholds.

SECTION 424. TECHNICAL CORRECTION OF OUTDATED REFERENCES

Present law

Section 202(n) and 211(a)(15) of the Social Security Act and Section 3102(a) of the Internal Revenue Code of 1986 each contain outdated references that relate to the Social Security program.

Explanation of provision

The new provision corrects outdated references in the Social Security Act and the Internal Revenue Code by: (1) in Section 202(n) of the Social Security Act, updating references respecting removal from the United States; (2) in Section 211(a)(15) of the Social Security Act, correcting a citation respecting a tax deduction related to health insurance costs of self-employed individuals; and (3) in Section 3102(a) of the Internal Revenue Code of 1986, eliminating a reference to an obsolete 20-day agricultural work test. This provision is effective upon enactment.

Reason for change

Over the years, provisions in the Social Security Act, the Internal Revenue Code and other related laws have been deleted, re-designated or amended. However, necessary conforming changes have not always been made. Consequently, Social Security law contains some outdated references.

SECTION 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES

Present law

The Social Security Act and the Internal Revenue Code provide that, in the absence of a partnership, all self-employment income from a trade or business operated by a married person in a community property State is deemed to be the husband's unless the wife exercises substantially all of the management and control of the trade or business.

Explanation of provision

Under the new provision, self-employment income from a trade or business that is not a partnership, and that is operated by a married person in a community property State, is taxed and credited to the spouse who is carrying on the trade or business. If the trade or business is jointly operated, the self-employment income is taxed and credited to each spouse based on their distributive share of gross earnings. This provision is effective upon enactment.

Reason for change

Present law was found to be unconstitutional in several court cases in 1980. Since then, income from a trade or business that is not a partnership in a community property State has been treated the same as income from a trade or business that is not a partnership in a non-community property State—it is taxed and credited to the spouse who is found to be carrying on the business.

This change will conform the provisions in the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States.

SECTION 426. TECHNICAL CHANGES TO THE RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2001

Present law

See Public Law 107-90.

Explanation of provisions

Quorum rules

This technical change clarifies that, under Section 105 of the Act, a vacancy on the Board of National Railroad Retirement Investment Trust (NRRIT) does not preclude the Board from making changes in the Investment Guidelines with the unanimous vote of all remaining Trustees.

Transfers

This technical change clarifies that under Section 107 of the Act, the Railroad Retirement Board (RRB) can require the NRRIT to transfer amounts necessary to pay benefits to the Railroad Retirement Account (RRA) and that excess Social Security Equivalent Benefits (SSEB) Account assets can be transferred to the RRA for investment in federal securities until used to pay benefits.

Investment authority

This technical change clarifies that, under Section 105 of the Act, the Board of the NRRIT has the authority to invest the assets with the assistance of its own professional staff or by retaining outside advisors and managers.

Clerical changes

This provision makes a number of grammatical and typographical corrections to the Act.

Reason for change

All four changes are purely technical in nature and are needed to promote the efficient implementation of the Railroad Retirement and Survivors' Improvement Act of 2001.

SOCIAL SECURITY

MEMORANDUM

Date: November 18, 2002

To: Stephen C. Goss, Chief Actuary

From: Chris Chaplain, Actuary, Alice H. Wade, Deputy Chief Actuary

Subject: Estimated Long-Range OASDI Financial Effects of the Social Security Program Protection Act of 2002, as Amended by the Senate Finance Committee—Information.

This memorandum provides long-range estimates of the financial effect on the Social Security (OASDI) program for enactment of the Social Security Program Protection Act of 2002 (H.R. 4070), as passed by the House on June 26, 2002 and amended by the Senate Finance Committee. This legislation contains 35 provisions, including the following:

Provide additional safeguards for Social Security beneficiaries with representative payees, such as requiring periodic onsite reviews, holding payees liable or assessing penalties for misused benefits.

Grant the authority to assess civil monetary penalties for corrupt or forcible interference with the administration of the Social Security Act, and wrongful conversion by representative payees.

Deny title II benefits to fugitive felons, persons fleeing prosecution, and probation or parole violators.

Limit the amount of attorney fee assessments to the lower of 6.3% of the fee or $75. The $75 threshold would be indexed annually by cumulative changes in the Social Security cost-of-living adjustment (COLA), but future threshold amounts would be rounded to the next lower multiple of $10. However, the threshold amount would never go below $75.

Make several amendments to demonstration projects under the Ticket to Work Act.

Extend the right to have a divided retirement system for public employees in the state of Kentucky.

Replace the "last day" requirement for exemption from the Government Pension Offset with a "last 5 years" requirement—that is, the beneficiary would have to work in a position covered by Social Security and by the government pension plan for the last 5 years of such employment, rather than the last day.

Make miscellaneous technical amendments.

The estimated long-range OASDI financial effect of each provision of the legislation is either no change or a change in the actuarial balance that is negligible (less than 0.0005 percent of taxable payroll). Taken as a whole, the legislation would result in an increase in the OASDI actuarial balance that is estimated to be negligible. In addition, enactment of this legislation would change neither the first year that annual costs are expected to exceed tax income (2017) nor the year that the combined OASI and DI Trust Funds are expected to become exhausted (2041). The provisions in the legislation are generally effective with the date of enactment of the legislation, which we assume to be January 1, 2003. All estimates included in this memorandum are based on the intermediate assumptions of the 2002 Trustees Report.

Mr. REID. I ask unanimous consent that the substitute amendment be agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4967) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (H.R. 4070), as amended, was read the third time and passed.

ORDERS FOR TUESDAY, NOVEMBER 19, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9 a.m., Tuesday, November 19; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate proceed under the previous order; further, that the Senate recess from 12:30 to 2:15 tomorrow for the weekly party conferences, and if the Senate is proceeding under cloture, this time be charged against the cloture 30 hours.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. REID. Under the previous order, there will be a series of rollcall votes in relation to homeland security beginning at approximately 10:30 tomorrow morning.

ORDER FOR ADJOURNMENT

Mr. REID. I ask unanimous consent that if there is no further business to come before the Senate, the Senate stand in adjournment following the statement of the Senator from Alabama.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama is recognized.

NOMINATION OF DENNIS SHEDD

Mr. SESSIONS. Mr. President, in his absence, I want to share some thoughts I have about Judge Dennis Shedd, who has been nominated for the Fourth Circuit Court of Appeals. Judge Shedd is a superb nominee. He served 12 years on the Federal bench as a Federal district trial judge, hearing some 5,000 cases. He was rated by the American Bar Association, which goes around and interviews fellow judges, State court judges, and lawyers on both sides of cases. They get their opinions about how the judge has performed and they issue an independent rating.

We conservatives have sometimes complained about their ratings, saying they tend to be more favorable to more liberal-type judges. But in this case, they rated Judge Shedd the highest possible rating, well-qualified. They have about a 15-member committee that actually votes on all the paperwork that has been put together, and the ABA investigation is quite a deal.

Frankly, I believe it is very valuable to this process. I always have. I was talking recently to Senator-elect Lindsey Graham from South Carolina, who will be replacing Senator THURMOND. We were talking about Dennis Shedd. Lindsey has been a practicing attorney for many years and had been in court a lot. What he said to me was exactly the way I feel about these things. He said: You know, when a person has been on the bench 12 years, everybody knows whether they are any good or not. In a State like South Carolina, there are not that many Federal judges. Lawyers go into their courts all the time. The fact is, after a few years, everybody knows whether they are any good or not. These lawyers support Judge Shedd. The American Bar Association has supported Judge Shedd.

I have looked at some of the complaints that have been made about his record. I find them not only wrong, but in fact he should have been commended for the rulings he has made. I would like to share a few thoughts on that.

One is that he has served the Judicial Conference of the United States during his tenure, 12 years as a Federal judge, serving on the Judicial Branch Committee and the Subcommittee on Judicial Independence. It is a mark of respect for a trial judge in the United States to be chosen to serve on key committees of the Judicial Conference. Most judges are not on these committees.

From 1978 through 1988, he served on the Senate Judiciary Committee staff in this body. He is known by many of the Senators. He served as chief counsel and staff director for the Senate Judiciary Committee for Senator STROM THURMOND. According to the Almanac of Federal Judiciary, the attorneys rate judges and make comments about judges. You go before a judge and want to know something about them. Lawyers have books on them. This is what they say about him. They say he has outstanding legal skills and excellent judicial temperament. A few comments from South Carolinians were included: "You are not going to find a better judge on the bench or one who works harder." "He is the best Federal judge we have," said one attorney. "He gets an A all around," said another. "It is a great experience trying cases before him," said an attorney.

I like that. I tried a lot of cases and some cases you go to trial before a judge and it is miserable. A good judge can make the practice of law a pleasure.

"He is bright in business," said another. Everyone knows that is true. Plaintiff lawyers who seem to be stirring this opposition up have commended him for being evenhanded. "He has always been fair." Another plaintiffs lawyer says: "I have no complaints about him. He is nothing if not fair."

Judge Shedd will bring experience to the bench, having tried 4,000 to 5,000 cases as a district judge. That will be more trial experience than any of the other Federal judges on the Fourth Circuit Court of Appeals. Trial experience is the crucible for training an appellate judge. Some can do well without it.

As a practicing lawyer trying cases in Federal court full time as a U.S. attorney, and in private practice, as an assistant U.S. attorney, I understand Federal judges. I respect Federal judges. I know they learn from that trial bench. That will help them better when they read a written record to see if a judge made a mistake or not. Trial experience is helpful.

They say this is some sort of a circuit that is too conservative. I don't believe this circuit is at all that way. I note the last five judges appointed to the Fourth Circuit have been Democrats. Some people have forgotten what President Bush did. Judge Gregory, who had been nominated for the circuit and who was not confirmed by this Senate before President Clinton left office was renominated. President Bush, in extending his hand of bipartisanship, reached out and took this African-American jurist and renominated him to the court as an act of bipartisanship. Judge Gregory was a Democrat, a Clinton nominee, and had not been confirmed. President Bush, shortly after he took office, renominated him. Of course, he was confirmed just like that.

The other judges who were nominated at the same time have not moved so well.

But there are 11 cases that Judge Shedd has ruled on that have been reviewed by Judge Gregory. He has affirmed all 11 of them. It is unfair to suggest this is somehow a radical judge who is out of step. One case, Crosby v. South Carolina Department of Health, has been raised, that somehow he made a bad decision on that case. I don't think he did. But regardless of that, people could have a different opinion. That was one of the cases that went to Judge Gregory, President Clinton's nominee. Many members of the Democratic Party were most aggrieved he had not been confirmed by the time President Clinton left office. Judge Gregory agreed with Judge Shedd. He affirmed Judge Shedd's opinion.

That is just typical. Do 5,000 cases and somebody will find something with which to disagree. But, as Lindsey Graham said: Judges have reputations. And to me that means a lot. And this judge, through this career and background, has a good reputation of capability, experience, honesty, and a superb demeanor, making it a pleasure to practice before him.

I just want to say this. I attended the hearings in which Judge Shedd testified, and he was there as long as they wanted him to testify. They submitted all these questions to him, demanding that he explain everything he has ever done. And I heard the complaints, and I read the complaints. I am just going to tell you: They do not hold up.

He was criticized for doing the right thing. He didn't do wrong things. He was written up in those reports put out by special interest advocacy groups, the ones Senator HATCH calls the usual suspects, and they have abused him and twisted his rulings. I am going to go through a few of them, and we are going to talk about them. It ought to be an embarrassment for any group to have submitted the smear sheets they submitted when allegation after allegation just gets knocked down.

But how does it work around here? Unfortunately these attack groups file these sheets, and they make these allegations, and the press picks them up. By the time somebody gets the case and reads it and shows it is not true, they don't get nearly as much attention. The allegations get the attention first. It is really sad. I have watched this for many years. This is an absolute pattern.

Judge Shedd has a very low reversal rate by the court of appeals for the thousands of cases he has handled. But I will tell you one thing: If these advocacy groups, these usual suspects, if their smear sheets were brought out in the light of day and they were graded on them, they would get a big fat F. It would come back off that court of appeals like a rubber ball off that wall.

I am amazed that someone we know, who has such a sound record, who has served as a staffer in this Senate, has been put in the kind of grinder he has. Not one of the allegations, once you look at them in the slightest way, would serve as the basis for rejecting this superior judge.

One of the things they said—and it was repeated earlier on the floor today—was that the judge acted sua sponte to throw out cases against plaintiffs. Oh, this is awful, they say. Sua sponte meaning he acts on his own motion, meaning without anybody having filed a motion. And this means he is anti-plaintiff.

Have these people never been to court? They don't know what happens? You can tell one thing, I submit. They scoured his record. If they are digging up this kind of stuff, they have looked at everything he has ever done. So if they found anything of real substance, we would have heard about it.

Let's look at these sua sponte rulings that are supposed to be so bad and represent a view that he is hostile to plaintiffs.

One of them is Coker v. Wal-Mart. In that case, the defendant removed the case—Wal-Mart has the right, within certain rules and procedures, to remove the case to Federal court from State court. Judge Shedd, sua sponte, questioned whether the removal was appropriate as it appeared the motion for removal had been filed outside the 30-day time limitation established by 28 U.S.C. 1446(b). There was a time limitation. If you are sued in State court and you want to remove it out of State court, you have a time limitation to do so. Doubting whether he had the authority to remand the case sua sponte, Judge Shedd stated he would permit the defendant to file a brief addressing whether removal was timely and whether the court had the authority to remain. He had a duty to raise the issue of removal because it was jurisdictional. Federal courts are courts of limited jurisdiction. The general courts of jurisdiction are our State courts. Federal courts have limited jurisdiction. So a good judge, the first thing he does is looks at a case that comes before him and he wants to know whether or not it even ought to be in Federal court, and that is all he was saying.

He is saying: I looked at the case here, counsel, and it looks like it is outside the 30 days. Send me a brief on why I ought not to remand it back to State court. You waited too long to bring it to Federal court. All he asked for was a brief on the law. So that is what Federal judges are supposed to do.

Here is another one. Gilmore v. Ford is a product liability case. Judge Shedd sanctioned the plaintiff for failure to prosecute the case by dismissing the case. He dismissed the case for failure to prosecute. He evaluated that decision and tested it by each of the factors established by the Fourth Circuit in Ballard v. Carson, a 1989 case. Indeed, the plaintiff failed to respond to this motion to dismiss and for failure to prosecute, after earlier failing to respond to the defendant's motion to compel discovery.

You are not entitled to go to court and file lawsuits and continue lawsuits if you don't abide by the rules of the court. If you don't answer discovery, and if the judge sends you a warning that, I am going to dismiss the case and we are going to have a hearing, and you fail to respond—and the plaintiff doesn't even respond to that motion—the judge did the right thing, which was, remove the case from the court. That is not something he did wrong, it is something he did right.

Here is another one: Lowery v. Seamless Sensations. The defendant raised the defense that the plaintiff failed to file a timely charge of discrimination with the EEOC—this is a defendant being sued over a discrimination charge—and he defended, saying the plaintiff did not file as required by law with the Equal Employment Opportunity Commission, the Federal agency that is supposed to deal with that; and he failed to file a timely lawsuit and the jurisdictional prerequisites to any Federal court action since that defense called into question the court's subject matter jurisdiction.

The court has no authority and jurisdiction over the case if the plaintiff hadn't filed his claim and had a hearing before the EEOC.

So the judge expedited consideration of those offenses as it would have served no purpose to proceed to the merits of a case in which there is no jurisdiction.

So you have to figure that out first. If the court does not have jurisdiction, it should not consider the case.

To expedite consideration of the issues, he ordered the defendant to file a motion to dismiss based on the defenses and that the motion be filed with the judge. Ultimately, the defendant was granted summary judgment on the grounds that the plaintiff could not establish a prima facie case. So it appears the motion to dismiss was not eventually granted. But the case failed on other motions.

Let me just say this. I am a lawyer. I love to practice law. I believe in the rule of law. I believe in the right of people to go to court and to litigate. But there is a growing concern in this country about the expense and delay and time extensions of litigation. It is costing large amounts of money. Lawyers—maybe a half dozen of them—are charging $200 an hour fiddling around with a case. One of the good government reforms that virtually every judge I know of who amounts to anything has bought into it. If the case fails on jurisdiction or has some other defect, it ought to be promptly ruled on and ended. We ought not to have six months of depositions and expenses when the case never had a basis to go to trial, anyway.

So that is what Judge Shedd was doing here. He was simply carrying out good government and a good legal basis. If you do not meet the standard for jurisdiction, you don't go to Federal court, and the clients don't expend thousands and thousands of dollars eaten up by lawyers and end up later with the case being thrown out when it should have been thrown out to begin with.

In McCarter v. RHNB, an age and sex discrimination case, Judge Shedd initially granted summary judgment—this has been complained of right here on the floor today—on the grounds that the plaintiff was unable to provide any evidence of age and sex discrimination.

Following the entry of that judgment, the plaintiff filed a motion to alter or amend that judgment since it was based on grounds not raised, it was asserted, in the defendant's motion. The judge reconsidered it.

Judge Shedd reconsidered his order, agreed with the plaintiff, and reinstated the motion. He wrote:

> Although the Court believes that the defendant's motion for summary judgment and supporting memorandum may be fairly read as raising the issue upon which the motion was granted, the Court will nevertheless give the plaintiff the benefit of the doubt and grant the motion to alter or to amend and deny defendant's motion for summary judgment.

So he says right there that he was going to give the plaintiff the benefit of the doubt and allow the case to continue.

That is what a good judge does. He rules. If somebody shows he has made a mistake, or it is doubtful, he may reconsider his ruling.

That, to me, shows again good behavior, that he is thoughtful; that if someone raises something he didn't fully understand, he will reconsider his decision and go forward.

In Shults v. Denny's Restaurant, a disabilities and slander case, Judge Shedd sua sponte considered summary judgment, and ordered the plaintiff to file a memorandum in opposition to the court's motion for summary judgment.

This action by Judge Shedd was again based on jurisdictional defenses raised in the defendant's answer. The allegation was that the plaintiff had failed to file within the 2-year statute of limitations, and he had failed to exhaust administrative equal opportunity commission review procedures.

In the order requesting the plaintiff to file a memorandum, Judge Shedd wrote that:

> . . . although the express language of Rule 56 provides only for the parties to move for summary judgment, Federal district judges possess the inherent power to raise sua sponte an issue for possible resolution by summary judgment.

He cited appropriate authority of the United States Supreme Court in Celotex Corporation v. Catrett.

That is absolutely the law of America. If a judge spots something that goes to the very nature of the jurisdiction, he can assert a summary judgment motion and ask the plaintiff to respond.

This is really not adversarial. Some people in this country think that judges decide cases on the length of their foot; that they decide cases on how they feel that day; or they look at the plaintiff and they look at the defendant, they don't like Celotex, but they like the plaintiff, and so they rule for them.

That is not what happens in America. We have rules, and judges follow the rules. They get the case to the jury, and the jury decides it, or the lawyers settle.

I would point out that he acted within the law, and he raised those two fundamental questions. They were simple but very important. Had the 2-year statute of limitations been violated? If it had, the case cannot be brought. Had they failed to seek the EEOC review required by the procedures? If so, the case could not be brought.

The sooner that is determined, the better off everybody is going to be.

Simmons v. Coastal Contractors was a discrimination and retaliation-in-employment case in which both parties were pro se.

Both parties, the plaintiff and defendant, were representing themselves; that is, both had fools for clients, as they say.

Judge Shedd sua sponte brought the parties before the court. Traditionally you would not do this, perhaps. But he knew he had two nonlawyers. He ordered the plaintiff to cure specific deficiencies in his complaint or face dismissal.

The decision really was an attempt to aid the plaintiff in properly drafting his complaint and should not be viewed as anti-plaintiff, given the pro se nature of both parties.

Basically he said, Plaintiff, you cannot recover. If you recover on this complaint, the court of appeals will throw it out. You have to amend your complaint and file it in the right fashion.

I think that is an advantage to the plaintiff. That was helping the plaintiff.

Yet, these groups—these attack organizations argue that Judge Shedd in his rulings show hostility to the plaintiffs before him.

That is one of the examples they cite.

Smith v. Beck was a section 1983 gender discrimination case in which several women alleged discrimination when they were not admitted without male escorts to a nightclub featuring nude female dancers.

Judge Shedd sua sponte questioned whether the plaintiffs' allegations sufficed to establish the defendant's private club's actions were under color of State law.

It is a complex legal question. He raised that on his own. He says if it is not under color of State law, this is a private club, and you can't recover.

So the question dealt with whether or not merely operating an establishment that has a liquor license does or does not transform the club into a State action. After consideration of the brief, he concluded that merely holding a liquor license does not make it a State action when they said you couldn't have in the strip club women coming in without male escorts.

We do have some interesting cases in Federal court, as you can well see.

I think that was a correct ruling, and apparently was not appealed and not reversed.

Should he have allowed that case to go on? Should he allow depositions to be taken for months? Should he allow expenses to be run up? Insurance companies pay, people say. Well, you know, there is nothing wrong with that. The insurance company is going to pay the lawyer. Who pays the insurance companies? We pay the insurance companies. It is a cost of doing business in America. There is no free lunch and there is no free legal work in America. Somebody pays.

In Tessman v. Island Ford-Lincoln-Mercury, Inc., this Title VII action, Judge Shedd sua sponte challenged the court's subject matter jurisdiction given the plaintiff's apparent failure to allege she had first presented her claim to the EEOC and received a right-to-sue letter.

The way this works, as I understand it, if you have a complaint about discrimination in the workforce, you have to go and file your complaint with the Equal Opportunity Employment Commission. When you do that, they evaluate it, and you can settle it at that stage. Businesses, recognizing they made a mistake or many times the complaint is shown to be worthless, and it is settled right there, and it ends right there.

But if the complaint is valid, and if the business or defendant does not respond to the satisfaction of the plaintiff, the plaintiff can ask the EEOC to give them a right-to-sue letter. That allows them to get their attorney to sue the defendant and take it to Federal court, to make a Federal case out of it.

So the judge ordered the case dismissed unless the plaintiff could show cause why that action should not be taken. I think that is what a judge should do. That is the way he ought to rule. When you have 5,000 cases, and you go through these, I am not aware that any of them have been reversed on appeal. And I think it is the right thing.

On the right of a judge to issue sua sponte actions, this is the law of the United States. This is a Supreme Court case, the authoritative decision on the matter issued in 1986. The Supreme Court said:

> [D]istrict courts are widely acknowledged to possess the power to enter summary judgment sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence.

In each of these cases, the judge told the other party that was in trouble their complaint was being questioned for jurisdiction matters, that they had an opportunity to file a brief, and any other evidence as to why the case ought not to be dismissed. And that is the right way to handle it.

The ninth circuit—this California circuit that strikes down the Pledge of Allegiance—has declared:

> District courts unquestionably have the power [to grant summary judgment sua sponte].

That was in 1995.

The fourth circuit, of which District Court Judge Shedd is a part, ruled:

> It is a fundamental precept that federal courts are courts of limited jurisdiction, constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute.

Many Federal judges forget that, but that is the law of this country. Federal courts have limited jurisdiction, and they are empowered by the Constitution and Federal statutes to do certain things, and only those things.

Continuing to quote the court:

> A primary incident of that precept is our duty to inquire, sue sponte, whether a valid basis for jurisdiction exists, and to dismiss the action if no such ground appears.

The fourth circuit further said:

> We have long held that receipt of, or at least entitlement to, a right-to-sue letter is a jurisdictional prerequisite that must be alleged in a plaintiff's complaint. Thus, where neither the complaint nor the amended complaint alleges that the plaintiff has complied with these prerequisites, the plaintiff has not properly invoked the court's jurisdiction under Title VII.

So in each of the cases I have cited, and those that have been complained of by these scurrilous attack groups, Judge Shedd acted sua sponte, but he provided proper notice and an opportunity to the plaintiff to respond, as the law requires.

None of these cases were reversed on appeal. Trust me, had they been in error, it would have been taken up and been reversed. I think this court is a great circuit.

Several years ago, we had hearings to address the caseloads of the federal courts. Senator GRASSLEY as chairman of the Courts Subcommittee of the Senate Judiciary Committee, of which I am a member, called the hearings. He had the chief judge of the fourth circuit appear and talk about his caseload. They have one of the highest caseloads in America. Actually, not one of the highest, I think their caseload, per circuit, based on the cases per circuit for judges, was the highest in America. They had worked extremely hard, and they had a good procedure for managing their cases. It was really a good example for the rest of the courts around the country.

So I think this allegation—that this circuit is out of line—is something not healthy about the fourth circuit. It is just wrong. It is a great circuit, doing superb work, and the taxpayers are benefitting from it greatly.

There have been suggestions, although not anything of substance really, but allegations that somehow Judge Shedd is a white Southern male, and he is insensitive on the matters of race. Those are serious matters. I think if somebody had something to say about that, they would come forward, and we would see it, and we would know about it. But vague allegations of that kind are not good.

We ought to take very seriously any thought that someone would have acted without a commitment to equal justice. That would be wrong, and they ought not be on the Federal bench if they do not treat people equally.

I would like to say, his record shows just the opposite. One of the things that Judge Shedd did as a district judge—and district judges play a significant role in the hiring of United States magistrates, who make about $1,000 less than they do per year. They do not have quite the lifetime appointment, but it is a good appointment. And magistrate judge positions are becoming highly sought after. A lot of good applications are made. There are a lot of superb lawyers who are acting as United States magistrate judges in America.

He led the effort in his district to recruit an African-American magistrate for that district, Margaret Seymour. She did a fine job as that magistrate. Later on, President Clinton, a Democratic President, appointed her to the Federal bench in that district. Margaret Seymour is now a sitting Federal district judge. One of the main reasons that occurred is because, years before, Judge Shedd had gone out and sought her, and worked to have her selected as that United States Federal magistrate.

He has worked actively to seek out minority and female candidates for other magistrate judge positions, and has directed the selection commission in South Carolina to consider diversity in selecting candidates for those positions.

In addition, he has recommended an African-American female to serve as chief of the Pretrial Services Division in that district. Pretrial Services handles all the arrest matters involving defendants who are arrested: whether or not they should be allowed bail, whether they are on drugs, whether they ought to be locked up, how they ought to be treated, supervising them pretrial if they are released on bail. They do a lot of work. It is a pretty big deal. For the State of South Carolina, with one district, that is a big appointment. I just point those things out. His critics didn't raise those issues.

Judge Shedd has bipartisan support from both his home State Senators. Of course, Senator THURMOND admires Judge Shedd immensely. He has observed his career for many years. He has observed with great pleasure Judge Shedd's success on the bench. And he is extremely proud, as he nears 100 years of age, about to complete the longest term any Senator has ever served in this body, that his former chief counsel, when he was chairman of the Senate Judiciary Committee, is now in a position to be elevated to the Fourth Circuit Court of Appeals. That is not too much to ask, I submit. It is the kind of thing we ought not to deny unless there is a real basis to do so.

He has both the support of Senator THURMOND and Senator FRITZ HOLLINGS from South Carolina. Before coming to this body, Senator HOLLINGS was a real lawyer, a real litigator, a plaintiff's lawyer, a former national president of the American Trial Lawyers Association. He gives no quarter in protecting the rights of plaintiffs on this floor.

When somebody complained one time about the plaintiffs trial lawyers getting so much money in these tobacco cases, he said they did so much good, as far as he was concerned, they could have more. He supports Judge Shedd. He and his friends in the Trial Lawyers Association—and I am sure he shares confidences with them—have agreed that this is a good nomination.

I don't understand where we are with this problem. Judge Shedd has been completely forthcoming with the Senate Judiciary Committee's requests, many of them, for information.

Earlier this year Judge Shedd sent nearly 1,000 unpublished opinions for review immediately after Chairman LEAHY requested them. They wanted to plow through all his cases, the unpublished opinions, thinking they might find a nugget there. Apparently they haven't because they haven't raised any of them. We would be hearing about it. They would be blown up in charts.

He continued to provide additional unpublished opinions as well as other information the committee has requested regarding his rulings, opinions, and judicial record generally. He has been absolutely forthcoming.

Finally, I will just repeat, how do you know about all this? You hear these things and some person says this and some person says that, and what do you believe?

The Democrats have tenaciously adhered to the view that the ABA rating is the gold standard, Democrats on our committee. They really insisted on that and placed the ABA review at the center of our confirmation process. Of course, it is an unofficial thing. It is nothing in the official process, but they have asserted it as the gold standard for determining whether or not a judge should be confirmed. This gold standard review process has been conducted by the American Bar Association. Their team of lawyers and investigators have talked to all the people down there who have practiced before his court. They talked to civil rights groups. They talked to plaintiffs lawyers. They talked to defense lawyers. They talked to the community and fellow judges. They have come back with the highest possible rating they give—well qualified—for Judge Shedd.

He absolutely is well qualified for this office. He ought to be confirmed. It was a real disappointment to me to see a number of Senators in committee suggest that they might not be for him or were not for him, even though we never had an official roll call vote. I don't see where they are coming from.

This is a man we know. This is a man with a record of integrity, judgment, good demeanor, experienced now to a large degree, the kind of capabilities that make for a great judge.

He is going to be a great judge on the Fourth Circuit Court of Appeals. I am proud to support him. I believe the complaints against him are baseless and that he should be confirmed.

I yield the floor.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m., Tuesday, November 19, 2002.

Thereupon, the Senate, at 9 p.m., adjourned until Tuesday, November 19, 2002, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 18, 2002:

APPALACHIAN REGIONAL COMMISSION

Anne B. Pope, of Tennessee, to be Federal Cochairman of the Appalachian Regional Commission.

Richard J. Peltz, of Pennsylvania, to be Alternative Federal Cochairman of the Appalachian Regional Commission.

DEPARTMENT OF TRANSPORTATION

James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.

HOUSE OF REPRESENTATIVES—*Tuesday, November 19, 2002*

The House met at noon and was called to order by the Speaker pro tempore (Mr. THORNBERRY).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 19, 2002.

I hereby appoint the Honorable MAC THORNBERRY to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Divine Wisdom and Word of God, enlighten our minds and set hearts free as You lift the burdens of daily routine from the shoulders of Members of the 107th Congress and their staffs.

Help Your servants to reflect on the accomplishments of this session and enable them to name the obstacles which impeded progress. May all learn from their experience and be committed to reconciling any personal relationships harmed in the course of daily activities.

Through the joint efforts of so many working together on the great tasks You set before this people, may Your holy will be done.

In Your Divine Providence, guide and protect this Nation and its elected officials as they look forward to a new day filled with promise and peace.

To You be glory, honor and thanksgiving, now and forever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Texas (Mr. BENTSEN) come forward and lead the House in the Pledge of Allegiance.

Mr. BENTSEN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

H.R. 727. An act to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

H.R. 2595. An act to direct the Secretary of the Army to convey a parcel of land of Chatham County, Georgia.

H.R. 5504. An act to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

H. Con. Res. 84. Concurrent resolution supporting the goals of Red Ribbon Week in promoting drug-free communities.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4070. An act to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhanced program protections, and for other purposes.

The message also announced that the Senate has passed bills and concurrent resolutions of the following titles in which the concurrence of the House is requested:

S. 754. An act to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs.

S. 1052. An act to amend the Public Health Service Act and the Employee Retirement Income Security Act of 1974 to protect consumers in managed care plans and other health coverage.

S. 2799. An act to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes.

S. 2869. An act to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers.

S. 2949. An act to provide for enhanced aviation security, and for other purposes.

S. 2951. An act to authorize appropriations for the Federal Aviation Administration, and for other purposes.

S. 3172. An act to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

S. Con. Res. 94. Concurrent resolution expressing the sense of Congress that public awareness and education about the importance of health care coverage is of the utmost priority and that a National Importance of Health Care Coverage Month should be established to promote that awareness and education.

S. Con. Res. 122. Concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes.

The message also announced that the Senate agreed to the amendments of the House to the bill (S. 2237) "An Act to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes."

DISPENSING WITH CALL OF PRIVATE CALENDAR ON TODAY

The SPEAKER pro tempore. Without objection, the call of the Private Calendar shall be dispensed with today.

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES,
Washington, DC, November 18, 2002.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 18, 2002 at 1:55 p.m.

That the Senate passed without amendment H.R. 2458.

That the Senate passed without amendment H.R. 5708.

That the Senate passed without amendment H.R. 5716.

That the Senate agreed to conference report H.R. 4628.

Withe best wishes, I am
Sincerely,

JEFF TRANDAHL,
Clerk of the House.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule I, the Speaker signed the following enrolled bills on Monday, November 18, 2002:

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

H.R. 2621, to amend Title 18, United States Code, with respect to consumer product protection;

H.R. 3758, for the relief of So Hyun Jun;

H.R. 3988, to amend Title 36, United States Code, to clarify the requirements for eligibility in the American Legion;

H.R. 4546, to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes;

H.R. 4628, to authorize appropriations for fiscal year 2003 for intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes;

H.R. 4727, to reauthorize the National Dam Safety Program, and for other purposes;

H.R. 5590, to amend Title 10 United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations;

H.R. 5708, to reduce preexisting PAYGO balances, and for other purposes;

H.R. 5716, to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year; and

S. 1214, to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

TRIBUTE TO THE HONORABLE JOHN LAFALCE, THE HONORABLE ROBERT A. UNDERWOOD AND THE HONORABLE KEN BENTSEN, MEMBERS OF CONGRESS

(Ms. PELOSI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PELOSI. Mr. Speaker, I am proud to put in the CONGRESSIONAL RECORD the tremendous accomplishments of JOHN LAFALCE, who has served this body with great distinction since 1974.

In 1999, JOHN LAFALCE steered the Financial Services Act through Congress, which began the process of modernizing the financial services industry, and this year his magnificent leadership brought about tough comprehensive investor protections that will help preserve pensions for years to come.

As this record attests, JOHN LAFALCE made a great deal of law during his outstanding career without making a great deal of noise.

I wish JOHN and his family, Pat and Martin, the very best, which is what he has given his fellow Americans, day in and day, out for nearly 30 years.

As I do so, I observe that I am here on the floor with two very distinguished colleagues who are departing Congress at the end of this session.

Congressman KEN BENTSEN from Texas, for whom I have a special recognition, since not only is he a great Member of Congress but he represents the district where my three grandsons live in Houston, Texas. His service in the Congress has benefited Americans across the board, whether we are talking about consumers or issues relating to financial services and housing. He was a champion in helping get debt relief for Third World countries that were poor and developing countries that needed assistance to make the future better for their children.

There is hardly any area that you can name that KEN BENTSEN's contribution has not been important, distinguished and had an impact on the American people. It has been an honor to call him colleague. I know much more will be said in the days and weeks ahead about his distinguished service.

He comes from a very distinguished family in Texas, Senator Bentsen being his uncle, but he made his own mark in Congress. I know his contribution to the public is not over and there is a great deal more to come. I congratulate him, his wife Tamra and their beautiful children on the service they have provided to our country.

As far as Mr. UNDERWOOD is concerned, he comes all the way from Guam. His contribution to the Congress has been significant in many ways, including his participation on the Asian Pacific American Caucus in the Congress. He taught us every day that he was here about the concerns of Asian Pacific Islanders and how we could do a better job for them, to make the future brighter for them, as well as within the Hispanic Caucus. So these issues of diversity are issues on which Mr. UNDERWOOD has led the way.

He loves his district, he loves his people, and he has served them very well here every day he was in Congress. It has also been a privilege to call him a colleague.

Mr. Speaker, I wish them all the best in their future endeavors, and I know that we will see great things from them down the road, in addition to the magnificent contributions they have already made.

ADJOURNMENT TO FRIDAY, NOVEMBER 22, 2002

The SPEAKER pro tempore. Without objection, when the House adjourns today, it shall stand adjourned until 11 a.m. on Friday, November 22, 2002.

There was no objection.

COMMUNICATION FROM THE HON. RICHARD A. GEPHARDT, DEMOCRATIC LEADER

The SPEAKER pro tempore laid before the House the following communication from RICHARD A. GEPHARDT, Democratic Leader:

HOUSE OF REPRESENTATIVES,
OFFICE OF THE DEMOCRATIC LEADER,
Washington, DC, November 18, 2002.

Hon. J. DENNIS HASTERT,
Speaker of the House, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: Pursuant to section 5(g) of Public Law 107-202, I hereby appoint the following individuals to the Benjamin Franklin Tercentenary commission:

Congressman Robert A. Borski (PA).
Congressman Chakah Fattah (PA).

Yours Very Truly,
RICHARD A. GEPHARDT.

APPOINTMENT AS MEMBERS TO BOARD OF TRUSTEES OF CONGRESSIONAL HUNGER FELLOWS PROGRAM

The SPEAKER pro tempore. Without objection, and pursuant to Section 4404(c)(2) of the Congressional Hunger Fellows Act of 2002 (P.L. 107-171), the Chair announces the Speaker's appointment of the following Members on the part of the House to the Board of Trustees of the Congressional Hunger Fellows Program for a term of 4 years:

Mrs. JO ANN EMERSON, Cape Girardeau, Missouri; and

Mr. David Weaver, Jr., Lubbock, Texas.

There was no objection.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes.

TRIBUTE TO THE LATE JESUS SABLAN LEON GUERRERO, FOUNDER AND CHAIRMAN OF THE BANK OF GUAM

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Guam (Mr. UNDERWOOD) is recognized for 5 minutes.

Mr. UNDERWOOD. Mr. Speaker, first of all, I want to thank the minority whip and soon-to-be minority leader for her kind remarks earlier today.

Mr. Speaker, today I rise to honor a man who has recently passed away in Guam, the passing of Jesus Sablan Leon Guerrero, the founder and chairman of the Bank of Guam. A pioneer, a visionary, a businessman, a local and regional leader, a statesman, a pillar of the community with a spirit seasoned by true grit, his experience during World War II, and emboldened with passionate ideals and altruism for Guam, these are the qualities embodied by the late Jesus Sablan Leon Guerrero, founder and chairman of the Board of the Bank of Guam.

The dream started long before the first cornerstone was laid for Guam's first locally owned bank. In the 1940s, Jesus Leon Guerrero worked in the Navy-operated Bank of Guam as a teller and then loan officer. The naval operation was later sold to the Bank of America in 1950.

During that time, Mr. Leon Guerrero continued his banking career with the Bank of America and worked his way up to the ranks of senior management. However, he found out that once he was assistant vice president of the Bank of America, the Bank of America would not let him be head of the local branch. They had a prohibition upon local people rising to that rank. As a consequence, he then left the Bank of America to start the very successful Bank of Guam.

For months, he personally went door-to-door to families, friends and people in the business community, in villages throughout the island, talking to people. He asked them to entrust their financial accounts in this new venture, the Bank of Guam, and he succeeded.

On March 13, 1972, after selling 100,000 shares at $15 each, the Bank of Guam was officially chartered and established its first branch in a humble modular home in Guam's capital, Hatgatna, with 13 employees.

The Bank of Guam has since been come to be known as the People's Bank, and because of this dedication to the people of Guam and other islands of the region, he resolved to take the risk of starting a new locally organized bank.

From its humble beginnings in a prefab building in Hatgatna, the Bank of Guam quickly grew into one of the island's most prominent success stories. As Guam's economy expanded, the bank prospered and took an increasing share of the market for both deposits and loans. Despite the setbacks of the recessions during the late 1970s and early 1980s, a more permanent structure replaced the original facility as the bank's headquarters.

In 1982, the bank opened a San Francisco branch to support trade financing between California and Guam and to allow daytime interaction with the Federal Reserve Bank. Then, in the mid-1980s, an opportunity arose to expand to other markets when the Bank of America restructured and closed its Pacific Island operations. Suddenly, the Bank of Guam had an established network of branches throughout the Western Pacific.

The Bank of Guam first introduced the ATM machine in 1984 and rapidly expanded its electronic banking network over the next few years. As the economy continued to grow throughout the decade, so did the Bank of Guam. In 1990, it opened its 10-story headquarters building in Hatgatna, and the building remains the most prominent structure in Guam's capital city.

But most of all I think we want to recognize Jesus Sablan Leon Guerrero for his inspiration to the young people of Guam. He is proof positive that the people of Guam, the Chamorro people, can be successful businessmen. Sometimes there is discussion in the society of Guam that there have not been too many successful local businessmen. He is one of them. He is also a role model for those of us who, when faced with difficult challenges, did not take no for an answer. Mr. Jesus Sablan Leon Guerrero not only took the challenge of opening a successful bank, but he also indicated that he was not going to let barriers artificially placed in front of him to impede his service.

He was a philanthropist, he was a contributor to the growth of the island as a Board of Regents member, as a philanthropist throughout the island.

His wife Eugenia, his children, Lou Leon Guerrero, who is a member of the Guam legislature, Tony, who is currently CEO of the Bank of Guam, and Jesse, also employed in the Bank of Guam, will miss their father, as we all will miss him. We certainly want to take the time to honor and celebrate the life of one of Guam's greatest citizens, Jesus Sablan Leon Guerrero.

□ 1215

EXPRESSING APPRECIATION AND GRATITUDE FOR THE OPPORTUNITY TO SERVE

The SPEAKER pro tempore (Mr. THORNBERRY). Under the Speaker's announced policy of January 3, 2001, the gentleman from Texas (Mr. BENTSEN) is recognized for 60 minutes as the designee of the minority leader.

Mr. BENTSEN. Mr. Speaker, I rise today in what will be my last speech as a Member of the House to thank the people of Texas' 25th Congressional District for the privilege they have bestowed upon me to serve as their representative over these past 8 years.

I want to at the outset thank the gentlewoman from California (Ms. PELOSI), the distinguished minority whip and incoming minority leader, who in fact, as she mentioned, her grandchildren do live in the district that I have had the honor of representing. She has been a great whip, she is going to be a great leader for our caucus, and we can expect some wonderful things from her over the years.

I would also like to thank the gentleman from Guam (Mr. UNDERWOOD). We have spent many hours together on flights, his flight a lot longer than mine, but to get to Guam, he had to go through Houston, so we had a good deal of time to spend together.

Of course, Mr. Speaker, yourself as the Speaker's designee, the gentleman from Texas (Mr. THORNBERRY), my colleague and classmate from the 104th Congress, and it has been a privilege to serve with him as well.

I can think of no greater honor than to be elected by one's fellow citizens to serve as their voice and vote in this, the people's House, in matters affecting their life, liberty, and property. I consider myself to be among the fortunate few Americans, less than 10,000 throughout history, who have had the opportunity to serve in this body.

Mr. Speaker, as I have served, I have learned more about my country and what it means to be an American, and I have learned more about my heritage and home as a representative of the people of Texas. I often have told friends at home how in this job it is not just the public figures with whom one interacts that are the most interesting but rather it is a chance to meet so many of one's fellow citizens in one's district who, but for this position, I would have never come to meet or know. As I leave the House, I do so with a far greater understanding of my constituency and my roots than when I arrived 8 years ago.

Furthermore, I have had the distinct pleasure of serving with my colleagues from all across this great Nation, from all walks of life, and from all points of view for whom I have the greatest respect. Serving in the House of Representatives gives one a more clear understanding of just how big and diverse our Nation has really become. The House is truly a unique national institution in that its Members are the closest to the people and their whims, and underscore our cultural, geographical, philosophical, ethnic, and religious diversity.

While ideology and partisan considerations have frequently divided us, it often seems that geography and culture are paramount. More importantly, one learns that there is more to our Nation than his or her district. It is the sum of these districts, their geography and cultures, that make us whole and strong. Even in this post-modern age, 220 years since the founding of our Nation, what de Touqueville saw in our democratic experience when he visited the United States in 1831 still holds true today.

Throughout my tenure, I have had the opportunity to witness and participate in a part of our Nation's history. I arrived with the Republican takeover of the House, a position I certainly did not advocate, but that was nonetheless historic. I watched as the government came to a halt and a presidency was resurrected after a stinging mid-term defeat. Even as the Congress took a turn to the right, I was able to participate in the greatest expansion of access to health care since Lyndon Johnson was President through the Children's Health Insurance Program and the largest investment in higher education since Eisenhower was President.

We went from deficits as far as the eye can see to an era of surpluses in paying down the Nation's debt, only to see deficits and debt return. I was here when we dismantled the regulatory barriers going back to the New Deal in finance and telecommunications and saw the rise of the new economy. We began making dramatic new investments in health and in basic science research as we witnessed historic breakthroughs such as the mapping of the human genetic structure. We enjoyed the "best economy in a generation" and impeached a President, witnessed the downfall of a Speaker, a tied national election and Supreme Court intervention for the first time in the history of our Nation, and saw that even in our time, mankind was still capable of genocide in Europe and Africa.

Then we suffered a startling and devastating attack, killing nearly 4,000 innocent Americans and others, and found our Nation at war and, once again, saw the economy go into a freefall. Yet the American people and its Congress rallied to the Nation's common defense.

It has been, to say the least, an exciting 8 years. As I take my leave, I do so with my faith restored in the American democratic experiment, now more than 220 years old. While elections may come and go, this body continues to operate. While we may disagree, we continue to do so in debate, rather than through insurrection and armed struggle. If I have any concerns, it is that perhaps we do not debate enough and that we have become less inclined to point out our differences in philosophy. I fear that frustration from our inability to compromise is resulting in an unhealthy cleansing of our philosophical differences under a forced and conceived cloak of bipartisanship.

Throughout my tenure, I have been willing on more than a few occasions to walk across the aisle to reach a compromise and achieve a greater good. We did this with the Budget Act in 1997, the children's health care program, and just recently with the Trade Adjustment Assistance Act, to name but a few.

I do not believe that compromise is a four-letter word, but, at the same time, I have become dismayed with the rising chorus of those who believe Members should hide their partisan and philosophical differences as a means to achieving an end. If we become devoid of any beliefs, can we effectively represent those who have them? Most of us, if not all of us, were sent here because we believed in something, and the people who sent us here believed in us. We should not be afraid to debate our positions and differences any more than we should be afraid to compromise at the end of a debate, if it is for the good of the Nation.

Too often, the perfect has been the enemy of the good. The world just does not operate that way. While I appreciate the position of the majority under the Rules of the House, I have often been frustrated not so much by the loss of debate than by the lack of any real debate. It all too often seems that the majority is more concerned with stifling debate of issues, rather than the potential altering of their outcome.

Members of the minority and the majority should be concerned with any curtailment of actual debate. History tells us that our Founders were not monolithic in philosophy and thought. Jefferson and Adams were political adversaries, yet they served together in an administration. Neither compromised their views, but they led a young Nation. The Congress must again learn to marry its ideological differences, debate, deliberation, and leadership.

Mr. Speaker, as successful as our Nation has been throughout its short history, we confront many problems both at home and abroad. In an amazingly short time, we have lost our fiscal discipline just about at the time Social Security and Medicare will begin to feel the burden of the retiring baby boomers. And yet it seems that few are willing to face the reality of this pending crisis. We still have too many without adequate access to health care, even though we have the very best medical assets in the history of the world.

I have had the honor of representing the world's largest medical center, the Texas Medical Center, with some of the greatest researchers and institutions on the planet and yet, even with its dedicated staff and investment, within a mile of these fine people and institutions too many of our fellow citizens lack access to the benefits of their care.

We still have too many Americans struggling to make ends meet, even though we have proven to have the most efficient and successful economic model.

We still face dangers and threats, even though we have the strongest military, by far. Our democracy and way of life may well face threats if we do not act, not merely to defend ourselves and our allies, but to eradicate poverty and tyranny throughout the world. The growing number of poor throughout the world is immoral and should be unacceptable to a free and democratic society such as ours. Failure to use our economic might and commitment to freedom and individual liberty can only result in a greater threat to our own freedoms.

The challenges are too great to ignore, but I believe the people of this body possess the ability, if they muster the will. As America continues to lead, we must confront those issues before they confront us.

Mr. Speaker, mine has been a tremendous experience for which I am truly grateful to my constituents. I have always tried my best to represent not just those who voted for me but those who voted for someone else and those who did not vote at all. I have had the benefit of serving alongside some of the finest individuals I will ever meet, from both parties and Independents, and while their friendship will endure, more importantly, as I return to private life, I am comforted in knowing that the leadership of the Nation remains in such competent and committed hands.

My tenure in the House would not have been at all successful had it not been for the excellent staff who tirelessly served the people of the 25th district and our Nation. Often going unnoticed, these individuals deserve the credit for a job well done, as I know Members would agree about their own staff. I would like to take a moment to read their names into the RECORD, because they deserve to be inscribed in the history of this body for the work they have done.

Mr. Speaker, if my colleagues permit me, they are as follows: of my current staff, Ms. Willie Belle Boone, Ms. Jessica de la Torre-Sauceda, Ms. Bradley Edgell, Ms. Ashley Etienne, Ms. Lisa Hallford, Ms. Gabrielle Hargrove, Ms. Victoria Johnson, Ms. Amber Moon, Ms. Brenda Murphy, Mr. Dominic Nguyen, Ms. Hava Rothman, Mr. J.J. Slater, Ms. Pat Strong, Mr. Andrew Wallace, the Honorable Ed Watson, and Ms. Barbara Winters.

Of our former staff, Mr. Ron Allen, Mr. Stephen Brown, Ms. Rosemary Burkland, Mr. Lloyd Chinn, Ms. Rosaline Cohen, Mr. Mark Daley, Ms. Audrey Duff, Ms. Natalya Estridge, Mr. Ruben Garcia, Ms. Jennifer Goodman, Ms. Meredith Grabois, Mr. Stephen Hofmann, Mr. Jonathan Kaplan, Mr. Lincoln Lobley, Thomas Mayo, Ms. Sandy McManus, Mr. Gary Palmquist, Ms. Sonya Pastor, Ms. Diane Patterson, Mr. Isaac Pesin, Ms. Sheryl Roppolo, Ms. Patricia Rojas, Ms. Susan Schieffer, Ms. Jessica Segal, Ms. Lisa Sherrod, Mr. Whet Smith, Ms. Samantha Smoot, Ms. Barbara Stalder, Ms. Kathryn Tsuchida, Mr. Jeremy Warren, Mr. Vince Willmore, Ms. Jennifer Winans, Mr. Patrick Woehrle, and Mr. Bobby Zafarnia.

In addition, Katie Rosenberg who served as a page, and 75, more than 75 interns who served in our offices in Washington and throughout the district.

These individuals have, in many ways, become an extension of our family; and we will always be grateful.

I also want to thank the professional staff with whom I have had the privilege to work with here on the floor, the Parliamentarian, the Sergeant at Arms, the Chaplain, the Clerk, and the Cloakroom and in committee. They, too, are among the most dedicated souls I have ever met. As some may know, I, too, was once staff of this institution and I understand the burdens of their jobs and I leave with nothing but the highest respect.

Mr. Speaker, let me thank my family for allowing me the opportunity to seek and undertake my position as a Member of the House. As every Member knows, this job, with all of its glory and grandeur, can be grueling on our families. No Member is an exception to this rule. But, at the same time, my wonderful wife, Tamra, who is in the gallery today and our two beautiful daughters, Louise and Meredith, have found a home and an extended family in this body.

I can still remember my first day on January 4, 1995, sitting just to the right of where I stand today with our two girls, then just 2 and 4. It was a long day with a lot of speeches. The gentlewoman from New York (Mrs. MALONEY), juggled Meredith, while Louise searched the floor for something else to do.

Throughout the years, these two girls have grown up in part on this floor, playing in the cloakroom, wrestling and dozing off in chairs during late-night debates. They harassed the staff, created havoc, and always felt at home.

I cannot thank the Members and the staff enough for what you have done to make my family part of the experience. They have had to put up with a lot, nights and days away, missed school events and uncertain schedules.

□ 1230

All too often Tamra had to play the role of both parents in my absence. I know it was not easy.

I once heard Senator Sam Nunn of Georgia speak at the National Prayer Breakfast, and he said, when asked what his greatest accomplishment was in all those years in the other body, that "I kept my family together." He was right. But I also know that Tamra, Louise, Meredith, and I will miss this place, and it will forever be etched upon our hearts.

Mr. Speaker, 8 years ago I was given the opportunity to serve my fellow citizens of Texas' 25th Congressional District, my State, and my Nation. Few get that chance, not only to witness history, but to participate in its making, even if in a small way. I have had that chance, and I have tried my hardest every day to do the very best that I could. We did not win every battle, but I believe we finished ahead of where we started. I am confident that our efforts have resulted in the betterment of people's lives.

Most of all, I have had the chance to serve my people, doing the same that our forefathers did more than 200 years ago in the founding of this Nation. The people of the 25th Congressional District gave me this opportunity to be a part of history and the American democratic experiment, and for that I shall be eternally grateful.

RECESS

The SPEAKER pro tempore (Mr. THORNBERRY). Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 12:40 p.m.

Accordingly (at 12 o'clock and 31 minutes p.m.), the House stood in recess until approximately 12:40 p.m.

□ 1254

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. THORNBERRY) at 12 o'clock and 54 minutes p.m.

REQUESTING SENATE TO RETURN OFFICIAL PAPERS ON S. 1843, EXTENDING CERTAIN HYDROELECTRIC LICENSES IN THE STATE OF ALASKA

Mr. COX. Mr. Speaker, I ask unanimous consent that the Clerk of the House of Representatives be directed to request the Senate to return the official papers on S. 1843, to extend certain hydroelectric licenses in the State of Alaska.

The House is requesting the return of these official papers to correct an inadvertent error that emerged during its post-passage processing. We are hopeful that the Senate will agree to this request and allow the will of the House on this bill to be reflected.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

CONGRATULATING WORLD SERIES BASEBALL CHAMPIONS, THE ANAHEIM ANGELS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COX) is recognized for 5 minutes.

Mr. COX. Mr. Speaker, I would like to take the time of the House of Representatives to bring to our attention the thrilling victory of the Anaheim Angels in the World Series. Just last week, this House approved a resolution, which I authored and which was cosponsored by the congressional delegation from Orange County, California, commending the Anaheim Angels. That resolution, not surprisingly, passed unanimously.

I would like to just take the time that we did not have, because of the press of business at that moment, to describe a little bit of what went on in the run-up to the World Series and just what an extraordinary group of men won this championship baseball series; what an extraordinary group of men, women and children throughout Southern California, and I think ultimately throughout America, were behind them in their heroic efforts.

I think everyone knows that the Anaheim Angels had a rough start to their season. They started out losing 14 of their first 20 games. Now, a lot of us here in the political line of work, a lot of people who watch baseball as an avocation for sports, understand what it is like to get behind the 8-ball, what it is like to know that not only are you not on top of the heap, but you are way behind, and nobody expects you to win. This did not hold back the Anaheim Angels in the end one wit. In fact, it was ultimately the source of their strength.

They came from behind not just at the beginning of the season to overcome this 14 out of 20 deficit, but time after time after time when they were behind in even the late innings of baseball games. That is what kind of grit and determination this team had that put them on top throughout the playoffs and ultimately throughout the best of seven in the World Series. That is why we were all so proud in this House of Representatives to congratulate the winning team in this year's World Series, because they are emblematic of what is so great about American sport and, ultimately, about American character, this never-give-up, never-say-die attitude.

As a regular fan of the Angels, particularly because my kids are so inspired by Angels baseball and such baseball fans and players themselves, I could not have had more fun this season. I attended a lot of Angels' games, starting with their first home game and going throughout the season, ultimately winding up with that exceptional playoff series against the New York Yankees, then against the Minnesota Twins, and finally against the San Francisco Giants.

I do not think that there is much in baseball that can compare to it, particularly since in game six of the World Series we had the greatest comeback in World Series history. Again, just so typical of the grit and determination of this Angels team, coming from behind time and time and time again.

The players on this team work hard. They play the game the way it should be played. They sacrificed their individual ambitions for the good of the team. There is so much that we can all take away from this, so much to learn about what makes success. They did their jobs with dignity.

The spirit of the team is captured on the words of the "Thunder Sticks" that were used so often during the World Series, "Yes, we can!" It is as good for everybody in America as it was for the fans of the Anaheim Angels this year.

Nobody can forget the "Rally Monkey." But the rally monkey was really a way for the players to inspire and honor their team, because this was all about the team. This was all about the individual players and how they worked together and contributed to that overall effort.

Nobody can forget how Tim Salmon came to the plate in game two to hit two home runs, giving the Angels a crucial home victory before the series moved to San Francisco for three games.

Nobody can forget how Scott Spiezio hit a three-run homer which brought the Angels to within two in the bottom of the 7th inning in game six.

Nobody can forget Darin Erstad and his long ball in the eighth inning, which carried the Angels to within one run of the Giants; and Troy Glaus, who sent a double into left field, scoring the tying run and the go-ahead run that gave the Angels a six-to-five win.

Each one of these players, a different one seemingly every time, rose to the occasion, and that is what made this such a team effort. There was David Eckstein, Garret Anderson, and all the rest of the Angels whose outstanding play put away game seven.

There was always, at the most exciting moment, Troy Percival to close the game. Percival's remarkable pitching has already become the stuff of World Series legend. And the Anaheim Angels of 2002 will go down in history as a team built on character and on heart.

Sure, we have our Gold Glove winners, Ben Molina, the catcher; Darin Erstad, the center fielder. Sure, we have our stars. In fact, ultimately everyone on this team was a star. But more than anything it was a team.

□ 1300

It was a team of champions. With that, Mr. Speaker, I yield the balance of my time to the gentle monkey from California.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Member (at the request of Mr. UNDERWOOD) to revise and extend his remarks and include extraneous material:)

Mr. UNDERWOOD, for 5 minutes, today.

(The following Member (at his own request) to revise and extend his remarks and include extraneous material:)

Mr. COX, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Ms. PELOSI and to include extraneous material, notwithstanding the fact that it exceeds two pages and is estimated by the Public Printer to cost $3,023.

SENATE BILLS REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 754. An act to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs; to the Committee on Energy and Commerce; in addition to the Committee on the Judiciary for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 2799. An act to provide for the use and distribution of certain funds awarded to the Gila River Pima-Maricopa Indian Community, and for other purposes; to the Committee on Resources.

S. 2869. An act to facilitate the ability of certain spectrum auction winners to pursue alternative measures required in the public interest to meet the needs of wireless telecommunications consumers; to the Committee on Energy and Commerce.

S. 2949. An act to provide for enhanced aviation security, and for other purposes; to the Committee on Transportation and Infrastructure; in addition to the Committee on Energy and Commerce for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 2951. An act to authorize appropriations for the Federal Aviation Administration, and for other purposes; to the Committee on Science.

S. 3172. An act to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes; to the Committee on the Budget; in addition to the Committee on Small Business for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. Con. Res. 122. Concurrent resolution expressing the sense of Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union which will provide significant rights and obligations for all Cypriots, and for other purposes; to the Committee on International Relations.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 2621. An act to amend title 18, United States Code, with respect to consumer product protection.

H.R. 3758. An act for the relief of So Hyun Jun.

H.R. 3988. An act to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

H.R. 4546. An act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 4628. An act to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 4727. An act to reauthorize the national dam safety program, and for other purposes.

H.R. 5590. An act to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations.

H.R. 5708. An act to reduce preexisting PAYGO balances, and for other purposes.

H.R. 5716. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1214. An act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on November 15, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 1070. "Great Lakes and Lake Champlain Act of 2002."

H.R. 2546. "Real Interstate Driver Equity Act of 2002."

H.R. 3340. To amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes.

H.R. 3389. "National Sea Grant College Program Act Amendments of 2002."

H.R. 3394. "Cyber Security Research and Development Act."

H.R. 4878. To provide for estimates and reports of improper payments by Federal agencies.

H.R. 5349. To facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri.

ADJOURNMENT

Mr. COX. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 1 minute p.m.), under its previous order, the House adjourned until Friday, November 22, 2002, at 11 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

10077. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the

Agency's final rule — Bacillus Cereus Strain BPO1; Exemption from the Requirement of a Tolerance [OPP-2002-0291; FRL-7277-3] received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10078. A communication from the President of the United States, transmitting a request to make available emergency funds for the Department of Treasury's Air Transportation Stabilization Program; (H. Doc. No. 107—283); to the Committee on Appropriations and ordered to be printed.

10079. A letter from the Acting General Counsel, Department of Defense, transmitting the Department's legislation to extend through 2003 the authorities necessary to continue the unified campaign against drugs and terrorism in Colombia; to the Committee on Armed Services.

10080. A letter from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting the Department's final rule — Housing Choice Voucher Program Homeownership Option: Eligibility of Units Owned or Controlled by a Public Housing Agency; Correction [Docket No. FR-4759-C-02] (RIN: 2577-AC39) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10081. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to Romania, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Financial Services.

10082. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving U.S. exports to Ireland, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Financial Services.

10083. A letter from the General Counsel, Federal Housing Finance Board, transmitting the Board's final rule — Affordable Housing Program Amendments [No. 2002- 52] (RIN: 3069-AB16) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10084. A letter from the General Counsel, National Credit Union Administration, transmitting the Administration's final rule — Investment and Deposit Activities; Corporate Credit Unions — received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10085. A letter from the Assistant Secretary, Investment Management, Securities and Exchange Commission, transmitting the Commission's final rule — Disclosure of Costs and Expenses by Insurance Company Separate Accounts Registered as Unit Investment Trusts that Offer Variable Annuity Contracts [Release Nos. 33-8147; IC-25802; File No. S7- 07-02] (RIN: 3235-AI39) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

10086. A letter from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting the Department's final rule — Security Conditions [DOE N 473.8] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10087. A letter from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting the Department's final rule — Eligibility for Security Police Officer Positions in the Personnel Security Assurance Program (RIN: 1992-AA30) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10088. A letter from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting the Department's final rule — Departmental Energy and Utilities Management [DOE O 430.2A] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10089. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Georgia: Final Authorization of State Hazardous Waste Management Program Revision [FRL 7409-2] received November 13, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10090. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans for the State of Montana; Revisions to the Administrative Rules of Montana [SIP No. MT-001-0043, FRL-7397-4] received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10091. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; Indiana [IN145-1a; FRL-7398-5] received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10092. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Plan for Designated Facilities and Pollutants; State of Mississippi [MS-200301(a); FRL-7404-2] received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10093. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District [CA242-0373a; FRL-7395-8] received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10094. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans for Kentucky: Approval of Revisions to the Jefferson County Portion of the Kentucky State Implementation Plan [KY-138; KY-140; KY-141-200303(a); FRL-7409-1] received November 13, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10095. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Motor Vehicle Emissions Budgets in Progress, Attainment, and Maintenance State Implementation Plans for Ozone, Carbon Monoxide, and Nitrogen Dioxide; California [CA-079-SIPS; FRL-7408-5] received November 13, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10096. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating [FRL-7385-5] (RIN: 2060-AG58) received November 13, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10097. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Tyler, Texas) [MM Docket No. 01-244; RM-10234]; Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Lufkin, Texas) [MM Docket No. 01-245; RM-10235] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10098. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, Lewisburg, West Virginia [MB Docket No. 02-178; RM-10456] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10099. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, Topeka, Kansas [MB Docket No. 02-154; RM-10490] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10100. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, New Iberia, Louisiana [MB Docket No. 02-153; RM-10454] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10101. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations, Wiggins, Mississippi [MB Docket No. 02-152; RM-10457] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10102. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, Montgomery, Alabama [MB Docket No. 02-132; RM-10374] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10103. A letter from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations; and Section 73.622(b), Table of Allotments, Digital Broadcast Television Stations, Des Moines, Iowa [MB Docket No. 02-130; RM-10438] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10104. A letter from the Legal Advisory, WTB, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Part 95 of the Commission's Rules to authorize the use of 406.025 MHz for Personal Locator Beacons (PLB) [WT Docket No. 99-366] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10105. A letter from the Assistant Secretary for Legislative Affairs, Department of

State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to international waters in the Pacific Ocean for Sea Launch or to Kourou, French Guiana on an Ariane Launch Vehicle [Transmittal No. DTC 246-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

10106. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed export license Agreement with Germany, Italy, Spain, and the United Kingdom [Transmittal No. DTC 282-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

10107. A letter from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting copies of international agreements, other than treaties, entered into by the United States, pursuant to 1 U.S.C. 112b(a); to the Committee on International Relations.

10108. A communication from the President of the United States, transmitting a supplemental report, consistent with the War Powers Resolution, to help ensure that the Congress is kept fully informed on continued U.S. contributions in support of peacekeeping efforts in Kosovo; (H. Doc. No. 107—282); to the Committee on International Relations and ordered to be printed.

10109. A letter from the Assistant Secretary of Commerce for Export Administration, Department of Commerce, transmitting the Department's final rule — Exports and Reexports to the Federal Republic of Yugoslavia: Lifting of UN Arms Embargo-Based Controls; Clarification of UN Arms Embargo-Based Controls on Rwanda [Docket No. 021009232-2232-01] (RIN: 0694-AC57) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10110. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-488, "Government Sport Utility Vehicle Purchasing Amendment Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10111. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-489, "Mandarin Oriental Hotel Project Tax Deferral Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10112. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-517 "Medical Support Establishment and Enforcement Temporary Amendment Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10113. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-516, "District of Columbia Flag Adoption and Design Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10114. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-515, "Department of Insurance and Securities Regulation Procurement Amendment Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10115. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-497, "Motor Definition Electric Personal Assistive Mobility Device Exemption Amendment Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10116. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-492, "Square 456 Payment in Lieu of Taxes Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10117. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-491, "Prostate Cancer Screening Insurance Coverage Requirement Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10118. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-490, "Carl Wilson Basketball Court Designation Act of 2002" received November 14, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

10119. A letter from the President, African Development Foundation, transmitting a report in compliance with the Inspector General Act, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

10120. A letter from the Director of Engineering, Maintenance and Operations, American Battle Monuments Commission, transmitting a report required by the Freedom of Information Act for FY 2002; to the Committee on Government Reform.

10121. A letter from the Attorney/Advisor, Bureau of Transportation Statistics, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

10122. A letter from the Attorney/Advisor, Bureau of Transportation Statistics, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

10123. A letter from the Executive Director, Federal Retirement Thrift Investment Board, transmitting a report in compliance with the Inspector General Act and the Federal Managers' Financial Integrity Act, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

10124. A letter from the Administrator, National Aeronautics and Space Administration, transmitting a report on the Annual Inventory of Commercial Activities; to the Committee on Government Reform.

10125. A letter from the Director, Office of Personnel Management, transmitting the Office's legislative proposal, "Postal Civil Service Retirement System Funding Reform Act of 2002"; to the Committee on Government Reform.

10126. A letter from the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, transmitting a report on plans and recommendations to establish a Dwight D. Eisenhower memorial, pursuant to Public Law 106—79, section 8162 (113 Stat. 1275); to the Committee on Resources.

10127. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — Kentucky Regulatory Program [KY-237-FOR] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10128. A letter from the Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna [I.D. 102202A] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10129. A letter from the Assistant Administrator for Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Carson Wandering Skipper (RIN: 1018-AI18) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10130. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for Loligo Squid [Docket No. 011005244-2011-02; I.D. 102202B] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10131. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone Off Alaska; Trawl Gear in the Gulf of Alaska [Docket No. 011218304-1304-01; I.D. 103102A] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10132. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fishery; Quota Harvested for Maine Mahogany Quahog Fishery [Docket No. 011004242-2005-02; I.D. 101102E] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10133. A letter from the Acting Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting the Department's final rule — Adjustment of Civil Monetary Penalties for Inflation — received November 13, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10134. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report in response to Section 417 of the USA-Patriot Act, Public Law 107-56; to the Committee on the Judiciary.

10135. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Amendment to Class E Airspace; Ulysses, KS [Airspace Docket No. 02-ACE-11] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10136. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Needles Airport, CA [Airspace Docket No. 01-AWP-15] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10137. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Revocation of Restricted Area R-5207, Romulus, NY [Docket No. FAA-2002-13624; Airspace Docket No. 02-AEA-17] (RIN: 2120-

AA66) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10138. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Amendment to Using Agency for Restricted Area 2301W Ajo West, AZ [Docket No. FAA-2002-13525; Airspace Docket No. 02-AWP-08] (RIN: 2120-AA66) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10139. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy and Gulfstream 200 Airplanes [Docket No. 2002-NM-265-AD; Amendment 39-12945; AD 2002-23-01] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10140. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; MORAVAN a.s. Models Z-143L and Z-242L Airplanes [Docket No. 99-CE-71-AD; Amendment 39-12925; AD 2002-22-01] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10141. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Eurocopter France Model AS355N Helicopters [Docket No. 2002-SW-32-AD; Amendment 39-12943; AD 2002-22-16] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10142. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Eurocopter France Model EC 155B Helicopters [Docket No. 2002-SW-26-AD; Amendment 39-12942; AD 2002-22-15] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10143. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes [Docket No. 2002-CE-23-AD; Amendment 39-12944; AD 2002-22-17] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10144. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A-1, 205B, 212, 214B, and 214B-1 Helicopters [Docket No. 2001-SW-42-AD; Amendment 39-12941; AD 2002-22-14] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10145. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Titeflex Corporation [Docket No. 2000-NE-57-AD; Amendment 39-12938; AD 2002-22-12] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10146. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Textron Lycoming AEIO-540, IO-540, LTIO-540, O-540, and TIO-540, Series Reciprocating Engines [Docket No. 2002-NE-31-AD; Amendment 39-12950; AD 2002-23-06] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10147. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Regulated Navigation Area, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone [CGD01-01-187] (RIN: 2115-AE84, AA97) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10148. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulation; Industrial Seaway Canal, Gulfport, MS [CGD08-02-031] (RIN: 2115-AE47) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10149. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Safety Zone; Lower Mississippi River, Miles 87.2 to 91.2, Above Head of Passes, New Orleans, LA [COTP New Orleans-02-022] (RIN: 2115-AA97) received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10150. A letter from the Paralegal Specialist, FAA, Department of Transportation, transmitting the Department's final rule — Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines [Docket No. 99-NE-33-AD; Amendment 39-12937; AD 2002-22-11] (RIN: 2120-AA64) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10151. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule [FRL 7408-6] (RIN: 2040-AD73) received November 13, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10152. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration's final rule — Authorization of Contractor Use of Interagency Fleet Management System (IFMS) Vehicles (RIN: 2700-AC33) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Science.

10153. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — 2002 Base Period T-Bill Rate (Rev. Rul. 2002-68) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10154. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Certain Exchanges of Insurance Policies (Rev. Rul. 2002-75) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10155. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — 2003 Limitations Adjusted As Provided in Section 415(d), etc. [Notice 2002-71] received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10156. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Qualified Pension, Profit-Sharing, and Stock Bonus Plans (Rev. Rul. 2002-63) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10157. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Substantiation of Incidental Expenses [TD 9020] (RIN: 1545-BB19) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10158. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Tax Treatment of Residential Grants Made by the Lower Manhattan Development Corporation to Individuals and Families Affected by the September 11, 2001, Disaster [Notice 2002-76] received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10159. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Information Reporting Relating to Taxable Stock Transactions [TD 9022] (RIN: 1545-BB40) received November 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10160. A letter from the General Counsel, Department of Commerce, transmitting the Department's draft bill entitled, "Marine Mammal Protection Act Amendments of 2002"; jointly to the Committees on Resources, the Judiciary, International Relations, and Ways and Means.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. OXLEY:

H.R. 5758. A bill to extend the national flood insurance program; to the Committee on Financial Services.

By Mr. OXLEY:

H.R. 5759. A bill to extend the national flood insurance program; to the Committee on Financial Services.

By Mr. CONYERS:

H.R. 5760. A bill to create a commission on Internet gambling licensing and regulation; to the Committee on the Judiciary; and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HYDE (for himself and Mr. LANTOS):

H.R. 5761. A bill to provide assistance to foreign countries to combat HIV/AIDS, tuberculosis, and malaria, and for other purposes; to the Committee on International Relations.

By Ms. MCKINNEY:

H.R. 5762. A bill to provide for the expeditious disclosure of records relevant to the life and assassination of Reverend Doctor Martin Luther King, Jr.; to the Committee on Government Reform.

MEMORIALS

Under clause 3 of rule XII, memorials were presented and referred as follows:

449. The SPEAKER presented a memorial of the General Assembly of the State of Iowa, relative to House Resolution No. 559 memorializing the United States Congress regarding Iowa Code 69.14 requiring a special election to fill vacancies; to the Committee on House Administration.

450. Also, a memorial of the Senate of the State of New Jersey, relative to Senate Resolution No. 36 memorializing the Congress of the United States that the legislature urges the United States Department of Agriculture to allocate additional resources to address problems associated with the resident Canada goose population in New Jersey; jointly to the Committees on Agriculture and Resources.

451. Also, a memorial of the Legislature of the State of Alaska, relative to House Joint Resolution No. 48 memorializing the Congress of the United States that the legislature hereby requests the Alaska Congressional delegation, as well as the Congressional delegations of the several states, to introduce and adopt legislation that would amend the laws of the United States regarding land managing agencies; jointly to the Committees on Resources and Agriculture.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 491: Mr. Royce.

H.R. 536: Mr. McDermott.

H.R. 1232: Mr. Brown of Ohio.

H.R. 1487: Mr. Andrews.

H.R. 1904: Mr. Olver and Ms. Norton.

H.R. 2207: Mrs. Lowey.

H.R. 2614: Mr. Farr of California.

H.R. 2820: Mr. Cox.

H.R. 3884: Mrs. Lowey.

H.R. 4032: Ms. Eddie Bernice Johnson of Texas.

H.R. 4790: Mr. Jeff Miller of Florida.

H.R. 4916: Ms. Eddie Bernice Johnson of Texas.

H.R. 4974: Mr. Platts.

H.R. 5013: Mr. Wilson of South Carolina, Mr. Taylor of North Carolina, and Mr. Goodlatte.

H.R. 5194: Mr. Honda.

H.R. 5252: Ms. Eddie Bernice Johnson of Texas.

H.R. 5274: Mr. Price of North Carolina.

H.R. 5441: Mr. Reyes.

H.R. 5462: Mr. Souder and Mr. Rangel.

H.R. 5471: Mr. Ford, Mr. McDermott, Mr. Wexler, Mr. Hill, and Ms. Eddie Bernice Johnson of Texas.

H.R. 5528: Mr. Sensenbrenner, Mr. Hansen, Mr. Jenkins, Mrs. Capito, Mr. Watts of Oklahoma, Mr. Armey, Mr. Hayworth, Mr. Wilson of South Carolina, Mr. Boozman, Mr. Mica, Mr. Herger, Mrs. Kelly, Ms. Eddie Bernice Johnson of Texas, and Mr. Lipinski.

H.R. 5613: Mr. Rangel.

H.R. 5669: Ms. Eddie Bernice Johnson of Texas.

H. Con. Res. 260: Mr. Peterson of Minnesota.

H. Con. Res. 421: Mr. Cummings and Mrs. Tauscher.

H. Con. Res. 507: Mrs. Biggert, Mr. Kolbe, and Mr. Sensenbrenner.

H. Con. Res. 511: Mr. Pitts.

H. Con. Res. 514: Mr. Stark.

H. Res. 554: Mr. Frost and Mr. Reyes.

H. Res. 589: Mr. Osborne and Mr. Waxman.

H. Res. 613: Mr. Davis of Illinois.

PETITIONS, ETC.

Under clause 3 of rule XII, petitions and papers were laid on the clerk's desk and referred as follows:

92. The SPEAKER presented a petition of the National Nuclear Workers For Justice, relative to a Resolution petitioning the United States Congress to approve our "Special Exposure Cohort" status; to the Committee on the Judiciary.

93. Also, a petition of John Philip Ellis Sr., a Citizen of Florida, relative to a Resolution petitioning the United States Congress for a thorough review of the events enumerating multiple procedural and criminal violations of law committed by various federal personnel that have occurred continuously in Palm Beach County, FL and other places within the State and elsewhere between May 1995 and the present day; to the Committee on the Judiciary.

SENATE—*Tuesday, November 19, 2002*

The Senate met at 9 a.m. and was called to order by the Honorable DEAN M. BARKLEY, a Senator from the State of Minnesota.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, You have called the men and women of this Senate to glorify You by being servant-leaders. The calling is shared by the officers of the Senate, the Senators' staffs, and all who enable the work done in this Chamber. Keep us focused on the liberating truth that we are here to serve You by serving our Nation. Our sole purpose is to accept Your absolute lordship over our lives and give ourselves totally to the work of this day. Give us the enthusiasm that comes from knowing the high calling of serving in government. Grant us the holy esteem of knowing that You seek to accomplish Your plans for America through the legislation of this Senate. Free us from secondary, self-serving goals. Help us to humble ourselves and ask how we may serve today. We know that happiness comes not from having things or getting recognition but from serving in the great cause of implementing Your righteousness, justice, and mercy for every person and in every circumstance in this Nation. We take delight in the ultimate paradox of life: the more we give ourselves away, the more we can receive of Your love. In our Lord's name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DEAN M. BARKLEY led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, November 19, 2002.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DEAN M. BARKLEY, a Senator from the State of Minnesota, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BARKLEY thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada is recognized.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that there be 2 minutes for debate, equally divided and controlled in the usual form, following the first vote in the sequence of votes already ordered for today's session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask that the 90 minutes begin running and that the time be charged equally.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. I thank the Chair.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

SCHEDULE

Mr. REID. Mr. President, we hope to complete action on the homeland security bill today. Also, as soon as we finish that, hopefully, we will do the Dennis Shedd nomination, and then the terrorism insurance conference report. We can complete all that today and, of course, also, we have the must-do legislation, the continuing resolution that we have to complete today. So we have a lot of work to do today.

I also note that I have been informed that the minority will allow no extensions of time during the 90 minutes already ordered.

HOMELAND SECURITY ACT OF 2002—Resumed

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

Pending:

Thompson (for Gramm) Amendment No. 4901, in the nature of a substitute.

Daschle (for Lieberman) Amendment No. 4911 (to Amendment No. 4901), to provide that certain provisions of the Act shall not take effect.

Daschle (for Lieberman) Amendment No. 4953 (to Amendment No. 4911), of a perfecting nature.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10:30 a.m. shall be divided, with 30 minutes under the control of the two leaders or their designees, and 30 minutes under the control of the Senator from West Virginia, Mr. BYRD.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, how much time do I have under the order?

The ACTING PRESIDENT pro tempore. The Senator has 28 minutes.

Mr. BYRD. I thought I had 30 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Nevada asked that the time in the beginning be charged to both sides.

Mr. BYRD. OK. That is fair enough.

Mr. President, many Senators feel that they are under great pressure from the administration to pass this bill that is before us—a bill that contains 484 pages. Here it is. This is the 484-page bill that was passed by the House of Representatives—a new bill, passed by the House quickly, without adequate debate, dumped into the laps of Senators, and we contributed to our own problem by invoking cloture on the amendment last Friday. We are coming around the final lap of our 30-hour journey now. We have been unable to call up any amendments, other than the pending amendment by Mr. DASCHLE and Mr. LIEBERMAN.

As I say, many of our colleagues feel they are under great pressure from the administration to support this bill, and the White House is attempting to say that by adopting the amendment offered by Mr. DASCHLE on behalf of Mr. LIEBERMAN—the White House would have us believe and the Republican-controlled House would have Members believe that if this amendment by Mr. DASCHLE is adopted, this would mean the death of the bill. Well, I would hope that were true because I think this is a terrible bill. It has some good provisions in it, but it is a bad bill. So personally, I would hope that were true. But it is not true.

The House has a duty to return. The House has dumped this bill into the laps of the Senate and then walked away, gone home for Thanksgiving, gone home for Christmas, gone home for the year—if it can get by with it. But the House has a duty to come back and finish its work. So I hope Senators will not be moved, will not be pressured into believing that the adoption of this amendment will kill the bill. That is untrue.

Congress has not adjourned sine die yet. So we all have a duty to stay here and do our work.

I think we are going to get a pay raise very soon—perhaps early next year—and so we can stay around and do our work. It is our duty to the people. We ought to try to improve this bill, and the amendment by Mr. DASCHLE will do that.

Do those who believe that the President—whatever party he is, Democrat or Republican—do those who believe that he is king under our Constitution—apparently some Senators here vote as though they think the President is king, although they know better than that. But still they believe they have to follow the President's direction.

The President did not bring any of us here. The President did not elect any of the Members of this body. This is an independent body. This is an independent branch of Government. This is a separate branch of Government. No President elects any Member of this body. The President is just the Chief Executive of the land. I say "just." It is a tremendous office, of course, with great power, but he is no king. And we are not sent here by our people to let the President or the White House or any party control us or dictate to us.

As a reminder of what a true Senator should be, I call attention to that ancient Roman Emperor whose name was Vespasia. He was Emperor of the Roman Empire from the years 69 to 79 A.D. A great Senator, one of the truly great Senators, was Helvidius Priscus.

For some reason, this Senator and the Emperor Vespasia got at cross-purposes, and the Emperor stopped Helvidius Priscus one day outside the Roman Senate and told him not to come in. "You can forbid me to be a Senator," said Helvidius Priscus, "but as long as I am a Senator, I must come in."

"Come in then and be silent," said the Emperor Vespasia.

"Question me not, and I will be silent," responded the Senator.

"But I am bound to question you," said the Emperor Vespasia.

"And I am bound to say what seems right to me," responded the Senator.

"But if you say it, I will kill you," the Emperor warned.

"When did I tell you that I was immortal? You will do your part, and I will do mine," responded the Senator. "It is yours to kill and mine to die without quailing."

So both did their parts. Helvidius Priscus spoke his mind. The Emperor Vespasia killed him.

In this effeminate age, it is instructive to read of courage. There are Members of the Senate and House who are terrified, apparently, if the President of the United States tells them, urges them to vote a certain way, which may be against their belief.

So in this day of few men with great courage—relatively few—let us take a leaf out of Roman history and remember Helvidius Priscus.

The Senate has rolled over with regard to the homeland security bill. The administration has sold a bill of goods to the American people that there is an urgency for the Senate to pass this bill before another terrorist attack. There is no such urgency. The real danger is not when the reorganization will take effect but whether the reorganization will distract our homeland security agencies from their primary mission of protecting the homeland.

The Senate shares in the complicity in pushing this sense of urgency on the American people. The people who will be protecting the public, those who will be protecting us, Members of the House and Senate, once this reorganization is completed a year from now—a year from the date of passage of this legislation—are the same people who are out there on the northern border right now, right today. They were there last night. The same people are already on the southern border. They are already at the ports of entry. They are guarding the Atlantic coast. They are guarding the Pacific coast. They are guarding the gulf coast. They are the same people then who are out on those posts of duty now. So whether or not we pass this bill does not mean a great deal insofar as the safety of the American people is concerned.

The Appropriations Committee of the Senate and the Senate itself have provided funds for the protection of this country, billions of dollars, which have been turned down by the President of the United States. He has rejected these funds. He did so earlier this year when Congress passed an appropriations bill, making $5.1 billion available for use, with only the flourish of a pen necessary on the part of the President.

These were designated as emergency funds by the Congress, but the President refused to likewise designate these items as emergency funds. So those funds have gone begging. Do not let anybody tell you we have to pass this bill in order to have the security of this country tomorrow or next week or the next month. The moneys have been there to provide homeland security for the American people. Those funds have been passed by this Congress months ago. This President—this President who is urging the Congress to act quickly on this bill—has not acted quickly on those funds. As a matter of fact, he has turned the back of his hand to those funds.

The Senate shares complicity in pushing this sense of urgency on the American people. Senators have pushed it so often and so hard that they now believe it. Last Friday, the Senate invoked cloture on the bill that is before the Senate, a bill that it had hardly read.

Most Senators, I believe, had not read that bill at that time. I had not been able to read the whole bill at that time.

This cloture limits the ability of the Senate to debate and offer amendments. We had 30 hours. What happened? One amendment is offered. Mr. DASCHLE offered one amendment on behalf of Mr. LIEBERMAN. That was it. The whole 30 hours have been spent on that one amendment. Our Republican friends deemed it so, to have one amendment. You are going to spend the whole 30 hours on it. That is the only amendment you are going to have.

So Senators can now read it and weep. They voted to invoke cloture on themselves and they denied themselves the possible opportunity to offer other amendments. Senators no longer cared what bill passed as long as they voted for something that would create a new Homeland Security Department. In the process of trying to build a Homeland Security Department, this Senate has come dangerously close to building a massive chamber of secrets. This past weekend, Homeland Security Director Tom Ridge appeared on several of the Sunday morning talk shows to assuage concerns that the administration is planning to create a new domestic spy agency in the United States. When asked about his trip to London to study the British model domestic spy agency, Governor Ridge said his trip was very revealing, but that the administration was not likely to create such a domestic spy agency in the United States.

I must give Homeland Security Director Tom Ridge an A+ for invoking the Constitution. He mentioned the Constitution more than once. I compliment him on that. That is the first administration official that I have heard say anything about the Constitution in all of these debates with respect to the war on Iraq, the Iraq resolution, and with respect to homeland security. I am sure something could have been said that escaped my attention. I cannot hear every administration official. But for once the U.S. Constitution was mentioned—more than once—by Mr. Ridge. I almost stood in my family room and applauded him for doing so.

A number of Senators appeared on the Sunday morning talk shows and assured the show's viewers that, if such a domestic agency were created, the Congress would exercise appropriate oversight to ensure that abuses of power did not occur within it.

I remember hearing these same kinds of comments with regard to the creation of a new Homeland Security Department. "A new Department won't solve anything," said the White House spokesman. That was not too long ago. The White House spokesman said a new Department would not solve anything. Then to everyone's surprise, the President suddenly made the creation of a new Homeland Security Department his top priority.

The President sought broad authority in the plan he presented to the Congress. He wanted the authority to reorganize and run this new Department with limited congressional interference. He wanted to hide decision-making within the new Department from the American public and the press. He wanted what he called "managerial flexibility" to waive statutory protections, for example, for Federal employees within the new Department. He wanted to free himself from as much congressional oversight as possible.

Members of Congress said they would exercise appropriate oversight to ensure this new bureaucracy could be reigned in, but what has the Senate actually done? What can it point out in all of these months and weeks of consideration? This homeland security bill authorizes this new Department to cloak its actions in secrecy. The President's plan, for example, for reorganization of this Department, has not been sent to the Congress. The President probably doesn't even know himself yet what he plans. He has several months in which to do that. Even then, the plan will not require congressional approval. The Congress will be informed by the President what the plan is under this bill. That is it. Just inform us, Mr. President. Let us know what you will do. No approval is required of Congress. So we are going to be a pig in a poke here. We are going to approve the President's plan in advance. Even before he knows what is in his plan, before he sends it to the Congress, we are going to approve it when this bill before the Senate is passed.

It provides broad new authorities to the President without any real mechanism to ensure that those powers are not abused. I sought to offer an amendment earlier when Mr. LIEBERMAN brought his bill from his committee when he and Mr. THOMPSON had worked in the committee to bring out a bill and did bring out a bill. I sought to amend it so as to keep Congress in the loop with respect to the President's organizational plan. I sought to have Congress continue to stay in the mix. But that amendment was rejected. It would have been well to have had such an amendment because it would have provided for an orderly process in the filling in of the Department by the various agencies. I understand there are about 28 agencies and offices that will go into the Department. Even Mr. LIEBERMAN, the author of that, one of the authors of the bill, and he is here in the Chamber, even he voted against my amendment.

Today I think that amendment would help. If that amendment had been adopted, I think it would have assured the American people that their elected Representatives in Congress were going to stay in the mix, and it was not going to relegate itself to the sideline. But that is water over the dam.

This legislation allows the President to rewrite the civil service code for Federal workers within the new Departments so that most new rules go into effect without any congressional approval. Congress has rolled over on almost every issue that would have provided the Congress with some oversight mechanism and the public with some transparency.

So here we are, on this day, we are going to vote in all likelihood on final passage, and the Congress has done precious little to make sure that appropriate safeguards are included in the legislation to protect the privacy rights and civil liberties of the American public. What is more, we have endangered the constitutional doctrines of the separation of powers and checks and balances between the President and the Congress.

What do we hear from supporters of the bill? The American people should trust the President, they should trust their elected leaders to ensure the mass of new bureaucracy will not intrude upon their private lives. How can Senators make such arguments? The administration has told us it is not planning to create a new domestic spy agency in the United States. Yet within this bill, this language would fund the total information or authorize funding of this total information awareness program that is being developed by the Pentagon, apparently for one purpose: to peer into the daily transactions and private lives of every American.

I urge Senators to vote for this amendment. I hope they will vote for it, and I hope they will not be cajoled by disingenuous arguments that a vote for the amendment is a vote against the homeland security bill. I don't buy that argument. If we amend this bill, it is beyond our control in the Senate, but it is the Senate's last chance to show the American people that we are serious about placing some controls over this massive new bureaucracy.

I hope the Senate will support the amendment, and I urge its adoption.

How much time remains?

The PRESIDING OFFICER. The Senator has 5 minutes.

Mr. BYRD. I thank the Chair. I reserve my 5 minutes.

The PRESIDING OFFICER. The Senator from Connecticut

Mr. LIEBERMAN. May I inquire how much time the majority leader or his designee has?

The PRESIDING OFFICER. Twenty-eight minutes.

Mr. LIEBERMAN. I ask the Chair notify me when I have consumed 15 minutes so I can preserve the rest for the majority leader.

The PRESIDING OFFICER. The Chair will do so.

Mr. LIEBERMAN. Mr. President, I rise to voice my support for the motion to strike which Senator DASCHLE and I and others have introduced.

I do so, as my colleagues know, believing deeply in the urgent need for a Department of Homeland Security and believing deeply that the vast majority of the underlying bill rises to the difficult and critical challenge of organizing and equipping our Government to protect the American people from terrorism. Of course, there are parts of the bill that I wish had been somewhat different, but in the nature of the legislative process one never achieves everything one wants, and that goes particularly to the long-debated sections on the rights of Federal workers whom we will now ask to carry out the work of the Homeland Security Department.

But on balance, the core of this bill is not only urgently necessary, it is good. The core of the bill is smart, and the core of the bill is vital. But I must register my strong opposition to a number of provisions in the bill that now appears before us that have been inserted at the last moment and that threaten to do serious damage to this otherwise urgently necessary piece of legislation. I fear that some of our colleagues have seized upon the likely passage of this bill as an opportunity to load it up with unwise, inappropriate, and hastily considered provisions, many of which protect special interests. That is a shame, and it is an embarrassment.

A common cause as urgent and weighty as homeland security post September 11, 2001, should not be tainted by a bevy of last-minute favors, surprises, and slapdash attempts to address controversial problems, some of which are totally unrelated to homeland security. That should not be the way business is done in the Congress of the United States, especially not with so profound an underlying responsibility as protecting the American people from terrorism.

Let me dispense with two myths that have reared their heads on the floor of the Senate during this debate on the motion to strike. First, some opponents of the amendment have suggested that to alter the underlying bill in any way would be to kill homeland security legislation in this 107th session of Congress. That is just not right. The House passed a new homeland security bill, numbered H.R. 5710, which means they will have to return to act on the version of the bill sent to them by the Senate whether or not we make any changes. So we are certainly not killing this bill for this session. We are simply trying to clean it up.

Second, some of my colleagues are saying that a vote for this motion to strike is a vote against the President.

That, unfortunately, reminds me of what became a familiar refrain in some States during the recently concluded elections, in which some seemed to suggest that any opposition to anything the President wanted was unpatriotic. Here is where I borrow from Senator BYRD in saying that the President is the President, not the king. And to question the President's judgment on one or another matter should not be described as a lack of patriotism. It is through free discussion and exchange of ideas that our Nation grows and that we have always believed we would achieve the truth. Was it Voltaire who said: I disagree with everything you said but will fight to the death to protect your right to say it? So, too, here.

I believe deeply that the seven extraneous provisions our amendment targets have hurt this bill, and that is why we are striking them. Six would be struck, and a seventh would be amended. None of these provisions goes to the heart of the Department that I believe so urgently should be created. I certainly would not want to do that, since Senator SPECTER and I and so many others of both parties have spent, now, more than a year in trying to achieve the creation of such a Department.

Let me speak about a few of the seven serious shortcomings in this current version of the homeland security legislation that our amendment would strike. First, the one that has received the most attention, is the one that attacks the childhood vaccine liability. This bill includes a surprise provision, one that was not in any version of homeland security legislation, and we have gone through, by my count, at least six versions: The original bill I cosponsored with Senator SPECTER in October 2001; the Governmental Affairs Committee reported-out bill in May; the President's proposal in June; the revised Governmental Affairs bill in July; the original House bill; and the original Gramm-Miller substitute. None of these contains this legislation which would dramatically alter the way certain vaccine preservatives are treated for liability purposes under the law.

As my colleagues have said, the bill would take complaints about vaccine additives out of the courts and require them to be made through what is called the Federal Vaccine Injury Compensation Program, which handles other vaccine-related claims. Incidentally, these provisions of the bill are retroactive, which would mean that a host of existing lawsuits would be interrupted, probably terminated, including claims involving the mercury-based preservative Thimerosal, which some have charged is related to autism in children.

This is just plain unfair. In the past, I have supported various tort reform or liability protections for companies—certainly the ones that design and manufacture lifesaving products. In 1998, for instance, Senator McCAIN and I sponsored, and the Senate passed, the Biomaterials Access Assurance Act. In this Congress, I introduced a bill that would offer a comprehensive package of incentives to biotech and pharmaceutical companies that develop vaccines, antidotes, and other countermeasures for biological and chemical weapons, a package that included liability protections. But this amendment would strike a provision in this bill that goes well beyond that and ought to be pulled out of the underlying bill.

The fact is that committees of the House and Senate have been struggling to reach a consensus on this question of the childhood vaccines and liability for some period of time now. They have been trying to craft a broad and balanced bill on childhood vaccines. This provision in this bill, which we would strike, would pull the rug right out from under the committee deliberations, offering a quick but unfair answer that is sure to do more harm than good.

I received late last night—and we are going to try to distribute it to our colleagues this morning—a Dear Colleague letter from our friend and colleague in the other body, DAN BURTON, chairman of the House Committee on Government Reform, really crying out to us to strike from the underlying bill this provision on childhood vaccines. Congressman BURTON, to whom I have spoken, believes passionately that this is a terrible mistake and very unfair. I am far from expert on this question and cannot vouch for all that Congressman BURTON asserts, but his passion cries out from this letter and I wish to cite several excerpts to illustrate the depth and complexity of this debate. For instance, Congressman BURTON says:

> During the past 24 hours, a number of incorrect statements have been made about the vaccine provisions in the Homeland Security Act. The facts are simple. These provisions severely restrict the legal rights of parents who believe their children have suffered neurological damage due to vaccines. The scientific debate remains unresolved. These provisions do not belong in the Homeland Security Act. I hope the following points will help separate fact from fiction.

Again, from DAN BURTON:

> In 2001, the respected Institute of Medicine concluded that a connection between thimerosal and autism, while unproven, is "biologically plausible." The IOM called for further research, stating, "the evidence is inadequate to accept or reject a causal relationship between exposure to thimerosal from vaccines and neurological developmental disorders of autism, ADHD, and speech and language delays."

Another fiction, according to Congressman BURTON, is that the sections that we intend to strike with our motion from this underlying bill do not eliminate the rights of vaccine-injured individuals to sue manufacturers of vaccines and their components. Congressman BURTON says proponents of these provisions have stated that once individuals have gone through the Vaccine Injury Compensation Program, they can still choose to file a civil lawsuit. And Congressman Burton feels very strongly that is wrong. As he says as a fact, "for many families who believe their children were injured by mercury-based Thimerosal, these provisions do eliminate their right to file suits. The Vaccine Injury Compensation Program has a narrow 3-year statute of limitations. Because many families were unaware of the program, they were unable to file a petition on time. Sections 1714–1717, which we would strike, take away their only remaining legal recourse."

I would add that I have received today a statement of opinion from the staff of the Senate Finance Committee which points out another problem. It states, "the Joint Committee on Taxation has advised the Committee on Finance that absent changes to the Internal Revenue Code, these changes would not be effective to change the approved disbursement purposes from the Fund."

In other words, by keeping this childhood vaccine provision in this homeland security legislation, we would not only remove the families' rights to sue, we would force them to go to the compensation fund. But barring additional changes in the law, they couldn't receive any funds from that fund.

This is not only wrong but shows how quickly and hastily and incompletely this provision was put together.

Congressman BURTON's words speak loudly to us of how critical it is to strike this provision from the law.

Some of our colleagues have tried to make the case that the provisions are necessary to maintain a plentiful vaccine supply in case of a bioterror attack, including a smallpox attack. Wrong. This has nothing to do with those bioterrorism provisions of the law, including one that provides liability protections for the makers of smallpox vaccines.

Our motion to strike doesn't touch those provisions. It only goes to the childhood vaccine rights of families of children who are suffering from autism.

I also want to strongly refute the suggestion about this part of our motion to strike by the senior Senator from Texas that we will suddenly have to throw away all of our smallpox vaccine doses if we strike this narrow provision. With all respect, that bears no relationship to the amendment. The Vaccine Injury Compensation Program doesn't cover claims against smallpox vaccine or any other vaccine used in the fight against terrorism—bioterrorism in this case. Moreover, Thimerosal has not been used at all since 1999, and the NIH confirms that none of the stores of smallpox vaccine nationwide contain it.

Excuse the pun on a serious matter, but this provision is an additive, and it is a harmful additive that ought to be removed from the bill by this motion to strike.

We in the Senate owe the parents, the children, and frankly, the companies on all sides of this issue a serious solution—not some last-minute patchwork change in the law which deprives people of their rights.

Second, another extremely problematic provision our amendment and motion to strike would remove is the one involving companies that shift their headquarters offshore to avoid paying American taxes and then turn around and seek to do business with the Federal Government.

The ACTING PRESIDENT pro tempore. The Senator has used 15 minutes.

Mr. LIEBERMAN. Mr. President, I ask you to let me know when I have consumed an additional 3 minutes, and then I will yield the floor.

Mr. President, this is the amendment to our committee bill that was offered by our esteemed colleague, our dear friend, the late Senator Paul Wellstone, and accepted by the Senate, which would have barred companies that set up offshore tax havens from getting Federal homeland security contracts with the Secretary of the Department retaining the singular important right to waive the prohibition for national security reasons. Now the underlying bill, at the last minute, would essentially nullify Senator Wellstone's provision by expanding the list of criteria the Secretary can use in granting a waiver beyond national security reasons to include a host of other provisions that gut the Wellstone proposal.

It is just wrong that companies that are going out of the way to circumvent the tax laws of the United States should be allowed to do business and basically to get the money that the taxpayers who pay their taxes have put into the Treasury of the United States, unless there is a national security reason that would be so. Our amendment would strike that provision as well.

Our amendment would also move to strike from the bill a measure that would require the Transportation Security Oversight Board to ratify within 90 days emergency security regulations issued by the Transportation Security Agency. If the oversight board does not ratify the regulations, under this bill, they would automatically lapse. Despite the TSA having decided that they are necessary, 90 days later, lacking the Board's approval, they'd disappear.

This doesn't make any sense. In the current climate, shouldn't we be trying to find new ways to expedite and implement TSA rules, not ways to disrupt and derail them? This bill is contrary to new procedures that the Senate passed just a year ago in the aviation security bill. Under that law, regulations go into effect and remain in effect unless they are affirmatively disapproved by the Board. I think that's a better system.

My esteemed colleague from Texas, Senator GRAMM, has claimed that our amendment would strike from the underlying bill the one-year extension of the deadline by which all airlines must install new security scanning equipment. I don't know whether he got that idea based on this provision or not; regardless, he is mistaken. We keep that extension in tact, and striking the new cumbersome approval process, as our amendment seeks to do, would have no effect whatsoever on it.

I urge my colleagues to strike this provision.

Another provision would extend liability protection to companies that provided passenger and baggage screening in airports on September 11.

But we in the Senate already decided against extending such liability protection—in at least three different contexts. First, the airline bailout bill limited the liability of the airlines—but not of the security screeners, due to ongoing concerns about their role leading up to September 11. Then, the conference report on the Transportation Security bill extended the liability limitations to others who might have been the target of lawsuits, such as aircraft manufacturers and airport operators, but again not to the baggage and passenger screeners.

The earlier Gramm-Miller substitute and the bipartisan Governmental Affairs Committee-approved legislation also left this provision out for the very same reasons.

Now, somehow, this provision is back again. Like that little mole you hit with the mallet in a whack-a-mole game, somehow this provision has reappeared. At this late hour, in this context, it is just inappropriate to reverse the Senate's carefully considered judgment without clear justification.

We must strike this provision.

Another unnecessary and overreaching provision our amendment seeks to strike would give the Secretary of the new Department broad authority to designate certain technologies as so-called "qualified anti-terrorism technologies." His granting of this designation—which appears to be unilateral, and probably not subject to review by anyone—would entitle companies selling that technology to broad liability protection from any claim arising out of, relating to, or resulting from an act of terrorism, no matter how negligently—or even wantonly and willfully—the company acted.

The bill goes well beyond what Republicans were advocating just last month in the Gramm-Miller substitute, which would have provided sellers with indemnification, but wouldn't have left many victims without any compensation at all, as this bill does. This bill seems to say that in many cases, the plaintiff can't recover anything from the seller unless an injured plaintiff can prove that the seller of the product that injured him or her acted fraudulently or with willful misconduct in submitting information to the Secretary when the Secretary was deciding whether to certify the product.

Even in cases where a seller isn't entitled to the benefit of that protection, the company still isn't fully—or in many cases even partially—responsible for its actions, even if it knew there was something terribly wrong with its product . Let me say that again. This bill gives protection even to those sellers who knowingly put anti-terrorism products on the market that they know won't work to keep people safe against an attack. Perhaps worst of all, this measure would cap the seller's liability at the limits of its insurance policy. In other words, if injured people were lucky enough to get through the first hurdle and even hold a faulty seller liable, they still could go completely uncompensated even if a liable seller has more than enough money to compensate them.

Again, I ask, is this really the kind of provision we want to fold up and cram into this vital legislation? I urge my colleagues on both sides of the aisle to stop, carefully consider the consequences, and then vote for our amendment, which would strike this provision.

The substitute bill also unwisely and unnecessarily allows the Secretary to exempt the new Department's advisory committees from the open meetings requirements and other requirements of the Federal Advisory Committee Act (FACA). I am well aware that this isn't a provision that will get big headlines but it ought to raise some eyebrows.

Agencies throughout government make use of advisory committees that function under these open meetings requirements. Existing law is careful to protect discussions and documents that involve sensitive information in fact, the FACA law currently applies successfully to the Department of Defense, the Department of Justice, the State Department even the secretive National Security Agency.

So why should the Department of Homeland Security alone be allowed to exempt its advisory committees from its requirements? Why should its advisory committees be allowed to meet in total secret with no public knowledge?

Again, if those rules work for the Department of Defense and the National Security Agency, I think they can work for the Department of Homeland Security.

What is the harm? Conceivably, this could allow the Secretary to create forums that operate in secret in which lobbyists for various special interests could advance their agendas and get back channel access with this and future Administrations, without concern that the public would ever find out—and that's regardless of whether their discussions were about security, business, or anything else. I am not suggesting that this is what the Administration intends, or what the authors of the bill intend, but the danger is real and must be recognized.

We all say, and say often, that we're for "good government"—for openness, integrity, and accountability. But if we pass this bill unamended, few of us will be able to say with confidence that the new Department's advisory committees are designed to be as independent, balanced, and transparent as possible. I know full well that the Homeland Security Department will deal with sensitive information involving life and death, but so does the National Security Agency. So does the FBI. So does the Department of Defense. Their advisory committees aren't allowed to hide themselves away from the public.

I hope my colleagues join with me to reject this unfortunate and short-sighted provision.

Finally, our amendment would alter a provision in the substitute bill creating a university-based homeland security research center. Now, I have nothing against creating a university research center focused on homeland security.

There are currently many effective university center programs—centers for expertise and excellence—established through competitive processes by the National Science Foundation and other science agencies. And the science and technology division in this homeland security bill closely tracks what we proposed in the legislation that came out of the Governmental Affairs Committee—which would give the Department many exciting new tools to harness talent in our universities and companies and focus it on meeting the unprecedented challenge we face to out-think and out-innovate our enemies.

But there is a problem with this particular proposal as it is written. Based on the fifteen criteria outlined in the bill, the research center that it would create is described so narrowly, through fifteen specific criteria, that it appears Texas A&M University has the inside track, to say the least, to get the funding and house the center. House aides have admitted as much to The Washington Post.

Texas A&M is a fine school that may be perfectly suited to run such a federal research center—but there are many other fine schools that may also be well suited to run a homeland security research center, and Congress should not predetermine the best site.

Science in this country has thrived over the years because, by and large, Congress has refused to intervene in science decisions. Science has thrived through peer review and competition over the best proposals—which are fundamentals of federal science policy. We are violating them here. This is nothing short of "science pork."

This provision was strongly opposed by the Chairman of the House Science Committee. And it has been roundly criticized by the university community as an inappropriate Congressional intervention in science program selection.

My friend, the Senator from Texas, has suggested that a few other institutions conceivably could assemble the qualifications to meet the 15 criteria that Texas A&M has specified. But I urge him to look at the list, which is breathtaking in the particularity of its detail. And even if a handful of schools might meet in theory these requirements, that does not solve our problem. We face grave dangers here, lives are at risk. We should all agree that we need to apply the most competitive possible process, the one that brings our best scientific brainpower brought to bear on this problem.

Suppose for the sake of argument that a few other schools technically do qualify. Then think about the agency employee, sitting at his desk at the new department, who receives the application from Texas A&M. A&M meets all the criteria specified in the statue, and meets them to a tee. The employee knows that Representative DELAY wants this done. Realistically, how do we think this decision will turn out? We know how it will turn out.

When it comes to making these research funding decisions, we need a playing field that is truly level—not one that only looks level when you tilt your head.

Perhaps that is why previous versions of this bill were wise enough not to include this provision. The bipartisan Senate Governmental Affairs Committee bill did not make this mistake. Nor did Senator GRAMM include them in his earlier Gramm-Miller substitute. I have worked over the years on science policy issues and legislation with Senator GRAMM, and I hasten to point out that this provision certainly did not originate with him. He has a strong understanding of the importance of strong science to our nation's economic and social well-being, of strong federal support for science, and of the need for competitive funding decisions that are based on sound peer review. These provisions did not originate with him.

Our amendment keeps the university-based science center program. However, it removes the list of highly-specific criteria that appear to direct it to a particular university. That is the way we will get the best science, not by making Congressional allocations to particular institutions.

I was under the impression that this homeland security bill would be clean. What does that mean? That it wouldn't be, for lack of a better word, mucked up with lots of extraneous provisions that are marginally relevant or irrelevant to the central mission of this department, which of course is protecting the American people from Twenty-first Century terrorism with every ounce of talent, every tool, every technology at our disposal.

I understand the legislative process. I know that, as a wise person once said, compromise is what makes nations great and marriages happy. I did not expect this substitute bill to look exactly like the bipartisan bill approved by the Governmental Affairs Committee I am privileged to chair.

But I did expect that this bill would be clean—and clean it is not. I believe passionately in the need to create a Homeland Security Department. And I recognize and appreciate the many good things in this bill. It has moved much closer to our vision of how to combine our strengths and minimize our weaknesses on intelligence to protect the American people from terrorism. So too has it embraced our creative and comprehensive vision of the new Department's science and technology division. And when we step back and look at the big picture, it looks pretty good. And more important than looking good, it looks and is necessary to protect the American people.

But these flaws are real. They are serious. And they are utterly unnecessary.

Luckily, they are easy for us to fix. One amendment, one vote. I once again urge my fellow Senators to pass this amendment.

There are other colleagues who wish to speak. I would, therefore, ask for the support of my colleagues for the motion to strike.

The ACTING PRESIDENT pro tempore. The Senator from Louisiana.

Mr. BREAUX. Mr. President, what is the time situation?

The ACTING PRESIDENT pro tempore. There are 10 minutes 20 seconds remaining to the majority leader or his designee.

Mr. BREAUX. Mr. President, I rise to indicate my support for two things: No. 1, for the homeland security legislation which I think is very important. We fought for weeks about what it was going to look like. We made some suggestions about what should be in the bill with regard to worker protections in the area of collective bargaining. The White House was not willing to accept our recommendation. And I understand that is not going to be possible. I thought that the bipartisan recommendation we had on collective bargaining was the right way to go. That did not work out. What we have in the bill is what the President wanted from the very beginning. I accept that. The concept of homeland security bringing these agencies together is very important.

It is clear that after 9/11 we found out that the Federal Government was not working very well together, that agencies were not sharing information that they should have been sharing with each other, and we could have been doing a much better job.

Under the leadership of the distinguished Senator from Connecticut, Mr. LIEBERMAN, a proposal came about for a homeland security agency. Quite frankly, at the very beginning the White House didn't think the idea was a good one. They were worried about it creating too large a bureaucracy, but they came to the realization that I think all of us have come to that, yes, this is in fact the right thing to do. That is where we are right now.

What has happened in the course of this process is interesting but not unusual. The House loaded up the homeland security bill with a whole bunch of things that were concocted in the middle of the night and not the subject of any hearings or not brought through the normal committee process and not voted on by the House and not voted on by any committee in the Senate and not passed by the Senate.

But, lo and behold, all of these provisions are now attached to the bill, and the House announced that they are going out of town, and take it or leave it.

I understand that some of them may be in Paris or London or Japan or doing things that are important. But we are not finished yet. This bill—no matter what happens—is going to have to go back to the House of Representatives for consideration. It is going to have to go back to the House for consideration even if this amendment to strike out these add-ons is not adopted because the bill still has to be—after we adopt the Thompson substitute—approved by the House. What is wrong with the House at that time saying we understand that the Senate is not going to accept these provisions and, therefore, we will pass homeland security such as the President requested it? The President, himself, in the White House said don't load this thing up with unnecessary items.

I would suggest that having a homeland security research center at Texas A&M University is a good idea, if you are from Texas. But how about the other 49 States that would like to also participate in the process? LSU would make a great center for homeland security research. They have already been working on it. But this legislation just cuts them out, sticks one university in the process, and says: This is it. Take it or leave it. We're gone. We're out of town.

That is not the way things are supposed to work. It is not the way they should work. I hope it will not work that way after we vote this morning.

There is nothing wrong with taking these items out of the legislation and having the House take the bill up without it and have them pass it. They can do it by voice vote. We could finish it this afternoon. The President can get the homeland security bill as he has requested. I will support that effort.

I think it is very important to do homeland security, but don't let it become a vehicle for special interest provisions which the Congress has never considered. I think it is wrong.

Mr. DORGAN. Will the Senator from Louisiana yield for a question?

Mr. BREAUX. I am happy to yield.

Mr. DORGAN. I ask the Senator from Louisiana, is one of the provisions you are describing a provision that makes it easier for a corporation that has renounced its citizenship, and moved to the Bahamas in order to save on its tax bill in the United States, to get contracts with the U.S. Government? Is that one of the provisions they stuck in at the hour of midnight?

Mr. BREAUX. The Senator makes a good point. In addition to spelling out one university that all of a sudden will get all the work in the entire country, the other earmark is it takes away the Wellstone amendment, which prohibits contracting with corporate expatriates.

What does that mean, expatriates? People who have left the country. People who said: I don't want to be a citizen of the United States any longer. I am taking my business overseas. But, oh, by the way, I would still like to do business with the Federal Government while I am in another country not paying taxes to the United States.

That really strikes me as being something we should not allow. I think the Senator is correct in pointing it out. That is not the way we should do business. If you want to provide homeland security, I would suggest giving business to companies that have left the United States is not in the interest of homeland security. It may be in the interest of the Bahamas, but it is certainly not in the interest of the United States of America.

Mr. DORGAN. If the Senator will yield for one additional question, isn't it a fact that the provision that would prevent corporations that renounce their U.S. citizenship in order to avoid paying taxes to the U.S. Government—the Senate actually passed a provision that said: Well, if you don't want to be an American citizen, then maybe you ought not be contracting with the Federal Government. We set a date by which that would be the case. That was in the legislation that moved out of the Senate. My understanding is it is the case that the House of Representatives put one of these special provisions in and said: Oh, we don't agree with that. We want to weaken that to make it easier for these companies that renounced their citizenship to get U.S. Government contracts once again. Isn't that the case?

Mr. BREAUX. The Senator is exactly right. In order to have homeland security, we need to protect the citizens of this country. Giving financial assistance to companies overseas that have left this country because they don't like to be citizens of the United States is the wrong way to do this.

Let's pass this bill clean. The President will get the homeland security bill he desires. He will sign it. I will support it. That is the right way to do business.

Mr. DURBIN. Will the Senator yield?

Mr. BREAUX. I am trying to save time for Senator DASCHLE.

Mr. DURBIN. For just 30 seconds?

Mr. BREAUX. I will yield.

Mr. DURBIN. The point was made last week that within this bill is a provision that benefits the Eli Lilly Pharmaceutical Company that says pending lawsuits brought on behalf of parents who believe their children are suffering ill effects from a preservative which the company made and put in vaccines, causing harm to these children—physical and mental harm to these children—that pending lawsuits against this pharmaceutical company would be wiped away by the language of this homeland security bill.

Does this amendment we are about to vote on eliminate that provision and say that these parents and families and children will still have their day in court against this major pharmaceutical company?

Mr. BREAUX. Just briefly, the Senator is correct in his observation. It does exactly that. There may be an argument whereby companies that make a vaccine should not be subject to liability suits. There is a provision for a fund for people who make vaccinations, that if they are being sued, they will recover against a fund. That is current law. But that should be prospective, not retroactive. It should not wipe out legitimate litigation that has already been filed. It is like saying here is a legitimate lawsuit, but all of a sudden, by this action, we wipe out all court proceedings against that particular company. That is not the right way to proceed.

The company, as I understand it, did not ask for it, did not lobby to put it in this bill, but all of a sudden, here it is, in the middle of the night. It should not be in the bill, and this amendment would take it out.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, how much time is left for Senator DASCHLE under the order previously entered?

The ACTING PRESIDENT pro tempore. Two minutes twenty seconds.

Who yields time?

If no one yields time, time will be charged equally to both sides.

The Senator from South Dakota, the majority leader.

Mr. DASCHLE. Mr. President, I will use leader time to augment the time allotted for me to make some remarks with regard to the amendment.

The ACTING PRESIDENT pro tempore. There is an order for the Republican leader to be recognized at 10 o'clock.

Mr. DASCHLE. Mr. President, I ask unanimous consent that I be allowed to speak and to complete my speech prior to the time the Republican leader addresses the Senate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DASCHLE. Mr. President, I did not hear my colleagues speak to one of the greatest myths that I have heard in the debate about this amendment. That myth is, if we pass this amendment, somehow it makes it impossible for us to reconcile this amendment with the House of Representatives; that somehow it would put some chink in the process.

But I think, as my colleagues have noted already this morning, regardless or whether this amendment is adopted, this bill must go back to the House. There will be another vote in the House. So do not let anyone persuade any colleague, any Senator, that somehow there a procedural impediment is created if we pass this amendment.

This legislation will go back to the other body. And when it does, if the House does the right thing, they will accept this language, and we will send the bill to the President as we should.

I must say, Mr. President, this has been a difficult debate for many of us, a very difficult debate. All of us, of course, want to do the right thing. Many of us think perhaps supporting some new infrastructure with regard to homeland security is right. We have worked and worked and worked to reach a consensus.

Much of what is in this bill reflects a consensus. But I must say, this language, these additions to the bill, added at the eleventh hour, is arrogance, is an atrocious demeaning the legislative process. They ought to be ashamed of themselves. At the eleventh hour, when nobody was watching, when most people had gone home, those people with deep political pockets, those people with the resources to make a difference, had inserted in this bill items that the House itself had already voted against.

In July of this year, the House voted 318 to 110 to cut off those corporations that move offshore to avoid paying taxes—318 to 110, 3 months ago. They said: If you are going to do that, you will not be able to contract with the new Department. You ought to be ashamed of yourself. How can you be so unpatriotic?

They did the right thing in July. But what did they do at the eleventh hour? Well, at the eleventh hour, when nobody was watching—when they thought nobody was watching—they quietly said: We didn't mean it. Now the elections are over. Now we will make a mockery of the tax law. We will make a mockery of the homeland defense bill. We will reopen the treasury to corporate expatriates, thinking nobody could possibly call attention to it.

Mr. President, that is just the beginning. Why would we possibly want to give liability protection to a company that made a pharmaceutical product that may cause autism in children? Why would we do that?

Why would we possibly slow down the process by which the new Transportation Security Agency issues new emergency rules to protect travelers? We do it to help out airlines and other transportation companies. That is why we are doing it.

The House inserted the liability protection for vaccine additives to help out a company. The House inserted the expatriate corporate exemption to help out a lot of companies with deep pockets. Why would the House put a university earmark in the homeland defense bill, earmarking Texas A&M for special treatment? Why, because some lobbyist got the job done at the eleventh hour. That is why it happened.

These items make a mockery of the legislative process. Everybody who has their fingerprints on these issues ought to be ashamed of themselves. We have one opportunity to make it right, and that is in about a half hour. We will have an opportunity to strike these, to send a bill to the President that better reflects the consensus we have worked so hard to achieve. We want to do that; some of us want to do that. But I must say, it is a sad day for the legislative process. It is a sad day for homeland security. It is a sad day for the institutions of the House and the Senate when we can insert language such as this unabashed.

I hope each Senator will think very carefully about the consequences of this vote. We ought to feel good about passing this bill. We ought to feel good about making some new contribution to reorganizing the Government, if indeed that will move us to a better sense of confidence about our own security.

But how do you feel good, how do you feel positive, how do you feel that you could in any way explain what the House has done?

I say to my colleagues in a bipartisan way, let's reject these provisions. Let's ensure we send the clearest message possible that this kind of legislating will not be tolerated. Let's do it now before it is too late. Let's not have to explain this weeks or months later. We have the opportunity to rectify bad decisions made at the last hour, made without any scrutiny, made without any real public attention, made for all the wrong reasons. We can do it today. We can do it in a half hour. I urge my colleagues to join us in getting this right.

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from West Virginia still has 5 minutes.

Mr. BYRD. Mr. President, how much time remains before the vote?

The PRESIDING OFFICER. The Senator has 5 minutes, and the Republican leader has 28 minutes.

Mr. BYRD. And does the time come out of both Senators, if no unanimous consent request is made?

The PRESIDING OFFICER. A quorum call will be charged to the party who suggests the absence of a quorum. If no quorum call is in place, both sides are charged.

Mr. BYRD. Does the distinguished majority leader want more time? I would like to give him my remaining time. I don't want to see that time whittled away simply because somebody is not taking the floor.

I ask unanimous consent that I may yield my remaining time to the majority leader.

The PRESIDING OFFICER. The Senator has that right.

Mr. DASCHLE. Mr. President, I am very grateful to the distinguished Senator from West Virginia. I ask unanimous consent that I be recognized for that time just prior to the vote.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I thank the President and thank the Senator from West Virginia.

Mr. BYRD. Mr. President, might I have just 30 seconds of my time back?

Mr. DASCHLE. Mr. President, I yield whatever time the Senator from West Virginia may require.

Mr. BYRD. I thank the Chair. I thank my leader.

I have just heard from the Budget Committee. CBO has scored the vaccine amendment as increasing direct spending by $100 million in the first year, $2 billion over 10 years. In other words, it is a gift to drug companies by this amount that would increase the deficit by this amount.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum, reserving the final time, as has been indicated in the previous order, to Senator DASCHLE.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, we are reaching the moment where we are going to vote on homeland security. I rejoice that we have found our way here. It has been a long and difficult debate. I commend to my colleagues that they vote for the homeland security bill. There will be an amendment that will be offered prior to that bill.

I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator has that right.

Mr. GRAMM. I want to take my 10 minutes to talk about the amendment that we will have prior to the final vote. I remind my colleagues that over the last weekend, as we tried to bring this 7-week debate toward cloture, the President reached a compromise with several of our Democrat Members to give additional power and input to government employees and their representatives, not the power to veto the President's decision but the power to have input, the power to have review. Also, to get a bill we could vote on and hopefully conclude this debate, we had to meet with Members of the House who had a separate bill.

What we have before us is the old Gramm-Miller amendment with the amendments that we adopted; 95 percent of the Lieberman bill is in this stack of paper. And then we had to reach an agreement with the House.

A great harangue has come forth against that final agreement. There is an amendment pending that would strike seven provisions. In striking those seven provisions, we would endanger the bill and, if we were fortunate, we would have a conference in December.

That is a risk that is not worth taking and, further, I believe the bill is a better bill with the seven provisions in it. Let me just address them.

The one that has gotten the most discussion is the provision with regard to liability on vaccines.

Let me state it in the simplest possible form. We have always had separate treatment for vaccines because some people react differently to vaccines.

In 1986, we set up a comprehensive program to compensate people who are harmed by vaccines that are used for general purposes. We have paid $1.6 billion out of that fund. Under that fund, you go through a process of arbitration and, if you settle, you settle; if you don't, then you can go on to court. The vast majority of people settle.

A loophole has been found in that process. Plaintiff attorneys are now arguing that damage is being done by a mercury derivative, which is a preservative in these vaccines. The plaintiff attorneys are arguing this preservative is not covered under the compensation program. Nobody has proved scientifically one way or another where the harm comes from. But plaintiff attorneys have now reached around the arbitration process and have filed suits that total 10 times the aggregate value of all the vaccine sales in the world combined.

This bill, recognizing that the stockpiling of new and powerful vaccines will be important to the war on terrorism, seeks to close that loophole by making it clear in law these preservatives that have always been part of vaccines are covered by the current arbitration process.

Now, many people have tried to label this into everything from a political payoff to you name it. We have a process that is working. People are satisfied with it. Plaintiff attorneys are trying to go around this process. Unless some order is brought to it, we are going to end vaccine production in the world. We don't want to do that. This is a good government provision that brings this process under the 1986 act, which was written by Senator KENNEDY and Congressman Waxman.

Now, the second provision—and there are two that are criticized—has to do with liability limits. Senator WARNER and Senator ALLEN introduced an amendment, which we accepted, that puts the taxpayer on the hook for paying any liability that occurs from items produced for fighting the war on terrorism. It is something we have done since the Civil War to try to indemnify manufacturers that are producing cutting-edge items that are desperately needed on a time-sensitive basis for the war effort. The House had similar language, but with liability limits included in the Transportation Safety Act. When it came to a choice between the taxpayer being at risk or having previously established liability limits, we accepted those liability limits from the House bill.

Another provision that has been criticized is a change in the Wellstone amendment. The Wellstone amendment originally said any company that has ever been domiciled in the U.S. that is domiciled somewhere else cannot sell items to be used in the war on terrorism. We thought there had to be some moderation on this language, so we added three points. One, if the language produced a situation where you actually lose American jobs because a product was produced here, even though the company's headquarters is in France, you could have a waiver. Two, if you have a sole source bidder and no competition, you can have a waiver. And three, if the product is cheaper with higher quality, a waiver can be given under those circumstances.

That is a good government provision. It makes eminently good sense. If a company in France is producing something in Cleveland and selling it for the war on terrorism, why should we put people in Cleveland out of work to buy something produced in Japan by a company that has no employees in the United States? It makes absolutely no sense. Those waivers represent good government.

There are two final provisions in the bill. One doesn't matter, and that is advisory councils. I don't know if they have any value or not. I don't see jeopardizing the bill to strike them.

The final provision has been referred to as a "Texas A&M" provision—a provision I did not write and didn't have anything to do with, and it doesn't specifically have anything to do with Texas A&M.

I have a letter from the University of California supporting the provision. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNIVERSITY OF CALIFORNIA,
OFFICE OF THE PRESIDENT,
Washington, DC, July 25, 2002.

Hon. NANCY PELOSI,
Ranking Member, House Select Committee on Homeland Security, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE PELOSI: As you prepare to vote on H.R. 5005, the Homeland Security Act of 2002, the University of California encourages your support for provisions in the bill that aim to strengthen the role of science and technology in the new Department and that ensure that the capabilities of the U.S. Department of Energy's National Laboratories are made available to the new Department. UC supports the establishment of an Under Secretary for Science and Technology and provisions to strengthen the important role that academic research institutions play in protecting our homeland.

As you are aware, UC is actively engaged in activities associated with homeland security and our nation's war on terrorism, including conducting ongoing research and providing scientific expertise. UC faculty and researchers, including those at the UC managed national laboratories, have testified before Congress, developed bio-agent detection devices, aided in the anthrax cleanup effort on Capitol Hill, and analyzed the World Trade Center structure, among many other activities.

Section 307 of H.R. 5005 calls upon the Secretary to establish university-based centers for homeland security. This section provides the Secretary with a list of merit contingent criteria from which to base the selection of colleges or universities as centers. The criteria range from strong affiliations with animal and plant diagnostic laboratories to expertise in water and wastewater operations. UC would welcome the opportunity to compete for such an important center. As the public research institution serving the state of California, the ten-campus UC System, with its three national laboratories, is uniquely qualified to address all of the selection criteria. To improve the selection process, UC would like to work with you and the conference committee to ensure that the final version of the legislation provide that the Secretary shall make the designation of university centers with the advice of an academic peer review panel.

I commend you for your leadership on this landmark legislation and for your continued service to the people and institutions of our state. If you need further information about the issues raised in this letter, please contact me.

Sincerely,

A. SCOTT SUDDUTH,
Assistant Vice President.

Mr. GRAMM. Mr. President, that provision is similar to provisions we have at the Department of the Interior and the Department of Energy. It basically says the major research universities in the country will be eligible to participate in a center or centers. It also says the agency and the President have the power to set up centers and do research wherever they want to. This is a provision that provides no money. It does say major research universities will be part of the process, but it doesn't say they will be the only part of it.

Let me conclude and then keep the balance of my time, because others may need it if I have not used it up. The seven amendments that would be stricken by the Daschle amendment are amendments that improve the bill. A couple of them didn't have to be there. They do no great harm. Five of them improve the bill by dealing with problems directly related to terrorism, and they all trace back to a provision, in one form or another, that was in both the Senate and House bills.

I know this is going to be a close vote. I urge my colleagues to vote against the amendment, A, on substance—the bill will be better if the amendment fails—and, B, I think there is a substantial probability that we will not get a bill this year, though we will certainly get one next year. It simply would mean a 3-month delay.

So I urge colleagues to vote no on the amendments and to vote for the underlying bill. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, how much time do the opponents have?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mr. THOMPSON. Mr. President, I ask the Chair to notify me at the end of the consumption of 7 minutes.

The PRESIDING OFFICER. The Chair will do so.

Mr. THOMPSON. First of all, Mr. President, with regard to the comments that have been made concerning the inversions, a couple of colleagues on the other side said our amendment takes out the Wellstone amendment to bar companies who leave the U.S. to evade taxes.

This doesn't eliminate the Wellstone amendment. That amendment to bar the Department of Homeland Security from contracting with inverted companies is included in our amendment. What our amendment does, though, is give the Secretary of Homeland Security the ability to waive the bar if U.S. jobs would be lost, or if it would cost the Government more taxpayer dollars because there would be less competition.

On this issue, I know this is extremely important politically for many of our colleagues. When you examine it from the standpoint of social policy, or policy as it affects the U.S., it does not bear scrutiny. We in the Governmental Affairs Committee, I think on a bipartisan basis, over the years have tried our best not to interject social policy in our procurement process.

Our Government needs to be able to get the best and cheapest goods for the taxpayers. One can think of many different things companies might do that are totally legal, totally proper, that we might disapprove of. We wish they were different kinds of companies, had different kinds of social policies. But if we say, with regard to all of them, that if there would be a new batch every year under consideration, we are not going to do business with them, we are going to cut off our nose to spite our face, even though their products are better, they are cheaper, and we are trying to protect homeland security, we are not going to do business with them because we do not approve of your policies, even though they are perfectly legal, that would hurt this country.

It is more important to have a viable Homeland Security Department to protect this country than it is to make a political point or punish some company. We are punishing, in some cases, companies that have thousands of domestic employees working in the United States. What we would be doing is depriving them of contracting with the Department of Homeland Security and allowing a French company or a German company that has always been a foreign company, always with foreign employees, getting the contract.

That makes absolutely no sense. However, it apparently is an idea whose time is come and is included in the amendment Senator GRAMM, Senator MILLER, and myself offered a while back.

What we do is this: We do not necessarily agree with the underlying policy, but we are going to include it in the amendment. But at least let's have some exceptions if it really benefits our country in terms of homeland security, our jobs, our costs. Let's give the Secretary the discretion to make some exception with regard thereto. It is just common sense and it focuses where we need to get, not for short term political gain but to punish some company.

Bermuda, for example, is the home of Intelsat from whom our Department of Defense gets satellite services. Do we want to cut ourselves off from that? There are not that many companies like that around the world. Intelsat is an inversion. Why limit it to homeland security?

Let's get away from the idea of punishing somebody or punishing some company when it hurts our country to do so. It does not say you have to do business with them. It says let them compete. We are not giving them anything if it is not the best thing for our country. That is the philosophy behind our approach, and it is incorporated in this amendment. No one should have to make any apologies for this provision being in the Thompson amendment the way it is.

With regard to the other point Senator GRAMM made concerning vaccines—and Senator FRIST spoke eloquently about this. This is an incorporation. What the Lieberman amendment seeks to remove is the incorporation of a portion of a bill that was submitted by Senator FRIST.

If one looks back at the history of vaccines, it is obvious vaccines have been special cases in this country for years. We have treated them in a special way because the profit margin on vaccines is lower than most drugs, and the risk is higher, and we need vaccines. As a part of our governmental policies, as part of our national policies, it has always been that way.

We addressed that when the swine flu epidemic came about, and we made some changes to the Federal Tort Claims Act. Back in the 1950s, an Executive order was put forward that would provide some indemnification for companies to produce vaccines. We have a long history of that practice.

Finally, in 1986, Congress created the National Vaccine Injury Compensation Program which said basically this to plaintiffs: Look, plaintiffs, you are not getting anywhere the way it is in the court system. Nobody ever gets any recovery off this because you cannot prove causation. You cannot prove your injuries were actually caused by this vaccine. So we are going to set up a separate system so you do not have to prove causation: basically a no-fault situation.

If plaintiffs do not have to prove causation, on the other hand, there is some limitation to the amount of damages they can get. Instead of a special court, you go to a special master. If you do not like the results, then you can go to court. We think that is a pretty sound deal. Congress thought it was in 1986 when it passed that legislation and it was signed into law.

Lawyers look at this and say: OK, we are cut out from suing in court if it has to do with a vaccine. So we will take this particular additive and say it is not really a vaccine. It is an adulterant, a pollutant in this vaccine; therefore, it is not covered by this compensation process. That is the way they got to court.

We have scads and scads of lawsuits as a result of it, and it resulted in two U.S. companies left producing vaccines in this country. What Senator FRIST was trying to do and what we are trying to do in our amendment is to effectuate the intent of the 1986 law which was to roll all this in to the compensation program.

Mr. President, I ask for an additional 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMPSON. The intent was to roll these new lawsuits of the future into this compensation program, so that in the future, not only with regard to vaccines, but components of vaccines, have a new definition, a more comprehensive definition of vaccine and make that a part of the system.

It is not cutting plaintiffs off, it is putting them in the same position we thought we were putting plaintiffs in in 1986, anyway, and that is go through a special master and prove your case. You do not have to prove your injury was actually caused by a vaccine, as one would in a court of law; on the other hand, there is some limitation on recovery. Then if you are not satisfied, you can sue in court.

A benefit to a company? When are we going to stop looking at who gets some little benefit, who is able to survive, and start looking at what is in the interest of our national security? Sometimes I believe we had rather make some small point and put some company or group of companies out of business who are not in favor at the moment, even if it hurts us as a nation. And vaccines are a classic case. We have to have more.

We are trying to figure out what to do with smallpox. It is not going to be in our country's interest to drive these companies out of business, and it does nothing to harm qualified plaintiffs to require them to go through the compensation program we set up in 1986 and which most people thought these plaintiffs would be a part of, anyway.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, how much time remains on this side?

The PRESIDING OFFICER. Six minutes 41 seconds.

Mr. HATCH. Will the Chair interrupt me after 4 minutes?

The PRESIDING OFFICER. The Chair will do so.

Mr. HATCH. Mr. President, today I rise to speak in opposition to the Daschle Lieberman amendment. There are some provisions that I consider very important to the Department of Homeland Security and which Senators DASCHLE and LIEBERMAN seek to strip from the House-passed language—thus, in my opinion, making their amendment more about abusive litigation security rather than homeland defense security.

In order to provide for our homeland defense, we must take necessary steps to promote research and development of important technologies and vaccines, and ensure their accessibility. We will have failed the American people if the development and deployment of needed technologies and vaccines is prevented by the threat of unreasonable exposure to overwhelming lawsuits.

To foster quality research, the House established criteria to ensure that when selecting universities as centers for the development of homeland security technologies, we partner with the highest quality programs. Many of these criteria mirror similar provisions routinely found in current Federal laws funding research and development. Proponents of the Lieberman-Daschle amendment claim the criteria are too selective and should be eliminated. Shouldn't we be concerned that the Department of Homeland Security works with the best and the brightest when developing technologies intended to protect the American people? If the Lieberman amendment passes, I caution you that the university-based centers could become more about pork and which legislator can deliver the most in government funds to his or her district, rather than protecting the American people with cutting edge technologies and programs.

To facilitate the development and deployment of needed technologies, the House included its SAFETY Act provision, recognizing that we cannot saddle manufacturers with unreasonable exposure to unlimited lawsuits. The House-passed SAFETY Act language imposes reasonable provisions to manage potential legal exposure of those companies that we have asked to step up to the plate in homeland security. Otherwise we will be faced with a crisis in homeland security when companies are unwilling or unable to become involved. Let me be clear, contrary to assertions by some, the House-passed language does not give blanket immunity to corporations. What it does is permit companies that manufacture and deploy designated antiterrorism technologies, approved by the Federal Government for use in homeland security, to be afforded the "government contractor defense," but only if certain criteria and precise government specifications are met.

It is important to note that if these criteria are not met, if the equipment deployed does not meet Government specifications or if the manufacturer conceals any information regarding the dangers posed by the equipment—the government contractor defense will not be successful. Moreover, if a company engages in fraud or willful misconduct, that are not protected. And if a State imposes additional requirements which do not conflict with the Federal criteria, the State law is not preempted. The defense is not a blanket immunity from suit.

If the government contractor defense fails, and the plaintiff prevails at trial, the subsequent award would be subject to reasonable limitations which include:

Proportionate liability for non-economic damages—Companies would only be liable for noneconomic damages according to their portion of culpability. Under current joint and several liability laws in place in many States, a defendant that is only 1 percent at fault could be forced to pay an entire award if payment cannot be obtained from those responsible for the other 99 percent. It is unconscionable that we would subject manufacturers that have stepped forward to protect the American people to unlimited litigation exposure that could result in their paying damages for which they are not responsible. A crafty plaintiff's attorney could conceivably add one of the terrorists as a defendant in a case to inflame the jury. Consequently, even if the jury finds the terrorist 99 percent liable because he perpetrated the act, the manufacturer of a device that may have failed one time in 1,000 might be forced to pay a huge, often crippling award. Often these types of lawsuits become less about culpability and more about the trial bar extorting huge settlements based on emotions that run high in the aftermath of a tragedy. Nonetheless, the House-passed language only remedies this injustice with regard to non-economic damages. Economic damages would not be subject to proportionate liability and State laws forcing those less culpable to pay for the damages inflicted by those who are really responsible, would still apply.

A Ban on Punitive Damages—It is appropriate to ban punitive damages in lawsuits which we can anticipate could very well be based more on emotion than legal culpability and are less in line with the real purpose of punitive damages—to punish bad behavior—and more about making a statement about a tragedy. Uncontrolled and inflated punitive damage awards run the risk of drying up defendant resources and reducing awards to subsequent plaintiffs to pennies on the dollar.

We must provide some stability to the legal process, especially in the context of terrorist attacks to ensure that private-sector resources are available for our homeland defense and that plaintiffs are compensated for their actual damages.

In order to facilitate the development and deployment of essential vaccines, the House-passed language recognized the importance of this aspect of our homeland security and included language that would treat doctors and hospitals who administer certain vaccines and manufacturers of certain vaccines as Federal employees. This means that the government will step in under the Federal Tort Claims Act, FTCA, and defend the lawsuit and pay any damages awarded, subject to the parameters of the FTCA. Claimants will still be compensated, but those who partner with us to protect our people will not be overwhelmed by an unrestrained trial bar. Nobody is arguing with that particular provision—but we must recognize that it works in tandem with the other provisions that I have addressed.

If we suffer another attack, do my colleagues want to be faced with a shortage of important vaccines, or the inability to get those vaccinations to the public in a rapid and orderly manner? As Senator FRIST noted, our vaccine capability is in crisis. Potential exposure to unlimited lawsuits has made it impossible for most companies to participate in a vaccine program. We have seen the number of vaccine manufacturers fall from 12 to 4, only 2 of which are U.S. companies. Doctors and hospitals are legitimately concerned about their potential legal exposure should they attempt to partner with the government in the dissemination of a vaccine. Let me stress that the government cannot do this alone; we must partner with the private sector or else we will leave significant portions of our constituents unprotected.

I must note that the last-minute inclusion of sections 1714–1717 in the House-passed bill dealing specifically with liability for vaccines that are covered under the current National Vaccine Injury Compensation Program, NVICP, has raised many concerns. I have heard from many parents that feel the process by which this bill was brought to the floor will deny them a meaningful opportunity to influence legislation that is important to children and their families. Simply, the process leaves much to be desired. A piecemeal, unvetted approach to addressing these specific, very complex vaccine injury compensation and supply issues is not the best way to protect our children and families. Without broad debate and consideration of all the issues surrounding vaccine compensation, the narrow inclusion of certain provisions regarding NCVIP, such as "clarification of definition of a manufacturer," removal as "an adulterant or contaminant any component or ingredient listed in a vaccine's product license application or product label," and application of these definitions to pending litigation, without addressing other criticisms of NVICP may not be the best course of action. What is most troubling is the fact that we have not been given the opportunity to fully understand the implications of sections 1714–1717 and develop comprehensive solutions due to a poor legislative process.

Maintaining a safe, adequate vaccine supply while fairly compensating vaccine injury is an important issue and deserves far more deliberation and debate than it was afforded. Americans are rightfully concerned about the manner in which this important issue has been handled in the eleventh hour. Clearly, on the one hand, the vast majority of our children and families have benefited from vaccines. On the other hand, unfortunately, there are rare adverse events that are caused by vaccines. Balancing these issues to ensure the health and well-being of our children requires careful consideration. Legislation introduced by Senator FRIST, S. 2053, the Vaccine Affordability and Availability Act, which contained the original provisions now included in the Homeland Security bill, had never been subjected to any legislative scrutiny such as hearings or markups. Our citizens expect to be heard and their concerns taken into account when forming legislation, especially when modifying a current program. I am disappointed that this did not occur. Ensuring affordable, life saving vaccines while protecting our children from vaccine injury and fairly and expeditiously compensating the unfortunate families who suffer harm is not a simple matter, and at the very least, should be the subject of an open, thoughtful legislative process. This issue was clearly not afforded the deliberation the American public deserves.

Though I may not agree with every provision in the House-passed bill, and I must emphasize my disappointment in the hurried manner with which some provisions were included, I recognize that if we allow this amendment to strip the provisions which I feel are vital, we will threaten overall passage of the bill.

Failure to enact this legislation would be a serious disservice to the furtherance of our homeland security and the interests of the American people because it would leave us in danger of being unable to develop the technologies or vaccines necessary for the defense of our country in the 21st century. We are in a new type of war, and litigation that could follow terrorist attacks will not be garden variety lawsuits. Leo Boyle, president of the Association of Trial Lawyers conceded as much in a January 9, 2002, Washington Post article, "Legal Eagles, Beating Back the Vultures," where he stated that lawsuits seeking to blame the effects of the September 11 attacks on anyone but the terrorists "deny the essential nature of the attacks" and should be subject to special rules limiting the liability of Americans. If that is true, the trial bar should not oppose these provisions.

Fred Baron, a leading member of the trial bar, was recently quoted as referring to an article in the Wall Street Journal that stated the trial bar "all but controls the Senate." Mr. Baron took issue with the "all but." I took issue with his assertion during a recent hearing in which he was a witness before the Judiciary Committee on asbestos litigation, because as I think it is clear to all of us—the trial bar has so far been successful in preventing us from enacting essential reforms in the area of asbestos litigation and class actions which are spiraling out of control and crippling American businesses. Often these abusive lawsuits have little correlation to any actual culpability of these companies, and often end up being to the detriment of claimants deserving of appropriate compensation.

I challenge my colleagues to show the American people that we are serious about providing them with the technologies and medicines necessary to protect them in the event of another terrorist attack by opposing this amendment, and thereby proving that the Senate will not cow tow to the special interests of the trial bar or their campaign contributions.

I thank the Chair. I yield the floor.

Mr. REID. Mr. President, I wish to speak in support of the Daschle-Lieberman amendment to the homeland security bill. Many people have pointed out many of the problems this amendment attempts to address.

I share the concerns of my colleagues that the homeland security bill should not include provisions protecting Eli Lilly from lawsuits over a vaccine that may be responsible for causing autism in children. The homeland security bill is no place for these special interest, last minute provisions.

There are many other such provisions that I am concerned about which this amendment will address.

In particular, I am extremely disappointed with the provision in the bill that essentially establishes Texas A&M as a homeland security research center. This provision was drafted in such a way that many other universities, such as the University of Las Vegas-Nevada and University of Nevada-Reno, will not be able to compete fairly for this important designation.

The war on terrorism will only be won when we utilize all the best and brightest academic minds all over the country. I am proud of the universities, colleges, and community colleges in the State of Nevada. We have some of the best counterterrorism training and research facilities affiliated with the Nevada universities and colleges. I am disappointed that the administration and the House decided to support one facility without taking the time to learn what these other facilities have to offer.

If this amendment is not successful, I will still work to ensure that UNLV and UNR will be able to compete for this important distinction. By doing so, these universities will continue the proud Nevada tradition of offering up our skills to serve the nation in times of crisis.

Ms. SNOWE. Mr. President, it is only after long and careful consideration, as well as assurances from leadership I and several of my colleagues have secured which I will detail in a moment, that I have determined that I will not support the Daschle-Lieberman amendment before us today.

This is not a decision I have come to lightly. I am deeply troubled by a number of eleventh-hour additions to this major piece of legislation, in the dead of night, as we face adjournment. This is not the legislative process at its finest.

Even as we speak, unprecedented challenges face our national security. Counterterrorism officials report that the level of intelligence "chatter", or information, being picked up from al-Qaida by the CIA, FBI, and National Security Agency is approaching the volume seen in the weeks before September 11, promoting the FBI's recent warning of "spectacular" attacks. That is why the President needs this new Department, and must have the opportunity to begin its organization as soon as possible in order to respond to this national imperative and to secure American soil to the best of his ability.

Yet, here we are, with the House regrettably having adjourned having sent to us a Homeland Security bill encumbered with stealth provisions that have prompted considerable and justifiable alarm, particularly the clarification of vaccine manufacturer liabilities, the criteria by which colleges and universities will be chosen to undertake work on behalf of the new Department, and the waiver allowing the use of inverted domestic corporations as contractors for the purposes of homeland security.

As to the vaccine program, some argue that the measure included in the legislation is necessary in order to help ensure the continued viability of the industry, especially at a time when vaccination against a host of potential biological attacks has become all the more critical. Others have serious concerns about the impact of this provision on pending litigation.

I'm also extremely concerned about the loophole that was opened in the bill's provision banning homeland security related contracts with inverted corporations.

It may be one thing to say that exceptions can be made should our security requirements demand we deal with an inverted corporation because there simply is no other option. It is quite another to actually require Federal contracts to be awarded on the basis of the lowest bid regardless of where the company is incorporated, thereby rewarding the very companies that moved offshore for the purpose of avoiding Federal taxation. What kind of message does that send? What kind of precedent does it set when just 5 months ago in the Finance Committee we were working to crack down on the most egregious corporate inversions?

And finally, the under-the-radar provision concerning college and university work mandated extremely selective and narrow criteria that effectively excluded the vast majority of institutions of higher learning in America. The measure offered the new Secretary no discretion, but rather was tailored to apply to only a handful of colleges and universities. Why shouldn't the University of Maine be able to contribute to the cause if the Secretary believes that specific security needs match with a specific expertise they may possess?

The only reason I will not be supporting efforts to remove these provisions from this legislation via the Daschle-Lieberman amendment is because I have been able to obtain assurances from the Republican Leader, the Speaker of the House, the Majority Leader-elect of the House and the Administration that these objectionable measures will be addressed with alacrity upon our immediate return in January, through the first available appropriations vehicle in the 108th Congress.

All of these parties have been in close communications on this matter. And let me say it is a credit to Leader LOTT that he worked swiftly and decisively to address the concerns I and others raised, as well as to secure the necessary assurances from House leadership.

I appreciate that our Republican leader came to the floor to speak to our concerns, agreeing there are items in the bill that cannot stand as they are and pledging they will be redressed. And I applaud the leader's initiative to form a committee to remedy the most troublesome provisions I have outlined, and as a member of that committee I look forward to achieving that goal so that we can right these wrongs as part of the first order of business we conduct in January.

As a result of these assurances, we can move forward toward completion on this bill that can no longer wait. After 6 month of deliberation, at this sustained period of "Code Yellow" elevated alert status, the time has come for the perpetuity of purpose ensured by statutory status for a new Department of Homeland Security.

A Department responsible for safeguarding our homeland defense must not be dependent solely on the relationship between a particular President and his or her Homeland Security director. Rather, it must be run as efficiently and effectively as possible under the leadership of a permanent, cabinet level official. That is the only way to achieve the kind of "continuity of urgency" the security of our homeland demands.

The fact of the matter is, we cannot afford a descent into complacency when it comes to this life-or-death obligation to protect the American people. Under a new cabinet-level department, responsibility would rest with a Secretary of Homeland Security—a position created under law—who would manage the vital day-to-day functioning of the new department. Critically, this person would have their own budget, while they work closely with the Administration to develop and implement policy.

The bottom line is, I support the creation of the Department of Homeland Security—the largest re-organization of our Government since WWII—because it will centralize our efforts to prevent and respond to any future terrorist attack. Currently, at least 22 agencies and departments play a direct role in homeland security, encompassing over 170,000 people. This legislation consolidates these various responsibilities into one Department which will oversee border security, critical infrastructure protection, and emergency preparedness and response.

Every day we wait is another day that we risk having to look back and wonder, what if we had acted sooner? For this reason, along with the commitment I have personally received from the Leader that we will address the issues of vaccine liability, inverted corporations, and university contracts next year, I will oppose the Daschle-Lieberman amendment.

Mr. LEAHY. Mr. President, tucked away into the Homeland Security bill is a small provision that no one seems to want to take credit for and yet it would bestow huge benefits on just one interest group. According to news accounts, Sections 714 through 716 of the Homeland Security bill were "something the White House wanted," not necessarily something the House or Senate wanted.

This explanation hardly clarifies why we are including such a far-reaching amendment that has nothing to do with homeland security in this bill. It hardly explains why, in these final days of the 107th Congress, we have decided so blatantly to put the interests of a few corporate pharmaceutical manufacturers before the interests of thousands of consumers, parents and children.

Sections 714, 715 and 716 basically give a "get out of court free card" to Eli Lilly and other manufacturers of thimerasol. Thimerasol is a mercury-based vaccine preservative that was used until recently in children's vaccines for everything from hepatitis B to diphtheria. Unfortunately, while these vaccines were intended to help protect our children's health, there are many health professionals and parents who now believe the opposite occurred.

Parents and health professionals are now concerned that using vaccines with thimerasol has exposed as many as 30 million American children to mercury levels far exceeding the "safe" level recommended by the Environmental Protection Agency. In 1999, the American Academy of Pediatrics and the Public Health Service began urging vaccine manufacturers to stop using thimerosal as quickly as possible. Since then, parents of autistic children around the country have gone to court to hold pharmaceutical companies liable for the alleged damage caused by thimerosal. Many of these parents now cite pharmaceutical manufacturer's own documents to show that they knew of the potential risk of using mercury-based preservatives back in the 1940s and yet did not stop its use.

Now tucked away in the Homeland Security bill, we find this small provision that changes the definition of a vaccine manufacturer to include those companies that made vaccine preservatives. This small change to the Vaccine Injury Compensation Program cuts the legs out from under the families involved in pending lawsuits against thimerosal manufacturers. The amendment is obvious in its attempt to put up roadblocks to these cases. Those who brought the cases against manufacturers would lose their option of going to court while the manufacturers get new protections from large judgments.

Let's be clear about this provision. It has nothing to do with homeland security. Smallpox and anthrax vaccines do not use thimerosal. We should not take away the rights of our citizenry under the guise of trying to protect them.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. What is the current time remaining?

The PRESIDING OFFICER. The Republican leader has 2 minutes 20 seconds, and the majority leader has 4 minutes 3 seconds.

Mr. DASCHLE. Since the Republican leader is not here, I will use the time remaining to respond to a couple of the points raised by my colleagues.

First, with regard to the comments made by the Senator from Texas, I again reiterate this has nothing to do with support for pharmaceutical research. This has everything to do with a questionable preservative used in combination with pharmaceutical vaccines. Thimerosal is an additive, a preservative. There are those who have made the case that Thimerosal may cause autism in children. We do not know. All over this country, there are class action suits by families who have sued to make the case, who have sued to have their day in court, who want to get more science and more answers than they have right now. That is what this is about: Whether those thousands of families will have an opportunity to be heard in court; whether they will have an opportunity if, God forbid that there is that connection, to be indemnified. Make no mistake, this legislation eliminates all of that opportunity.

I heard the Senator say this is good government. I must say, I am baffled by that expression. How can it be good government to say to families all over the country who have been victimized, or at least who think they have been victimized, that they can no longer go to court to seek redress?

Again, let me say, this has nothing to do with research or with the vaccines themselves. Thimerosal is no longer being made. We are not even dealing with future class action lawsuits. We are only dealing with the ones currently pending. This legislation, let everyone understand, will wipe out—eliminate—the access to courts by families who have been injured, whose children have autism, who want the right to make the case to the courts, and then the courts decide. If the evidence is not there, they do not get the compensation. But if they can make the case and if the science will support the connection, then there is some hope for these families who otherwise have none.

Why at the eleventh hour, why in the dead of night, somebody, even if they thought they were right, would add legislation without debate, totally stripping these families of that opportunity, is something I cannot explain, I cannot understand. That is what we are talking about. That is not good government; that is shabby government. That should not be allowed. That is really why we are taking it out.

We can explain, we all know how these targeted amendments get put in legislation. In the course of any one Senator's career, those occasions occur. I don't think anyone can justify a Texas A&M earmark for research. I say to the Senator from Nebraska, the University of Nebraska should be entitled to that research. The University of South Dakota might be interested in that research. There ought to be a bidding process. There ought to be some open opportunity for colleges to compete. But to earmark, without debate, Texas A&M as the only university allowed under this legislation—it may be justified; maybe after all the competition they could win—is not the way to legislate. That is also an embarrassment. I hope we can avoid that.

I will finally say, because I know I am out of time, for the Congress to reverse a decision we both have made—passed in the Senate, passed in the House, passed overwhelmingly in both bodies—to send a clear message to companies that go overseas to avoid paying U.S. taxes, that will not be tolerated, especially with regard to their ability to deal with the Homeland Security Department, and now to say we were not serious, we were just kidding, those votes, as overwhelming as they were, really did not mean anything; what we really mean is, go ahead and have that business, do that business, that is OK, you can go overseas, avoid paying taxes, you can renounce your U.S. citizenship, but you can still do business with homeland security, that is OK—that is what we are saying if we oppose this amendment.

I could go on and on. I know I am out of time. I urge my colleagues to do the right thing. Let's cleanup this bill. Let's not have this vote and send the wrong message to the people of this country, to the families who are victimized, to the businesses that have no business dealing with homeland security. We can do better than that. That is what this amendment will allow us to do.

The PRESIDING OFFICER. The minority leader.

Mr. LOTT. How much time is remaining on each side?

The PRESIDING OFFICER. Two minutes 11 seconds remain.

Mr. LOTT. Mr. President, if I need additional time, I will yield myself leader time so I can wrap up this discussion.

I regret I have not been able to hear all of the debate this morning. We have had an opportunity to have a long and fruitful debate. A lot of Senators and Congressmen and the administration have been involved in this process. There is no use rehashing all of the history. We know we need a Department of Homeland Security. We know this 484-page bill that Senator BYRD referred to is not a perfect bill. There are things we will find out very quickly we will have to add that are not there now. We will find out some of the provisions are not good. We will have to revisit that. This is a huge undertaking. We all know this has not been done for 50 years.

We will bring together 170,000 people and try to make this thing work out of whole cloth. It will be a tremendous challenge, whether Gov. Tom Ridge or whoever winds up being the Secretary. They will have to have a strong Department. They will have to have support from Congress. We will have to carry out our oversight responsibilities. This will be a continuing process.

However, if we do not do it now, when are we going to do it? Do I like this process? No. Is a legislative process like making sausage? No, it is not pretty and it is not done well, sometimes. Sometimes we are the problem, individually or collectively. Sometimes it is the House; sometimes even the administrations make mistakes.

The terrorists are not going to wait for a process that will go on days, weeks, or months.

We have fought this fight. We need to get this done. And we need to do it now. If we don't, we don't know when this process would end. Would we have to go to conference? When would conferees be appointed? Who would appoint them? When would the conference meet? I don't want to be singing "Jingle Bells" here on December 21. We are all prepared to do it if that is the right thing for the country.

But we could very well be working on this again next year. And then you have to get this Department started. It could take a month, 2 months, 3 months, 4 months. Is our homeland going to be secure during that process? Are we vulnerable still in our ports? How about our drinking water? Are we at risk? Yes.

Now, there are some things in this bill that cannot stand, as it presently is.

We don't like it. Texas A&M University is a great university. Mississippi State University could do this job. I don't think we ought to be setting criteria that directs research being done at one place or another. We have to open that up. We have to make sure everybody has a shot at it and that the research will be done at universities—if that is needed, and I am not even sure it is—in the right way. We are going to change that. You have my commitment we will change that.

And I don't like the language in this expatriate area. I think it is too broad. However, a little bit of what is at stake here is trust. We have to have some modicum of trust that the new Secretary and the President and the Congress are not going to let these things be done in an irresponsible way. We are not going to grant block waivers to companies that have left this country for tax purposes. But we also have to have some common sense.

What if homeland security is at risk? What if a large amount of jobs is at stake? What if this particular company offers a particular thing we really need that somebody else can't offer? We are going to have to deal with the liability. We don't like limiting liability in some areas—some of our colleagues on both sides. But here is the question: Are they going to go into this business of homeland security without some degree of reliability that what they are going to be able to do will be without the threat of lawsuits going on and destroying them?

We are asking companies to produce items and to deal with this vaccine problem. Let me tell you, one of the toughest decisions the President of this United States is going to have to make is are we going to have a broad-based smallpox vaccination of the population? That could kill hundreds, thousands of people, but perhaps protect millions. It is a huge, tough, emotional, personal decision the President is going to have to make. And liability exposures could be huge.

But do we want the vaccine? Do we want the inoculation opportunity to protect our people? Yes.

So I am asking for common sense. I am asking for trust. I am asking for action now. And we will address some of these issues. I am going to be specific as the day goes forward about some of the changes that are going to have to be made. We will find what they are. We will find a vehicle.

Some people would say: Change it now and let the House deal with it. But how do you do that? How do they do that? How do we get a conclusion? How much longer does it delay this? We need to get this done, my colleagues, and now is the time to do it. We need to work together to make sure it is implemented in the right way.

We are going to find there are a lot of provisions here that are going to have to be refined. There are going to have to be technical corrections. There are going to have to be amendments and they are probably going to come soon. But I urge the Senate to go ahead and act now.

As I said earlier, we have fought this fight. Is it perfect? No bill, no law, ever is. And I am going to ask the President of the United States to give us some assurances, when he signs this legislation, that we are going to look at it carefully and we are going to continue to work to make sure he has the authority and that the Department does the job in the way we expect them to do it.

In conclusion, I thank Senator LIEBERMAN, the chairman of the committee, for his work. He was for it before it was cool. And so were some others on that side and this side. I thank Senator FRED THOMPSON for his great effort. This is his swan song. He will be leaving at the end of this year and we are going to miss him. These are two fine Senators who have worked on a very difficult job. I think we should show our appreciation to them and get this work complete.

I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 4953.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be.

The clerk will call the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 47, nays 52, as follows:

[Rollcall Vote No. 245 Leg.]

YEAS—47

Akaka
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Byrd
Cantwell
Carnahan
Carper
Cleland
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Graham
Harkin
Hollings
Inouye
Jeffords
Johnson
Kerry
Kohl
Leahy
Levin
Lieberman
Lincoln
McCain
Mikulski
Murray
Nelson (FL)
Reed
Reid
Rockefeller
Sarbanes
Schumer
Stabenow
Torricelli
Wyden

NAYS—52

Allard
Allen
Barkley
Bennett
Bond
Brownback
Bunning
Burns
Campbell
Chafee
Cochran
Collins
Craig
Crapo
DeWine
Domenici
Ensign
Enzi
Fitzgerald
Frist
Gramm
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Kyl
Landrieu
Lott
Lugar
McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NOT VOTING—1

Kennedy

The amendment (No. 4953) was rejected.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

Mr. LOTT. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4911

The PRESIDING OFFICER. Under the previous order, there are 2 minutes equally divided for debate prior to the vote on the next amendment. Who yields time?

Mr. DASCHLE. Mr. President, I ask unanimous consent to vitiate the yeas and nays on the amendment in the first order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The question is on agreeing to amendment No. 4911.

The amendment (No. 4911) was rejected.

Mr. GRAMM. Mr. President, I move to reconsider the vote.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 4901

The PRESIDING OFFICER. There are 2 minutes equally divided prior to the next vote. Who yields time?

Mr. BYRD. Mr. President, what is the amendment that is before the Senate?

The PRESIDING OFFICER. The Thompson substitute amendment is the next item of business.

Mr. BYRD. Is that the amendment by Mr. THOMPSON?

The PRESIDING OFFICER. It is.

Who yields time?

Mr. BYRD. Mr. President, I assume someone who is in favor of the amendment will take 1 minute out of the 2 minutes.

The PRESIDING OFFICER. Who yields time?

There are 2 minutes equally divided.

Mr. BYRD. Mr. President, if no proponent wishes to take the 1 minute, I will take 1 minute.

I say to my colleagues that the Senate had just 48 hours to review the 484 pages of the House bill before cloture was invoked, before we stabbed ourselves with the dagger.

In reviewing the details of the bill finally, though, I have had a chance to do a cursory review. The Congressional Budget Office has identified three provisions that increase mandatory spending by $3.26 billion. Some of this new mandatory spending has nothing whatsoever to do with homeland security.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. BYRD. Mr. President, my time has not expired. Senators should pay attention. I insist that I have the rest of my time.

The PRESIDING OFFICER. Would the Senator ask unanimous consent.

Mr. BYRD. I ask unanimous consent that I may proceed for at least a half minute.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator is recognized for 1 minute.

Mr. BYRD. Mr. President, at age 85, I need no hearing aid. I don't think I will ever need one, but sometimes it is pretty difficult to hear, even for those who can even hear better.

These additional expenditures are not provided for in the budget resolution adopted in 2001 for fiscal years 2002 through 2011. Therefore, the amendment is subject to a point of order under section 302(f) of the Budget Act.

I make a point of order that the pending amendment violates section 302(f) of the Congressional Budget Act of 1974.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I yield myself 1 minute. We have debated this issue for 8 weeks. The American people spoke very clearly on this issue in the election. It is now time for us to speak.

This is the vote on homeland security and I urge my colleagues to vote aye.

I would like to thank Richard Hertling, the distinguished staff member who has been the leader here. I thank Mike Solon of my staff, and I thank Rohit Kumar of the Republican leader's staff.

Mr. President, I move to waive the budget point of order. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 69, nays 30, as follows:

[Rollcall Vote No. 246 Leg.]

YEAS—69

Allard
Allen
Barkley
Baucus
Bayh
Bennett
Bingaman
Bond
Breaux
Brownback
Bunning
Burns
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Cochran
Collins
Craig
Crapo
DeWine
Domenici
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Gramm
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Kerry
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Rockefeller
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—30

Akaka
Biden
Boxer
Byrd
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Feingold
Graham
Harkin
Hollings
Inouye
Jeffords
Johnson
Leahy
Levin
Mikulski
Murray
Reed
Reid
Sarbanes
Schumer
Stabenow
Torricelli
Wyden

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. On this question, the yeas are 69, the nays are 30. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to and the point of order falls.

The majority leader.

Mr. DASCHLE. I ask unanimous consent the next two votes be 10-minute votes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Mr. President, I rise today in support of the Thompson substitute amendment to the Homeland Security bill. While I have concerns about the process by which this legislation was put together and some of the provisions contained in it, I believe that passage of the Homeland Security bill is a necessary first step in the Government's effort to secure our nation against future terrorist attacks.

I want to speak first about the provisions in the bill that will help my State of New Mexico. First, I am pleased that this legislation includes many provisions that will ensure that New Mexico's national laboratories—Sandia and Los Alamos continue to play a key role in the fight against terrorism. To that end, the Thompson amendment incorporates a number of science and technology provisions from Senator LIEBERMAN's Homeland Security bill that I helped write.

In particular, I am pleased that the Thompson amendment allows the Department of Homeland Security to become a joint sponsor of the Department of Energy's national laboratories. I believe joint sponsorship retains the clear lines of authority needed for the Government to manage the national laboratory system effectively. I am also happy to see that the bill includes $500 million for the technology acceleration fund, which represents a good starting point for our investment in the new technology that will be needed to defend our homeland against terrorist threats. Finally, the amendment includes the formation of a Homeland Security Institute, as called for by the National Academy of Sciences. The Institute will provide vital technical analysis and policy advice to the new Department. In particular, I look for the Institute to help the new Department strike an appropriate balance between the desire for greater information gathering by law enforcement and intelligence agencies and the fundamental need to protect the privacy rights of individuals. I believe we have done the right thing by establishing a not-for-profit institute to advise the Department on these most important issues.

The bill also transfers the Federal Law Enforcement Training Center, FLETC, to the Homeland Security Department and ensures that the activities currently underway continue to be carried out at the same locations. This will ensure that the FLETC division in Artesia, NM, will continue to play a key role in training Federal law enforcement personnel who are on the front lines in the effort to keep our country safe.

The legislation also creates a new Bureau of Border Security within the Department of Homeland Security, which will include the Customs Service and Border Patrol, as well as the other enforcement functions of the Immigration and Naturalization Service, INS. While I would have preferred that the service and enforcement functions of the INS be kept under a single directorate, as proposed by Senator LIEBERMAN, I am hopeful that the consolidation of these border agencies under a single bureau will enable us to address the efficiency and security problems that have been experienced at ports-of-entry along the U.S.-Mexico border in recent years. That said, if we are ever going to ensure the security of our borders, we must also take steps to improve the efficiency of the INS with regard to its processing of legal immigrants. As the new Department takes shape, it is my hope that the Secretary of Homeland Security will make immigration reform a top priority.

I would also like to talk briefly about some of the concerns I have with this bill. First, I was deeply troubled with the process by which the final legislation was crafted. Senator LIEBERMAN worked for months in good faith to craft a Homeland Security bill that was well thought out and included significant input from both the majority and minority in the Senate. His bill even passed the Governmental Affairs Committee with bipartisan support. Unfortunately, when the bill came to the Senate floor, the Republican party and President Bush chose to politicize the issue and block many good faith efforts to pass the bill before the election. After the election, the President and the Republican leadership, with virtually no other input, produced this 484-page bill, which is loaded with numerous special interest provisions and a bad deal for Federal workers. Further, as we considered this bill on the Senate floor, we were allowed only one amendment. This process of last minute, backroom deals and limited amendments is not the way the Senate should conduct its business.

Second, as I mentioned, this bill is loaded with special interest provisions that were inserted at the eleventh hour by the Republican leadership at the request of the White House. The one amendment that was considered would have stricken seven of the most egregious provisions. One such provision will grant new liability protections for pharmaceutical companies that make mercury-based vaccine preservatives that may have caused autism in children. Provisions such as this have nothing to do with homeland security and have no business being in the Homeland Security bill. That is why I was greatly disappointed that the Senate voted against the Daschle/Lieberman amendment to strike these seven extraneous provisions from the bill.

Finally, I want to emphasize that I remain concerned with the lack of provisions that address protections for civil service employees. I know that support for these provisions has been characterized over the last few weeks as support for the unions. I think that characterization is overly simplistic, however, and the issue far more complex. I believe that all employees—whether they be in the public or the private sector—deserve to be protected against the arbitrary treatment this so-called "flexible" management system will allow. Over the decades we have established a set of reciprocal principles and practices in Government service that require both employers and employees to treat each other with respect and integrity. Those principles and practices have worked well through national crises of all kinds and a willingness has always been evident on the part of both employers and employees to sit down and work through problems that have arisen.

The idea that we need to change that system because it will break down in this instance is, in my view, a red herring. There is no evidence that this will occur, and there are no examples when it has occurred. From where I sit, the brave men and women who work along the border in the Border Patrol, U.S. Customs, and the Immigration and Naturalization Service are patriots and are not inclined to take any action that would harm the national interest. They deserve better than this bill offers. There are no protections against unlawful discrimination, political favoritism, and unjust decisions. There are no protections for whistleblowers. There are no protections against management that use the "flexibility" available in this bill to settle a personal or professional grudge. There was instead a decision on the part of the administration to impose its ideological solution to a problem that begged for discussion and compromise. What we ended up with was a bill that establishes a system based on individual whims and not established law. Government employees deserve better than this, and I believe in the end our capacity to serve the public will be diminished because we did not find a way to address this issue in a mutually satisfactory manner. That said, I believe the need for the creation of a Homeland Security Department outweighed the potential consequences of these provisions in the bill. As the President takes steps to establish the new Department, I will be watching his actions with regard to Federal workers closely, and I hope that we will have the opportunity to address this matter further during the 108th Congress.

It may seem like we have finally reached the end of a long and difficult debate on how best to ensure our homeland security, but passage of this bill means that our efforts have just begun. It will take some time to get the Homeland Security Department off the ground. During the coming transition, I am committed to helping President Bush make this new Department operational as soon as possible, and I will continue working to ensure that the new Department has the funds necessary to carry out its mission effectively. Further, I will continue working to maintain New Mexico's preeminent position in the fight against terrorism and to ensure that our national labs remain at the leading edge of homeland security research and development. At the same time, I will be monitoring closely the actions of the President and his administration as this legislation is implemented. We do not have to sacrifice our civil liberties to maintain homeland security, and I will be working to ensure that the new Department remains accountable to the American people.

The PRESIDING OFFICER. The question is on agreeing to the Thompson amendment No. 4902.

Mr. DASCHLE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 26, as follows:

[Rollcall Vote No. 247 Leg.]

YEAS—73

Allard
Allen
Barkley
Baucus
Bayh
Bennett
Bingaman
Bond
Breaux
Brownback
Bunning
Burns
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Cochran
Collins
Craig
Crapo
Dayton
DeWine
Domenici
Dorgan
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Kerry
Kohl
Kyl
Landrieu
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Murkowski
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Rockefeller
Santorum
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—26

Akaka
Biden
Boxer
Byrd
Clinton
Conrad
Corzine
Daschle
Dodd
Durbin
Feingold
Harkin
Hollings
Inouye
Jeffords
Johnson
Leahy
Levin
Mikulski
Murray
Reed
Reid
Sarbanes
Stabenow
Torricelli
Wyden

NOT VOTING—1

Kennedy

The amendment (No. 4091) was agreed to.

Mr. HATCH. Mr. President, I move to reconsider the vote.

Mr. LIEBERMAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Calendar No. 529, H.R. 5005, the Homeland Security legislation.

John Breaux, Ben Nelson of Nebraska, Larry E. Craig, Jon Kyl, Mike DeWine, Don Nickles, Craig Thomas, Rick Santorum, Trent Lott, Fred Thompson, Phil Gramm, Pete Domenici, Richard G. Lugar, Olympia J. Snowe, Mitch McConnell.

The PRESIDING OFFICER. Under the previous order, there are 2 minutes of debate equally divided on the cloture vote.

Who yields time?

Do Senators yield back their time?

Mr. DASCHLE. Mr. President, I yield the remainder of our time.

Mr. THOMPSON. Mr. President, we yield back the remainder of our time.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call under the rule is waived. The question is, Is it the sense of the Senate that debate on H.R. 5005, an act to establish the Department of Homeland Security, and for other purposes, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) necessarily absent.

The PRESIDING OFFICER (Mrs. CLINTON). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 83, nays 16, as follows:

[Rollcall Vote No. 248 Leg.]

YEAS—83

Allard
Allen
Barkley
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Breaux
Brownback
Bunning
Burns
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Craig
Crapo
Daschle
Dayton
DeWine
Domenici
Dorgan
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Helms
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Johnson
Kerry
Kohl
Kyl
Landrieu
Leahy
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murkowski
Nelson (FL)
Nelson (NE)
Nickles
Roberts
Rockefeller
Santorum
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner
Wyden

NAYS—16

Akaka
Boxer
Byrd
Corzine
Dodd
Durbin
Feingold
Harkin
Jeffords
Levin
Murray
Reed
Reid
Sarbanes
Stabenow
Torricelli

NOT VOTING—1

Kennedy

The PRESIDING OFFICER. On this vote, the yeas are 83; the nays are 16. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, at 12:29 p.m., the Senate recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CORZINE).

HOMELAND SECURITY ACT OF 2002—Continued

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BAUCUS. Mr. President, what is the pending business?

The PRESIDING OFFICER. We are postcloture on H.R. 5005.

Mr. BAUCUS. Mr. President, I ask unanimous consent that I may soon make a unanimous consent request that the time be charged against the pending measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

DISASTER RELIEF

Mr. BAUCUS. Mr. President, soon, I am going to ask unanimous consent to take up the emergency disaster relief bill that the Senate passed earlier with over 79 votes on September 10, 2002.

The only difference between my consent request today and that amendment is today's bill reimburses the $752 million of section 32 funds that were used to pay for the livestock compensation program earlier this year. This all really stems from the agricultural disaster our country has been facing for the last year and, frankly, in preceding years.

In 1996, not too many years ago—that is the year before the drought began in Montana—our producers earned $847 million from wheat sales. In 2001, 4 years later into the drought—we have had a series of droughts in Montana—producers made just $317 million from wheat sales, a 62-percent decline.

That 62-percent decline in sales is through absolutely no fault of Montana wheat producers. These farmers haven't been cooking the books. This is not an Enron matter or a WorldCom matter. They have not been taking exorbitant bonuses at the expense of their shareholders. They have been farmers and ranchers working the soil and doing their very best, in many cases, just to survive. They are dedicated, honest, plain folks, raising livestock for our country and the world, raising agricultural and grain products to try to make ends meet. They need our help.

The drought is no longer touching only isolated pockets of our country; it has become an epidemic that is affecting a majority of our Nation.

According to the U.S. Department of Agriculture, 49 percent of our Nation's counties were declared an agricultural disaster in 2001; 78 percent of our counties were declared a disaster in 2002; 38 percent of those counties were declared a disaster in both 2001 and 2002.

So it is in many parts of the country. In fact, a map I displayed in this body earlier showed that the western half of the United States basically is experiencing drought conditions, and the eastern United States as well. Now, there are also pockets. In Montana, for example, there are some counties where farmers are devastated and other counties where they harvested a bit of a crop.

In any event, if you are a farmer who has lost his crop continuously and you are having a very difficult time making ends meet, I say you deserve our help.

According to the New York Times, on May 3 of this year:

> In eastern Montana, more than a thousand wheat farmers have called it quits rather than try to coax another crop out of ground that has received less rain in the last 12 months than many deserts get in a year.

It is anticipated that another 1,300 wheat producers will call it quits this year if disaster assistance is not provided.

Continuing, Mr. President, that same New York Times article—this is an eastern newspaper, not Montana:

> Those people, small businesses and rural communities have been devastated by an unpredictable and uncontrollable national phenomenon.

On September 3, 2002, the Wall Street Journal also printed an article:

> The United States may be looking at the most expensive drought in its history inflicting economic damage far beyond the farm belt.

Producers every day hope, plead, ask that Congress help them a little bit.

I could go on at great length. I am not going to go on at great length except to say many times we have brought up this measure. It passed the Senate by a large margin both times, and the other body has said no, basically because the White House has said no. That is a fact. Nobody denies that fact. I will ask again today; we still do have time today or tomorrow, however long we are here, to help our farmers. This is a disaster payment; it is an emergency disaster payment. This is what America does. If we have hurricanes, we provide disaster assistance. If we have floods, we provide disaster assistance. We have other natural disaster phenomena in this country, and the Government provides assistance to help the people get back on their feet. That is all we are asking.

If we pass this legislation today, the other body can take it up and pass it, and the President can sign it. It is that simple.

As we near the end of this session and approach the holiday season, the very least we can do is provide disaster assistance to our farmers and ranchers, many of whom are either going out of business or about to go out of business because of an agricultural disaster, in most cases, drought and in some parts of our country it is flooding.

I see our distinguished majority leader on the floor. I am quite certain he wants to speak on this matter as well. It is a huge issue in many parts of our country. It is very much hoped we can take disaster assistance up and pass it at this time. I yield now to my colleague from South Dakota.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I commend the distinguished Senator from Montana. He has been at this now for over a year. The very first conversation I had about drought assistance was with Senator BAUCUS over a year ago. I believe it was in connection with the economic stimulus package of a year ago. It has been 278 days since the Senate acted. So he has been at it for over a year. We, as a Senate, have been at it now for 278 days.

I must say, we can go all the way back to a year ago when Senator BAUCUS made the case that if you want economic stimulus in our part of the country, there is no better economic stimulus than to provide some drought assistance.

I would use the word economic salvation. This is more than stimulus in our part of the country. This is salvation. This is the only way we can provide some salvation to ranchers and farmers who otherwise will not be here a year from now. We have done everything we know how to do. We have passed amendments. We have passed legislation in various forms. We have offered the House an opportunity to negotiate with us. We have suggested to the White House: Act alone. It does not matter, use whatever vehicle you will, but get it done.

How in the name of economic stimulus can we ignore a large part of our geographic population, a large part geographically of our country? If these people are without this assistance, the rural communities associated with these people simply cannot survive.

I thank the Senator from Montana for his leadership and for again coming to the floor to remind our colleagues of the import of this question, of the urgency that we get something done before we leave. This may be the last day. We may not be in session after today. If we do not do it today, we will not do it. What kind of a message does that send to rural America, to farmers and ranchers who have been waiting now 278 days for the Congress to complete its work?

We voted, as he said, overwhelmingly—overwhelmingly, Republicans and Democrats. I would hope we were not doing that just for a political cover because this is far more important than political cover. This is economic survival. This will provide the only salvation to the farmers and ranchers who are desperately looking to Washington for help. Let's do it right. Let's provide this assistance. Let's agree with this request. Let's get this assistance to them quickly. Let's save them before it is too late. I hope we will do that this afternoon.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, there are many Senators who wish to speak on this because it is so important. I ask unanimous consent that I be able to yield to other Senators without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAUCUS. Mr. President, I yield to my good friend from Minnesota.

Mr. DAYTON. Mr. President, I thank the distinguished senior Senator from Montana for his leadership on this matter. As the majority leader said, the Senator has been superb in his leadership on this for now over a year and has been speaking out not only on behalf of Montana farmers but on behalf of thousands of Minnesota farmers who have also been devastated over the last 2 years and have not seen $1 of disaster aid provided to our State.

The message is: If you are a pharmaceutical company and you have that kind of political clout, you will be taken care of by the Congress. If you are a company that has run away from this Nation to hide your tax obligation, you get a special consideration stuck in the bill that came over from the House of Representatives which we just voted on this morning. If you are a farmer in Minnesota, however, Montana, or elsewhere and you have been devastated by conditions beyond your control, the Congress is going to turn its back on you, the administration is going to turn its back on you.

As the Senator pointed out, this Senate has not turned its back on farmers on disaster aid. The 2002 farm bill—and I served with the Senator from Montana on the Senate Agriculture Committee—had agriculture disaster assistance in that measure, but, again, the House and the administration turned a cold shoulder and had no funding whatsoever, and the conference report came back after many days of negotiation with the House unyielding and the administration unyielding in their position of not providing disaster assistance.

The farmers in my State of Minnesota have lost over three quarters of a billion dollars in crop devastation in the last 2 years—three-quarters of a billion dollars in 2 years, and not $1 back from the Federal Government. That is why people lose their faith and trust in Government because we do the wrong things for the wrong people and we do not do the right things for the right people. By "we," I mean the collective bodies, because this Senator and the majority of the Senate have said again and again: We want to stand with those farmers who are suffering the greatest losses, who are being wiped out.

Over half the crops in my region have been wiped out over each of the last 2 years.

I say let's stand with the farmers. I stand proudly with the Senator from Montana. I thank him for his leadership. Let's make one last plea to this body and the House and the administration to do what is right and do what is urgently needed on behalf of farmers in my State and elsewhere in this country.

I thank the Chair, and I thank the Senator from Montana for yielding to me.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I now yield as much time as he consumes to the Senator from North Dakota, an ardent fighter on behalf of agriculture, I might add.

Mr. DORGAN. Mr. President, I thank the Senator from Montana for bringing this issue before the Senate again and again.

It is interesting what people consider a priority in this Congress. We have voted on this issue of drought relief and disaster assistance for farmers in the Senate. Seventy-nine Members of the Senate voted to do something. We passed legislation for $5.9 billion. Let me tell you why we did that.

This map shows what happened to a major part of the country. A major part of our country suffered a devastating drought. In my State, we had that extreme drought in the southwestern corner. We also had extreme moisture and therefore flooding in the northeastern corner.

Let me show a picture of two farmers in the same State. This farmer is standing on his land that looks like a moonscape. Put seeds in that ground and nothing grows. Is that a disaster? It is if you put all your hopes, dreams, and capital into the ground. We had literally a moonscape. No pasture, no crops in these areas.

In the same State, flooded land. Drought and flooding. No crop.

Now, when family farmers suffer this circumstance, they cannot make it from one year to the next. One of my colleagues said we really ought to name droughts. We do name hurricanes. If a hurricane came through tomorrow and it took a portion of the country and flattened it, immediately airplanes would leave Washington, DC, FEMA would be on the airplane, other governmental offices would be on the plane, and they would be rushing there. Why? Because Hurricane Andrew, Emma, or Hurricane Myrtle hit land. We would all understand this was a disaster. All of the mechanisms of the Federal Government racheting up to try to deal with disasters would be on the way to help.

But this gripping, relentless drought that occurred in our country, with flooding in some other parts, is something that happens over time. So there are enough people in Congress—including the President of the United States—who decided we do not want to do anything; we want to block this. We passed disaster assistance by 79 votes in the Senate. Bipartisan. The Speaker of the House and the President say, We do not want it, we will not do it.

My colleague from Minnesota made an appropriate point. What did they have time to do? As to the question of whose side are you on, at least part of the answer this morning is we are on the side of corporations who want to renounce their citizenship and move offshore to stop paying taxes to the United States Government, or at least minimize those taxes. We would like to become citizens of Bermuda, some corporations say. So this morning the vote in the Senate was to say, at least by the majority, regrettably, we would like to help those companies. The Senate already voted to say if you want to renounce your American citizenship, you ought not be getting American contracts with the Federal Government.

In the homeland security bill they have stuck in a little piece that says let's make it easier for corporations that renounce their citizenship to get these contracts. That was a priority. It was a priority, for those corporations that renounce their citizenship, to help them out. We had the time and the will by some in Congress to help them out.

It is interesting, exactly the same people who do not want to lift a finger to help family farmers are saying we would like to help out these poor corporations that renounce their citizenship.

Mr. BAUCUS. Will the Senator yield?

Mr. DORGAN. I yield the floor.

Mr. BAUCUS. How many family farmers in North Dakota are able to move offshore to Bermuda and not pay income taxes? How many would you guess could do this?

Mr. DORGAN. The answer is zero. But the answer would be zero if every farmer had the opportunity to do it. Do you know why? Because our farmers are Americans. They do not want to move anywhere. They do not want to become citizens of Bermuda. They do not want to avoid paying income taxes. They would love to pay income taxes for a change. They would like an opportunity to have an income to pay income tax.

There is no income with a moonscape farm or when your crop is under water. Our farmers would not move to Bermuda for tax purposes.

Mr. BAUCUS. And that means they do not have to pay income tax.

Mr. DORGAN. Yes. They consider that unpatriotic.

The question is, why does Congress have time to help those corporations that renounce their citizenship but it does not have time to pass a piece of legislation that deals with disaster?

The point the Senator from Minnesota made is an important point. They have the opportunity and the will, apparently, to help drug companies but not family farmers.

It was Tom Paxon a couple of decades ago, when Congress gave some financial assistance to Poland, who wrote a song that said, "I'm changing my name to Poland."

Well, the question is, What is important to the Congress? Do you have to change your name to get some help? My farmers are named Johnson, Olson, Christianson, Larson. And they are out there and they put everything they have in the ground in North Dakota. They do it on a hope and a prayer that somehow it will rain enough, not rain too much, the insects will not come, the disease will not come, and they raise a crop and take it out of the ground and take it to the elevator for some money. That is a hope beyond hope with a natural disaster.

We have a responsibility, if we care about rural America, care about family farmers and care about the special culture they provide for this country and contribution they make to this country, we have a responsibility to help in tough times. That is what we ought to do, to extend a helping hand to say, we would like to help you during these tough times.

Yet, I regret, in answer to the question, Whose side are you on, too many decided to block this. They blocked it at the White House, blocked it at the speaker's office in the other body. The Senator from Montana has been on the floor before—again and again and again. I am proud to have been here with him to say this is a priority for us. This is not a giveaway. It is not something that is not desperately needed. This is a responsibility as Americans to say to others in this country when they need help, here is a helping hand.

I am proud to have served in both the House of Representatives and the Senate. In every circumstance on every occasion where someone in this country has been injured, hurt, or disadvantaged by fires and floods and earthquakes and tornados and so many natural disasters, I am proud to say I have voted to provide disaster assistance to them because I believe that is the best of what we should do in this country.

I will never, ever vote against that kind of assistance to people who are down and out and need help. That is why I would have expected this Congress and this President to join us, 79 Members of the Senate, Republicans and Democrats, to provide disaster help now when it is needed.

I regret we may now, in the waning hours, leave this session with an objection to the unanimous consent request, after it has already passed the Senate by 79 votes and after the House is somewhere scattered across America—done with their business, they will have left this Congress and left undone a significant piece of legislation that should have been saying to America's family farmers, beset by disaster, that this country cares about you and this country wants to help you in a time of need.

Again, let me say thanks to the Senator from Montana for his effort today. I fully support him.

Mr. BAUCUS. I thank the Senator. I notice my colleagues are coming over. This is an important matter, and we have an opportunity and we owe it to our people to get this legislation passed.

I yield to my friend from Michigan, Senator STABENOW.

Ms. STABENOW. Mr. President, I thank my friend from Montana who has been such a leader on this issue. We have all joined on the floor time and time again to talk about the need for emergency assistance, for disaster assistance in our States. As a member of the Senate Agriculture Committee, I stand with my colleagues to indicate that Michigan has been under a disaster from flooding, from drought, from changing temperatures. We had our cherry growers this past year find extraordinarily high temperatures in April, only to see freezes just a few weeks later. This has stopped the ability for practically any cherries to end up on the trees this year. It is incredible, the fact that they have essentially been wiped out, not including what has happened the last 2 years for our grape growers, what has consistently been the battle for our apple growers, what we have seen from dry beans in Michigan, asparagus.

I could go on and on. We have had harmed numerous crops in Michigan. We have seen consistent emergencies come as a result of weather.

This is not only an issue for our family farmers but for the business community as well. When we do not have the cherries on the trees, our processors do not have any business. We are seeing processing plants that are cutting back or closing. This is a ripple effect throughout the economy in Michigan. I am sure in other States, as well.

This is truly a disaster. As my colleagues have said, if this were a hurricane, if this were a tornado, if this were another circumstance, we would all be joined together to help communities that find themselves in a disaster situation because of no fault of their own. This is no less a disaster. It is no less a situation out of the control of our farmers and all of those involved in agriculture.

I thank the Senator from Montana again and stand, as I have throughout this process, with the Senator. This is our last opportunity to do this and to indicate to our family farmers, to agriculture across this country, that we understand what you are going through; that we support you and we will provide the same assistance we would for any other disaster and emergency that might occur.

I strongly hope we will be able to prevail in getting some action today.

Mr. BAUCUS. I might ask a question of the Senator. Did the Senator by any chance vote for disaster assistance to aid other parts of the country, such as, say, New York City?

Ms. STABENOW. Absolutely. As our leader has just indicated, we are consistently coming together on a bipartisan basis to support important efforts. I was proud to stand with all my colleagues in the time of need of New York and New Jersey and all those who were affected after 9/11. We consistently have requests from FEMA that come forward, to which it is necessary that we respond, and we do that and we step up together. Honestly, for the life of me, I do not understand why, when it comes to our farmers, we do not have the same bipartisan support nor the same support from the administration. It is deeply concerning.

I very much hope as we come to the end of the session that we could come together and stand up for those who fight hard every day against the elements. They are in a tough job. They cannot control whether it rains or shines. Yet they are putting food on our tables, as well as around the world, and providing for a very important part of our economy. I hope we stand up for them at this time.

Mr. BAUCUS. Mr. President, I yield to the Senator from South Dakota.

Mr. JOHNSON. Mr. President, I thank Senator BAUCUS of Montana; Senators DORGAN and CONRAD of North Dakota; Senator STABENOW of Michigan; my colleague, TOM DASCHLE of South Dakota; and others who have risen on the floor to talk about the urgent need for disaster relief to the agricultural sector of our economy. It seems extraordinary to me that at a time when we have passed disaster relief for earthquakes in California, hurricanes in Florida or New York or whatever—whenever there is a natural disaster that has occurred, our country has come together. Our colleague, BEN NELSON of Nebraska, suggests perhaps we ought to give names to these droughts. If it was Drought Hugo or Drought Andrew, perhaps there would be a different perception at the White House.

I was profoundly disappointed this summer when President Bush traveled all the way to Mount Rushmore, in fact, to announce to the agricultural sector that there would be no relief other than what meager amount there might be available in the farm bill. That was never designed to address natural disasters. We have always dealt with disasters in the agricultural sector or any other sector of the economy on an individual basis. Some years we have them, some we do not. There is no slush fund in the farm bill designed to be utilized for a disaster relief. It is simply not put together that way.

Yet we know we could do a full $6 billion level of drought relief and do it in a fiscally responsible fashion because, in fact, the farm bill, over the course of this next year, is going to be using less countercyclical payments, and those payments will not be required, and that will come to around a $6 billion savings. It is not a technical offset, we know that, but it is a fiscally responsible way we can go about doing this.

But to single out agriculture for the first time ever in this unprecedented way strikes me as an extraordinarily bad precedent. Republican and Democratic administrations alike in the past have supported disaster relief when disasters occur. It is not like we seek relief every time we have a little shortage of rain or a little problem of one kind or another. That is the nature of agriculture. But what we have here is a devastating circumstance that has damaged agriculture in a significant way in some 37 different States, at least, across the country. Yet we have an administration for the first time ever saying we will help tornado victims, we will help hurricane victims, will help earthquake victims, but if you are in the agricultural sector, forget about it. We are not going to be there for you. That is a precedent that is of profound consequence to the agricultural sector all across our country.

In South Dakota, the State university tells us the loss to the economy is already in excess of $2 billion in our small State. Obviously this ripples up and down every Main Street of every community. Those who are the least capitalized, the younger producers, are the first to be forced off the land at a time when we have a demographic problem as it is in terms of keeping our young people and young leaders in our rural communities. It has an enormous impact. We will be feeling the effects for years and years to come. Even if we were to have this disaster relief, as Senator BAUCUS well knows, this would not make people whole. This would not make it as though the disaster had not occurred. This would simply get people by through the winter so they can know whether they have to continue to disperse their herds or whether they would continue to farm at all—they would have that knowledge. They would be in the hope next year things would turn better.

As it is, we have had a 2001 and 2002 drought, 2 years back to back. On top of that, we have unfair trade policy, concentration in the agricultural sector, and all kinds of conditions at work to lower the price that our producers get in too many cases and it simply gangs up on our producers to the point where income is falling off a radical level this year—down at least 23 percent this year; last year it wasn't good. What we are going to find is a depopulation of this part of the country.

If we were seeking something unique and special for the agricultural sector that no other sector gets, it would be one thing, but what we are looking for is equity, fairness. I ask my good friend, the Senator from Montana, who has played such a lead role in helping to raise this issue, is there any logic, is there any equity in singling out the agricultural sector to be devoid of any kind of disaster relief as opposed to any other sector that faces a natural disaster in America? Why should agriculture be the one sector that is told to drop dead when you have a natural disaster in your region?

Mr. BAUCUS. I thank my friend. Frankly, I was going to ask him roughly the same question; namely, what possible reason could the administration have, the other side of the body have, for saying no? What possible reason? Can you even think of a reason? The only one I can think of is, perhaps, that it costs money. That cannot be a reason when we spend so much money in so many areas where there is no disaster, no emergency. This is black and white. This is so easy. As the Senator has so articulately said, in so many instances it is the American way to help parts of the country that suffer natural disasters, America is there. America has a big heart. We are there. We are Americans. We work together to help other Americans who suffer disasters.

The Senator has mentioned earthquakes. We know of the devastating earthquakes, say in California and we were there. We know of the devastating hurricanes in Florida or on the eastern coast, and we have been there. We know of other floods and we have been there. All of us together have been there. As the Senator said, it has been nonpartisan, it has just been America.

But for some reason, and I cannot fathom what the reason is, the White House said no to this disaster; said no. The other body, on the other side, said no. The only possible reason I can think of, as the Senator has suggested, for some reason they think they can get away from it because farmers and ranchers are kind of stoic. They are good people. They do not raise the rafters. They don't take to the streets. They are good, solid people.

I think the Senator from Minnesota made a good point earlier. He said, and frankly this is very poignant, it is ironic: When our beloved late departed colleague, Senator Wellstone, often said, there are other people—there are law firms, lobbyists, who can represent big companies in Washington, DC. But he, Senator Wellstone, was there to represent the people who don't have big lobbyists and well-heeled people. He, Senator Wellstone, is there to represent the people. That is our job. It is the job of both sides of the aisle, to represent the people. It is the job of both ends of Pennsylvania Avenue to represent the people.

Now we have our nation's farmers and ranchers, down and out—there are not better, more decent, hard-working, wonderful, people in America than our farmers and our ranchers. They don't complain. They work really hard. They do their very best. Yet the administration and the other body is turning their backs to them.

It reminds me sometimes of New York. The current occupant of the Chair from New Jersey certainly knows this phenomenon. Certainly, when an administration or Congress says no to something New York wants, the headlines are: Drop dead. The administration says drop dead.

Clearly this administration, the other party, to our farmers and ranchers has said: Drop dead.

The Senator made another excellent point; namely, the farm bill is not designed to take care of natural disasters. You must have a crop to participate in the Farm Bill. There is no slush fund, the Senator said, in the farm bill.

The farm bill is irrelevant to this phenomenon, this disaster, we are facing. For the life of me, I cannot understand. Maybe drought is just a "silent killer," as some of our colleagues mentioned earlier. It is not on the front pages. It is the silent killer in different parts of the country. You do not see it coming slowly, but it just as pernicious and devastating, if not more so.

Mr. JOHNSON. Mr. President, I thank my colleague for his insight because I think he is exactly right. While the damage is as great as with any other disaster, it takes a matter of days and weeks and months for this to occur, as opposed to the headline-grabbing earthquake or tornado or hurricane that may take a day or two and grab headlines.

I invite my colleagues from the House who have refused to even hold hearings on this issue, much less have a vote of any kind on disaster relief, and I invite the administration to come to my part of the country to look at what has happened to those fields, to those farms, and to those ranches. The liquidation of herds has already taken place. The equity built up for generations has been lost over the course of this last year. Again, we find a stone wall relative to disaster relief for agriculture.

I applaud the leadership of my colleague from Montana, and my colleague from South Dakota, Senator DASCHLE, and Senators DORGAN, CONRAD, NELSON, and others who have done so much to highlight the equity and the common sense of this action. It is my hope that before we leave this place, we can in fact see to it that our rural parts of America get the same kind of attention, the same kind of concern, and the same kind of compassion that every other part of America and every other sector gets when they have unmitigated disasters facing them.

I yield my time.

Mr. BAUCUS. Mr. President, I have the floor. Before I yield time to the Senator from North Dakota, I see the distinguished minority leader. I ask if he can wait for a short while so the Senator from North Dakota can give his statement, if that is OK with the Senator from Mississippi.

Mr. LOTT. Mr. President, I would be glad to withhold. I hope it doesn't take too long.

Mr. BAUCUS. I am giving him in a little nudge.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the Senator from Montana. I thank the Republican leader. I appreciate that.

As you can imagine, this is deadly serious for the people I represent. This picture says it all. This is what southwestern North Dakota looks like. It looks like a moonscape. Nothing grew this year. It is the most devastating drought that many have faced since the 1930s. Many would say it is an even more devastating drought than we had in the 1930s because absolutely nothing grew this year. It is a devastation.

One of the newspapers in our State published this headline: "Disaster Aid Just Common Sense." This is my hometown newspaper. They said: Look, this is a circumstance that demands a response. Always before, we have given disaster assistance to every other part of the country in every other circumstance, but not here.

The President of the United States says take the aid out of the farm bill. There is no disaster aid in the farm bill. That was specifically precluded. But the farm bill can provide the funding because the savings from the farm bill will directly provide the amount of money necessary for disaster assistance.

Here is the circumstance we face, according to the USDA. Net farm income is going to go down 21 percent even though prices are higher. Even though farm program payments will be lower, farm income is going to plunge. It is going to plunge because of natural disasters in every part of the country. Obviously, it is very acute in the Midwest—especially Montana, North Dakota, and Minnesota.

I end by reminding colleagues of what Senator Wellstone, who so tragically died, said in his last days. He was fighting for disaster aid. He said: "Politics delays aid for northwest Minnesota farmers."

Senator Wellstone may be prophetic in what he said because he was afraid that politics would kill the disaster assistance that is so desperately needed.

In my State, literally hundreds, and perhaps thousands, of farm families will be forced off the land if we don't do what we have always done in the past; that is, provide disaster assistance—a disaster package that can be fully offset and fully funded by savings out of the farm bill. Because of these natural disasters, and because we have had drought and floods, production is less and prices are higher. That means payments are less from the farm bill. That money could be used to pay for disaster assistance that is so desperately needed.

I plead with my colleagues. I plead with them. Let us do now what we have always done in the past. When any part of the country suffered a disaster, we helped. We should do no less now.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 3099, the bill to provide emergency disaster assistance to agricultural producers, that the bill be read a third time and passed, that the motion to reconsider be laid upon the table, and that any statements thereon be printed in the RECORD.

Mr. President, before I ask the Chair to put that question, let me just say that I plead with my good friend, the minority leader—soon to become the majority leader—from Mississippi. I know he is about to object. But I urge him to not object at this point.

Maybe there is a way to work something out here. I say that because this is not a political gesture. As the Senator well knows, Mississippi farmers are hurt for various reasons. As a final good-faith, bipartisan way to work something out with the White House, if he can possibly figure it out—I don't want to put the Senator on the spot. Believe me. I don't. I am only putting it this way because this could be the last day we are in session, and we still have an opportunity here. I wonder if the Senator might not object. As the Senator from North Dakota pointed out very well, there really is no cost to this because the farm bill costs will be about this amount less because of the way the farm bill works; namely, with the drought we have less production and higher prices and much less in government payments made to farmers, it works out to be very close to the amount of disaster assistance to farmers and ranchers who suffer from a natural disaster.

I know it is a long shot. I am still going to make the request. We haven't given up around here trying to help our people.

Mr. LOTT. Mr. President, reserving the right to object, I have no doubt about the seriousness of the sponsors of this effort. Also, I am sure the administration and the Congress are going to continue to look at this to find ways to be of assistance in every way that is possible and that is needed.

There are a couple of serious problems with this, though. First of all, we do not really know what the cost will be. We are being told it wouldn't cost anything because it would come out of the agriculture bill. I thought I heard another Senator say you can't take it out of the agriculture bill that we passed because it is prohibited. I am not sure exactly how that would work.

Second, this bill came straight to the floor. It didn't come through the committee. I have a lot of faith, even though I disagree sometimes with the leadership on the Agriculture Committee. My colleague from Mississippi, Senator COCHRAN, is certainly sensitive to agricultural disasters. He will be the chairman of the Agriculture Committee next year. We will have a chance to revisit this. But no committee considered it; it was just brought straight to the floor.

For those reasons and others, and the fact that the House will not have an opportunity to fully consider it, or even take it up at this late date, I would have to object. So I do object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Montana.

Mr. BAUCUS. Mr. President, I am gravely disappointed that there is objection.

Our farmers cannot wait, frankly, until next year. It looks like they are going to have to wait now. Those who are still farming, those who are still raising livestock are going to have to somehow dig deeper, if you pardon the pun, to make a living, scratching off the land.

I am baffled. I am totally baffled. This case is so clear. With all due respect to my colleague from Mississippi, he made two inconsistent points. I heard no real reason, just an objection, as is any Senator's right under the rules of the Senate.

But, nevertheless, we have spoken. And I will fight this in January; that is, we will figure out some way to help our farmers and ranchers who are suffering from these disasters, just as other people around the country get aid when they experience disasters.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. EDWARDS). The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I thank you for this opportunity to speak today regarding the importance of disaster relief yet this year.

Now, in just the last few minutes it became fairly clear this is now going to have to carry over. And I respectfully disagree with the Republican leader that this should be carried over. I do understand the rules and will have to abide by them, but I think it is important to point out that while the legislation may wait, the people who need these funds for their very survival are not going to be able to wait. They are going to sell off their land. Many are selling their herds right now. They will not wait because they can't wait. We will have to wait for this legislation and do the best we can.

But I would like to quickly thank Senator BAUCUS and certainly Senator DASCHLE for their tireless efforts to provide drought assistance. And I certainly associate myself with the comments made by Senator CONRAD from North Dakota, who I think very eloquently laid out the numbers and what the implications are relative to the need for this disaster relief in his State.

Nebraska isn't much different. Much of our land looks like a moonscape because the pastures have had inadequate precipitation for a number of months and, in many cases, years, and they do not come back quickly. Without water, without snow, without the precipitation required, the grass simply will not grow.

This body has twice passed drought assistance—twice. We first passed it as drought relief. Then we passed it as part of the Interior appropriations process. We tried to include it in the farm bill.

Yet as we come to the conclusion of this 107th Congress, the House has failed to act. We must try one more time to get the point across so that, as the year turns from 2002 to 2003, there will still be a recollection that just because the year has changed, the conditions have not changed; they continue, unfortunately.

We are here not to make a point, although a point must, in fact, be made, but to get the necessary drought assistance for our farmers and ranchers in those areas of our country that are experiencing a continuing drought, a multiyear drought, that is devastating to their economic well-being today and threatens to be even more devastating in the days ahead.

Some are worried, apparently, about the cost. I, too, as a fiscal conservative, am worried about the cost. But I must ask, what would we do if it was a different kind of natural disaster, let's say a hurricane or a flood or an earthquake, some other kind of disaster?

It is not that the people in this body are not worried about the cost; it is that when we have emergencies, we respond to those emergencies without looking for offsets because we recognize emergencies are special situations. They cannot be simply provided for within the current budget or in a future budget.

On disaster relief, the Congressional Budget Office has said Government spending is down, almost enough to pay for this disaster relief, because of this year's high commodity prices. Why cannot we see our way clear, in some manner, before the end of the year, or right after the beginning of the new year, to put disaster relief on the continuing resolution or be the first order of business in the next Congress?

If some believe this drought is really not as damaging as other natural disasters, I invite them to come to Nebraska and visit with our farmers and our ranchers and take a look at the landscape and begin to understand that if our farmers and ranchers are unable to make it financially, the lenders will require them to sell their land, to sell their herds, to go into bankruptcy.

This damaging drought is not only a problem for farmers and ranchers, but it devastates main street Nebraska, main street North Dakota, the main street in any community that depends primarily for its existence on successful agriculture. If you talk to the merchants in these small communities, they will tell you what is happening to their business. They are going under. They are not making it. They are worried about not only next year but making it this year. Because if you don't have money coming from agriculture, these communities are going to wither, and they are not going to be able to make it.

So I only suggest, half in jest, that we begin to label droughts, because if this was "Drought Andrew" or "Drought Margaret," it would have some identity that could attract emergency aid for a disaster. We make a mistake in not having these droughts named after an individual, as we do with hurricanes, because then these natural disasters, these natural events, that occur over a continuing period of time might have a substance that could attract the attention of those who are today saying: Well, let's put it off until next year.

I can assure you, if we had another type of disaster today, it is very unlikely it would be put over until next year. If we had had a hurricane last month or the month before, I can absolutely assure you, it would not have been put over until next year.

I don't think it can be any more clear to me that America's farmers and ranchers need this effort in our Senate to go forward. We need the House to pass disaster relief. I have seen so much of the damage firsthand. I have been across the State. I see the reports. This summer I was on a dryland farm that has had crops—some good, some bad—for 70 years. During the Dust Bowl years that farm produced a crop. This year there is no crop—for the first time in 70 years, and perhaps long before that, certainly in the recollection of the owners of that farm. They can only go back 70 years. But they know there has never been a year until this year where they have not had a crop.

A family farmer in my hometown of McCook, NE, Dale Dueland, whom I have known since the days he crawled across his family's floor—he is not going to like me saying that, but I remember when he was that little boy in that farmhouse, and today he is a man with children, and with a successful farming operation, except for the drought. It is not simply because of prices but because it does not matter what the price is if you do not have a crop.

He does not have a crop. He said he would have a zero yield on his 900 acres of dryland corn. It would not matter if corn went to $5; if you don't have anything to sell because of a disaster of this kind, you are not going to be able to make it. His poor crop performance is not the result of poor planning or poor farming or nondrought-related weather. This is the result of a natural disaster that has been going on in some cases for over 2 years.

For much of my State, this is, in fact, a no-yield year or, at best, a low-yield year.

Al Davis from Hyannis, NE, told me that "each day places another nail in the coffin of many individual ranchers in Nebraska and on the Great Plains. Many ranchers have already thrown in the towel and are liquidating portions of their herds," which will have an impact not only today but tomorrow, the next year, and the next year, because rebuilding herds is not a singular event that occurs in a short timeframe. It takes years to build a herd. It takes only days to liquidate a herd.

Annette Dubas, who owns a ranch and farm in western Nance County in Nebraska, told me that after the third year in a row of drought conditions, some farmers in her area have already been forced out while others have been working two jobs just to be able to keep their farm going. That is neither a happy situation nor is that a good thought about what the future is going to hold. They are going to have to be able to sell or they are going to have to be able to have a crop or they are simply going to go out of business.

These are not big time corporate farms. Nebraska law bans corporate farming. These are family farmers who are being driven out of business for the first time in generations. These farms have been in their families for many generations; in some cases, 100 years or more. Farmers and ranchers have not only been let down by Mother Nature, they have been let down by those in the Senate and House who have blocked efforts to provide disaster relief despite its severity and despite CBO's savings indications.

We can't keep denying relief to those in need. Maybe the procedure is that it be put over for another couple months. But it must be one of the first things, if not the first thing, that this Senate and the House take up after the beginning of the year in the new Congress. We cannot allow the House to remain idle on the issue. We need the White House to support this bill, and we cannot allow objections from those few who don't understand that this drought is no different than a flood or a hurricane or an earthquake to stop us from providing relief. We must, in fact, recognize the savings from the farm bill are there. And if need be, we need to get it as part of this drought assistance.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I want to say, before the Senator from Nebraska leaves the floor, that the statement made by the Senator from Nebraska, former Governor, should be a primer for someone trying to lay out a case. He laid out a case as well as I have ever heard. He talked about the State itself, about individual people. It is compelling.

Nevada, of course, does not have large agricultural interests. We have some agricultural interests. But the Senator from Nebraska has done as good a job as I have ever heard in presenting a case.

I hope the people of Nebraska know what an advocate they have in the Senator from Nebraska. When students study how to lay out a case, whether it is for farm aid or whether it is for anything else, reviewing the statement of the Senator from Nebraska makes the case in point.

Mr. NELSON of Nebraska. Mr. President, I thank my friend from Nevada. The challenge we have in Nebraska is laid out by the fact that this is about the present but also the future. The future will be dim if we are not able to take care of the problems that have developed in the past and continue today. It is about young people, the future of the State, and the future food needs for the people of this country. Everybody will be continually adversely affected if we don't remedy this situation as soon as possible. If it can't be before January 7 of this coming year, it would still be early enough.

The PRESIDING OFFICER. The Senator from Michigan.

BAY MILLS INDIAN COMMUNITY LAND CLAIM SETTLEMENT ACT

Ms. STABENOW. Mr. President, I rise today to discuss another bill, a very important bill to communities in Michigan, a bill I introduced earlier this year, S. 2986, the Bay Mills Indian Community Land Claim Settlement Act. I also, on a personal note, thank Patty Bouch of my staff for her excellent work on this issue. She has been diligently focused for a number of months now in working with all those interested in this issue.

S. 2986 provides for congressional approval of a land claim settlement agreement reached earlier this year by the State of Michigan, Governor Engler, and the Bay Mills Indian community of Brimley, MI. The agreement settles the tribe's longstanding claim to over 110 acres of land that was once deeded to the Governor of the State to hold in trust for the ancestral bands of the Bay Mills Indian community.

This land, now called Charlotte Beach, MI, was later sold for unpaid taxes and without the knowledge of the bands or consent of the State. In agreeing to extinguish the historical land claim in the area, the Bay Mills Indian community will be granted alternative lands in the State as outlined in the settlement agreement. These alternative lands are located in Port Huron, MI, and would become part of the reservation of the Bay Mills Indian community.

Furthermore, the legislation directs the Secretary of the Interior to take these alternative lands into trust as land obtained in a settlement of a land claim under the Indian Gaming Regulatory Act. The Senate Committee on Indian Affairs held a hearing on S. 2986 on October 10 of this year. I am very appreciative of Chairman INOUYE's willingness to hold the hearing, particularly that week, in light of the fact that the Iraq resolution was being debated at that time on the floor. It was a very serious week with much happening. I am grateful for his willingness to hold the hearing and to work with me on this issue as we have moved through the process.

The hearing afforded me and House colleagues in attendance and my constituents a forum to explain the merits and the need for the legislation. I appreciate the fact my House colleagues, Congressman BART STUPAK and Congressman DAVE BONIOR, were in attendance. They testified in support of S. 2986 as it directly affects their current congressional districts.

Before the committee, Congressman STUPAK discussed his past efforts to remedy this land claim for the Charlotte Beach landowners in his district. He has worked on the issue for the last 8 years. He has been trying to resolve it. He believes that S. 2986 will grant the clear property title to the landowners in Charlotte Beach, MI who have inadvertently been involved in an issue greater than themselves.

The settlement of this land claim will also greatly benefit a community in Michigan. Port Huron, MI is a community that is in great need of new economic development and jobs. The citizens of Port Huron can look directly across the waters at a casino in Canada—right across the bridge. There is a large bridge that goes from Port Huron to Sarnia. They watch every day as people drive across that bridge, citizens of Michigan and the United States taking their dollars to Canada where there are more jobs now as a result of that establishment.

On the other side we have a community desperately in need of jobs. This community has wrestled with economic development and what to do. In June of 2001, they had a referendum and the voters of that community, after thoughtful discussion and debate, voted by a 55 to 45 percent margin to show their support for potential gaming activities in their community.

This was done, as in any community, with thoughtfulness about what the alternatives are. I know they are very frustrated at the fact that they can look at job loss, economic loss right across the river from them.

Should my legislation pass this Congress, Port Huron could be the last

U.S.-Canadian border crossing in my State to have gaming, which would provide some desperately needed economic development and job creation for a community where the unemployment rate exceeds both the State and the national unemployment rate.

Unemployment in Port Huron is nearly 12 percent and the community desperately needs new economic development and jobs. They have a plan now. Community leaders have come together and developed a plan that will work for them. It will create jobs in the building and construction industry, and it will create long-term jobs in the service industry as it relates to this project. They are urgently asking us to pass this legislation. They are ready to go to work and get it done. They ask that we pass this now in the final day of the session. It is very important to them that this be passed this year and not next year.

Mr. President, I ask unanimous consent that the Committee on Indian Affairs be discharged from further consideration of S. 2986 and the Senate proceed to the immediate consideration of the bill; that the bill be read the third time, passed; and that the motion to reconsider be laid upon the table, without any intervening action or debate.

Mr. REID. Mr. President, reserving the right to object, first, let me say to my dear friend, the junior Senator from Michigan, I don't oppose Indian gaming. I am responsible for writing the Indian Gaming Act. It was done many years ago. I am still a member of the Indian Affairs Committee. I haven't liked the way the law has gone with the Indian Gaming Act, but I follow what the courts have decreed.

I think there have been some very good things happening in the country in Indian gaming. They have been taken advantage of on a number of occasions, but that is the way it is in a lot of different businesses. I don't oppose Indian gaming, I repeat. While I had some concerns initially, they basically have been met, and I have had some very good relations with Indian gaming operators and operations across the country.

I oppose this legislation that my friend from Michigan has asked be passed by voice vote today. I oppose it for a number of reasons, not the least of which is that the legislation would undermine the gaming compacts that were approved by the Michigan State Legislature after years of careful and deliberate negotiations.

Senator STABENOW's bill would circumvent the terms negotiated in all 11 tribal-State compacts, including the compact to which Bay Mills is a party, which prohibits off-reservation gaming in the absence of a revenuesharing agreement involving all of Michigan's Federally recognized tribes.

Additionally, in recent gaming compacts, the tribes involved all agreed to limit themselves to one gaming site for each tribe; yet this legislation would allow Bay Mills, which already has two gaming facilities, to open still another facility hundreds of miles from its reservation and in direct competition with the tribes in the lower peninsula.

Secondly, allowing a tribe to settle a land claim and receive trust land hundreds of miles from their reservation for the express purpose of establishing a gaming facility sets a very dangerous precedent.

This pursuit of off-reservation gaming operations should continue to follow the procedures outlined in the Indian Gaming Regulatory Act, Public Law 100–497, which authorizes tribal gaming operations on off-reservation "after-acquired lands" where the land to be acquired has no relationship to the land upon which the claim was based.

Let me say that the first gaming compact ever approved with an Indian tribe in the history of the country was done in Nevada. So it is not as if Nevada is here opposing this request. The first compact ever approved in the country was in Nevada. That is still an ongoing operation and a very successful one.

The proposed casino would be located just north of Detroit on a major link to Ontario that is in the lower corner of the lower peninsula. Bay Mills is located in the upper peninsula. The legislation is fundamentally flawed because it allows Bay Mills to establish gaming facilities under the guise of settling a land claim.

The land claim is simply—and everybody knows this—an excuse to take land into trust for off-reservation gaming.

I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. WYDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WYDEN. Mr. President, I ask unanimous consent that I be permitted to speak for up to 15 minutes and that the time be charged postcloture.

The PRESIDING OFFICER. Without objection, it is so ordered.

HEALTH CARE THAT WORKS FOR ALL AMERICANS ACT

Mr. WYDEN. Mr. President, recently I introduced with Senator HATCH health care legislation, the Health Care that Works for All Americans Act. I come to the floor today because I think many Senators are frustrated about the inability to make more progress on the health care issue in this session of the Senate. I want to take a few minutes and talk about what I think the key principles are for this country to make headway with respect to health care.

The three principles that I believe are central on this health care issue are, first and foremost, to make sure the public is involved from the ground floor. Again and again, what we have seen is health care legislation proposed that is attacked by special interest groups, and then it goes nowhere. The public gets understandably confused about the discussion, and the bill dies.

Under the Wyden-Hatch legislation, the public would get the first crack at looking at the key issues, which are: What are the essential services that people feel strongly about? How much would they cost? And who would pay for them?

The second feature of our legislation is that it establishes a process to ensure that Congress actually votes for meaningful and comprehensive health reform. The last time Congress took a crack at this, almost a decade ago, there were not even votes in Congress on the legislation.

The third principle we ought to zero in on with respect to health care for the future is that it has to be bipartisan. The Wyden-Hatch legislation is literally the first bipartisan effort in comprehensive health reform in a decade.

I come to the Chamber today to say those three principles—involving the public at the outset, ensuring there will be an actual vote by the Congress on comprehensive legislation, and that the bill be bipartisan—ought to be the core of the Senate's effort to reform the health care system.

Today I wish to take a couple of minutes to talk about a central part of our legislation, and that is what to do about rising health care costs in America.

Rising costs in American health care are a runaway train, and the American people have literally been tied to the track. Again and again, small businesses come up to us and say they have been subjected to 15-, 20-, 25-percent rate hikes year after year. This is all before the demographic tsunami comes in 2010 and 2011 when we will have millions of baby boomers, and right now millions of working families, some with insurance, some without, that cannot afford doctor visits and disease treatments and the drugs they need. So certainly at the center of any effort to reform health care has to be putting the brakes on those rising costs that are literally a runaway train in our society.

There are going to be tough choices. If resources are limited, we have to make some tough calls about how to allocate those resources and to focus on some of the ethical and moral questions that are inherent in rising costs.

The tough moral and ethical considerations that will be necessary to contain them are stark realities, but they have to be faced if this country's health care system is going to work for all.

My colleague from Utah, Senator HATCH, and I have proposed in our legislation, the Health Care that Works for All Americans Act, a specific plan so that citizens can face those realities and fashion a better health care system.

Under our proposal, the American people will have a chance—a chance they have not had in 57 years since health care reform was tackled by Harry Truman in the 81st Congress—the American people will have a chance, before the special interest groups have at it, to talk about the kind of health care system they believe makes sense for them.

Our legislation has two major components: A public participation process at the outset over a relatively short period of time, and a guaranteed vote in both Houses of the Congress on the people's recommendations.

When it comes to health care costs, there is a lot for the public to examine. We are now spending 15 percent of our gross domestic product on health care. The last time it was looked at, the country spent more than $1.4 trillion on medical care, a 10-percent increase from the previous year.

If you divide $1.4 trillion by the number of people in this country, it comes to almost $5,000 for every man, woman, and child. Tens of millions of our citizens, in addition, slip through the cracks every day, even as our Nation pours more and more money into health care.

We are going to have to take a look at where the money is going. A study that has now been published on the Web site of the journal Health Affairs attributes spending increases primarily to higher hospital costs and prescription drugs. Hospitals are raising prices to make up for declining insurance, Medicaid and Medicare reimbursement, and the money they lose treating patients with no insurance at all. Moreover, a backlash against the tight hospitalization controls of managed care has clearly contributed to rising costs.

There are a host of relentless forces converging on American health care. Technological innovations seem to be coming at us from every area, and each miracle cure comes with a high cost. More and more health information is available through the Internet through sites such as WebMD and health.gov. It shows up on the ticker on all the 24-hour news channels, and each new discovery drives up the demand for care. If CNN runs a story on a medical breakthrough at 9:30 in the morning, it seems that an hour or so later we will be getting calls at our offices asking if Medicare or Medicaid or various insurance plans will pick up that coverage.

We have an extraordinary appetite for health care, for new treatments, but sometimes when we order these, we are not sure we are getting what is medically effective. We are not sure we are getting services that are worth the money. And most importantly, there is no way to measure it.

This is all compounded by the baby boomer explosion. Already, elderly people make up 15 percent of the population and spend 40 percent of our health care dollars. Folks are not just getting older, they are living longer. Those additional lives and the care that is necessary is going to require more funding. Life expectancy has risen more in the last 50 years than it did in the preceding 5,000. In the last months of their longer lives, Americans are spending more money than ever on health care. But money does not always give the best results for a suffering individual.

As a direct result of health spending increases in 2001, the Health Affair Study that I noted said health insurance costs have risen sharply, but at the same time coverage is getting harder and harder for many to get. The costs have gone up two ways. The first is with simple premium increases. Insurance companies are asking purchasers to pay more for the policies. The second way is through something called buydown. Employers who subsidize insurance reduce available benefits and ask employees to pay a higher share of the subsidized premium. Employees often get lower wages, even as they pay more for health insurance, with no guarantee their insurance will meet their needs. When you combine that significant hike in premiums—12 percent has been one assessment by the Kaiser Foundation—with a 3-percent increase in the number of cases of the buydown, the total cost of insurance has risen about 15 percent this year.

Nationally, businesses are still paying three-quarters or more of employees' premium costs, but it is harder and harder for companies and individuals to absorb those cost increases year after year. Fully 60 percent of those who have no insurance work for small businesses. For the self-employed or for those who have to buy their own insurance, premium increases at this point have priced many plans out of reach.

If someone is listening today and saying, "The health care system works fine for me," let's also reflect on the fact that while it may work for you, it is not working for tens of millions of others. The fact is, every single day in America those who have no coverage, those who are going without, in effect, get subsidized by those who do have coverage.

If an individual listens today and says, "I am in pretty good shape; things are going well for me," I only point out for the millions who do not have coverage right now, those people are subsidized by those who think everything is fine.

The fact is, it is just not right to leave millions of Americans in this country with a feeling of helplessness and a sense that when they go to bed at night they can see that train, that runaway train of health care costs I have mentioned bearing down on them.

The legislation Senator HATCH and I have proposed gives Americans the power to put the brakes on rising costs. It offers regular citizens the opportunity to make tough choices about spiraling medical bills. We will be addressing, if our bill can pass, the tough questions of health care directly related to our families: The question of what kind of care do people believe is most essential: how much are people willing to pay; how do you contain the costs without sacrificing quality of care: what about the government or private business being required to pay part of the cost.

My bottom line is pretty simple. It is time, finally, after 57 years of trying the same thing—writing bills in Washington, DC, only to have them attacked by special interests—it is time to try something different, and that is to give the people of this country a chance to make the judgment on calls with respect to what kind of health services they want, how much those services are going to cost, and who is going to pay. The alternative is to continue to spend more and more on a system that, while scientifically prodigious, is flawed in many of the administrative ways in which it is carried out.

At a time when America is becoming a nation of health care haves and have-nots, this country can do better. We have many of our providers and businesses already making tough choices as they try to deal with growing costs. I know scores of small businesses in Oregon and across this country who are dying to offer their people good coverage, and they have had difficulty offering it without effective policies to contain those rising costs.

Senator HATCH and I believe with a different approach it will be possible to reign in the costs, but it all has to begin—and begin in a fashion that has not been tried for 57 years—with the American people being given the opportunity to make some of the tough calls. The fact is, the options in the cost containment area do involve hard calls. The Kaiser Commission, for example, on the uninsured, on Medicaid, recently laid out a number of cost containment measures currently employed by our public health programs. They range from some that I think are progressive to some that I think would make the problems that we have today in health care even more serious.

According to Kaiser, the main way public health programs are cutting costs is by cutting payments to providers. Private insurers then follow suit, paying less to providers for each patient seen and for each procedure performed or for each bed the hospital provides. Then, in effect, the Robin Hood approach kicks in in a dramatic way with those who do get payments, in effect, giving services to those who lack it. But when the cutbacks get severe, when the reimbursements continue to go down as we have seen in so many facilities, those providers, those health care facilities that have a great sense of community and caring, just cannot offer the services anymore. Instead of or even in addition to cutting provider payments, some insurers and public health programs are cutting back on what services they will cover, reducing the availability of some services. Unfortunately, services are often cut with no regard to their overall effectiveness—only for their cost.

Many types of health care programs are asking patients to pay more at the time of service—higher copayments. Higher copayments are also becoming a regular feature at the pharmacy, as prescription drugs are one of the biggest reasons behind rising costs. Options include those higher copays, requiring more prior authorization for prescriptions, requiring or covering only generics, or even limiting the number of covered prescriptions per month.

I want to pause to note a couple of issues here—first, that prescription drugs are on the table in the Wyden-Hatch legislation, just as long-term care and Medicare and Medicaid and private insurance are. Senator HATCH and I are placing no limits on what the American people can discuss and decide to change. And second, efforts to cut rising drug costs are perfect example of the range of choices that folks will face in this national discussion. Some of the choices for cutting costs seem good and fair. Some seem punitive and unfair. Senator HATCH and I just believe that Americans have enough sense to tell the difference.

People participating in the health care discussion prescribed in our bill will take a look at some of the toughest cost-cutters being employed today. In the case of private insurance, companies refuse to cover pre-existing conditions. They deny policies to people whose care is likely to be expensive. In the case of public insurance, States make last-ditch efforts to cut costs by limiting the number of people to whom coverage is available.

All across America today, mothers will tell their children that you don't always get everything you want in this life. That's the stark reality people are going to have to face when it comes to reforming the health care system. The key will be to find solutions that do the best job of splitting the difference, cutting costs and providing essential, effective health care services.

Cost containment is not enough. Our health care dollars must buy quality care, that not only treats disease but also prevents it whenever possible. That's the best cost containment. Failing that, care that manages diseases to slow or prevent their progression may be the next best thing. Disease management is a growing component of health care today. Instead of allowing months to go by between doctor visits, patients with chronic illnesses meet or speak regularly with nurses or other health care providers to monitor their specific condition. Doctors have concerns about their patients being treated or advised by others, and all the kinks aren't worked out of this system yet. But the result, in many cases, is a reduction in the number of expensive complications and hospital stays.

I want to see Americans educated about disease management, preventive care, and every other option available for reforming health care. That's why the Wyden-Hatch Act calls for the publication of a Citizens' Guide to the Health Care System. A panel that's a cross-section of Americans using and running the health care system today will produce it. It will be designed so folks can be fully informed when the public participation portion of the process begins.

To me, some of these cost containment methods seem fairer than others; some seem more sensible than others. The American people should have the change to decide—because what's being done now isn't working. Benefits are usually considered in terms of cost-benefit, which basically measures how much money you save for every dollar you spend. Another way of looking at procedures and practices is their cost-effectiveness, which is how much good you do with every dollar.

Let me explain why I believe it is folly to continue to address questions of health care and health coverage as purely economic considerations. The problem is, and families know this, it doesn't all boil down to money. You're not just dealing with a bottom line. You're talking about maintaining people's health and about the basic care they have a right to expect. Sometimes you're literally talking about life and death. It's time America started recognizing its ethical and moral responsibilities with respect to health care, and acting on them.

This is not the seismic shift it sounds to be. Just as individual insurers and state health administrators are making choices about how to contain costs, American citizens are making moral choices around their kitchen tables every day. People already have to answer questions like, it okay to put off the colorectal screening my insurance won't cover because I really need to pay for my mother's prescription medicines? If we pay for Jennifer's broken arm, does Bobby have to wait a year to get braces?

Doctors and hospitals are already making ethical choices about what care to get and give, or how much cost the hospital is willing to absorb before cutting services. The question that must be answered is still the same: do Americans want these choices made as they are now, in a back-door way? Or do they want a chance to discuss these issues at the front door, decide on them as a community, and then ask Congress to deliver a health care system based on the country's values?

A better way to make decisions is to look at what we are and are not able to do on a societal level, instead of deciding what we are and are not able to do for a give patient at a given time. If that sounds tough, it is. But Mr. President, I'm here to urge that America tackle these issues head on and turn them to the advantage of as many people as possible. That's far better plan then letting back-door decisions suck away more funds and resources and deny people decent care.

It's time to look at questions on a broader scale. Is $315,000 of public money better spent on one liver transplant and follow-up care for a 70-year old man with cirrhosis, or on 3,000 preventive well-baby visits costing about $100 each? Does a woman with known risk factors for breast cancer have a right to a mammogram every year even if I have to help pay for it?

Because these choices are so tough, a variety of think tanks and great minds have tackled these issues, including Arthur Kaplan at the University of Pennsylvania, Daniel Callahan at the Hastings Center and others. I admire their thoughtful work. Their conclusions and study have provided valuable direction on these issues.

I believe that at the end of the day, only the citizens of this country can make the fundamental choices that affect their health and their well-being—and health and well-being of the society in which they live.

Researchers shows that Americans believe that there are certain basic rights when it comes to health care and no one should be forced to go without. If it's been confirmed that the American people feel that way, the key is to find out what the basics are and go from there. This country won't get anywhere on health care reform until we do.

Let me explain a little further. Most Americans operate on the idea that they should have the latest tests and treatments on demand. That's possible—if America spends more of its dollars on health care and other budget items like educations take the hit. But spending more doesn't necessarily buy better health care. More and more people are being let without even the essential health care services, let alone the latest drugs and procedures.

Let me be clear. I'm not talking about keeping people from spending their own money on whatever kind of health care they want. If someone wants to rebuild himself limb by limb and has the money to pay for it, I say go for it. But when it comes to the health care system as a whole, we can't just spend money for the sake of spending money. Health care dollars must be used in better ways, or the people of this country must decide that it's okay to keep spending and keep leaving people out.

I don't believe that's the way America wants it to work. As Marcia Angell wrote in the New York Times, there are some essential services in which we all agree the public has stake, and health care should be one of them. For example, no one I know thinks of our country as a place where it's okay for babies to go untreated because Mom and Dad are in financial straits.

Postponing care sometimes places more strain on the health care system. If a baby doesn't get treated at the beginning of an ear infection, he may have to be treated as it goes further along, probably in the emergency room at a much higher cost than if he'd had a pediatrician to see in the first place. If he's not treated, and ends up with hearing damage, the costs will skyrocket not only in the health care system, but also in the educational system to meet his special needs.

More than a decade ago, the people in my home State of Oregon realized the interconnectedness of everyone in the health care system. Folks realized that no amount of money would ever be enough to pay for all the health care Oregonians wanted, and that too many people were doing without health care at all. So the people of my state took on the tough task of sitting down and deciding what the basics were, what health care no one should have to do without.

That may sound like an easy task; if you could just sit and make a list of all the things you'd like health care coverage to pay for, you would be able to do that without much trouble. But there's a flip side. The question Oregonians faced over and over again was, okay: if we want this fundamental service covered, what do we have to give up? What can't we afford to cover for anyone, if we want everyone to have at least some help? Those questions sometimes translated into heartbreaking real-life situations, where people using public health care couldn't get the latest and greatest innovations on demand. But lives were saved because people using public health care were able to get the basic when they needed them. That tradeoff, for the most part, made the tough choices worthwhile.

Now, Senator HATCH and I are not asking America to come up with a list of 880 health procedures in order of importance. But we are looking for a general idea of people's priorities—so that Congress can act on them when it's time for health care reform.

I believe there are some priorities our people already agree on. I think they agree that 18,000 Americans shouldn't have to die every year just because they can't get health insurance and health care. I believe 280 million people will agree they'd rather cover the cost of preventive services than get stuck with the much higher costs of preventable diseases that go unchecked. I think with some serious discussion, they can agree on some basic concepts of how and where our limited health care dollars should be spent to help the most people. I believe 280 million people can agree on a lot more than you think.

Some might say Americans aren't going to want to talk about this, that the idea of not paying for someone's liver transplant to take care of babies isn't fit talk for the public. But I believe Americans have a right to this discussion. These choices are going to get made, one way or the other, and I want them made in the open with the input of the people I'm here to represent. The stakes are just too high not to include the American people. And I believe they're up to the task.

To help Americans understand what's at stake, and make informed decisions, the dissemination of information will be key. I believe the Citizens' Health Guide will be a real eye-opener for most people—for instance, when they find out this: Medicare Part A will pay for prescription drugs when a patient is in the hospital. Part B will pay nothing for those same drugs on an outpatient basis. Some doctors are sticking patients in the hospital to the tune of thousands of dollars just to get their medicine to them. That money can't be spent, then, on preventive services or any other more beneficial health care concerns. Don't you think when people see the connection, they will insist on making a change?

Health care works like an ecosystem in this country. The consequence of every decision, and every reform effort, snakes through the system as a whole. Addressing health care properly, that, means addressing it as a system entire. Ad hoc is not going to work.

Just as a good doctor wouldn't prescribe a medicine that would treat one symptom but leave the disease to run rampant, it's time to stop with the piecemeal reforms that put a Band-Aid on the sucking chest wound of the health care system. To be most effective, you can't just make decisions on broken bones one day, organ transplants the next and something else the next day like they don't have any effect on each other. This country needs a way to consider the moral and ethical choices already being made that affect not just one person or one family, but the entire health care system. As hard as it's going to be, it must be done. The Wyden-Hatch bill provides a path to do that.

Yes, there are economic choices to be made about health care in this country. The runaway train of rising costs must be stopped somehow. And there are moral questions underlying every economic decision. The Wyden-Hatch proposal is built around the idea that these questions are simply too important to duck any longer. People deserve the chance to discuss their own moral and ethical priorities when it comes to health care, and to decide what's best for them and for our society as a whole. Only then can Congress deliver health care reform that truly works for all.

That's why our bill, the Health Care that Works for All Americans Act, centers on that public participation portion, and then guarantees the people a vote in both houses of Congress.

Perhaps the people of this country will choose one or more cost-containment measures being used today. Perhaps in examining their own ethics, they'll come up with new ideas. What Senator HATCH and I want to guarantee is that their voices will be heard—and that this Congress will act, with a mandatory vote in both houses—to make the people's vision for health care come to pass. I believe that if Congress chooses to put the people in charge, Americans will choose to fight rising costs, make tough moral choices, and direct this country toward better health care for everyone.

That is the point at which we have reached. That is why it is not right to leave so many underserved in so many communities without adequate health care.

I urge, finally, that as we leave and reflect on what is needed to reform the health care system in the next session, that the three principles in the Wyden-Hatch legislation of involving the money, forcing a vote in the Congress on the reforms that come from the people, and making it bipartisan guide our work in the next session.

I yield the floor.

ORDER OF PROCEDURE

Mr. REID. Mr. President, I ask unanimous consent that all time, postcloture, be considered expired except for the following: 60 minutes under the control of Senator BYRD, 70 minutes under the control of Senator LIEBERMAN, 70 minutes under the control of Senator THOMPSON or their designees; that 20 minutes of Senator THOMPSON's time be under the control of Senator SPECTER; that 15 minutes of the time of Senator LIEBERMAN be under the control of Senator DODD; 15 minutes be under the control of Senator SARBANES; 10 minutes under the control of Senator CARPER; and 10 minutes under the control of Senator CLINTON; leaving Senator LIEBERMAN, I believe, 20 minutes.

Again, it will be 70 minutes under the control of Senator LIEBERMAN; Senator DODD would have 15 minutes, Senator

SARBANES 15 minutes, Senator CARPER 10 minutes, Senator CLINTON 10 minutes, leaving Senator LIEBERMAN 15 minutes, with Senator DASCHLE having the final 5 minutes to close the debate.

That upon the use or yielding back of all time, the bill be read the third time, and the Senate proceed to vote on passage of the bill; provided further that the 10 minutes prior to the vote be controlled by the two leaders, with the majority leader controlling the final 5 minutes, without further intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, if I could further ask the Chair to consider this unanimous consent request.

I ask unanimous consent that upon the adoption of the conference report to accompany H.R. 3210, the terrorism risk insurance bill, the Senate then proceed to the consideration of Calendar No. 762, H.J. Res. 124, the continuing resolution; that no amendments or motion be in order to the joint resolution; that there be up to 3 hours for debate, with the time equally divided and controlled between the chairman, Senator BYRD, and the ranking member, Senator STEVENS, of the Appropriations Committee, or their designees; that upon the use or yielding back of time, with no intervening action or debate, the joint resolution be read a third time and the Senate vote on passage of the joint resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, the only thing I would ask is I hope, because I did move quite hurriedly here, that the time, the 70 minutes that Senator LIEBERMAN has adds up to 70 minutes. I am quite sure that it does.

The PRESIDING OFFICER. It does.

Mr. REID. I appreciate everyone's cooperation. I ask unanimous consent that the time I have just enunciated not start running until 4 o'clock so people have time to get over here. But at 4 o'clock, I ask that the time I have outlined here would begin to run and that anyone who has the floor at 4 o'clock, they would have to yield to one of these individuals who control the time at that hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada.

Mr. ENSIGN. Mr. President, I ask unanimous consent that I be allowed to speak for up to 10 minutes as in morning business.

The PRESIDING OFFICER. The Senator might speak for up to 8 minutes.

HONORING THE GENEROSITY OF ANDRE AGASSI

Mr. ENSIGN. Mr. President, when I was first considering a run for office almost 10 years ago, I found a quote from Chaplain Lloyd John Ogilvie to be especially inspirational in helping me make my decision. Chaplain Ogilvie once said:

> You may only make a small difference, but that does not relieve you of the responsibility to make that difference.

I want to tell you today about a constituent of mine who continues to raise the standard for how much difference one person can make.

The world knows this man as a top-ranked tennis star whose personality and success of the court have made him an American favorite. In Las Vegas, however, he's admired for his generosity and dedication to making a difference in the lives of our children.

Andre Agassi was born and raised in Las Vegas. Although he started playing tennis as a toddler, he won his first professional title in 1987. He has won at each of the four major professional tennis tournaments, and he holds a gold medal from the 1996 Olympics. As much as Las Vegans love to watch their "son" winning on the court, our hearts hold a special place for his devotion to underprivileged, abused, and at-risk children in Las Vegas.

You see, a top-ranked tennis player who has won as many tournaments as Andre has accumulates a good amount of wealth. Throw in a few lucrative endorsement deals, and you have someone who could live extremely comfortably for the rest of his life. He could become his own island with very few cares in the world. Unfortunately, many successful people do just that.

Andre Agassi, on the other hand, created the Andre Agassi Charitable Foundation. Its Board of Directors is impressive and is led by another son of Las Vegas, Andre's best friend and president of Agassi Enterprises, Perry Rogers. I can't think of many other organizations that have made the impact that this one has. Its goal is simple:

> To assist those underprivileged, abused and abandoned children who may be deprived of basic options in life. The foundation funds a combination of emotional, physical and academic programs designed to enhance a child's character, self-esteem and career possibilities.

Among the programs funded by the Andre Agassi Charitable Foundation are the Agassi Center for Education and the Andre Agassi Cottage for Medically Fragile Children at Clark County's public shelter for abused and neglected children. The Agassi Boys and Girls Club, which sees over 2,000 members during the year and features a tennis team and a basketball program, provides a safe after-school facility and a wonderful learning environment.

The Foundation, through the Assistance League of Las Vegas, provides the means for new clothes for well over 2,000 destitute and homeless children; helps to send 20 physically challenged or disadvantaged children to camp for a week each summer; and introduces fourth and fifth graders to symphonic music.

There are many more programs funded by the Andre Agassi Charitable Foundation, but I want to tell you about the Andre Agassi College Preparatory Academy, known in Las Vegas as Agassi Prep, and located in the heart of an at-risk community.

Agassi Prep is a charter school that focuses on technology, college preparation, cultural activities, and expanded involvement in community affairs. It also seeks to enhance character, respect, motivation, and self-discipline.

While HUD and the State of Nevada contributed significantly to the school, the core funding came from Andre Agassi's Foundation. The school's principal, Wayne Tanaka, is a distinguished educator who, in line with the goals of the Foundation, will truly impact the students who are fortunate enough to benefit from Andre Agassi's generosity and dedication.

I also want to share with you the reach of Andre Agassi's deep-seated concern for Las Vegas' at-risk children.

Since 1995, the Foundation has held the Grand Slam for Children concert benefits. The yearly event continues to draw some of the biggest names in entertainment, hundreds of volunteers, and crowds of almost 10,000. As someone who looks forward to this event every year, I can assure you—there is no better show on earth. This year's benefit featured Elton John, Martina McBride, Carlos Santana, Robin Williams, Babyface, and Rod Stewart. And that's just the entertainment.

A live and silent auction before the show included sports items from Shaquille O'Neal, Wayne Gretzky, Greg Maddux, Muhammed Ali, and tennis lessons from Agassi and his wife, Stefanie Graf. I share these names with you because they are a testament to the respect that Andre Agassi and his Foundation have earned from so many different people.

When I tell you that Andre Agassi continues to raise the standard for how much difference one person can make, I mean it literally. Since its inception in 1995, the Foundation has raised $23.6 million to help at-risk children. That includes $5.6 million from this year's Grand Slam for Children—$1.4 million more than last year.

That's $23.6 million over 7 years, with every penny going to assist children. All administrative and overhead costs are funded through contributions made by Andre Agassi or Agassi Enterprises, Inc. When you step back and think about the enormous impact that this man has had in Las Vegas, it is incredible.

I share the story of Andre Agassi's impact on Las Vegas with the hope that it will challenge and inspire other successful people to make their own difference in this world. We all have a responsibility to leave this world a better place, even if—as Chaplain Ogilvie stated—we make only a "small difference."

Words are not enough to thank Andre for the way he has changed the lives of so many children. But Andre, your acts of loving kindness will touch not just the children you help today. They will make a difference for generations to come. Thank you for making a difference in our community and for setting an example for us all.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Might I inquire of the business before the Senate?

The PRESIDING OFFICER. There are 2 minutes remaining on general debate.

Mr. BURNS. I ask unanimous consent that the time I use be a part of the Thompson amendment of the homeland security bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOMELAND SECURITY

Mr. BURNS. Mr. President, I rise today after talking with staff and going through what we are going to do with homeland security. This legislation provides the framework of the largest reorganization of Government in many, many years; in fact, going all the way back to the Depression days in the 1930s. But it is done because we are facing one of the greatest security challenges that this country has faced in its 26-year history from an enemy that identifies with no specific nation, an enemy that has shown us that fear is really something that erodes our freedoms—and we learn how fragile they are and how fragile our economy is.

Is it a perfect piece of legislation to leave the Congress and go downtown to be signed by the President? It is legislation that he has wanted and it has taken us too long to pass.

There are parts of this piece of legislation that concern most of us. We have been around here long enough to know that once we pass a piece of legislation—no matter what the subject might be—we find that the administrative rule writers interpret it differently than we do. Sometimes the net result is not exactly how we envisioned it, and maybe not even how the President envisioned it.

There are sections in here which I am very concerned about. I think as legislators in this body we must pay attention to how the administrative rules are written and how some of the Departments are moved into one called Homeland Security.

DROUGHT ASSISTANCE

I was interested a while ago in the statement on the floor about drought assistance to our farmers. No State has been hit harder than my State of Montana. No one can argue that there is a need. In fact, we have worked for over a year and a half with our colleagues here in the Senate, in the House of Representatives, and with the administration to get relief to our farmers and ranchers. We have been unsuccessful to date for a variety of reasons.

There is drought assistance already in the appropriations process that this Senate this year did not get passed—some $500 billion in rounded figures. But it wasn't allowed to move because of the debate on forest health.

Maybe this is the wrong place to talk about forest health. Nonetheless, I could see no logic at all in every night turning on the television, looking at the news, and watching America's forests go up in flames, and then denying the money and the change in policy—a change in policy that would have allowed us to prevent or at least take away some of the possibilities for such catastrophic fires as we have experienced in the last 2 years.

We were denied that—commonsense things, the relatively minor commonsense things that we have to do to our forests in order to make them healthy and productive and beautiful, as America envisions its national forests.

I am reluctant to raise false hopes for our farmers right now and say this is going to be done in the closing hours of the 107th Congress—unless it is done in January, or whenever we take up the appropriations bills. We have 11 more of them to pass. I imagine we will again try to develop some drought assistance for those States that have been hit hard this year by drought, and to help my farmers who are in the fifth year of drought in that part of the country.

We see a little bit of posturing going on here on the floor today. I do not like it. That wasn't the reason I was going to stand up here and talk in the first place. Nonetheless, I had to discuss this topic.

I notice that my friend from Kansas has come to the floor, and he has a problem, too, in Kansas. I think his State was probably the hardest hit this year of any State.

The PRESIDING OFFICER (Ms. STABENOW). The Senator from Kansas.

Mr. ROBERTS. Madam President, would the distinguished Senator from Montana yield for a question?

Mr. BURNS. I will.

Mr. ROBERTS. The Senator really alerted me to this. And I apologize for not watching on our closed-circuit television. Apparently some of our distinguished colleagues across the aisle are thinking about resurrecting the $6 billion emergency disaster relief package and putting it on the continuing resolution. Is that the case?

Mr. BURNS. That was the case, plus I think there have been a couple of suggestions made by our colleagues across the aisle. That is part of it. With the House being gone and not coming back, it would seem that this would be an exercise that could not be successful.

Mr. ROBERTS. Madam President, I would like to ask if the Senator would yield for another question.

Mr. BURNS. I will yield.

Mr. ROBERTS. How on Earth do you take a $6 billion disaster relief bill, which I happened to vote for, that was part of the Interior appropriations bill, as I recall—and, as I recall, the majority leadership filled the legislative tree and basically prevented this Senator from introducing an alternative to the $6 billion package that this Senator thought might stand a chance of approval from the administration, might stand a chance in regard to the hurdle that any disaster bill faces to get through the House Agriculture Committee.

I am going to be very candid. There were certain farm groups and certain commodity organizations that did not want to consider any disaster legislation for fear of opening up the farm bill and having something happen to their payment limits. So you had the leadership of the House Agriculture Committee saying no. You had the administration saying no in regard to further expenditures over and above the $180 billion we spent on a 10-year farm bill. You had the emergency assistance bill—not on Agriculture appropriations but on Interior appropriations.

Then, all of a sudden, we couldn't get any action on the Interior appropriations bill because there was a controversy in regard to forest management. Is that not the case?

I know the Senator worked very hard, because of the State he represents, in regard to forest management as part of that Interior appropriations bill. But the disaster relief money was attached to the Interior appropriations bill, and then we couldn't move it. We couldn't get any action on this floor.

Is that about correct?

Mr. BURNS. Madam President, the Senator is correct. I am ranking member on that Interior Appropriations Committee. There was money to replenish the U.S. Forest Service for the moneys they had expended on firefighting. That was also in there and needed, and would have passed. But we got into a situation on forest health, and the other side would not budge on some very commonsense recommendations to the Forest Service on how we go about cleaning up our forests. I am sorry it happened that way.

I would say to my Agriculture leaders, to my farmers, and to the farmers in Kansas who, by the way, are not really interested in inside baseball here in Washington, DC—a 17-square-mile logic-free environment—they are interested in not only what the farm legislation that we passed late last spring would do for them but also how we deal with disasters. None of those issues were covered.

But the Senator from Kansas is right on. We have all voted for disaster assistance until we have just run our little fingers to the bone only to find it blocked by other legislation or parliamentary procedures.

Mr. ROBERTS. Madam President, I would like to ask the Senator to yield for several additional questions. I am a little confused about this.

Mr. BURNS. I yield.

Mr. ROBERTS. I have a bone to pick. I want to see if the Senator from Montana shares the same bone.

Let us go back to the original problem of why in the Great Plains and the great States of Montana, Wyoming—and move over into South Dakota, Nebraska, Kansas, which, yes, this year was the hardest hit State. Many other States incurred bad weather and disaster conditions. But why did this happen? The Good Lord was not willing. The Good Lord sometimes doesn't have the creeks rise too much, or there is too much water in terms of the creeks. From time to time we have disaster bills. They tend to come during even-numbered years, by the way.

We have made a lot of progress in crop insurance. There has been crop insurance reform. But when you have a total disaster, and you lose your grain crop throughout the grain-producing areas, you would think you would have a disaster bill.

Now, let me back up. I know one Senator from Kansas—this Senator from Kansas—who said, as we go through the consideration of the new farm bill, $180 billion—make that $200 billion really over 10 years because the budget was 10 years long—that you would at least think there would be some provision in there for a farmer who had no crops, no crops to harvest. The Senator knows that. You have gone through that up in Montana, how many years—1, 2, 3, 4, 5 years maybe?

Now, what did the new farm bill, I would ask the Senator, have? We had four different components, four different payments, four different ways to invest in agriculture.

We changed the old farm bill, which was a direct income supplement, to a price support farm bill, and there were four ways your farmers could be helped. No. 1, we increased the loan a tad. We decided the loan rate would become an income protection device but—guess what—the prices over the loan rate do not do you any good.

Then you had something called a loan deficiency payment. That means if the price were below the loan rate, you would get that amount. Well—guess what—the price is above the loan rate, so you don't get the loan deficiency payment.

Then you also had a target price deficiency payment. It is a little confusing, all this gobbledygook, with all the agricultural acronyms and everything to do with farm bills.

But—guess what—the price was above the target price, so he did not get or the farmer did not get or she did not get or that person did not get any help from the target price deficiency payment. So we are zero for three.

Then we had a direct payment.

Now, in the wisdom of the farm bill conference, of which this member did not serve—I am not going to get into that, as to how that ratio came down, and who was prevented from being on the conference, and who was not; I could, but I will not—but in the wisdom of the conference, they said: We are going to keep a direct payment just to make sure that if these other things don't work, and the farmer still wouldn't have a crop, the price is increased. We are going to have a direct payment. That was 6 cents a bushel in regard to wheat. And the corresponding numbers were true in regard to corn and other crops—6 cents.

Why do I mention that? Because all the way through this, both you and I said—Senator COCHRAN said, most of us on this side said—don't go down this road with this new farm bill and apply it to the 2002 crop year because any farm bill is too complex to really figure out, with all the fishhooks and all the saddle burrs, to try to get it in place for 2002.

What we would have had under the old farm bill—much maligned by the other side, constantly, day after day after day, for 4 or 5 years—the Freedom to Farm Act was a direct payment called an AMTA payment. Then we were going to double that because of the problems we were having. That was 60 cents a bushel. Now, there is a big difference between 6 cents and 60 cents.

I have given this speech to my farmers. Why do I give it to my farmers? Because they are desperate. We had the worst drought since the 1930s. It may have been hotter in some years, and it may have been dryer in some years, but it has never been hotter and dryer in the same year. So they lost all their crops. Now, we were able to get some livestock assistance, but disaster assistance, as compared to the old farm bill, which would have provided them 60 cents a bushel, it did not happen.

So all the critics on our side of the aisle, and some on the other side, who say, well, we have a new farm bill, we are going to give the farmer four mailboxes to open—the loan rate; nope, nothing there. The loan deficiency payment; nope, nothing there. Are we going to have the target price deficiency payment? No, nothing there. We are going to have a direct payment—6 cents, as compared to the 60 cents we would have had if we applied the new farm bill to 2003.

Now, that is my bone to pick because my farmers are hurting. And now after having a $6 billion emergency disaster bill that I voted for, in regards to the Interior Appropriations Committee, we have those with the temerity and chutzpah who will come to the continuing resolution and say, we are going to do it now, unless we shut down Government?

You know the administration is not going to support that. You know the House has already left town. You know the House Agriculture Committee, representing certain interests in agriculture, does not want to mess with the payment limitations. This is a horse going nowhere—nowhere.

The handling of this has been highly political. The election is over. There are some who wanted an issue and not a bill. They got the issue. And I guess the result in South Dakota proved that. OK, it is over. But why you bring up this particular effort for disaster assistance during this particular time is beyond me. It is not going anywhere. People crawl out of train wrecks faster than this bill will ever get passed and signed and provide real relief. And the farmers are not interested in this.

The Senator pointed out a long time ago, our farmers are not interested in politics or agriculture gobbledygook or legislative parliamentary gobbledygook as well.

I urge my colleagues who are thinking about this, don't do this. Now, when can we do this? We can do it in the omnibus bill.

We had some indication from the administration they will be a little bit more forward thinking. I don't want to leave them out of my tirade here. I am not happy with this administration. I tried to explain that wheat country was in a dire situation, that the farm bill didn't work. And it was sort of: Oh, well, you know. And we are saving money we are not spending on the farm bill, so I think we could score it. But there is no way they are going to do that.

So I just don't see why we are going through this exercise. And it has obviously got me mighty exercised because my farmers are hurting. Land values are starting to decline. Their lenders have already told them they hit their cap.

We have farmers who are mortgaging their place and their equipment in order to stay in business, and we sit here and introduce an emergency disaster relief bill to the tune of $6 billion that is not going anywhere. That is not right, especially in a lame duck session.

So I would ask the Senator, finally, a question. You are going to work with me, I know. I just talked to the majority leader about this, and I will talk to the minority leader about this. He is a good man. He has been on the Agriculture Committee on the House side. He has been the driving force in regards to the Agriculture Committee and the farm program policy in this session.

Let's get it done in the omnibus bill when we have a chance to get it done. If we need offsets, we will find offsets. Otherwise, we are putting at great risk a lot of farmers in this part of the country on the Great Plains. Quite frankly, other people, other farmers, other farm groups, other commodity groups apparently don't care—apparently don't care. Well, by golly, I care.

I know the Senator from Montana cares. So let's don't go down this road.

What is going to happen is, you are going to have to vote against a $6 billion bill in a lame duck session of Congress, when the election is over, with no hope of actually getting the thing done. Farmers are damned tired of that, and so am I.

So my question is, to the distinguished Senator from Montana, let's work together with the plan we have already put together during the omnibus bill.

I just talked to the chairman-to-be of the Appropriations Committee, Senator STEVENS, and he said, yes, he will work with us. The administration said they will work with us. And we can get some real help to farmers at the appropriate time.

So would the Senator work with me in that regard? That is the question.

Mr. BURNS. Madam President, I would be glad to work with him. But I am sure glad we didn't get him stirred up where he is really excited about this issue. No one gets exercised more than the good Senator from Kansas.

That is the common-sense way to approach it. There is no question about it. I would like to see it happen that way.

I just wish that we could do something on forest health. I think there is a chance of doing that this time.

HOMELAND SECURITY

Madam President, before I relinquish the floor, though, I just want to express my concerns again about homeland security, and in some areas.

As you know, we have spent the last 3 years trying to pass a privacy bill. We have worked with Senator HOLLINGS, the chairman of the Commerce Committee, and also working with the Judiciary Committee. I would hope we can now do a privacy bill coming up in the next Congress.

I notice the Senator from New York is on the floor, and I am looking forward to working with her on the E-911 caucus because we know we have a lot of work to do on spectrum and spectrum management and how we apply our emergency first responders in the days to come because of this challenge we have before us. So I will be watching very closely as the administration rules are written on this piece of legislation. There it is right there. I can't even pack it back to the office. I probably couldn't understand most of what I read in there, if I did. But, nonetheless, those are the issues I think are very important.

Americans value their freedom. They value the privileges of living in this country, but they also value something else; that is, their personal privacy. A database or anything else that could be done in this is a great mistake. Whenever we start doing R&D on technologies that would allow us to invade the privacy of an individual citizen, whether it be in wireless communications or in the Internet or the firewalls we might burn, and before that technology is transferred into the agency that is in charge of gathering intelligence, there should be a firewall in there.

I hope whenever they write the administrative rules they will be sensitive to that and will allow congressional oversight before that technology is transferred. It is very sensitive.

I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

HOMELAND SECURITY

Mrs. CLINTON. Madam President, I want to associate myself with the remarks of the Senator from Montana about the importance of the implementation of the Homeland Security Department, particularly as it affects the privacy issues that will be raised going forward. Further, I would like to add a few other cautionary notes to the legislative record as we are about to, in a few hours, vote on this Department.

My friend from Montana raises some of the important issues, and there are indeed others as well that we will have to be vigilant about and hopefully involved in going forward.

Mr. BURNS. Will the Senator yield so I could correct a terrible mistake I just made?

Mrs. CLINTON. Certainly, I am happy to yield.

Mr. BURNS. I think I identified her as the Senator from Arkansas when I should have said the Senator from New York.

Mrs. CLINTON. I appreciate that correction.

Mr. BURNS. I would like to correct it, if I could.

Mrs. CLINTON. I thank the Senator. I appreciate that.

Mr. BURNS. I thank the Senator for yielding.

Mrs. CLINTON. I must confess I thought he was referring to the Senator from Arkansas who perhaps was in the Chamber.

As I said, I appreciate the Senator's yellow, flashing lights about some of the issues we are about to contend with going forward in the Homeland Security Department. In the months following September 11, which are really the time period that has brought us to this day, we knew as a Nation we had to take some additional steps, some unprecedented steps to protect ourselves. I believe we have attempted to do so certainly with respect to our men and women in military uniform.

I am very proud of the support we have given to our armed forces. I am proud to represent the 10th Mountain Division in upstate New York. When I go there, when I speak with the young officers and enlisted men who come to see me or when I go to Fort Drum to see them, I feel confident I can look them in the eye and tell them we are doing all we know to do to make sure they are ready, well equipped, and compensated appropriately. They are trained to the best of their abilities, and we are doing all as a Nation we can to support them.

I do not have that same level of confidence when I go to my firehouses, my police stations, my emergency rooms throughout New York. I cannot look into the eyes of our firefighters, our police officers, our emergency responders and tell them we have done all we need to do to make sure they are as well prepared, well trained, and safe in their defense here in the homeland.

So are we safer today than we were on the morning of September 11, 2001? The answer is only marginally. Because somewhere along the way, we have not kept that laser-like focus we needed to match our will and our resources and to get those resources to the front lines at home as we have around the world.

The people who we are going to count on to make our homeland safer are the ones who will pick up the phone when we dial 911. They will respond to the call. They will leave the firehouse and the police station. They will leave the emergency room. They will be there in order to protect us.

The votes we cast this afternoon for the creation of a Homeland Security Department are just that. They are votes to create a Department here in Washington.

My hope is the approval of this bill will set into motion a necessary reorganization process that will ultimately result in improved coordination, information sharing, and a stronger, safer America.

But we have to be absolutely clear to the American people about what it is we are voting for. This bill has to do with structural reorganization. There are many things in this bill we absolutely need to make us safer. Unfortunately, there are many things in this bill that have absolutely nothing to do with our security.

I am concerned that Americans will believe, because we have passed this bill, our Nation is safer. But when we pass it and when Americans read about it or see coverage about it on television, they need to know this measure does not increase patrols or technology along our northern borders. It does not give our firefighters, police officers, and emergency personnel the resources, training, and equipment they desperately need. It does not increase security measures at our ports, our railroads, our public transportation systems. It does not increase our capability of detecting biological, chemical, radiological, and nuclear weapons.

What this bill does is fall short on many important measures. We had the opportunity to do this right, to do more than create a Department. The Senate's original bill coming out of the

Governmental Affairs Committee under Senator LIEBERMAN's leadership, on a bipartisan vote, would have included critical measures that would make our country safer today. In the end, we failed to act on those critical measures.

There is a lot in this bill that secures the future for special interests at the expense of the security of the American people. I believe those who are using this legislation as a vehicle for their own particular commercial or special interest have done this country a grave disservice.

That is why Congress cannot stop with this vote. As the distinguished Senator from Montana said: We have to watch this process with vigilance. We have to be involved in the rulemaking. We have to ask the hard questions about resources. We have to continue to fight to make sure every substantive measure we need to enhance our security gets passed in the next Congress.

Let's start with the obvious. Let's support our first responders. They are the ones who are our front line soldiers at home. We need to do what we have been asked to do by mayors and police and fire commissioners. They have asked us for direct funding that they can best utilize to make sure those firehouses stay open, those hazardous material suits and equipment are bought and available. That is why I still believe we should pass legislation I introduced last November that would provide direct funding to local communities—the Homeland Security Block Grant Act.

We also know the recent report by former Senators Hart and Rudman, the terrorism panel's report, clearly states we are not doing enough to support our first responders. That report expressed grave concern that 650,000 local and State police officers still operate without close U.S. intelligence information to combat terrorists.

We have not done enough to help local and state officials detect and respond to biological attacks. The report expressed concerns that our firefighters and local law enforcement agencies still—more than a year later—do not have the proper equipment to respond to a chemical or biological attack. And they don't even have the communications systems that will let them talk to each other—police departments, fire departments—across municipal and county lines in an emergency.

Madam President, I was also greatly disappointed that the SAFER Act, which would have allowed our Nation to hire 25,000 more firefighters over the next couple years, was completely eliminated from the bill. This is the time to do more for our first responders, not less.

We also have to act immediately to secure our Nation's nuclear power infrastructure. While the homeland security bill creates a new Department, it does not adequately address the real threat of terrorist capabilities and desires to destroy our nuclear powerplants. Last year, Senators JEFFORDS, REID, and I introduced the Nuclear Security Act. We moved that act through the committee. It is unfortunate the bill does not address nuclear security, particularly with respect to our nuclear powerplants. We clearly have a problem there, as we do with radiological attacks from a a so-called dirty bomb.

Every day that goes by without us having those resources available in local communities around our country to respond is a day I cannot look into the eyes of my constituents and say, yes, we are safer today than we were.

We have all gone over the many provisions in the bill that have absolutely nothing to do with security. I regret deeply that they were included in this bill, and the impact of them will be known for years to come.

Madam President, this bill, which does some good by helping us better focus here in Washington, does not do nearly enough of what needs to be done out in our country. I am particularly concerned that New York does not have a specific coordinator as the bill provides for Washington, DC. We know from every intelligence report that New York City is still a high-risk area.

This bill has much that perhaps can make us safer, but nothing that will immediately do so; and it does not address the most serious issues with respect to the resources that are needed.

There is an article in this day's Washington Post about how the fact that we have not funded the war on terrorism here at home means that money—even if it passes in January—will not get to the people who need it the most for quite some number of months.

This is, unfortunately, a day where we have adopted a piecemeal approach to homeland security without the resources and the comprehensive strategy that many experts have recommended. I hope we will come back in January and address the gaps in our homeland defense strategy going forward.

I yield the floor.

The PRESIDING OFFICER. Who yields time to the Senator from Idaho?

Mr. CRAIG. Madam President, I yield myself time from Senator THOMPSON's time.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Madam President, I came to the floor for two purposes this afternoon. I will briefly speak about H.R. 5005, our homeland security legislation, which will become law in a reasonable time, possibly today, to suggest I am really not going to play the political game that has been played with this bill for the last 2 months, and that is being caught up again in the rhetoric of the hour—that somehow you don't need to structurally change the way Government thinks, that you can spend billions of dollars ahead of time to get it done.

You do need to change the way Government thinks. You do need to change the culture of the Federal bureaucracy. You do need to coordinate. That is what we are doing because, clearly, to anyone on this floor, or anyone in any of the committees that have spent the last several years analyzing what happened prior to 9/11, and following 9/11, it became very clear our agencies did not connect, they did not coordinate, they did not communicate, and the culture of the day—and probably a prevailing attitude—was somehow what happened would not happen here, didn't allow us to come to attention.

Well, we are now at attention. We have already spent billions of dollars getting there—both in the fine city of New York, which was tragically hit, and across this country. My State of Idaho alone—a State of 1.2 million people—for its first responders is going to get a couple million dollars more this year. That is significant money for beginning the process of coordinating and training and communicating, right hand to left hand, local responders to State responders to Federal responders.

There is a long way to go, but to suggest that the step we are taking today is unnecessary, or for 2 months did not prevail and, therefore, the bill is no good, shame on those who want to play the politics of the moment, because the politics of the moment is this country has decided to make a major step in the right direction.

I will tell you that I can pick the bill apart and say there are bits and pieces in there I don't like. I agree, in part, with the Senator from New York and the Senator from Montana that it will take due diligence, that we should not suspect that what we pass today goes on autopilot. My guess is we will be back next year making refinements in it. I am not quite confident that it protects the privacy of the citizens of our country in our pursuit for security in a fashion I would want to see happen.

I am glad we gave the President the flexibility not to be tied up in the bureaucracy of the public employees unions, but to give them an ample opportunity to express their concern; but in the end, in a national crisis, to give the chief executive of our country the latitude he or she should have and must have to make this system work. That is what we finally won the day over.

I am sorry the other side lost that fight, but the country won, and the legislation we bring today is a significant and appropriate step forward. I will probably be here on the floor within a couple of months offering some amendments, and my guess is my colleagues from both sides of the aisle will be doing the same. But to demagog our way into a new form of Government in the context of homeland security, shame on us.

The politics of that day is over. The reality of what we must do is now at hand and this Senate is stepping forward, as it should, to get the job done.

I said I came to the floor to talk about a couple of other issues. I have been watching from my office the great politics of agricultural drought disaster. What I heard on the floor was in itself a bit of a disaster. For one full month, we had a bill on the floor with drought assistance in it. When the bill was controlled by the other side, which had the majority, I innocently came to the floor and said, hey, why don't we add an amendment on forest health? Why don't we get to the business of thinning and cleaning the seven or eight million acres of land that is desperately in need of our caretakership and our stewardship that, by every estimation, is a tinderbox waiting to explode, like the seven million acres that burned this year across our public forest lands, that burned up 2,800 homes and cost us 25 lives.

But for one full month, the other side refused to vote on it. Why? Because of the November 5 election. They didn't want to put their people at risk, or what they thought was risk, to vote for a good piece of legislation that would have passed the Interior bill and would have put forth the drought legislation and the money that was talked about on the floor.

What I witnessed over the last hour is raw politics that won't get done. The Senator from Kansas came down a bit exercised a few moments ago, and he had every right to say, shame on them, it is politics, it won't happen—and it won't happen. What will happen is we are going to come back to a new Congress on the 7th of January called the 108th Congress. We are going to swear in some new Senators and convene, and we are going to have a new organizational resolution; we are going to have chairmen. And already, at that moment on the 8th, 9th, 10th, and beyond, we are going to move, I believe, 11 appropriation bills that didn't get cared for this year, that somehow, on their watch, didn't happen. In those, we are going to take care of drought and a lot of other things that should have been done a long time ago. Sure, we have anxious farmers. They have every reason to be anxious. But now to blame us and bog up the works and put our Government in a stall at this moment, all in the name of agricultural politics, is, in itself, wrong. I have farmers who have suffered from drought. I want to help them, and we will help them. We will help them in January. Why do we come to the Chamber today and play the politics of the game that will not happen? I think we all know. It makes for good rhetoric and probably a few headlines back home. But it will not accomplish the mission at hand, and the mission at hand is to solve our agricultural drought problems, and to do so in a responsible, meaningful way that actually produces policy so the farmer can go to the farm service office and say: I have a problem and here is my loss. And that farm service officer can say: And here is the program, and here is how we can help you.

That is not going to occur probably until we legislate it in January and it becomes law sometime in early February. Then, I say to my colleagues on the other side, pick up the phone and call your farmer and say: Go to the farm service office, take your records and your losses, and they will calculate what you deserve based on the program at hand. That is how one delivers a message home. That is how one solves a problem that exists.

What has happened in this Chamber is the last moments of the last hour of the last day of the 107th, is that somehow a great amount of politics got played out. Some of it worked and some of it did not work, and we just heard some of it that will not work.

We are about to vote, though, on homeland security, and in the end, over the course of the next 3 to 4 years, it will work because it must work. We must be able in a real way, in a material way, to say to our friends and neighbors and civilian populations at home that the world is a safer place, and we made it safer by the ability to craft a government a good deal more sensitive to the reality of our current circumstances, to change the culture of the CIA, the FBI, the Border Patrol, and the INS in a way that creates a level of communication that knows what the right hand and the left hand are doing in concert. Yes, allows us a level of training and expertise at the very local of levels so when that first responder goes out on the line, they have every bit the skill and the equipment necessary to determine if they and/or the population they serve are at risk because of a potential terrorist act.

That is our charge. We do not do it overnight. It should have been done 2 months ago. The politics of the day would not have allowed that, but November 5 changed that, and that is why we are here and why we will pass this bill today in its whole form, and it will go to the President's desk for his signature.

Then, frankly, the hard work begins. If I were the administrator selected to craft a homeland security agency out of the bureaucracies that will fight down to their very last bureaucratic breath to hang on to some authority, I would say it is a monstrous task. But we will be here helping that administrator along because we know it is so necessary for our country to have an agency that can respond to a new threat to this Nation and to freedom-loving people all around the world.

I hope out of the frustration of the day and the rhetoric that has occurred that, in the end, we will pass legislation and get on with the business at hand, but I thought it was incumbent upon myself to come to the Chamber to talk briefly about the idea that a drought has occurred, not just on farmlands across this country, but in the reality of the politics right here. And that drought is, we only have so much we are going to get done, and we better return come January and finish the work that should have been done months ago. This side is up to it, and I trust my colleagues on the other side will join us in a fair and bipartisan way to make that happen.

I yield the floor.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CARPER. Madam President, I am pleased to see that the Senate is finally ready to pass legislation creating a Department of Homeland Security. My colleagues and I on the Governmental Affairs Committee, under Senator LIEBERMAN's leadership, began this process more than a year ago. When we first started out, I must admit that I had some reservations about making such dramatic changes to the way the Federal Government is organized. The hearings Senator LIEBERMAN chaired during the first half of this year, however, showed me how truly ill prepared we really are to face the threat of terrorism. That is why I supported the original version of Senator LIEBERMAN's homeland security bill when it came before the Governmental Affairs Committee on May 22, 2002, some time before President Bush released his proposed reorganization plan. I supported it again on July 24 after we incorporated a number of the President's recommendations into our original draft.

I believe we need to create a strong Department of Homeland Security that brings together under one roof the various Federal agencies charged with preventing and responding to terrorist attacks. I am a little disappointed, however, that we appear ready to do so in a way that disregards a good deal of the hard work that went into the bipartisan bill we reported out of Governmental Affairs.

Among other things, the bill before us today abandons a compromise arrived at in committee on information sharing and the Freedom of Information Act and includes INS restructuring language that is different from anything included in the President's proposal, the House-passed bill or anything that we have debated here in the

Senate. It also includes some controversial provisions we have never seen before that seemingly appeared overnight. In the 108th Congress, we can and should have a debate on tort reform. We can and should have a debate on the safety of childhood vaccines. What we should not have done is hastily slip brand new provisions into this critically important bill without debate at the behest of special interests. There are three changes, however, that are of the most concern to me.

First, there is the new personnel language. This bill gives the Secretary of Homeland Security and the Director of the Office of Personnel Management (OPM) almost total authority to rewrite Federal civil service laws for Department of Homeland Security employees related to hiring and firing, job classification, pay, rules for labor-management relations, performance appraisal and employee appeals to the Merit Systems Protection Board. Thinking that the Secretary and OPM could not possibly know what kind of personnel system was needed at the new Department before they were able to start putting it together, our committee maintained current law and asked the Secretary to report on his or her progress in setting the Department up at least every 6 months and to ask Congress for specific changes in civil service protections to meet specific Department needs.

As a former Governor who had to reorganize parts of his own State's government, I can appreciate President Bush's desire to have as much flexibility as possible when creating something as large, complex and important as a Department of Homeland Security. However, I do not believe it's necessary to give him or his new Secretary the power to unilaterally change or waive workplace rules over the objections of Department employees and Congress. That is why I supported the compromise put forward by Senators NELSON, BREAUX, and CHAFEE before we adjourned for the election. That language would have left the most important civil service protections related to union rights and employee appeals untouched and set up a system of binding arbitration so that the Secretary and OPM would have to work out any personnel system they draft with the employees who will be required to work under it. I wish that the personnel language in this bill was closer to that contained in Nelson-Breaux-Chafee bipartisan compromise.

The second issue that is of concern to me in this bill is the language on collective bargaining rights. It says that the President can only use the authority he currently has to remove employees' collective bargaining rights on employees transferred into the new Department if their agency's mission materially changes and their duties involve intelligence, counterintelligence, or investigative work directly related to a terrorism investigation. It gives him broad authority to waive this test, however, and to use his authority regardless of whether or not the mission of the relevant agency has changed. Our committee-passed bill would have required the administration to go through the Federal Labor Relations Authority to remove employees' collective bargaining rights. I was comfortable with that provision, but even more so with the Nelson-Breaux-Chafee compromise on this issue, which includes the same restrictions on the President's authority included in this bill but which gives Department employees the assurances that their collective bargaining rights will not be taken away arbitrarily simply because they are working in something called the Department of Homeland Security. I wish this bill offered future employees of the Department of Homeland Security as much assurance that their rights would be protected.

My greatest disappointment with this bill is the glaring omission of any meaningful provisions to improve the security of our Nation's railroads. It is inexplicable that we stand ready to create a Department of Homeland Security that does nothing to protect the millions of Americans who travel by rail every day. After the tragedy of September 11, this Congress and the President moved quickly to stabilize and secure our aviation system and to create the Transportation Security Administration with the mission of protecting all transportation modes.

The Congress followed suit with the Maritime Transportation Security Act of 2002 to protect our ports and maritime industry, which successfully passed in the Senate last week. And now it seems that the Over-the-Road Bus Security legislation is poised to pass this body. Yet in all these efforts, we have done little to protect rail from terrorist attacks and security threats, creating an Achilles heel in our Nation's efforts to secure our transportation system. For all of our commendable focus and attention on preventing future attacks against the aviation industry, it is unconscionable that we would not work to ensure that the roughly 25 million intercity passengers and many millions more that commute aboard our trains are as safe as the ones in our skies.

How can we ignore the FBI warnings made a few weeks ago that al-Qaida is considering directly targeting U.S. passenger trains and that operatives may try to destroy key rail bridges and sections of track to cause derailments? How could the Senate have voted to appropriate $2 million to remove jars of formaldehyde and alcohol from the Smithsonian's buildings here on the Mall because of their threat to the Capitol and yet leave the rail tunnel traveling under the Senate and House office buildings and the Supreme Court unprotected from terrorist attack? How can we end the 107th Congress having approved increased and strengthened security programs for every single transportation mode except rail, a mode we know that al-Qaida may currently be targeting?

In creating the Department of Homeland Security, we had the chance to address this omission. We could have included provisions to secure the nation's critical rail infrastructure and facilities and augment the mission of the Transportation Security Administration. Recognizing the obvious need for greater rail security early on, Senators HOLLINGS, MCCAIN and others worked within the Commerce Committee to produce a bipartisan rail security bill to protect Amtrak and our vital rail infrastructure from attack or sabotage. This bill, S. 1550, was supported by the Bush Administration and reported unanimously out of the committee.

They understood the important role that Amtrak played immediately following the tragic events of September 11, when, with the aviation system shut down and our highways clogged or closed, Amtrak kept people safely moving in the northeast and across the country. They know it is essential that we provide Amtrak with the means to harden their physical assets and protect the safety and security of the traveling public if we want to ensure that Amtrak can serve the nation in the future as it did after September 11. They realized that more people use Amtrak's Pennsylvania Station in one day than use all of New York's three airports combined. They recognized that, like our other modes, our rail network is essential to the mobility, defense, and economic vitality of our nation. Yet their efforts have been blocked in this body and our railroads remain largely unprotected.

Following the Commerce Committee's good work and seeing the logical role for rail security within the new Department, I offered, and the Committee voted to accept, a rail security amendment to Senator LIEBERMAN's homeland security bill during the our markup in July. My amendment authorized funds through the Secretary of Homeland Security for critical security and safety needs across Amtrak's national network. Totaling $1.2 billion, my amendment authorized funds to assist the diligent efforts already being made by Amtrak's police force and other law enforcement agencies, giving them the tools to focus on real threats beyond the harmless rail fans police were chasing away as described in an article on the front page of the Washington Post last week. The amendment included: $375 million to finance systemwide security and safety enhancements. These funds would have been used to immediately address serious security risks by protecting infrastructure, stations, and facilities across the entire Amtrak system. Amtrak's top priorities to be addressed with these funds include:

No. 1, securing tunnels, bridges, interlockings, towers, and yard and station facilities with surveillance equipment, perimeter fencing, security lighting, bomb detection equipment and bomb resistant trashcans for stations, vehicle barriers and other measures.

No. 2, investing in passenger information systems to allow the creation of watch lists and passenger manifests for tracking purposes and data sharing between Amtrak Police Department and the FBI. Currently, Amtrak does not have the realtime ability to track who is onboard its trains.

No. 3, communications and command/control upgrades to track and locate trains enroute, to ensure adequate radio coverage across the Amtrak system, and to provide automated data for incident response and crisis management;

$778 million for life-safety and security improvements to the Amtrak tunnels in New York, Baltimore and Washington. The life-safety problems with the tunnels on the northeast corridor are well documented and require immediate action. The tunnels in New York, 1910, Baltimore, 1872, and Washington 1904 are nearing, or are over 100 year olds and constitute safety hazards due to problems with emergency exits and ventilation. Of specific concern, is a possible terrorist action involving these tunnels, which have limited evacuation capacity, antiquated stairwells, and poor lighting. The results could be catastrophic. The funds will enhance life safety features within the tunnels, including:

No. 1. Washington, $40 million: upgraded emergency access and egress, improved ventilation and communications. This tunnel sees 50 Amtrak/VRE trains a day and 2 million passengers annually. Additionally, these tunnels pass directly under the Supreme Court and House and Senate Office Buildings.

No. 2, Baltimore, $60 million: New fire standpipes; improved lighting and communications, egress improvements; and a preliminary design study of tunnel replacement options. This tunnel sees 125 Amtrak/MARC trains a day.

No. 3, New York, $678 million, 6 tunnels: upgraded ventilation, access, and egress through new stairways and shafts; structural rehabilitation for tunnel access, and improved lighting and signage. The 6 New York Amtrak tunnels provide access to Penn station for Amtrak, New Jersey Transit and the Long Island Railroad. They are gateway to New York and the heart of the Northeast Corridor. Work on the tunnels has already begun with $220 million from the Long Island Railroad and the FRA, through $100 million from FY '02 DOD supplemental Appropriations Act. Funds authorized in this amendment would complete work on 3 of the 4 rebuilt ventilation and escapes shafts, dramatically improving the safety of passengers should an emergency occur in the tunnels;

$55 million for wrecked equipment repair to ensure Amtrak adequate fleet capacity in the event of a national security emergency. At the time of my amendment, 96 damaged and wrecked cars and five locomotives, or nearly one out of every fifteen Amtrak cars, were sitting idle, out of service, and awaiting repair. Without these cars, Amtrak is in serious danger of being able to provide adequate equipment to service its current routes, let alone offer additional service should there be another national emergency. With these funds, Amtrak could have repaired about half of these, and have some equipment up and running again within 90 days. In our effort to strength the security of the homeland, that we must provide Amtrak with the equipment it needs to serve the existing routes and to handle increased traffic should another security crisis occur.

After the Governmental Affairs markup and the inclusion of this amendment to the Lieberman substitute, I worked with Senators HOLLINGS and McCAIN to create a bipartisan rail security package based on the previous Committee work and my amendment that would authorize needed resources while ensuring proper oversight and accountability. We agreed to work together to add this package to the homeland security legislation, in whatever form it took. I believe that Senator McCAIN spoke briefly about his commitment to enhancing the security of our railroads on the floor last week, and I want to thank him for working with us to create a sound security proposal. I know that he and Senator HOLLINGS share my disappointment that we have not been able to get this package included in the current homeland security bill. Though we were unable to achieve success today, we are committed to doing so next year, and I urge my colleagues to join this effort. Until we have passed a rail security package, we cannot honestly say that we have secured our national transportation system.

In conclusion, today we missed a tremendous opportunity to truly secure our entire transportation network. Surely, we all agree that doing so is one of the Federal government's chief responsibilities. Debates about the future of Amtrak should not stand in the way of this effort. The fact is that, today, several thousands of riders are on Amtrak trains and hundreds of thousands more use Amtrak's tracks for their daily commute to work. Securing these facilities and these services is not an issue that can wait. As the intelligence community has already warned, the risks to America's railroads are real and exist as we speak. We have a responsibility to act to protect our people and our nation. We must pass rail security legislation as soon as possible.

Mr. KOHL. Madam President, I rise to discuss two provisions of the Homeland Security bill, those substantially transferring the Bureau of Alcohol, Tobacco and Firearms, "ATF," to the Department of Justice and modifying and improving our explosives laws.

A driving force behind the President's blueprint for the reorganized Government is the need for the various agencies and bureaus charged with enforcing Federal law to work more cooperatively and effectively in defending the country against terrorism. The President's plan shifted several agencies charged with different aspects of Federal law enforcement to the proposed Department of Homeland Security, including the Secret Service and the Bureau of Customs, both formerly housed in the Department of the Treasury.

Unfortunately, this realignment of Treasury's law enforcement agencies left out one vitally important bureau, one that has as its primary mission the enforcement of the explosives and firearms laws. The ATF has been the cornerstone of the Federal law enforcement functions at Treasury for decades, but now under the President's plan, it would be left as the only major law enforcement presence in the entire Department.

The Department of the Treasury is entrusted with responsibilities primarily in the area of monetary policy such as budgets, taxes, and currency production and circulation. In contrast, the ATF's mission consists of enforcing the firearms, arson, and explosives laws as well as the criminal and regulatory functions of the alcohol and tobacco laws. Clearly, these two missions do not jibe.

ATF serves an important role not only in the enforcement of the criminal laws regarding firearms, explosives, alcohol and tobacco, but also in waging the war on terrorism. We only need to remember the litany of terrorist bombings from the first attack on the World Trade Centers to Beirut in 1982, the East Africa embassies, the U.S.S. *Cole*, Khobar Towers, and Oklahoma City, among others, to understand the importance of the ATF's expertise in explosives and firearms on the war on terrorism. Indeed, in the last 20 years, the vast majority of terrorist attacks with Americans as targets have used explosives or firearms. Any effort to strengthen our homeland security that does not take note of this fact is a half measure.

This bill understands ATF's importance in the war on terrorism by moving it to the Department of Justice where it can coordinate its efforts more easily with the FBI, DEA, and the other premier Federal law enforcement agencies. In addition, the bill authorizes the ATF for the first time as the Bureau of Alcohol, Tobacco, Firearms and Explosives, ATFE, and refocuses its mission. It will no longer be responsible for collecting alcohol and tobacco fees, but instead will focus entirely on the criminal enforcement of the explosives, firearms, arson, and tobacco and alcohol smuggling laws.

The amendment makes clear that along with the transfer of enforcement of the explosives, firearms, and arson laws, the new ATFE will have jurisdiction over the criminal statutes in title 18 of the United States Code as they relate to tobacco or alcohol laws. These few criminal statutes are the extent of ATFE's jurisdiction over alcohol and tobacco. All alcohol and tobacco revenue collection and related regulatory functions performed by the current ATF will remain under the jurisdiction of the Tax and Trade Bureau of the Treasury Department.

The renaming of the Bureau is more than simply symbolic. The addition of the "E" to the name of the Bureau demonstrates the importance of explosives in their mission. To coordinate better law enforcement training in explosives, we created the Explosives Training and Research Facility at Fort AP Hill, VA, where Federal, State and local law enforcement agents from around the country will be trained to investigate bombings.

We trust that the Attorney General and the Department of Justice in conjunction with the Department of the Treasury will make ATFE's transition as efficient as possible. Moving a large law enforcement agency is not easily done. For that reason, the Homeland Security bill permits a sufficient time frame for the transitions to occur both to the new Department of Homeland Security as well as the ATFE's transition to the Department of Justice. It is our intent that the ATFE be permitted as much time to complete its transition as the other bureaus and agencies being shifted to the Department of Homeland Security.

At the Department of Justice, the ATFE will have primary responsibility for the enforcement of the firearm, arson and explosives laws as well as criminal alcohol and tobacco laws. In that role, the ATFE will be able to work cooperatively with the FBI and the DEA in enforcing the criminal law while at the same time taking the lead when the case under investigation is primarily within their jurisdiction. According to recent news reports, the FBI and the ATF do not always have the best of relations. In fact, despite a long-standing memorandum of understanding between the two agencies allocating responsibilities, there is still a fair amount of competition between the two when it comes to areas where their respective jurisdiction overlaps. Now, with the ATFE working under the same leadership as the FBI, the Attorney General will be able to sort out these differences and maximize the cooperation between the two agencies. More cooperation will lead to a better focus on the war on terrorism.

The establishment of the ATFE at the Department of Justice gives the Government a dynamic weapon in the war on terrorism and in the every day battle against violent crime involving explosives, firearms and arson. We look forward to the ATFE joining the Department of Justice and its other law enforcement agencies. We also look forward to the ATFE maximizing its capabilities in enforcing the explosives, firearms, and arson laws and fighting the war on terrorism.

In addition to transferring ATF to the Department of Justice, this measure contains a subtitle that modifies our explosives laws. This provision is an amended version of S. 1956, the Safe Explosives Act, which was introduced earlier this year by Sen. ORRIN HATCH and me and H.R. 4864, the Anti-Terrorism Explosives Act, which was introduced earlier this year by Chairman SENSENBRENNER.

The Senate Judiciary Committee unanimously approved the measure this summer. I want to explain some of the provisions in this title of the bill and provide a more detailed section by section analysis of it.

Following the September 11 terrorist attacks on the World Trade Center and the Pentagon, we have had a growing sense that Congress needs to close numerous gaps in Federal law to help prevent future disasters. The current explosives laws are effective, but the Safe Explosives Act closes some loopholes and significantly improves its administration.

The Safe Explosives Act effects two major changes in our explosives laws: first, it creates a systematic method of enforcing our laws regarding who can and cannot purchase and possess explosives; and second, it makes some commonsense additions to the list of people who are barred from purchasing and possessing explosives.

Creating a systematic method for enforcing our laws makes sense in the current environment. Most Americans would be stunned to learn that in some States it is easier to get enough explosives to take down a house than it is to buy a gun, get a driver's license, or even obtain a fishing license. Currently, it is too easy for would-be terrorists and criminals to obtain explosive materials. Although permits are required for interstate purchases of explosives, there are no current uniform national limitations on the purchase of explosives within a single state by a resident of that State. As a result, a patchwork quilt of State regulations covers the intrastate purchase of explosive materials. In some States, anyone can walk into a hardware store and buy plastique explosives or a box of dynamite. No background check is conducted, and no effort is made to check whether the purchaser knows how to properly use this deadly material. In at least 16 States, there are little to no restrictions on the intrastate purchase of explosives.

By addressing the intrastate sale and possession of explosives, the Safe Explosives Act would help close one such loophole that allows potential terrorists and criminals easy access to explosive materials. Let me elaborate. As I said, under current law anyone who is involved in interstate shipment, purchase, or possession of explosives must have a Federal permit. This legislation creates the same requirement for intrastate purchases. It calls for two types of permits for these intrastate purchasers: user permits and limited user permits. The user permit lasts for 3 years and allows unlimited explosives purchases. The limited user permit also expires after 3 years, but only allows six purchases per year. We created this two-tier system so that low-volume users would not be burdened by regulations. The limited permit, like the user permit, imposes commonsense rules such as a background check, monitoring of explosives purchases, secure storage, and report of sale or theft of explosives. However, the Safe Explosives Act does not subject the limited user to the record keeping requirements currently required for full permit holders.

In addition to closing the intrastate loophole, this measure expands slightly the class of people who are barred from purchasing or possessing explosives. Current federal law prohibits certain categories of people from purchasing and possessing explosives. However, some important categories, such as people in the United States on a tourist visa, are not included in current federal explosives law. The committee feels that in addition to being barred from obtaining a firearm, these people should also be prohibited from purchasing and possessing explosive materials.

Overall, this measure strikes a reasonable balance between stopping dangerous people from getting explosives and helping legitimate users obtain and possess explosives. Most large commercial users already have explosives permits because they engage in interstate explosives transport. These users would not be significantly affected by our legislation. The low-volume users will be able to quickly and cheaply get a limited permit. And high-volume intrastate purchasers who are running businesses that require explosives should easily be able to get an unlimited user permit. Also, the measure will not affect those who use black or smokeless powder for recreation, as the legislation does not change current regulations on those particular materials.

Our goal is simple. We must take all possible steps to keep deadly explosives out of the hands of dangerous individuals seeking to threaten our livelihood and security. The Safe Explosives Act is critical legislation, supported by the administration. It is designed solely to the interest of public safety. It will significantly enhance our efforts to limit the proliferation of explosives to would be terrorists and criminals. It will close a loophole that could potentially cause mass destruction of property and life.

Let me thank the many people who assisted us in drafting these provisions. Senators HATCH and LEAHY and Chairman SENSENBRENNER were vital, as were Senators BAUCUS and GRASSLEY. The staff and leadership of the Department of Treasury, the Department of Justice and the ATF were invaluable. We all worked together cooperatively and in close collaboration, and I believe that the finished product reflects the professionalism and dedication of the staff of those agencies. They are all to be congratulated.

I ask unanimous consent that a section-by-section analysis of the measure be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF TITLE XI, SUBTITLE C

Section 1121—Short title

The short title of this bill is the "Safe Explosives Act."

Section 1122—Permits for purchasers of explosives

First, the following terms referenced in the bill are defined: permittee, alien, and responsible person.

Second, this section would require all purchasers of explosives to obtain a permit from the Treasury's Bureau of Alcohol, Tobacco, and Firearms (ATF), a process that includes a background check, thereby reducing the availability of explosives to terrorists, felons, and others prohibited by law from possessing explosives. Although permits are now required for interstate purchases, there are no current Federal limitations on the purchase of explosives within a single state by a resident of that state.

The new permit requirement would significantly enhance the government's ability to prevent the misuse and unsafe storage of explosives. As part of the permit application and renewal process, ATF would conduct background checks on all individuals wishing to acquire or possess explosives materials. Applicants would also be required to submit photographs and fingerprints along with their applications, to ensure that a thorough background check can be completed. Fingerprints are not necessary to conduct a background check, however it significantly reduces the work and amount of time for the positive identification of applicants, and therefore will greatly reduce the application turnaround time and workload for ATF.

In the case of a corporation, partnership or association, the applicant would be required to submit fingerprints and photographs of responsible persons, meaning those individuals who possess the power to direct the management and policies of the corporation, partnership or association pertaining to explosive materials. Consistent with ATF's current policy, this section does not require corporate applicants for explosives licenses to list every single corporate director or officer as a "responsible person" on its application for a license or permit. Those officials within the corporation who have no power to direct the management and policies of the applicant with respect to explosive materials need not be listed on the application. For example, in a large corporation that uses explosives in just one of many business activities, there may be many corporate officials who have no responsibilities or authority in connection with the explosives aspects of the company's business. These officials would not be listed as "responsible persons" on the application, and would not need to submit fingerprints or photographs to ATF. Furthermore, if corporate bylaws provide that certain high-level corporate officials do not have the power or authority to direct the management and policies of the corporation with respect to explosive materials, then such officials will not be considered to be responsible persons.

We encourage the Secretary to strive for balanced enforcement. In so doing, the Secretary should avoid imposing unnecessary burdens on applicants for explosives licenses and permits. There is no reason to require background checks for corporate officials who have no responsibilities or authority in connection with the explosives aspect of a company's business. By the same token, companies have an obligation to be forthright with the ATF, and we expect them to err on the side of overinclusiveness in deciding who may be a responsible person.

This section will also require applicants to list the names of all employees who will have possession of the explosive materials, so that the ATF can verify that these individuals are not prohibited from receiving or possessing explosives. In order to prevent an overload of employee background checks all at once for the ATF, current licenses and permits will remain valid until that license or permit is revoked, expires, or until a timely application for renewal is acted upon. Under current law, it is too easy for would-be terrorists and criminals to obtain access to explosive materials by obtaining jobs (such as driving trucks) with explosives licensees. These expanded requirements would also apply to entities seeking to obtain a license to sell explosives.

It is the Committee's intention that ATF should work closely with the regulated industry to develop guidance as to which employees are considered to be in "possession" of explosive materials in the course of their employment. Applicants for explosives licenses or permits are not required to list every single employee of the business. Instead they are only required to list employees who are expected to possess explosive materials as part of their duties.

In developing these standards, ATF should be guided by the case law interpreting the term "possession" under the Gun Control Act of 1968, GCA, as amended. It is well established that possession under the GCA may be demonstrated through either actual or constructive possession. Actual possession exists when a person is in immediate possession or control of an object, and includes instances where a person knowingly has direct physical control over the object at a given time. Thus, employees who physically handle explosive materials would clearly be in possession of those materials. This would include, among others, employees who handle explosive materials, as defined by the law as part of a production process; employees who handle explosive materials in order to ship, transport, or sell them; and employees who actually use the explosive materials. All of these employees, as well as any other employees who actually possess explosive materials as part of their duties, must be listed on the application for a license or permit.

Where direct physical contact is lacking, a person may nonetheless have constructive possession where he or she knowingly has the power and the intention at a given time to exercise dominion and control over the explosives, either directly or through others. Accordingly, this section would require applicants for licenses or permits to list all employees who will have constructive possession of explosive materials as part of their duties. For example, an employee who drives a truck with an explosives load is in constructive possession of the explosives even though he may not physically handle them. This individual has dominion and control over the explosives while he transports them; furthermore, he could easily divert them from their intended destination. Such an individual should be subject to the background check requirements of the amended law. Similarly, a supervisor at a construction site who keeps the keys for the building in which the explosives are stored, and directs the use of explosives by other employees, would be in constructive possession of those explosives.

Finally, this section recognizes the distinction between small individual users of explosives and large commercial users by creating a new "limited permit" for those infrequent purchasers. The limited permit allows a purchaser to make no more that six purchases of explosives within a 12-month period, and the permit is only valid for purchases within the purchaser's state of residence. While limited permit holder must pass the background check like all other permit applicants, they are not subject to spot inspections imposed on full permit holders. To ensure that holders of limited permits are not violating law by acquiring explosive materials more than six times a year, this section requires anyone selling explosives to a limited permit holder to report the sale to the ATF. This allows the ATF to monitor misuse by limited permit holders, and investigate suspicious volume purchases by such individuals, while allowing infrequent users to access more than enough for their needs. Holders of limited permits would also be required to report their distribution of excess stocks of explosives to other permittees or licensees.

All permittees, limited or otherwise, are subject to inspection by the ATF to ensure that the explosives are being properly stored. In the interest of minimizing the turnaround time for approval of licenses and permits, and in order to avoid overburdening ATF with an onrush of inspections immediately after this act takes effect, the bill gives ATF the discretion to defer immediate inspection of license and permit applicants at the time of application. However, because of concern for public safety, a provision requires ATF to inspect both permitees and licensees within three years of issuing a license or permit. Specifically, ATF must inspect limited permitees prior to a third consecutive renewal, and licensees or user permitees prior to the first renewal. It also increases the amount of time ATF has to approve or deny an application to 90 days. This will allow

ATF ample time to conduct thorough background checks, especially important immediately following enactment of the bill when there will likely be a surge in applications. These provisions were put in the bill at the request of the House.

This section also includes an important measure that ensures privacy for employees or potential employees of a company that applying for a user permit that are subject to a background check. The provision requires the Secretary of the Treasury to notify the employer as to whether or not an employee passes the background check. However, should an individual not pass the employer will not be told the reason why. Rather, the employee will be notified as to the reason(s) for not passing.

Section 1123—Persons prohibited from receiving or possessing explosive materials

This proposal expands the list of those people who are prohibited from purchasing or possessing explosives to include: mental incompetents, aliens other than lawful permanent resident aliens, people dishonorably discharged from the military, and Americans who have renounced their citizenship. The addition of such categories to the list of prohibited persons recognizes the potential for terrorists or other criminals to use explosives to carry out their attacks and brings the explosives law in line with most categories of prohibited people in the Gun Control Act.

Congress has already determined that the possession of firearms by the above categories of people is dangerous to society. In order to combat terrorism and other violent crime, it is essential that Federal law prohibit the receipt or possession of explosive materials by such individuals already deemed too dangerous to possess firearms. The language relating to non-immigrant aliens differs slightly from that in the Gun Control Act, as technical changes have been made to improve the clarity of the provision.

Section 1124—Requirement to provide samples of explosive materials and ammonium nitrate

This section would enhance the ATF's ability to solve cases involving explosives by requiring Federally licensed explosives manufacturers and importers and persons who manufacture or import ammonium nitrate to provide to ATF, upon request, with samples of, or chemical information on, the products they manufacture or import. The ATF fulfills a critical investigative role in the solving of crimes or acts of terrorism committed by explosives. Such information is essential to ATF's ability to prevent and solve bombings and to trace explosive materials that are used in terrorist activities and other violent crimes by matching residue with the manufacturers' samples. Also, the ability to evaluate such samples as well as information on the chemical composition of these products will allow the ATF to familiarize themselves with products that may be diverted to criminal misuse.

Section 1125—Destruction of property of institutions receiving federal financial assistance

This section expands ATF's authority to investigate destruction of property by fire or explosion if the property receives federal assistance.

Section 1126—Relief from disabilities

This section allows for a person who is prohibited from the above mentioned explosive material possession, purchase, etc. to apply to the Attorney General for relief from disabilities. The Attorney General may grant that relief if the circumstances regarding the disability are such that the applicant is not likely to be dangerous to the public if allowed to work with the above mentioned explosive materials, and that it would not be contrary to the best interest of the public.

Section 1127—Theft reporting requirement

According to this section, all licensees and permittees are required to report the known theft of explosive materials from that user no later than 24 hours after the discovery of theft. Failure to do so can result in a fine not more than $10,000, or imprisonment not more than 5 years, or both. It is essential that ATF investigate theft of explosives in order to prevent accidental or criminal misuse.

Sec. 1128—Authorization of appropriations

This section authorizes the appropriation to carry out the provisions of the bill.

The PRESIDING OFFICER. The Senator from Maine.

Ms. COLLINS. I yield myself 5 minutes from the time of Senator THOMPSON and 5 minutes from the time of the leader.

The PRESIDING OFFICER. Without objection, it is so ordered.

Ms. COLLINS. Madam President, this legislation to create a new Department of Homeland Security will result in the most significant transformation of the executive branch in over 50 years and is of fundamental importance to our national security. I believe that Congress has the responsibility to establish a new Department of Homeland Security this year, before we adjourn for we know that those wishing to do our nation harm will not wait for us to act.

The longer we delay, the longer we leave vulnerabilities in place, the longer we consciously rely upon a fragmented system to guard our homeland. While creating a new department in and of itself will not be sufficient to safeguard our homeland, it will bring much needed focus and coordination to the task.

In the year since the terrorist attack, much has been done to make our nation more secure. Congress has approved billions of dollars to secure our borders, protect critical infrastructure, train and equip first responders, and better detect and respond to biological or chemical attacks. Our brave men and women in uniform have fought valiantly in the war against terrorism and have secured important victories in Afghanistan.

The creation of the Department of the Homeland Security is the next step in our efforts to secure our nation against another terrorist attack. The task before us is daunting. This sweeping reorganization dwarfs any corporate merger. It involves some 170,000 employees and a budget of nearly $40 billion.

Despite the magnitude and challenge of the task, there should be no doubt about the need for this new cabinet department. Currently, as many as 100 Federal agencies are responsible for homeland security, but not one has homeland security as its primary mission. When that many entities are responsible, nobody is really accountable, and turf battles and bureaucratic disputes are inevitable.

If we are to overcome these problems and create a workable national security structure, then we must unite the current patchwork of governmental entities into a new Department of Homeland Security. The new agency will work to secure U.S. borders, ports, and critical infrastructure. It will synthesize and analyze intelligence from multiple sources, lessening the possibility of intelligence communication breakdowns. And it will coordinate security activities now undertaken separately by agencies like the Customs Service, the Federal Emergency Management Agency, and the Immigration and Naturalization Service so that the resulting effort will be greater than the sum of its parts. The new Department for Homeland Security will help to remedy many of the current organizational weaknesses and to protect us against future attacks.

As a member of the Senate Governmental Affairs Committee, which held extensive hearings on the reorganization, I had the opportunity to consider carefully myriad ideas and concepts about the creation of the Department. We heard testimony from Governor Ridge, from Director Mueller of the FBI, from Director Tenet of the CIA, and from numerous other experts. They all shed light on the problems that have impaired our ability to defend our homeland, and on the threats that we now face and that will inevitably challenge us in the future.

While strongly supporting the creation of the Department, I believe that we also must protect the traditional roles of institutions and agencies that are important to America's economic and social fabric. In particular, the Coast Guard's traditional functions—such as search and rescue and marine resource protection—must be maintained.

Since the attacks of September 11, the Coast Guard's focus has shifted to homeland security. The Coast Guard plays an essential role in homeland security, and I believe that it should play a leading role in the new Department. If, however, the current resource allocation is maintained, and the Coast Guard continues to assume new responsibilities, its traditional missions may be jeopardized.

Prior to September 11, port security accounted for approximately 2 percent of the Coast Guard's resources. Immediately following the terrorist attacks, the Coast Guard deployed 59 percent of its resources to port safety and security missions. As a result, many of the aircraft and vessels used for search and rescue were far removed from their optimal locations for search and rescue. Even after the immediate impact of September 11 attacks subsided, its impact on the resources of the Coast

Guard remained. Indeed, the Coast Guard continues to devote fewer hours to its traditional functions than it did before 9/11.

Because of the Coast Guard's importance to coastal areas throughout our Nation, any reduction in its traditional functions is of great concern. Last year alone, the Coast Guard performed over 39,000 search and rescue missions and saved more than 4,000 lives. On a typical day, the Coast Guard saves 10 lives, interdicts 14 illegal immigrants, inspects and repairs 135 buoys, and helps more than 2,500 commercial ships navigate into and out of U.S. ports. In short, the Coast Guard's traditional missions are of vital importance and must be preserved.

Let me take a minute to talk about the Coast Guard's importance in my home State of Maine. Each year, the Coast Guard performs about 300 search and rescue missions in my State. These missions are literally a matter of life and death. Just a few weeks ago, the Coast Guard saved two Maine fishermen from their burning boat off the coast of Massachusetts after a 12 hour search.

Since October 1999, fourteen fishermen have lost their lives off the coast of Maine. Commercial fishing is one of the most dangerous of occupations. How many more fisherman or recreational boaters would have died or been injured if the nearest Coast Guard cutter were not in port? How many more will lose their lives if the local Coast Guard stations must devote the majority of their time to homeland security alone? I agree that the Coast Guard must perform homeland security functions. But it is critically important that it not do so at the expense of its traditional missions.

Senator STEVENS and I addressed these concerns during the Governmental Affairs Committee's mark-up of the original homeland security bill. We offered a successful amendment to preserve the traditional functions of the Coast Guard.

The compromise bill ensures that the Coast Guard's non-homeland security functions will be maintained after its transfer into the new Department, and also provides for flexibility to ensure our national security. As our amendment provided, the compromise homeland security bill has the Commandant of the Coast Guard report directly to the Secretary of Homeland Security, thus ensuring direct access for the Commandant's views. The protections for the Coast Guard will help safeguard our coastal communities' economies, way of life, and loved ones, while Americans, wherever they live, can rest assured that the Coast Guard will perform its necessary and vital homeland security functions.

Similarly, I am pleased that the compromise bill incorporates a provision that Senator LEVIN and I proposed to create a Special Assistant position in the Secretary's office to promote public/private partnerships and to ensure that the business community has a place to go to ask questions, voice concerns, and provide feedback. It is important to bear in mind that our homeland security and economic security are closely linked, and that the failure of one jeopardizes the other. Our economic vitality makes us strong and capable of defending our nation against external and internal threats.

The issue of personnel and management flexibility, unfortunately, became the most controversial issue in this homeland security debate. The creation of the new Department will transfer approximately 170,000 current Government employees who are covered by a large number of different work rules, personnel systems, and labor agreements from other departments and agencies. Given the pressing importance of the new Department, and the vital functions it will perform, we need to grant the new Secretary appropriate but not unlimited authority to create a flexible, unified new personnel system that meets the Department's unique demands.

This legislation strikes the right balance. Initially, the Administration sought power for the Secretary to unilaterally modify all of the civil service laws which I opposed. The administration compromised and will have flexibility in only those areas it deemed vital to the Department's efficient functioning.

Also, I would note that there are many safeguards to prevent abuse of this authority that we are granting the Department, including a requirement I authored requiring that any changes made to the appeals rights of the Department's employees be made only to "further the fair, efficient and expeditious resolution" of workers' appeals. Additionally, any changes made will now be subject to mediation, unlike the Administration's initial proposal, which only called for notification.

As we create a new Department of Homeland Security, it is critically important that we remember those on the front lines of any emergency: our police, our firefighters, our EMS personnel. I am disappointed that the compromise bill fails to include important amendments that I offered with Senators FEINGOLD and CARPER, and that were adopted both in committee and on the Senate floor.

The compromise bill includes an Office for State and Local Government Coordination, but it lacks the provisions needed to ensure that the new Department coordinates and communicates adequately and efficiently with state and local first responders. Senators FEINGOLD, CARPER and I would have placed a Department liaison in each State, thereby enhancing the Department's ability to work effectively with first responders, who perform such a critical role in our homeland defense. In my role as chairman of the Governmental Affairs Committee, I plan next year to revisit this issue to ensure that the new Department and our first responders can work efficiently together not at cross purposes when emergencies arise.

The new Department of Homeland Security is an essential component of our response to current and future threats. As the brutal attacks of September 11th demonstrated, distance from our enemies and the barrier of oceans no longer suffice to protect our nation. The bill that we are considering today is an important step in making our homeland more secure.

I reserve any unused time for Senator THOMPSON.

The PRESIDING OFFICER (Ms. CANTWELL). The Senator from Connecticut.

Mr. DODD. I will yield myself 15 minutes off the majority side. I would like to be notified by the Chair when 5 minutes have expired. I would like to separate the remarks: 5 minutes spent on the homeland security issue, and then 10 minutes on terrorism insurance, of which I will be yielding some brief time to colleagues who want to be heard on that matter. Senator SARBANES, the chairman of the Banking Committee, will be coming to the floor at which time he will also have 15 minutes to talk about terrorism insurance or other matters he may want to raise, in which case we will try to have our remarks appear continuously, if we can, regarding terrorism insurance.

On the issue of homeland security, I am going to vote for this bill in the end when we are called upon, in several hours, to do so.

First of all, let me commend my colleague from Connecticut, who has been the manager of this bill along with Senator THOMPSON of Tennessee for the last number of weeks and months since this bill has been part of the debate in the Senate.

I want to commend JOE LIEBERMAN. My colleagues should know—and I am sure they remember this—he introduced this legislation in October of last year. The committee marked up that bill, I think, with just Democratic votes out of the Government Affairs Committee to bring a homeland security bill to this Chamber.

I am delighted to hear that we now have strong bipartisan support for this effort. But let us be clear about the history. The history is that JOE LIEBERMAN offered this idea to this body. It was his committee under his leadership that marked up that bill and sent it to the floor on a partisan vote, unfortunately. We are now going to vote on it.

I will vote for passage of the bill before the Senate today, but I will do so with deep reservations. I believe that the bill before us does far too little to adequately protect average Americans from the dangers posed by terrorists. And regrettably, it does far too much to protect special interests favored by the majority party in the other body. That having been said, I believe that, on the whole, the bill will make America marginally more secure and I would rather err on the side of improving security than on the side of inaction. I will to look for every opportunity to make improvements in Department of Homeland Security in the months ahead.

This bill does take a step in the right direction by creating a unified department that can focus on security. Effectively reorganizing parts of the federal government can improve our security. The bill will allow the Department of Homeland Security to coordinate activities that have previously been conducted by two dozen separate agencies. This bill will allow the Administration to consolidate layers of government and if the Administration does this well, it should improve the way our government collects and shares information. By eliminating redundancy and conflicts within the government, the new department can make it easier to identify and respond quickly to threats as they emerge.

Further, if the Administration wisely uses the authority granted to it in this bill, it should be able to improve security at our borders. This bill authorizes the administration to completely revamp our immigration and naturalization services. If the Administration uses this authority to truly modernize immigration services, it will be able to avoid problems like those we have all read about cases where the immigration and naturalization services issued student visas improperly because of computer errors, poor record-keeping, and lax analysis of information.

Still, despite these and several other constructive provisions, this bill could have done more to strengthen homeland security. For example, it could have done more to foster better coordination and to better prepare local communities to respond to emergencies that may occur. I offered an amendment that would have authorized the Department of Homeland Security to establish a grant program to help local fire departments address the chronic understaffing problems that plague so many local departments. The International Association of Firefighters and the International Associate Fire Chiefs have estimated that we need at least 75,000 additional firefighters in this country just to meet pre-9/11 staffing needs. Since 9/11, firefighter labor shortages have become even more of a problem across the country. Senator WARNER and I recognized the full extent of the problem of firefighter understaffing shortly after September 11, 2001, and we wrote legislation to help solve the problem. The amendment I offered was based on the bill that Senator WARNER and I wrote. The amendment also built on the FIRE Act, which Senator DEWINE and I authored in 2000. The FIRE Act, which became law thanks in large part to the effort of Senators WARNER and LEVIN, has provided more than $400 million to train and equip tens of thousands of firefighters around the country. Understaffing has become such a problem, that according to the International Association of Firefighters, nearly ⅔ of all fire departments cannot meet minimum safety standards.

I also attempted to offer a second amendment to provide equitable pay for federal law enforcement officers. This amendment would have ensured that the federal government could retain highly-qualified and experienced law-enforcement professionals. All over the country, federal law enforcement officers are retiring from the federal service because they can make more money working in the private sector or for state and local governments. In New York, San Francisco, and Los Angeles, where living expenses are high, the FBI reported that 65% of its agents have been on the job for less than 5 years. This statistic reflects the fact that experienced officers would rather leave the Federal service than accept transfers to these expensive cities where they cannot provide adequately for their families.

Don't get me wrong, all of the men and women who serve as Federal law enforcement officers do an outstanding job. But I also believe that experience is an invaluable asset and I think we need to make sure that the talent that comes with experience is available to the Federal government. Our Federal law enforcement services should be more than just a training ground—our law enforcement officers should be among the most experienced and highly skilled in the world so that they can provide the high degree of protection that the American people so rightly deserve.

The bill before us would have been far better if it had more fully addressed the critically important needs of firefighters and federal law-enforcement officers. Sadly, however, their needs are all but ignored in this legislation. I intend to seek any and every opportunity in future to remedy this shortcoming. A homeland security bill that largely ignores the needs of these dedicated civil servants can only be considered a partial success.

Instead of focusing on the interests of the American people and those of firefighters and law officers, the bill before us contains numerous special interest provisions that help large corporations and do nothing to ensure the safety of the American public. In fact, I believe that some of the provisions in this bill could potentially cause harm to the public.

One provision of particular concern will bar parents from seeking legal redress from pharmaceutical companies whose drugs may have caused autism in their children. Parents would be barred from pursuing complaints through the courts and instead would be forced into the Federal Vaccine Injury Compensation Program, which limits damages to $250,000. I have supported reasonable tort reform in the past, but this provision changes the rules in the middle of the game for people who are already before the courts. Under this provision, pending lawsuits that have absolutely nothing to do with homeland security will likely be dismissed and parents who claim their children have become autistic due to corporate malfeasance will be denied their day in court.

The homeland security bill before us also guts an amendment offered by Senator Wellstone, which would have prohibited the government from contracting with companies that have moved their headquarters overseas to avoid taxes in the United States. Under the current bill, the Secretary of Homeland Security has broad authority to contract with these corporate expatriates. This provision is a welcome relief to those companies that would dodge their patriotic duty at a time of war by relocating to foreign shores.

I am concerned about another provision in the bill that exempts the new Department's advisory committees from the open meetings requirements of the Federal Advisory Committee Act (FACA). Agencies throughout government use advisory committees that function under open meetings rules and the open meetings law is careful to protect discussions and documents that involve sensitive information. The law currently applies to the Department of Defense, the Department of Justice, the State Department, the National Security Agency, and others. In my view, the administration has failed to make the case for exempting the Homeland Security Department from the requirement that records for committee meetings should make available to the public.

Another blatantly unnecessary and misguided element of the bill would create a very narrow university-based homeland security research center program. Based on the criteria outlined in the bill, the research center that would be created is described so narrowly that it appears that only a handful of universities—including Texas A&M University—might qualify to host the center. This provision amounts to Congress intervening to pick winners and losers in the field of science. The Democratic amendment would have eliminated the list of highly specific criteria that appears to direct the science center program to particular universities. This bill would have been better if that amendment had succeeded.

I invite anyone who may be interested to call up the Web site at the White House to get an idea about what the homeland security bill looks like. This is what it looks like. It is 35 pages long. This is the bill the White House submitted as the homeland security bill. That is what you will get if you call up the Web site. What we are actually going to vote on is this. The bill I just showed you is 35 pages long. The bill we are going to vote on is 484 pages long. Once the House leadership got their hands on this bill, it grew by 450 pages. Most of the extraneous material has nothing to do with homeland security. It has a lot to do with special interests, but not homeland security. When you call up that White House Web site and you ask for the bill, you are going to get the short version, but we are going to vote on this monstrosity of 484 pages.

I am told that the White House and others are going to clean this up in the coming Congress. They have a major job to do.

There are provisions in this bill that have no bearing and no relationship whatsoever to homeland security that were stuck in here in an act of arrogance by the leadership in the other body. They assumed they could put anything they wanted in here and then send it over and we would have to support it. Most of us know that these matters have no business being in this bill.

There are a number of provisions, of course, in the bill that Senator LIEBERMAN authored that are included here and therefore deserving of support.

That is the quandary in which we find ourselves. There are good pieces here that truly deal with the necessity of bringing agencies of Government together so we can respond more effectively and efficiently to terrorists—a matter we have to confront. But it is a tragedy they have taken language and then added to it all of these other provisions in these 484 pages.

There are some things that are left out as well. I want to commend my colleague from Maine, Senator COLLINS, as did our colleague from New York, Senator CLINTON, for talking about the absence of dealing with first responders. It seems unfair, to put it mildly, that we are not dealing here with the police, firefighter, and emergency medical services personnel. We're not giving them the kind of support and backing that will be necessary if we are struck with another terrorist attack.

I am hopeful as we reconvene the 108th Congress in January that we will be getting on with the business of doing what we can to see to it that those provisions to help first responders are going to become the law of the land.

There have been provisions passed already that deal with homeland security, but, unfortunately, the President decided to sequester those funds.

For those who may not understand what sequester is, that is tantamount to a veto—about $150 million—sitting down there just waiting for the President's signature which would become available to deal with homeland security.

But again, there are good provisions in the original Lieberman proposal and many of those provisions remain intact. For those reasons, despite the fact that the bill includes a lot of things that do not deserve to be in here, and on the commitments we have received from the Republican leadership as well as the White House to scrub this legislation and get rid of a lot of these things that have been added on here, I will support this bill.

But when you call up that Web site, you might ask them where the other 450 pages are which you won't get.

In closing, I would have preferred to lend my support to a more focused, more effective, homeland security bill. I tried to improve this bill, but at the end of the day this is the best we could do given the opposition we faced. I presume that this is not the last opportunity Congress will have to address homeland security. In the months ahead, I will continue to fight for improvements to the department we are creating. I will continue to fight for cops, not corporations; firefighters, not firms. America's security from terrorism depends on the men and women who wake up every morning, put on uniforms from state and local agencies across the country, and place themselves at risk for our nation. We owe them—and the Americans they are sworn to protect—more than this bill provides. But to do nothing would be to provide even less, and that is not wise under the present circumstances. This bill is a start toward a more rational and effective approach to strengthening security for all Americans here at home. For that reason I will support this homeland security bill.

THE TERRORISM RISK INSURANCE ACT

Madam President, I rise today in support of the conference report on the Terrorism Risk Insurance Act of 2002. This conference report represents a truly bipartisan, bicameral compromise. The Senate overwhelmingly supported the underlying legislation, which I introduced, along with Senators SARBANES, REID, and SCHUMER, in June of this year by a vote of 84–14.

This conference report closely mirrors the Senate-passed bill, and in many regards has been improved by negotiations with the House.

Late last week, the House passed this conference report by voice vote. It is my fervent hope that the Senate will move shortly to support it as well.

In the 14 months since September 11, 2001, Congress has taken many important steps to protect our Nation from the new threat of terrorism. Most of these measures have focused on protecting our Nation's physical security—such as our new anti-terrorism laws, airport security legislation, and other initiatives to shore up our "homeland defense."

But we cannot, and must not, fail to respond to the effects that the new threat of terrorism are having on our Nation's economic security.

The goal of the September 11 terrorists was not simply to cause an enormous loss of life—it was also to derail America's economy; to undermine the consumer and investor confidence that serves as the cornerstone of our free enterprise system.

It is, therefore, by no means an overstatement to say that a robust American economy, and continued American prosperity, are as vital to defeating the aims of terrorists as is protecting American lives.

As a result of the September 11 attacks, during the past year, several critical sectors of the economy—real estate, commercial lending, aviation, construction, and others—have experienced significant disruptions because of the difficulty in finding terrorism insurance. By some estimates, this has cost American workers thousands of jobs and cost our economy tens of billions of dollars in economic growth activities—at a time our economy can surely use responsible economic stimulus.

The bottom line is that the insurance which protects America's buildings, businesses, homes, and workers from terrorist acts is no longer readily available or affordable. The impact on our economy of the shortage and expense of terrorism insurance has been detrimental.

According to the Real Estate Roundtable, over $15 billion worth of new real estate projects across the country have been stalled or canceled because of a continuing scarcity of terrorism insurance during the past year.

The Risk Insurance Management Society, RIMS, recently released a survey which revealed that 71 percent of its membership found it very difficult or impossible to obtain adequate terrorism insurance. Also, 84 percent felt that their companies were inadequately covered against a future terrorist attack, while nearly 70 percent had no terrorism coverage whatsoever.

Rating agencies like Moody's have downgraded the credit ratings of nearly $5 billion in commercial mortgage backed securities because terrorism insurance could not be obtained on the underlying properties.

It has estimated that the lack of terrorism insurance has caused construction workers to potentially lose up to 300,000 jobs because projects couldn't get financing without such insurance. According to Edward Sullivan, President of the Building and Construction

Trades, AFL-CIO, "The unavailability of terrorism risk insurance is hurting the construction industry by making the cost and risk of undertaking new building projects prohibitive. Building projects are being delayed or canceled for fear that they may be future terrorist targets. Lenders are refusing to go forward with previously planned projects where terrorism insurance coverage is no longer available. As a result, construction workers are losing job opportunities."

Just last week, a survey conducted by the New York City Comptroller cited the "dramatic" increases in commercial insurance premiums coupled with a "significant decline" in the availability of insurance since the September 11 attacks. The comptroller has urged the passage of federal legislation—such as that contained in this conference report.

Without Federal action, the General Accounting Office has warned that another terrorist attack would seriously impact America's economy by exposing businesses and property owners to potentially enormous losses—losses that could wipe out those businesses as well as the businesses that insure them.

No one wants to think about another terrorist attack. However, our free market system, in order to function efficiently, has to factor the risk of such an attack into its economic thinking.

The fact is, experts are estimating that, should another attack comparable to the September 11 attacks take place, only about 20 percent of the losses would be covered. This exposes our economy—and our entire country to a significant—and in the opinion of many, an unacceptable level of vulnerability.

We are here today to address this vulnerability. The passage of this conference report will go a long way toward calming our nervous insurance marketplace, and allow American businesses to continue to invest, and expand—in short, to continue business as usual.

This conference report makes sense because it calls upon the Federal Government to act only as an insurer of last resort. The private insurance industry will maintain front-line responsibility to do what it does best: calculate risk, assess premiums, and pay claims to policyholders.

The insurance industry is paying off the losses from the September 11 attacks, estimated to be roughly $30 billion—$40 billion. And the industry has made clear that despite this unprecedented loss, it remains strong and solvent.

Insurance isn't something we think about every day, yet it is vital to the overall health of our economy. By protecting people and property, goods and services in every sector of America's $10 trillion economy, insurance provides the stability and certainty required to keep our economic engine humming. Every prospective homeowner needs insurance to obtain a mortgage from a bank. Similarly, industries as diverse as commercial real estate, shipping, construction, manufacturing, and even "mom and pop" retailers require insurance to obtain credit, loans, and investments necessary for their normal business operations.

So although insurance isn't something we can touch and feel, its availability is as vital to rebuilding our economy in the aftermath of September 11 as bricks and beams will be to rebuilding lower Manhattan.

But the private insurance market cannot at this time bear the full risks of future attacks. As part of our defense against terrorism, and specifically to maintain the strength of America's economy, our government must share, at least temporarily, some of the risk associated with damage from terrorist acts.

And that's what the Terrorism Risk Insurance Act of 2002 does—by establishing a temporary Federal program under which the government would share the risk of future terrorist attacks with the insurance industry for up to three years.

In order to protect the American taxpayer, federal cost-sharing would become available only if total losses from terrorist attacks exceed $10 billion in the first year of the program. Insurers and policyholders would retain responsibility for the initial $10 billion in losses. This industry retention increases gradually throughout the life of the program.

For losses between $10 billion and $100 billion, the government would assume responsibility for 90 percent of the costs. Should losses top $100 billion, Congress would determine the appropriate mechanism for ensuring payment.

For payments made by the federal government for insured losses during the course of a year, the Treasury Secretary will recoup the difference between total industry costs and $10 billion. The recoupment will be accomplished through a surcharge on policyholders.

In order to insure that insurance consumers are both adequately informed and able to take full advantage of this program, several key consumer protections are included. Insurance companies are prohibited from discriminating amongst consumers in their offering of terrorism coverage. This conference report, like the Senate-passed bill, requires that insurers offer terrorism coverage in all of their property and casualty policies during the first 2 years of the program.

Additionally, at the time that policies are offered, purchased, or renewed, insurers must provide a clear and conspicuous disclosure of the premiums charged for terrorism insurance. Insurance consumers may not be charged for coverage that is not explicitly disclosed.

Lastly, nothing in this legislation prohibits state insurance regulators from retaining full authority to disapprove any rates or forms that violate state laws.

Simply put, our bill would ensure that the federal government would provide a temporary backstop to bring stability to a part of the economy that was seriously destabilized on September 11, 2001 against future terrorist attacks. This is the only way to bring full confidence back into the insurance markets that are so vital to our Nation's overall economic health.

This conference agreement is based on three important principles. First, it makes the American taxpayer the insurer of last resort. The insurance industry maintains front-line responsibility to do what it does best: calculate risk, assess premiums, and pay claims to policyholders.

Second, it promotes competition in the current insurance marketplace. Competition is the best way to ensure that the private market assumes the entire responsibility for insuring against the risk of terrorism, without any direct government role, as soon as possible.

Third, it ensures that all consumers and businesses can continue to purchase affordable coverage for terrorist acts.

Some say such a plan would be an unwarranted "bailout" of the insurance industry. Far from it. Not only will this measure be temporary, but any money the Federal Government spends through the program will go to victims of terrorism, not insurance companies. This conference report is needed to protect insurance consumers—consumers who need and deserve the stability promoted by this conference report.

America will win this war on terrorism. But to do so, our economic front must remain strong. Preserving the availability of terrorism insurance will act as "homeland defense" for our economy.

We must remember, on September 11 the terrorists did not target just the World Trade Center and Pentagon—they targeted our entire Nation. And we must have a national response. This conference report is part of that response.

Madam President, I would like to particularly thank, of course, the chairman of the Banking Committee, Senator SARBANES, for his leadership and support.

I would also like to thank the President of the United States. We would not be passing terrorism insurance were it not for the efforts of the White House that weighed very significantly in trying to bring this bill to closure and fruition.

This bill has been around for a long time—since October of last year. We have dealt at a number of levels with the physical security of our Nation since 9/11. But our Nation's security is complete without dealing with our economic security, and this terrorism insurance conference report is designed to do just that.

As a result of the efforts of Senator SARBANES, of Senator CORZINE, and of my colleague, Senator SCHUMER from New York, Senator JACK REED of Rhode Island as well as others who have worked on this legislation.

Additionally, I would like to thank Congressman MIKE OXLEY of Ohio, chairman of the House Financial Services Committee, and JOHN LAFALCE, the ranking member for their efforts on this front as well.

I thank the Members who worked so diligently on this legislation. We spent a great deal of time on liability issues. In the end, we were able to strike a fair compromise. It is truly a bipartisan bill. It is bicameral in that both Chambers have been involved in the structure of this language. At lot of hours were spent—until the wee hours of the morning on one particular night until 5 a.m. working with the House and Senate staff to work out the differences and come to a final agreement on a conference report.

I know there are those in the other Chamber and some here who would have liked this bill to become the vehicle for tort reform. But the reality is we needed to deal with terrorism insurance and this legislation does just that.

Again, I thank the President of the United States. I have been critical of the President on numerous occasions. He deserves commendation here. But for his efforts and his staff to pull this together, we would not be talking about a final product. I am very grateful to him and to my colleagues and staff for their work.

I would like to particularly thank Alex Sternhell of my staff who worked tirelessly on this product for the past year to try to get us to a point where we can pass terrorism insurance.

Again, I thank those who have contributed so much to this conference report.

Senator SARBANES, Chairman of the Banking Committee, has played an invaluable role. Other conferees, Senators SCHUMER and JACK REED, were critical to reaching consensus on this important legislation. Senators CORZINE, CLINTON, and BEN NELSON also make important contributions.

I would also like to acknowledge the hard work of Senators DASCHLE and REID, who tirelessly shepherded this bill through the legislative process. I would like to thank my colleagues in the House, MIKE OXLEY and JOHN LAFALCE.

Also, Treasury Secretary Paul O'Neill and Undersecretary Peter Fisher and other members of the Treasury Department—Pat Cave, Laura Cox, Ed DeMarco, Mario Ugoletti—who put in long hours in order to ensure that the mechanics of the Federal backstop created in this conference report are sound.

And lastly, I would like to thank the staffs of the Senate and House who played a critical role in this conference report:

Sarah Kline, Aaron Klein, Didem Nasanci, Polly Trottenberg of the Senate Banking Committee.

Terry Hains, Robert Gordon, Charles Symington, Michael Paese, and Lawranne Stewart of The House Financial Services Committee.

I would also like to recognize two members of the Legislative Counsel's office Laura Ayoud and Paul Callen, who have performed their duties so capably and in a nonpartisan fashion that is so important to the legislative process.

This conference report is about economic security. As important as our physical security is, our economic security is critically important. This conference report is an important piece of ensuring our nation's economic security. I look forward to the coming hours and days when the President will sign this bill into law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I understand I have 15 minutes on this bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. Does the Senator also seek to speak on this bill?

Mr. SPECTER. Madam President, if I may respond, I will seek recognition. I will be glad to wait until the Senator from Maryland concludes. I do intend to seek recognition to speak on the homeland security bill.

Mr. SARBANES. Will the Senator allow us to use up the time that we have on this bill—I have 15 minutes and Senator DODD has 5 left—so we can complete the consideration of that?

Mr. SPECTER. I would be agreeable to that. If I might propound a unanimous consent that, at the conclusion of the 20 minutes referred to by the Senator from Maryland, I be recognized for 20 minutes which I have on homeland security.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SPECTER. I thank the Chair. And I thank my colleague from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, let me try to parcel out the time here.

The Senator needs 3 minutes, as I understand it.

Mr. SCHUMER. Yes.

Mr. SARBANES. And the Senator from New Jersey needs 3 minutes. And the Senator from Rhode Island?

Mr. REED. Three minutes.

Mr. SARBANES. That is 9 minutes. And the Senator from Nebraska, 3 minutes?

Mr. NELSON of Nebraska. Yes.

Mr. SARBANES. Madam President, I yield 3 minutes each to Senators SCHUMER, CORZINE, REED, and NELSON of Nebraska, and reserve the other 3 minutes for myself. And then Senator DODD, I think, still has just under 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SARBANES. I will use my time at the end.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you, Madam President.

I thank my chairman of the Banking Committee for yielding. I want to make a few brief points both on terrorism insurance and on homeland security.

HOMELAND SECURITY

First, on homeland security, briefly, I will vote for the bill. I think it is a far-from-perfect measure. In fact, reorganizing the Government does not really do most of the job we need to do. It will not make the computers at the INS put those on a terrorist watch list on that list. It will not make the Coast Guard patrol out to 200 miles.

We are going to have to spend some dollars. And we are going to have to do some work within the agencies after we reorganize them.

So it is a first step. It is better than nothing, but I hope and pray that this Nation will understand that if we just do this on homeland security, and nothing else, we are woefully unprepared. When we come back in January, it ought to be our highest priority.

TERRORISM INSURANCE

Madam President, on terrorism insurance, I, first, thank my colleagues from Maryland, Connecticut, New Jersey, Rhode Island, Nebraska, and everyone else who worked so long and hard on this legislation. This is vital to our cities and our country.

Right now, there are hundreds of thousands of construction jobs not filled because there is no terrorism insurance. There are billions of dollars worth of construction projects not being undertaken because we do not have terrorism insurance. And there are higher costs for even those who can get terrorism insurance, putting a large crimp in the economy.

Right now, when our economy is swishy soft, this insurance bill is the shot in the arm the economy needs. Thankfully, at this last hour, after the perils-of-Pauline voyage that took over a year, this bill is about to pass this Chamber, be put on the President's desk, and be signed into law.

It comes none too soon because we desperately need it. We need to allow our companies to know that if, God forbid, there is a second terrorist incident—we hope and pray there isn't—

the Government will be there as a backup.

To some of the ideologues who have opposed this bill, I would suggest to them that the Government has always been behind insurance in times of war. We have always had that. And this new terrorism is a time of war.

To those who say, well, let the market take over, we never did that under huge and new circumstances out of the control of individuals, without any predictive ability. So insurance companies have no knowledge of what they face.

We are going to have to do more. We are going to have to deal with life insurance. We are going to have to deal with workers' compensation insurance. All of these things, in this brave, new post-9/11 world, need some Government help and Government involvement or the economy will come to a standstill.

So I want to say, thank God we passed this bill. My city and State, many of the larger cities and States throughout the country, desperately need it. We hope it will move to the President's desk quickly and be signed into law and remove a major roadblock on the path to recovery that this country needs.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SCHUMER. Thank you, Madam President. Again, I thank the Senator from Maryland for his generous yielding of time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, I thank Chairman SARBANES for yielding me time. But also I thank and commend my colleagues who worked so diligently on this important legislation: Senators Schumer, Corzine, and Nelson of Nebraska, and particularly Senator DODD. Senator DODD really led the charge on this important effort, and together with his electoral reform legislation, he has made major contributions in this session. I commend him and thank him for his leadership.

This is a vitally important issue. After September 11, the reaction of the insurance industry to the potential of terrorist attack was contraction coverage. Premiums went up, coverage has shrunk, and many organizations, particularly many properties, could not secure insurance. That inhibited economic growth, and that inhibition continues to weigh on our economy.

This legislation, we hope, and I hope, will go a long way to start reviving activity, particularly construction activity and real estate activity. But the effects of this legislation go beyond simply the property market and the real estate market.

One of the interesting aspects of the 9/11 attacks was the fact that workers' compensation insurance was put at risk because, as you realize, workers' compensation, under law, must cover practically all injuries to workers. And if there is a terrorist event in a particular locale, it is likely that hundreds, perhaps even thousands, of workers could be injured. Those liabilities fall on very few companies. Without reinsurance, those companies cannot operate.

In my home State of Rhode Island, there is one workers' compensation insurance company which is actually a quasi-governmental entity. It is supported by the State. If that company failed, literally the State of Rhode Island would be on the hook to provide the resources to pay workers' compensation claims. It would be a great blow to my State.

This legislation also provides help and reinsurance for workers' compensation claims. So it is legislation whose effect, and beneficial effect, will go throughout our entire economy. It will help, I hope, to stimulate economic activity. And it certainly will give, I hope, business men and women the confidence to, once again, undertake real estate projects, undertake economic activity, and do those things which are so essential for our continued economic prosperity.

Once again, this has been a long and arduous process. It has taken months. It has been the result of great effort and great diligence and great patience by my colleagues, again, particularly by Senator DODD.

I am pleased we are passing it this evening. I hope the President will sign it quickly. I hope we can get on to other legislation that will assist our economy in a material way, in a positive way.

I thank the Senators, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

HOMELAND SECURITY

Mr. CORZINE. Madam President, I, too, want to speak to the terrorism insurance legislation, but I also would like to make a brief comment with regard to homeland security.

I will be voting to support the creation of the Department of Homeland Security. Like many of my colleagues, this was a close call. Unfortunately, there were far too many adds to what was presented to us in this 484-page document, things that were really special interests, not the people's interests. They have been enumerated with regard to pharmaceuticals, colleges and universities, et cetera. It is unfortunate. And there are many details that are left out with regard to chemical plant security, nuclear powerplants, railroads, other issues that I think are vital.

Finally, we really have not dealt with the appropriations process to make sure that our first responders, the people who really are fighting the war on terrorism day to day have the resources to do their job. It is not even dealt with in this 484-page effort, and it is a serious shortcoming. It will move the ball down the field, but we are not where we should be. We have a lot of work to do. It is unfortunate that we have done it, in my view, in a half-hearted way here.

TERRORISM INSURANCE

Madam President, with regard to terrorism insurance, this is about the economy. It really is quite simple. This was never about the insurance industry. This was about making sure that investments would go forward in the construction, commercial real estate field. It was about making sure there was not a tax on the consumer, on everything from whether you went to a football game, or any kind of process you needed to have terrorism insurance to make sure that our economy is working efficiently. This was missing since September 11. And it is absolutely essential that we got to this compromise.

I cannot tell you, cannot tell my colleagues, how proud I am to have seen the tremendous work that both Senators SARBANES and DODD performed to try to get a compromise.

The holdup on this was never about the need to push forward to protect our economy, to support our industry. This was about tort reform, issues that really were relevant to protecting the economic security of the American people. Their tenacity, their effectiveness in negotiating compromise has led to a great result. I can only say congratulations to them, to the others who helped bring it about. The President was certainly at the forefront.

I hope my colleagues will support the terrorism insurance legislation. I am very appreciative of the help of my senior colleagues.

The PRESIDING OFFICER. The Senator from Nebraska.

TERRORISM INSURANCE

Mr. NELSON of Nebraska. I thank my esteemed colleague from Maryland for the opportunity to rise today in strong support of the conference report to S. 2600. I commend Senator DODD and all those who have worked to bring this together after having passed it earlier. It is now a great opportunity for us to come back and pass it in its final form.

It is about the economy; it is not simply about insurance. The economic impact of the events of September 11 have had a continuing devastating impact on our commercial real estate market, mortgage lenders, the construction industry, the investment community, and other segments of our economy. Many of these areas have yet to recover and do not look for recovery for a long time.

Fundamentally, this is a jobs bill. It is just one small step Congress can take to help stimulate our weak economy by providing this Federal backstop—not a bailout—for catastrophic losses resulting from acts of terrorism in the future.

It is estimated that the property damage alone from the attack on the World Trade Center is about $50 billion. While the carriers involved in this loss have indicated they could cover these losses while maintaining their solvency, we can only speculate as to where and when the next attack might come and the nature and extent of the damages. Without this backup, all insurers providing this coverage, if they do provide it, will only risk not being able to respond to the next loss.

The underlying premise of insurance is the ability of the insurer to assess the nature and the extent of the loss, applying actuarial principles, the historical approach to determine the likelihood of loss, and then calculating the premiums necessary to build reserves sufficient to cover that loss. Clearly, under these circumstances, without a historical perspective, there is no way for insurers to realistically underwrite for the risk of terrorist attack.

Who among us knows where or when the next event might occur, what the nature of the attack might be, and what type and extent of loss might be sustained? Will it be primarily property damage? Will it be massive loss of life in a concentrated area such as we had with the World Trade Center? Will it be a chemical or biological agent released or will it be a dirty bomb? These are the questions to which we don't know the answers.

The fact is, we cannot make those decisions without knowing what the opportunity will be for the next terrorist attack. We all hope there won't be one, but insurance is against that kind of loss that you don't necessarily expect but you anticipate could in fact happen. The long-term effect on our industry would be devastating.

I hope we will all rise today in support of this important legislation. I thank the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Madam President, I am pleased that we will shortly, I assume, be passing this legislation, although I understand we have to go through a cloture vote prior to reaching the legislation itself. I wanted to underscore that this represents an extraordinary effort on the part of many people. I particularly recognize the leadership my able colleague from Connecticut, Senator DODD, provided on this issue. We have been working at this now for about a year. So it has been a long time coming. It is fair to say that we would never have reached this point without Senator DODD's commitment to this issue and his tireless efforts with respect to this legislation.

I also thank the majority leader, Senator DASCHLE, who was consistently trying to get terrorism insurance legislation, despite efforts by many to turn it into something over and above that.

Senators SCHUMER and REED, our colleagues on the conference committee, made significant efforts to move the bill forward. And also Senator CORZINE, although he wasn't on the conference committee, was very closely involved in developing this legislation. Of course, Chairman OXLEY and Congressman LAFALCE, our colleagues in the House, were obviously instrumental in moving the legislation through the other body.

I also want to take a moment to underscore the outstanding work done by staff on this legislation. We come to the floor and, of course, Members are deeply involved. And I particularly underscore Senator DODD's efforts in this regard. But there are staff who back us all up.

I particularly want to recognize from the Banking Committee staff Sarah Kline, Aaron Klein, and Alex Sternhell, who worked literally day and night on this matter. Also Steve Harris, Marty Gruenberg and Steve Kroll, and the staff of our conferees: Didem Nisanci from Senator REED's office, and Polly Trottenberg from Senator SCHUMER's office; and while he was not a conferee, Senator CORZINE's staffer, Roger Hollingsworth, also participated throughout.

I also want to recognize the hard work and the professionalism that our legislative counsels brought to this process: Laura Ayoud from the Senate legislative counsel's office, who is just an outstanding professional and renders great service to this body, and Paul Callen from the House legislative counsel's office. Laura Ayoud stayed up all night working on this legislation. I simply want to underscore that.

We have had strong support for this legislation from the administration. The President has indicated that he will sign it. The administration was instrumental in dealing with some of the objections that were actually raised more with respect to items that are not in the legislation rather than items that are in it. In the course of this, we have developed a piece of legislation which I believe will address the challenge that confronts us.

We have had troubling reports about the availability of terrorism insurance, and the impact of that upon the economy.

Since the tragic attacks of September 11th, many property and casualty insurers are excluding coverage of losses from acts of terrorism from the policies they write. In those cases where terrorism insurance is available, it is often unaffordable, and very limited in the scope and amount of coverage. The Banking Committee explored this issue in two days of hearings shortly after the attacks, in which we heard from Treasury Secretary O'Neill, CEA Chairman R. Glenn Hubbard, insurance regulators, business and insurance leaders, and outside experts. The testimony of these witnesses helped to define the scope of the problem in the insurance marketplace and to shape our thinking on the appropriate solution.

The fact that so many properties are uninsured or underinsured against the risk of terrorism could have a negative effect on our economy and our recovery if there were to be another terrorist attack. In the event of another attack, many properties would have to absorb any loses themselves, without the support of insurance. As a result, the GOA has observed, "another terrorist attack similar to that experienced on September 11th could have significant economic effects on the marketplace and the public at large."

But even in the absence of another attack, the lack of insurance can hinder economic activity. The GAO has found example of "large projects canceling or experiencing delays . . . with a lack of terrorism coverage being cited as a principal contributing factor."

Most industry observes are of the opinion that, given time, the insurance industry will develop the capacity and the experience that will allow them to underwrite the terrorist risk. However, those conditions do not appear to exist today. In the interim experts believe that a Federal reinsurance backstop of limited duration would give the insurance markets the necessary time to stabilize.

The conference report before us establishes a temporary, three-year backstop under which the Federal Government will share the risk of loss from future terrorist attacks with the insurance industry. The program is triggered when the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General, certifies that an event meets the definition of an act of terrorism provided in the legislation.

The Terrorism Insurance Program requires that insurers pay a share of losses before Federal assistance becomes available. Each insure that suffers losses in a terrorist attack will be responsible for paying out a certain amount in claims—an insurer deductible—based on a percentage of that insurer's direct earned premiums from the previous calendar year. Beyond their deductibles, insurance companies will continue to have 'skin in the game,' as they will be liable for a copayment for additional losses. For losses above an insurer's deductible, the Federal government will cover 90 percent while the insurer will pay 10 percent.

These provisions are intended to create partnership between insurers and the Federal Government in the event that losses occur. By requiring companies both to cover initial losses and to continue to share in additional losses, this program provides the coverage and the certainty of the Federal backstop while also providing incentives to promote a healthy private market. And while no system is perfect, the legislation grants the Treasury Secretary certain powers, such as the ability to audit and inspect claims, that are necessary to protect the government against unscrupulous behavior. It is our intent that insurers do not alter their behavior in an attempt to procure more value from this program than they would otherwise receive from the course of their natural business practices.

In addition to limiting the exposure of individual insurance companies, the legislation also includes certain mechanisms to limit the exposure of the Federal Government, first by requiring the insurance marketplace as a whole to absorb a prescribed amount of any terrorism losses—$10 billion for year 1; $12.5 billion for year 2; and $15 billion for year 3—and second, by capping total losses covered by the program at $100 billion per year. Any Federal payments made before the prescribed insurance marketplace retention is reached must be recouped by the Secretary of the Treasury through a policyholder surcharge.

One of the guiding principles of this bill is that, to the extent possible, state insurance law should not be overridden. To that end, the bill respects the role of the state insurance commissioners as the appropriate regulators of policy terms and rates. Each state commissioner currently has the responsibility to ensure that insurance rates are not inadequate, unfairly discriminatory, or excessive, and this legislation does not change that responsibility.

At the same time, in order to ensure that the Federal program will work as intended, certain Federal requirements are needed to ensure that consumers of terrorism insurance will benefit from this program.

For example, insurance companies will be prohibited from discriminating amongst their policyholders by picking and choosing which ones to cover for terrorism. The bill requires that insurance companies must offer terrorism coverage in all of their property and casualty policies during the first two years of the program. The Secretary has discretion to extend their important requirement to the third year of the program.

In addition, insurers must provide policyholders with clear and conspicuous disclosure of the premium charged for terrorism coverage and the existence of a sizeable Federal backstop. This disclosure is intended to enhance the competitiveness of the marketplace by allowing consumers to comparison-shop for the best rate on terrorism insurance. In addition, the disclosure is intended to make policyholders aware that the Federal Government will be sharing the costs of terrorism losses with their insurers, to help the policyholders assess the appropriateness of the premium being offered.

Moreover, the bill ensures that the State regulators and the Federal Government will have access to the information needed to assess the impact of this program on insurance consumers. The Secretary is required to compile annually information on the terrorism risk premiums being charged by insurers].

This is a limited bill in duration. Of course, the objective is that by the end of that time, the insurance market will have come fully back into play and that these matters can be dealt with in a more traditional way.

But as the Senator from Connecticut has pointed out frequently, as we have addressed the issue over the course of this last year, we face extraordinary circumstances created by the risk of terrorism. This legislation represents a reasonable and rational response to this challenge.

I urge my colleagues to support this legislation.

The PRESIDING OFFICER. The Senator has used 2 minutes.

The Senator from Connecticut.

Mr. DODD. I have 2 minutes remaining?

The PRESIDING OFFICER. Two and a half minutes remaining.

Mr. DODD. Madam President, let me again thank my colleagues for their work. I mentioned MIKE OXLEY of Ohio, chairman of the House Banking Committee, and JOHN LAFALCE. JOHN LAFALCE and I were elected to Congress together back in the 1970s. He has made a decision to retire from his service in the Congress. I thank him for a remarkable record of public service over the more than 2½ decades.

I also thank some of the White House staff in addition to our own staff here. I include all the names in the remarks I have already submitted. I want to thank Nick Calio and Matt Kirk of the White House legislative operations. I commend them for their efforts.

They helped to broker this final agreement. You need to have people at the executive branch who are willing to try to put pieces together. They are two very professional staff people. The President is fortunate to have them working with him. I know that in the process of doing so, they disappointed some. I know how they strongly agreed with some of the people they disappointed on substantive matters but believe they are serving their President and the country well in coming to a final conclusion that is fair to all. I thank them for their professionalism and straightforwardness in dealing with these difficult matters.

I thank Senator DASCHLE and Senator LOTT for their leadership as well. Both leaders have done a very fine job. Mark Childress of Senator DASCHLE's staff was tremendously helpful on this legislation. Senator SARBANES is absolutely correct that we don't often give those staff members who put in countless hours on matters like this the credit they deserve. But were it not for Mark and Senator DASCHLE's other staff members working with Alex Sternhell of my office, and Senator SARBANES' staff, we would not have been able to achieve this result.

This conference report is about economic security. As important as our physical security is, our economic security is critically important. This conference report is an important piece of ensuring our nation's economic security. I look forward to the coming hours and days when the President will sign this bill into law.

I yield the floor.

Mr. SPECTER. Madam President, I have sought recognition to comment about the legislation on homeland security, which I believe the Senate is about to pass. It has been accurately characterized as historic legislation. It reorganizes the Government of the United States of America to meet the threat of terrorism.

On September 11, 2001, this country sustained a devastating loss, a loss deeply emblazoned on the minds of all Americans. With the attacks on the World Trade Center, the attack on the Pentagon, and the plane that went down in Somerset County, PA, it was obvious that we faced a very extraordinary threat.

We should have taken action against al-Qaida long before September 11. There were many warning signals available. Osama bin Laden was well known for his jihad against the West, against our values, against our civilization. Osama bin Laden was indicted for killing Americans in Mogadishu in 1993. Osama bin Laden was indicted for blowing up the U.S. embassies in Africa in 1998. He was known to have been involved with al-Qaida and the terrorism against the destroyer Cole, and he had made his announcement of his worldwide jihad.

But the United States has historically been reluctant to take preemptive action. We did little in responding to the attacks on the embassies of August 20, 1998. When we sent a missile to Afghanistan, it went to an empty factory. When we put a missile in a factory in the Sudan, it may or may not have been a factory with chemical weapons. But then, with the events of 9/11, it became apparent that we had to respond, and we had to respond very dramatically and emphatically.

Senator LIEBERMAN and I introduced legislation on October 11, 2001—exactly 1 month after the 9/11 attack. It was apparent to many of us at that time that we needed to have an office of homeland defense and a Secretary with power to deal with the many agencies that would be involved. First and foremost among those agencies, in my view, was the coordination of activities among our intelligence agencies.

When I was chairman of the Intelligence Committee in the 104th Congress, I introduced legislation in 1996 to bring all of the intelligence agencies under one umbrella, under the Director of Central Intelligence. That had been the spot that was supposed to coordinate all of the intelligence activities.

But the fact of the matter was that the Director of the CIA did not have that authority because there were too many independent agencies—the Defense Intelligence Agency, the National Security Agency, the counterintelligence of the FBI, intelligence units in the State Department, and intelligence units spread throughout the Government—and there were fierce battles on turf, and the coordination was not undertaken.

As a result of not having all of the intelligence agencies under one umbrella, the United States paid a very heavy price. It is my view that had all of the dots been on the board, had there been coordination at all of these intelligence agencies under one umbrella, we might well have prevented September 11.

After the fact, we learned that in July there was a very important FBI report coming out of Phoenix, AZ, about a suspicious man taking flight training, and he had a big picture of Osama bin Laden in his living quarters. That memorandum was buried somewhere in the FBI headquarters. We found out after the fact that the CIA had information on two al-Qaida agents at Kuala Lumpur. The CIA did not tell the FBI or the Immigration and Naturalization Service that those agents came into the United States, and they were two of the suicide bombers on 9/11.

There was information about a man named Zacarias Moussaoui. The FBI field office in Minneapolis made an effort to get a warrant under the Foreign Intelligence Surveillance Act. They never got the warrant. They were using the wrong standard. They were using a standard of probable cause of 51 percent. The FBI agent testified that the U.S. attorney in Minneapolis thought he had to have a 75- to 80-percent probability.

The fact is that, under the law, *Gates* v. *Illinois*, an opinion by Justice Rehnquist—now the Chief Justice, then an Associate Justice on the Court—says that probable cause is judged by the totality of the circumstances and suspicion, and had the warrant been obtained under the Foreign Intelligence Surveillance Act, the computer of Zacarias Moussaoui was a virtual treasure trove of information.

Then a man named Murad, a Pakistani, a member of al-Qaida, gave a statement in 1995 that al-Qaida had plans in 1995 to load explosives on an airplane and fly them into the White House or into the CIA. Then you had the experience with the trade towers themselves, attacked in 1993 by al-Qaida's agents. They had made an effort to blow up one of the towers to try to topple into the other tower to destroy them both. It was known that they were very unhappy about their failure.

So the risks were present, but there was not coordination. We didn't bring all of those dots onto one screen. When FBI Director Mueller testified before the Judiciary Committee in early June, I asked him about all of these facts and concluded that there was a veritable blueprint had all of these dots been put together. That is what we have an opportunity to do now with homeland security, under the direction of the Secretary of Homeland Security.

I had submitted an amendment, which would have given the Secretary greater authority than is present in the existing bill. The Secretary of Homeland Defense, under the existing legislation, may request that the agencies coordinate, but the Secretary does not have the authority to direct, and I believe that is a significant failing in this bill.

When the House of Representatives passed a homeland security bill last Wednesday and, in effect, left town, sending a bill to the Senate, it was pretty much a matter of take it or leave it. If I had pressed my amendment to do what I thought was a very important improvement, to give the Secretary authority to direct all of these agencies, the bill would have had to go back to conference, and the Members of the House of Representatives had dispersed. They are present only in pro forma session. They can take some technical amendments without reconvening, but to press a substantive amendment would have sent the matter back for a conference, and it would have delayed the matter perhaps as long as April of next year.

I had a long discussion on this matter with homeland security adviser, former Governor Tom Ridge, and pressed the point. Then I discussed the matter with Vice President CHENEY and sought some sort of a commitment that the administration would look favorably upon this kind of an amendment when we reconvened. The Vice President said he could not speak for the President. I talked to President Bush, who urged me not to press the amendment, and I told him I would not because I did not want to tie up the bill. I did not want to put on a substantive amendment that would have required a conference.

Early in the 108th Congress, I will refile that amendment to give the Secretary of Homeland Security the authority to direct these agencies because I am still concerned about their turf battles. Turf battles in Washington, DC are endemic and epidemic. It is too serious a matter to engage in turf battles any longer. Now is the time where we have to use all of our resources to prevent another attack.

We have made very significant advances on a number of lines—on the Border Patrol, the Immigration and Naturalization Service. We put up $3 billion last year on serums to deal with smallpox and anthrax, such as Cipro. That came through the Subcommittee on Labor, Health, Human Services, and Education. Senator HARKIN, then the chairman, and I, ranking member, took the lead in putting up that money. All of these precautions in building up the hospital infrastructure and giving assistance to the fire departments is vital. Having coordination with Federal, State, and local authorities is vital, but if we have to respond to an attack, if we do not prevent an attack, then we will be in very bad shape. That is why I do believe our efforts have to be directed to preventing another attack.

I discussed also with the administration, with Governor Ridge, Vice President CHENEY, and President Bush the labor-management relations issue. I believe we could have worked out an accommodation which would have been satisfactory to all parties.

When we had the amendment offered by the Senator from Nebraska, Mr. NELSON, cosponsored by Senator CHAFEE and Senator BREAUX, there was initial confusion as to whether the two paragraphs of the Breaux amendment, which incorporated the so-called Morella amendment from the House bill, was in place of, substituted for, or in addition to.

In a colloquy with the distinguished Senator from Connecticut, we established the amendment was in addition to and did not remove the President's national security authority to take steps if national security was endangered. That model could have been applied to the other five chapters on flexibility.

The Subcommittee on Labor, Health, Human Services, and Education will schedule hearings promptly when we reconvene the 108th Congress to go into these issues, to have a thorough airing, have people from the Office of Personnel Management come in and explain what they need; to have labor representatives come in and explain what they have in mind, in order to work out an accommodation which is satisfactory for all parties to maintain a high level of morale.

We also have to be concerned about provisions in this bill which could have the effect of trampling on civil liberties and constitutional rights. There is no doubt about the danger posed by al-Qaida, but there is similarly no doubt that we cannot give up our civil liberties and our constitutional rights in our efforts to combat al-Qaida. If we do that, if we give up our civil liberties, al-Qaida would have, in effect, won.

There is an ongoing responsibility for oversight, and that responsibility will fall on the shoulders of the Governmental Affairs Committee and the Judiciary Committee to see to it that the detention of aliens is based upon some reason; to see to it that if American citizens are tried in a military court that there is an observance of constitutional rights. There is grave concern in America that we be protected from another terrorist attack, but there is also grave concern that we be careful in the preservation of our civil liberties.

Madam President, how much of my 20 minutes remains?

The PRESIDING OFFICER. Six minutes and 26 seconds.

Mr. SPECTER. Madam President, I notice the Senator from Connecticut has come to the Chamber. In his absence, I had commented that the Senator from Connecticut, Senator LIEBERMAN, and I, had introduced homeland security back on October 11, 2001.

There was resistance in many quarters to having a Department of Homeland Security. Governor Ridge, at that time, and I had discussed the matter. I have worked very closely with Tom Ridge for many years—12 years in the Congress and two terms as Pennsylvania's distinguished Governor. Governor Ridge said he was sure the people would not say no to the President; he could walk down the hall, and he could solve the problems.

I had a view, having been chairman of the Intelligence Committee and knowing what goes on in the CIA, that it was not going to be that easy; that the man in charge of homeland security really needed some muscle.

Having worked on the Judiciary Committee chairing the oversight committee on the FBI, I knew the problems there. I knew the turf battles, and I thought the adviser in charge of homeland security needed some muscle.

Senator LIEBERMAN and I constructed that bill, when we had hearings. We reintroduced an updated version last May, and it has had a number of developments. I do believe it is going to be necessary to revisit some provisions. I mentioned two—the authority of the Secretary to direct the intelligence agencies to consolidate under one umbrella, and a refinement of some of the provisions on labor-management relations.

Then the House of Representatives passed a bill on Wednesday and sent it to the Senate on Thursday. Senator LIEBERMAN offered an amendment to strike which was voted upon earlier today.

I agreed with a great deal of what Senator LIEBERMAN had to say. I felt it necessary to vote against Senator LIEBERMAN's amendment because that would have called for a conference, the appointment of conferees, and great delay. It could have been delayed until April.

We have been asked a lot of questions about this. Yesterday in Pennsylvania in a number of meetings, a number of people asked me about it. I told them about the old statement: You never want to see legislation or sausage made. If you saw what the House of Representatives did, the bill they sent over here and some of its provisions gave sausage a bad name. But we are going to work through it. We are going to pass the bill.

It is not unusual for the Congress, for the Senate to be confronted with a bill which has a lot of clunkers, which has a lot of problems, a lot of major disadvantages. Then we have to make a public policy determination as to whether the advantages outweigh the disadvantages.

In my judgment, it is not even a close call at this point. We have to have a Department of Homeland Security to protect America.

Again, I compliment my colleague from Connecticut. I compliment the Senator from Tennessee, Mr. THOMPSON, for the tremendous job he has done on the bill, and the Senator from Texas, Mr. GRAMM, and his swan song. It is a tough legislative battle, but before the stroke of midnight, I believe we will have moved ahead. I am told by the White House that the President intends to sign this bill early next week. He is not going to let any grass grow under anybody's feet. We are going to do our best to protect America and try to prevent another terrorist attack.

I yield the floor.

THE SAFETY ACT

Mr. CHAFEE. Madam President, I would like to thank the Republican Leader for his willingness to address concerns raised by me and our colleagues from Maine regarding certain provisions in H.R. 5005, the Homeland Security Act of 2002.

In the interests of clarity, I wanted to discuss one aspect of the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act of 2002, which is included in H.R. 5005. The SAFETY Act provides that the "government contractor defense" will be available to certain sellers of anti-terrorism technology. In *Boyle* v. *United Technologies Corp.*, 487 U.S. 500, 108 S. Ct. 2510 (1988), the U.S. Supreme Court recognized that the government contractor defense offers relief to certain defendants from liability for design defects. It is my understanding that the drafters of the SAFETY Act were aware of the Boyle decision and intended for the government contractor defense to apply solely to design defect claims, rather than offering blanket relief to any and all causes of action.

Mr. LOTT. I concur with the Senator from Rhode Island. It is clear that the government contractor defense contained in the SAFETY Act could be raised only in response to design defect claims.

Mr. CHAFEE. I thank the Republican Leader, and look forward to the opportunity to correct three other provisions of the Homeland Security Act when the 108th Congress convenes in January.

FIRST RESPONDERS

Mr. DAYTON. Madam President, I would like to speak about a very important first responder matter which, I hope, the Senate will include in the Homeland Security Act of 2002.

By definition, emergency management usually occurs in crisis. The incident managers must assess the emergency, organize the staff, and direct their responses under very difficult conditions. Currently, however, many first responders are not fully prepared for attacks like September 11, 2001.

The Homeland Security Act of 2002 includes provisions to improve the preparedness of emergency response providers. It is also designed to improve the Federal Government's response to terrorist attacks and other major disasters.

To date, however, most of the homeland security training and consulting contracts have been awarded to Fortune 500 companies. Postsecondary educational institutions have been left out of the process. It is essential that our country's colleges and universities also collaborate on the design of homeland defense-integrated emergency management and training systems. Demonstration programs should train first responders to use new technologies that would reduce the devastations from terrorist attacks. They can integrate these technologies into management procedures that will improve accountability, command, and control. The results of those demonstration programs could then be disseminated nationwide.

Am I correct to assume that funding for colleges and universities to develop homeland defense-integrated emergency management and training systems could be provided through provisions in the Homeland Security Act of 2002?

Mr. LIEBERMAN. I will request that the new Secretary of the Homeland Security Department give attention to the concerns about emergency management raised by the Senator from Minnesota, and I hope that homeland defense-integrated emergency management and training systems will be given due consideration for funding through grants from the extramural programs.

Mr. DAYTON. I thank the Senator for his consideration and support.

BACKGROUND CHECKS FOR TRUCK DRIVERS

Mr. McCAIN. Madam President, last November, Congress included a provision in section 1012 of the USA Patriot

Act, P.L. 107-56, which requires all commercial truck drivers who haul hazardous materials to undergo a background records check before receiving or renewing their Commercial Driver's License, CDL, endorsement to haul hazmat. Unfortunately, over a year has passed and regulations to promulgate this requirement have not been issued.

Mr. HOLLINGS. I want to associate myself with the concerns raised by my colleague. This is a very important issue to both of us. In fact, we worked together in a bipartisan fashion on S. 1750, the Hazmat Endorsements Requirements Act, which would clarify existing law and guide the process for administering the checks. The Senate Commerce Committee approved S. 1750 in April without objection. However, the Senate has not taken up this legislation, nor has the Department of Transportation issued a rulemaking to implement Section 1012.

Last week, we took an important step forward in addressing Port and Maritime Security when we passed S. 1214. That important measure includes requirements for background records checks for many port workers, and clarifies that if a driver holds a valid CDL with a hazardous materials endorsement obtained after a background records check, the driver would not need to have a duplicative check to access secure port areas. Unfortunately these checks are not being performed and it is unlikely that will change until the DOT issues a rule or the Congress approves legislation to address concerns regarding the hazmat endorsement background records check requirements enacted last year.

Mr. McCAIN. That is correct. We have not fully addressed the issue of background checks for commercial drivers and more work remains.

Mr. HOLLINGS. I hope we can continue our bipartisan work on this important issue early next year to ensure the requirements in the USA Patriot Act will be carried out and that truck drivers are afforded a right to a formal appeals process.

Mr. McCAIN. I agree that the issue must be addressed. In the absence of any regulatory action by DOT, I will certainly want to continue our joint efforts to provide the appropriate guidance to DOT and the states on this important security matter.

Mr. HOLLINGS. I thank my colleague and look forward to working with him on this issue during the next Congress.

AGRICULTURAL PROVISIONS

Mr. HARKIN. Madam President, as Chairman of the Senate Committee on Agriculture, Nutrition and Forestry, I want to enter into a colloquy with the ranking minority member of the Committee, Senator LUGAR, regarding the agricultural provisions in the compromise homeland security legislation.

Mr. LUGAR. I am pleased to join with my colleague to discuss some of the agricultural provisions in this legislation. A provision in Section 421 dealing with the transfer of certain agricultural inspections from the U.S. Department of Agriculture—USDA—to the new Department of Homeland Security—DHS—needs clarification. This section requires that USDA and DHS enter into a transfer agreement and stipulates that the agreement shall address USDA supervision of training of employees who will be carrying out agricultural inspection functions at the new DHS and the transfer of funds from USDA to the new DHS. We want to make clear that we expect that the transfer agreement shall include these components and that USDA will be responsible for agricultural inspection training and that appropriate funds would be transferred from USDA to the new DHS.

Mr. HARKIN. I agree with your interpretation of that provision. I also want to provide additional explanation about a section that originated from our mutual concern about the safety of food that enters our country. Like you, I have been concerned that agencies that inspect foods and food products that come through our borders do not have the ability to share information in order to jointly track shipment and other crucial information. As a result, we crafted a provision, now included in this legislation, to ensure that information systems—i.e., computers—will be coordinated across agencies with border security responsibilities. This includes agencies that will be housed in the new DHS as well as those like the Food and Drug Administration and the Food Safety Inspection Service—that will not, but have a homeland security function.

Mr. LUGAR. That is an important provision in this legislation. I also want to clarify a provision related to the transfer of the Plum Island Animal Disease Center from USDA to the new DHS. Due to a technical error, there appears to be a contradiction between Section 303(3) and Section 310 of the House passed bill. The intent of this bill is to transfer the assets and liabilities of this center, which is now part of USDA, but not the USDA personnel or functions. While I am fairly confident this technical error will yet be rectified, in implementing this new law, I would expect that the language in Section 310 would govern.

Mr. HARKIN. Thank you for that clarification. Finally, we are aware that the Chairman and ranking minority member of the House Agriculture Committee, during consideration of this legislation in the House, entered into the RECORD their understanding of how these agricultural provisions would be implemented. While I question whether or not it is necessary to transfer Plum Island to the new DHS at this time, I concur with the House's interpretation of the provisions that are included.

Mr. LUGAR. I also concur with their interpretation which follows and would expect that these agricultural provisions be carried out consistent with this description. I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture. Transfers the Plum Island Animal Disease Center from the Department of Agriculture to the Department of Homeland Security and requires the Secretary of Agriculture and the Secretary of Homeland Security, upon completion of the transfer, to enter into an agreement providing for continued access by USDA for research, diagnostic and other programs.

The Committee recognizes the critical importance of the Plum Island Animal Disease Center to the safety and security of animal agriculture in the United States. The Committee expects that the transfer of this foreign animal disease facility to the new DHS shall be completed in a manner that minimizes any disruption of agricultural research, diagnostic or other USDA activities. Likewise, the Committee expects that funds that have and continue to be appropriated for the maintenance, upgrade, or replacement of agricultural research, diagnostic and training facilities at the Plum Island Animal Disease Center shall continue to be expended for those purposes.

The Committee shares the goal of expanding the capabilities of the Plum Island Animal Disease Center. Likewise, the Committee supports the accompanying goal of building agro-terrorism prevention capabilities within the new DHS. With this in mind, the Committee fully expects that in the absence of alternative facilities for current USDA activities, the Secretary of Homeland Security shall make every possible effort to expand and enhance agricultural activities related to foreign animal diseases at the Plum Island Animal Disease Center.

Sec. 421. Transfer of Certain Agricultural Inspection Functions of the Department of Agriculture.

(a) Transfers to the Secretary of Homeland Security the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities.

The Committee is aware that the Agricultural Quarantine and Inspection Program of the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) conducts numerous activities with respect to both domestic and international commerce in order to protect the health of agriculturally important animals and plants within the United States. Within the new DHS will be created a mission area of Border and Transportation Security. In order that the new streamlined border security program operates efficiently, the Committee has transferred to the new DHS the responsibility for certain agricultural import and entry inspection activities of the USDA conducted at points of entry. This transfer will include the inspection of arriving passengers, luggage, cargo and means of conveyance into the United States to the Under Secretary for Border and Transportation Security. In addition to inspection at points of entry into the United States, responsibility for inspections of passengers, luggage and their means of conveyance, at points of departure outside the United States, where agreements exist for such purposes, shall be the responsibility of the Secretary of Homeland Security. The provision allows the Secretary of Homeland Security to exercise authorities related to import and entry inspection functions transferred including conducting warrantless inspections at the border, collecting samples, holding and seizing articles that are imported into the United States in violation of applicable laws and regulations, and assessing and collecting civil penalties at the border. The Committee intends that USDA will retain the responsibility for all other activities of the Agricultural Quarantine and Inspection Program regarding imports including pre-clearance of commodities, trade protocol verification activities, fumigation activities, quarantine, diagnosis, eradication and indemnification, as well as other sanitary and phytosanitary measures. All functions regarding exports, interstate and intrastate activities will remain at USDA.

(b) Delineates the laws governing agricultural import and entry inspection activities that are covered by the transfer of authorities.

The Committee is aware that the authority to inspect passengers, cargo, and their means of conveyance coming into the United States is derived from numerous statutes that date back, in some cases, more than 100 years. The Committee does not intend that the reference to these statutes should be construed to provide any authority to the Secretary of Homeland Security beyond the responsibility to carry out inspections (including pre-clearance inspections of passengers, luggage and their means of conveyance in such countries where agreements exist for such purposes) and enforce the regulations of USDA at points of entry into the United States.

(c) Excludes quarantine activities from the term "functions" as defined by this Act for the purposes of this section.

While agricultural inspection functions, as well as those related administrative and enforcement functions, shall be transferred and become the responsibility of the Secretary of Homeland Security, the legislation retains all functions related to quarantine activities and quarantine facilities within USDA. Although the Committee has excluded quarantine activities from those functions transferred to the new DHS, the Committee does not intend to preclude the Secretary of Homeland Security from taking actions related to inspection functions, such as seizure or holding of plant or animal materials entering the United States. These authorities fall within the purview of inspection related enforcement functions that shall be transferred to the Secretary of Homeland Security.

(d) Requires that the authority transferred to the Secretary of Homeland Security shall be exercised in accordance with the regulations, policies and procedures issued by the Secretary of Agriculture; requires the Secretary of Agriculture to coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the covered laws related to the functions transferred under subsection (a); provides that the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue guidelines and directives to ensure the effective use of personnel of the Department of Homeland Security to carry out the transferred functions.

One intention of this legislation is to create a streamlined Border and Transportation Security program at points of entry into the United States. With regard to the protection of animal and plant health, the Committee does not intend or expect the new DHS to make the determination of what animals, plants, animal or plant products, soils, or other biological materials present an unacceptable risk to the agriculture of the United States. Policies and procedures regarding actions necessary to detect and prevent such unacceptable risks shall remain the responsibility of the Secretary of Agriculture. Likewise, policies and regulations defining restrictions on movement into the United States of substances that would pose a threat to agriculture shall continue to be the responsibility of the Secretary of Agriculture.

The Committee has provided authority for the Secretary of Homeland Security to issue directives and guidelines in consultation with the Secretary of Agriculture in order to efficiently manage inspection resources. When exercising this authority, the Committee expects that the agricultural inspection function at points of entry into the United States shall not be diminished, and as a result, the Committee expects that Secretary of Homeland Security shall ensure that necessary resources are dedicated to carrying out the agricultural inspection functions transferred from the Department of Agriculture.

(e) Requires the Secretary of Agriculture and the Secretary of Homeland Security to enter into an agreement to effectuate the transfer of functions. The agreement must address the training of employees and the transfer of funds. In addition, the agreement may include authority for the Secretary of Homeland Security to perform functions delegated to APHIS for the protection of domestic livestock and plants, as well as authority for the Secretary of Agriculture to use employees of the new DHS to carry out APHIS functions.

The Committee is aware of the unique nature and the specialized training necessary for effective and efficient border inspection activities carried out by the Agricultural Quarantine and Inspection Program. The Committee expects that the training of personnel and detector dogs for this highly specialized function will continue to be supervised by the Department of Agriculture. While a large proportion of the personnel employed by the Agricultural Quarantine and Inspection Program is permanently stationed at one of 186 points of entry into the United States, the Committee is aware that the Secretary of Agriculture commonly redeploys up to 20% of the border inspection force in order to manage agricultural pests and diseases throughout the United States. In completing the transfer of Agricultural Quarantine and Inspection Program border inspectors to the DHS, the Committee expects that the Secretary of Agriculture and the Secretary of Homeland Security will enter into an agreement whereby inspection resources, where possible, would continue to be made available to the Secretary of Agriculture in response to domestic agricultural needs.

(f) Provides that the Secretary of Agriculture shall transfer funds collected by fee authorities to the Department of Homeland Security so long as the funds do not exceed the proportion of the costs incurred by the Secretary of Homeland Security in carrying out activities funded by such fees.

Beginning in fiscal year 2003, the unobligated balance of the Agricultural Quarantine and Inspection Fund will be transferred to other accounts within USDA and will be used to carry out import and domestic inspection activities, as well as animal and plant health quarantine activities, without additional appropriations. Fees for inspection services shall continue to be collected and deposited into these accounts in the manner prescribed by regulations issued by the Secretary of Agriculture. In effectuating the transfer of agricultural import inspection activities at points of entry into the United States, the Committee intends that funds from these accounts shall be transferred to the DHS in order to reimburse the DHS for the actual inspections carried out by the Department. The Committee expects that the Secretary of Agriculture shall continue to manage these accounts in a manner that ensures the availability of funds necessary to carry out domestic inspection and quarantine programs.

(g) Provides that during the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security up to 3,200 full-time equivalent positions of the Department of Agriculture.

(h) Makes conforming amendments to Title V of the Agriculture Risk Protection Act of 2000 related to the protection of inspection animals.

FEDERAL ALCOHOL AND TOBACCO STATUTES

Mr. GRASSLEY. Madam President, it is clear that the Secretary of the Treasury presently possesses the authority to administer the Federal alcohol and tobacco statutes referenced in the bill before us. These authorities currently are delegated to the Bureau of Alcohol, Tobacco and Firearms and now will be delegated to the new Tax and Trade Bureau. I appreciate this colloquy to confirm that the language in section 1111(c) (1) concerning the transfer to the Department of Justice not only excludes the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that will be retained within the Department of the Treasury as set forth in paragraph (2) of this section, but also excludes the functions of the Secretary of the Treasury that relate to these retained authorities, functions, personnel, and assets.

Mr. BAUCUS. The Senator is correct.

Mr. GRASSLEY. I also wanted to confirm that section 1111(b) as it relates to alcohol and tobacco only invests the Bureau of Alcohol Tobacco, Firearms and Explosives at the Department of Justice with the responsibility to investigate with respect to the Title 18 laws pertaining to the smuggling of alcohol and tobacco. All other investigatory responsibilities pertaining to alcohol and tobacco remain at the Department of the Treasury under the new Tax and Trade Bureau, or as otherwise delegated under existing law.

Mr. BAUCUS. The Senator is correct and his reading is consistent with the provisions of this legislation.

Mr. GRASSLEY. Finally, I wish to confirm that Treasury retained the authority to audit or investigate violations such as false or inaccurate records of production, false or inaccurate tax returns, failure to respond to delinquency notices, unlawful transfers in bond, and the unlawful production, labeling, advertising and marketing of alcoholic beverages.

Mr. BAUCUS. That is correct, and I appreciate my good friend from Iowa for clarifying these points.

PRESERVING COAST GUARD MISSION PERFORMANCE

Mrs. MURRAY. Madam President, I would like to thank the chairman of Governmental Affairs Committee, the Senator from Connecticut, for his tireless efforts and leadership concerning the creation of the Department of Homeland Security. Our country is facing a range of threats that we must address—from port and airport security to cyber terrorism. We need funding for a new organizational structure to reduce these risks.

I also would like to engage in a colloquy with the ranking member of the Committee on Appropriations, the Senior Senator from Alaska, regarding the Coast Guard. The men and women of our Coast Guard make significant contributions to our nation each and every day, and they deserve our support and admiration.

Last week, our colleague from Alaska addressed an important section in this legislation, Section 888, which governs the Coast Guard's role in the new Department of Homeland Security. His statement clearly established that it is the intent of this provision that the Coast Guard's non-homeland security missions and capabilities must be maintained without significant reduction when the Service transfers to the new Department.

As the chairman of the Transportation Appropriations Subcommittee and as a Senator from a coastal state, I emphatically agree with my Alaska colleague's remarks about the intent and effect of Section 888. I also would like to ask him some questions about the Coast Guard and its role in the Homeland Security Department.

Does my colleague from Alaska agree that the United States Coast Guard is integral to the security of this country, and that the Coast Guard provides a wide range of services to our nation? Does he also recognize that some of these services are related to homeland security while others are not? For instance, the Coast Guard provides vital services in the areas of marine safety, search and rescue, aids to navigation, fisheries enforcement, marine environmental protection, and ice operations. While these traditional missions do not directly contribute to national security, they do ensure the safety of our citizens and our environment.

Mr. STEVENS. I firmly agree with my colleague from Washington about both the Coast Guard's role in securing our nation and the importance of its non-homeland security missions and capabilities.

Mrs. MURRAY. Madam President, does the Senator from Alaska believe that it is imperative that these essential non-homeland security missions be maintained, and that the language in the bill clearly identifies the need to protect these critical services?

Mr. STEVENS. I strongly agree with this imperative and with my colleague's interpretation of Section 888. Indeed, Section 888 mandates this protection.

Mrs. MURRAY. Madam President, as the Senator from Alaska has previously indicated, the essential non-homeland security missions are to be protected pursuant to Section 888. It is also my understanding that the Coast Guard organizational structure shall be maintained. To ensure that we achieve our objectives, the Inspector General of the Department shall conduct an annual review to assess the Coast Guard performance of all its missions, with a particular emphasis on examining the non-homeland security missions. Is this the understanding of the Senator from Alaska?

Mr. STEVENS. I share my colleague's understandings on these matters.

Mrs. MURRAY. Madam President, does the Senator from Alaska agree that any significant changes to the authorities, functions, missions and capabilities of the Coast Guard can be implemented only if they are specified in subsequent legislation? And to that end, does he believe the language contained in the bill will serve to protect the non-homeland security missions of the Coast Guard while moving the organization into an important homeland security role?

Mr. STEVENS. I do agree. Section 888 is a clear statement that Congress will play a major role in deciding whether there would be any significant changes to the Coast Guard in these areas. The language also preserves the Service's non-homeland security missions while permitting it to perform important homeland security missions.

Mrs. MURRAY. As the ranking member of the Appropriations Committee, the Senator from Alaska is aware that, as part of the fiscal year Transportation Appropriations bill reported unanimously in July, the Committee mandated that the Coast Guard submit quarterly mission hour reports detailing precisely how the Coast Guard has allocated its human and capital resources by mission for the preceding quarter.

The Committee also granted the Commandant unprecedented budget flexibility with the dramatically increased funds provided above the fiscal year 2002 level to address simultaneously his homeland security needs while ensuring that his other critical missions return to their pre-September 11, 2001 levels.

Finally, the Committee required the Commandant to submit a detailed plan as part of his fiscal year 2004 budget request to show us precisely how he would maintain such mission balance. I am sure that the Senator from Alaska agrees with me that, notwithstanding the fact that the fiscal year 2003 Transportation Appropriations bill has been entangled in the larger delay in the Appropriations process, the bipartisan leadership of the Appropriations Committee expects the Commandant to move forward with the submission of these reports.

Mr. STEVENS. Yes, I concur with the Senator that the Committee should begin receiving these reports without delay so that we can monitor the Coast Guard's progress in complying with not only the Appropriations Committee's directives but with the requirements articulated under Section 888 of the Homeland Security Act.

Mrs. MURRAY. It is with great disappointment that I have to tell the Senator from Alaska that I am greatly concerned by some preliminary indications from the Department of Transportation Inspector General, IG, that the Coast Guard may not have fulfilled its statutory obligations to fully fund mandated improvements to its Search and Rescue Program in fiscal year 2002.

As part of the Department of Transportation and Related Agencies Appropriations Act, 2002, the Committee mandated that not less than $14,541,000 be used solely to address the many deficiencies that the IG found with the Coast Guard's readiness in the area of Search and Rescue. We also mandated that the Inspector General monitor the Coast Guard's compliance with this directive.

While the Inspector General's office has not yet finalized its report, I am greatly concerned by preliminary indications that the Coast Guard did not, I repeat "not fulfill the requirement in the law. This is precisely the kind of concern that makes it essential that we continue to monitor the Coast Guard's compliance with Appropriations Committee directives as well as with Section 888 of the Homeland Security Act. Again, I commend your leadership in this area and look forward to working with you and Admiral Collins, the Commandant, on these issues in the future.

I also want to thank the Chairman of the Governmental Affairs Committee again for his foresight and leadership in the efforts to create the Department of Homeland Security.

Mr. SHELBY. Madam President, as the Ranking Member of the Transportation Appropriations Subcommittee, I strongly agree with the remarks made by my distinguished colleague from Alaska last week regarding the Coast Guard and its treatment in the Homeland Security legislation. I commend his leadership to preserve the traditional role of the Coast Guard as it becomes an agency of the Department of Homeland Security.

The unique strength of the Coast Guard in its multi-mission operational capability—the ability to perform a variety of missions for the nation. It is one of several agencies to be subsumed into the new Department that has both on-homeland security and homeland security missions. It is critical to maintain all of the Coast Guard's missions and capabilities instead of allowing one mission area to eclipse any other. Section 888 takes a significant step forward in preventing that from happening by preventing assets, personnel, and budget resources from being diverted away from the Coast Guard's traditional missions, including rescuing mariners in distress.

Madam President, I share the concerns expressed by the Senator from Alaska about the utmost importance of maintaining the Coast Guard's non-homeland security missions and capabilities. When I became Chairman of the Subcommittee in the next Congress, I shall look forward to working closely with him as the Full Appropriations Committee Chairman to ensure that Section 888 is implemented as Congress intends.

Ms. COLLINS. I would like to thank the Senior Senator from Alaska for the leadership he has shown in helping to preserve the traditional functions of the Coast Guard after it becomes part of the new Department of Homeland Security. Maine and Alaska share a common interest in preserving the Coast Guard's traditional functions, including its search and rescue mission, which are so critical to our fishing communities.

The Senior Senator from Alaska and I teamed up in the Governmental Affairs Committee to ensure that, when we transfer the Coast Guard to the Department of Homeland Security, we do not leave its traditional missions behind. Our language ensured that the authorities, functions, assets, and personal of the Department would be maintained intact and without reduction after its transfer to the new Department except as specified in subsequent Acts.

I am pleased that the fundamental elements and purposes of our Coast Guard amendment are included in the final compromise homeland security bill. Section 888 of the final compromise measure is intended to preserve the traditional functions of the Coast Guard such as marine safety, search and rescue, aids to navigation, living marine resources, and ice operations. The Coast Guard will also be a separate and distinct entity in the new Department, and the Commandant of the Coast Guard will report directly to the Secretary of Homeland Security, thus preventing a demotion from the Commandant's current status in the Department of Transportation.

There is, however, a question that I would like to address to my friend from Alaska. It is my understanding that Section 888 of the final compromise bill is intended to prohibit changes in the Coast Guard's personnel, assets, or authorities that would adversely impact the Service's capability to perform its non-homeland security functions. Is that also the Senator's understanding of this provision?

Mr. STEVENS. Yes, that is my understanding also.

Ms. SNOWE. I would like to enter into a colloquy with several of my colleagues from coastal States regarding Section 888 of the final version of the Homeland Security Act of 2002. The provisions of Section 888 were drafted to preserve the traditional roles and missions of the Coast Guard and ensure they are not altered or diminished.

Since September 11, 2001, the Coast Guard has taken on additional homeland security responsibilities resulting in its largest peacetime port security operation since World War II. While our new reality requires the Coast Guard to maintain a robust homeland security posture, these new priorities must not diminish the Coast Guard's focus on its other traditional missions such as marine safety, search and rescue, aids to navigation, fisheries law enforcement, and marine environmental protection.

As a Senator from a coastal State, and as the ranking member on the Oceans, Atmosphere, and Fisheries Subcommittee of the Senate Commerce Committee, I can attest that all these missions are critically important and that the American people rely on the Coast Guard to perform them each and every day.

The language in Section 888, which I developed with Senators STEVENS and COLLINS, strikes the proper balance and ensures the Coast Guard's non-homeland security missions will not be compromised or decreased in any substantial or significant way by the transfer to the new Department of Homeland Security.

First and foremost, it ensures that the Coast Guard will remain in distinct entity and continue in its role as one of the five Armed Services. The Coast Guard plays a unique role in our government, in which it serves as both an armed service as well as a law enforcement agency, and this must not be changed or altered.

This language in Section 888 maintains the primacy of the Coast Guard's diverse missions by establishing the Coast Guard as a distinct agency under the Secretary of Homeland Security and mandates that the Coast Guard Commandant will report directly to the Secretary, rather than to or through a Deputy Secretary.

Additionally, this section prevents the Secretary of this new Department from making substantial or significant changes to the Coast Guard's non-homeland security missions or alter its capabilities to carry out these missions, except as specified in subsequent Acts. It also prohibits the new department from transferring any Coast Guard missions, functions, or assets to another agency in the new Department except for personnel details and assignments that do not reduce the Service's capability to perform its non-homeland security missions.

This section also requires the Inspector General of the new Department to review and assess annually the Coast Guard's performance of its non-homeland security missions and to report the findings to the Congress.

I also am pleased to see the inclusion of my amendment requiring the new Homeland Secretary, in consultation with the Commandant, to report to Congress within 90 days of enactment of this Act on the benefits of accelerating the Coast Guard's Deepwater procurement time line from 20 years to 10 years. The Deepwater project, which will recapitalize all of the Coast Guard assets operating 50 or more miles from our coasts, is already underway. However, the Coast Guard must wait up to 20 years, in some instances, to acquire already existing technology. I believe that we must accelerate the Deepwater acquisition project and acquire these much-needed assets for the Coast Guard now, not 20 years down the road.

Madam President, Section 888 is a strong statement by the Congress that the Coast Guard is an essential component of the new Department and that its non-homeland security missions and capabilities must be maintained due to their overriding importance, not only to coastal States such as Maine, but also to the entire nation.

Mr. LIEBERMAN. Madam President, as manager of the legislation to create a Department of Homeland Security, I want to share with the Senate my views on the meaning and intent of several key provisions in H.R. 5005, the final homeland security legislation approved by the Senate on November 19, 2002. These provisions have been through several iterations and they have been debated extensively.

H.R. 5005 is the result of over a year of deliberations begun last October when I introduced legislation (S. 1534) with Senator SPECTER to create a Department of Homeland Security. That legislation was subsequently combined with legislation by Senator GRAHAM (to create a White House Office for Combating Terrorism) and became S. 2452, which was reported out of the Committee on Governmental Affairs on May 22, 2002.

Before the Senate had a chance to consider that bill, however, the President announced his support for a Department of Homeland Security. The Administration's bill, first submitted to Congress on June 18, 2002, encompassed almost all of S. 2452's organizational elements regarding the Department. The Governmental Affairs Committee held hearings to consider the administration's proposals, and, I prepared an amendment to S. 2452 that was considered, and adopted, at a July 24–25 business meeting of the Committee. That expanded version of S. 2452 went a considerable way to incorporate the administration's proposals.

In late July, the House of Representatives passed its version of the Homeland Security bill, H.R. 5005. This House bill became the base bill for floor consideration in the Senate, and the amended version of S. 2452 was offered on the Senate floor as SA 4471 to H.R. 5005.

The following statement will discuss various provisions in H.R. 5005 and, where appropriate, their relationship to similar provisions in SA 4471. It is intended to supplement a statement and other material I submitted for the RECORD on September 4, 2002, (S8159–S8180) which interpreted key provisions in SA 4471 (also referred to as the Committee bill).

INTELLIGENCE

Title II, Subtitle A, Section 201 of H.R. 5005, establishes a Directorate for Information Analysis and Infrastructure Protection. This is a critical provision that goes to the heart of the weaknesses that have been exposed in our nation's homeland defenses since September 11, 2001—that is, the lack of information sharing related to terrorist activities between intelligence, law enforcement, and other agencies. This directorate stems from the President's legislative submission in June, which included a proposal to create an information analysis and infrastructure protection directorate in the Department. However, the President's concept has been altered and expanded in response to testimony before the GAC and input from key Senators. The version in H.R. 5005, while not exactly what the GAC recommended, represents a substantial improvement over the President's June 18th, 2002 proposal. If fully implemented, and if the new department and the various agencies responsible for gathering and providing intelligence properly interpret its provisions, it will improve our capacity to fuse that intelligence in order to prevent terrorist attacks before they occur.

S. 2452, as originally reported on May 22, 2002, and based largely on recommendations by the bi-partisan Hart-Rudman Commission, included directorates for critical infrastructure, emergency preparedness, and border security. The President's June 18th proposal added a fourth directorate for "information analysis and infrastructure protection."

SA 4471 was developed after examining the President's proposal and hearing from expert witnesses on the critical need for a national level focal point for the analysis of all information available to the United States to combat terrorism. On June 26 and 27, the GAC held hearings on how to shape the intelligence functions of the proposed Department of Homeland Security—to determine how, in light of the failure of our government to bring all of the information available to various agencies together prior to September 11, 2001, the government should receive information from the field, both foreign and domestic, and convert it, through analysis, into actionable information that better protects our security.

The GAC's hearings focused specifically on the relationship between the Department of Homeland Security and the Intelligence Community. The hearings featured testimony from some of our country's most noted experts in intelligence issues, including Senators BOB GRAHAM and RICHARD SHELBY, the chairman and ranking member of the Senate Intelligence Committee. Other witnesses included Lt. Gen. Patrick M. Hughes, former director of the Defense Intelligence Agency; Jeffrey Smith, former General Counsel of the Central Intelligence Agency; Lt. Gen. William Odom, former Director of the National Security Agency; Chief William B. Berger, President of the International Association of Chiefs of Police; and Ashton B. Carter, former Assistant Secretary of Defense for International Security Policy. Finally, CIA Director George Tenet and FBI Director Robert Mueller also testified.

Senator GRAHAM's written testimony stated that the Intelligence Committee's hearings thus far have uncovered several factors that contributed to the failures of Sept 11—one of which is "the absence of a single set of eyes to analyze all the bits and pieces of relevant intelligence information, including open source material." Senator SHELBY's written testimony stated that "most Americans would probably be surprised to know that even nine months after the terrorist attacks, there is today no federal official, not a single one, to whom the President can turn to ask the simple question, what do we know about current terrorist threats against our homeland? No one person or entity has meaningful access to all such information the government possesses. No one really knows what we know, and no one is even in a position to go to find out." General Patrick Hughes, former director of the Defense Intelligence Agency, echoed these points. His testimony stated that, "in our intelligence community, we currently have an inadequate capability to process, analyze, prepare in contextual and technical forms that make sense and deliver cogent intelligence to users as soon as possible so that the time dependent operational demands for intelligence are met."

These hearings made it clear that: (1) there is currently no place in our government where all intelligence available to the government is brought together to be analyzed, (2) the Department of Homeland Security requires an all-source intelligence analysis capability in order to effectively achieve its mission of preventing, deterring, and protecting against terrorist attacks, (3) the intelligence function should be a smart, aggressive customer of the intelligence community, (4) the intelligence function must have a seat at the table when our nation's intelligence collection priorities are determined, (5) the Department is already a significant collector of intelligence-related information, through such agencies such as the Customs Service and the Coast Guard being transferred into the Department, and (6) the Department must have sufficient access to information that is collected by intelligence, law enforcement, and other agencies. This final point was underscored by Senator SHELBY, who testified that the relatively limited "access to information" provisions in the President's proposal were unacceptable, and that it would be a mistake if they were adopted.

The President's proposal was to create an "information analysis and critical infrastructure protection division"—whose most important role, as CIA Director Tenet testified at the GAC hearing on June 27, 2002, would be "to translate assessments about evolving terrorist targeting strategies, training, and doctrine overseas into a system of protection for the infrastructure of the United States." Its purpose would be to focus the intelligence function on detecting and mitigating against threats to critical infrastructure rather than the entire range of potential threats. Consequently, the intelligence analysis function in the Department of Homeland Security would not be designed to uncover terrorist plots or prevent acts of terrorism before they occurred. The Governmental Affairs Committee rejected this more limited approach and subsequently approved a more robust intelligence directorate, along with a separate directorate for critical infrastructure protection, which were incorporated in SA 4471. Some of these improvements are now incorporated in H.R. 5005.

Most importantly, like SA 4471, H.R. 5005 makes it clear that the purpose of the information analysis function in the Department goes beyond critical infrastructure protection to encompass disseminating intelligence in order to deter, prevent, and respond to all terrorist threats. Section 201(d) of H.R. 5005, which describes responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection, at paragraph (1), states: "to access, receive, and analyze law enforcement, intelligence information, and other information from agencies from the Federal Government, State and local government agencies), and private sector entities, and to integrate such information in order to—(A) identify and assess the nature and scope of terrorist threats to the homeland; (B) detect and identify threats of terrorism against the United States; and (C) understand such threats in light of actual and potential vulnerabilities of the homeland." Clause (B) especially establishes that the information analysis function must be designed in order to "detect and identify" threats of terrorism.

In addition, Section 201(d)(9) states that the responsibilities of the Under Secretary (for information analysis and infrastructure protection) shall include the following: "to disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States." Again, it is important that the new information analysis division focus on doing everything within its power to deter, prevent and preempt, acts of terrorism, while also ensuring that our nation is adequately prepared to respond.

As noted earlier, the President's June 18th proposal would have established a more limited function primarily designed to assess threats and vulnerabilities to our critical infrastructure. This is an important task and will clearly be a major focus of the Department of Homeland Security, but the Department's information analysis role will now encompass all terrorist threats, not just those to critical infrastructure. Many potential terrorist attacks—for example a bomb in a shopping mall and attacks using weapons of mass destruction—are not directed at critical infrastructure, but at producing mass casualties. Thus, the intelligence analysis function in the Department can and must focus on the full range of threats that we face. And it must have the capacity to access and properly analyze all of the information about terrorist attacks that our government possesses.

Secondly, though it falls short of the Committee's recommendation, the final legislation does establish dedicated leadership for both the information analysis and infrastructure protection functions. SA 4471 established separate, Senate confirmed Under Secretaries for "intelligence analysis" and "critical infrastructure protection." This was to ensure that focused leadership—with sufficient clout—was provided for each of these complex, and major challenges facing our government. With 85 percent of our critical infrastructure owned by the private sector, it is clear that full time leadership will be required to ensure that adequate protective measures are identified and put in place. Similarly, the tremendous challenge of overcoming barriers to information sharing within the intelligence community and establishing a robust intelligence analysis division will likely occupy a significant amount of time of the Secretary and Under Secretary.

H.R. 5005 takes a somewhat different approach: like the President's June 18th proposal, it establishes a single Under Secretary with overall responsibility for both information analysis and infrastructure protection. However, in Title II, Section 201, (b)(1) and (b)(2) it also creates two Assistant Secretaries to lead information analysis and infrastructure protection, respectively. Earlier, Title I, Section 103 of the legislation establishes several officers who shall be appointed by the President "with the advice and consent of the Senate," including not more than 12 Assistant Secretaries (Sec. 103 (a)(8)). The Assistant Secretaries for information analysis and infrastructure protection will clearly occupy two of the most critical positions in our government: consequently, Congress' expectation is they will be among the 12 Assistant Secretaries who will be appointed by the President with the advice and consent of the Senate.

Third, responding to the testimony of Senator SHELBY and others, the SA 4471 provided broad, routine access to information for the Secretary of Homeland Security. The assumption behind the Committee's approach was that, unless the President determined otherwise, all information about terrorist threats, including so-called "unevaluated intelligence," possessed by intelligence agencies would be routinely shared by intelligence agencies and other agencies with the Department of Homeland Security. In contrast, the President's proposal would curtail the Secretary's access to unanalyzed information. The Secretary would have routine access to reports, assessments and analytical information. But, except for vulnerabilities to critical infrastructure, the Secretary would receive access to unanalyzed information only as the President may further provide.

H.R. 5005 has wisely moved towards SA 4471. In Section 202 (a), H.R. 5005 states that, "except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government." This is crucial because the Secretary must have access to the information he or she deems necessary to protect the American people, and cannot simply rely on agencies that have historically been reluctant to share information to determine what the Secretary should have.

In Section 202(b)(1) the legislation provides that the Secretary may enter into cooperative agreements with agencies to provide access to such information. At the same time, if no request has been made, or no agreement has been entered into, agencies are still required to provide certain information that is specified in the legislation. This includes, at Section 202(b)(2) (A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary; (B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed; (C) all other information relating to significant and credible threats of terrorism, whether or not such information has been analyzed; and (D) such other information or material as the President may direct.

These provisions require agencies to provide significant amounts of information to the Secretary, even in the absence of a cooperative agreement. With respect to the information required in Section 202(b)(2)(C); in many cases, it may be impossible for agencies to know if certain information is related to "significant and credible threats" of terrorism precisely because that can only be determined once the information is fused with information from others. Consequently, to meet the statutory requirement, agencies should clearly endeavor to collect requested information, even if it is not already available, and they should err on the side of providing more, rather than less, information that is already on hand to the Department's analysts. This is clearly the best way to help ensure that the Department can effectively carry out its mandate to prevent, deter, and preempt terrorist attacks.

Finally, like SA 4471, H.R. 5005 makes the Department responsible for working with the Director of Central Intelligence to protect sources and methods and with the Attorney General to protect sensitive law enforcement information (Section 201(d)(12)). Also, as the Committee recommended, the substitute formally includes the elements of the Department concerned with analysis of foreign intelligence in the "intelligence community". (Section 201(h)) while also empowering the Secretary to consult with the Director of

Central Intelligence and other agencies on our nation's intelligence gathering priorities (Section 201(d)(10)). These provisions will ensure that the Department becomes a full partner with the Central Intelligence Agency and other agencies in our intelligence community, and that is has a crucial seat at the table in all proceedings where intelligence-gathering priorities are established.

Though H.R. 5005 is not exactly what the Governmental Affairs Committee recommended in SA 4471, it does contain key aspects of the Committee's approach and establishes a single point in our government with the responsibility for receiving and assessing all information about terrorist threats to our homeland. Thus, it does represent a very significant improvement over the Administration's proposal. As a result, the information analysis and infrastructure protection function in the Department, assuming it is properly implemented, will greatly improve our nation's overall capacity to prevent, deter, protect against, and respond to terrorist threats against our homeland.

SCIENCE AND TECHNOLOGY

The Department will have profound scientific and technological needs, and both the immediate and long-term success of its mission will require the implementation of a broadly-coordinated, tightly-focused, and sustained effort to invest in critical areas of research, accelerate technology development, and expedite the transition and deployment of such technologies into effective use. H.R. 5005 attempts to meet this objective by creating a strong, coherent, and well-funded Directorate of Science and Technology. The Directorate established in this legislation follows directly from the model embodied in the homeland security bill passed by the Senate Governmental Affairs Committee, SA 4471, and explicated in the Chairman's Statement on September 4, 2002 (CONGRESSIONAL RECORD, pages S8162–S8164). In keeping with that model, the Directorate will be headed by a Senate-confirmed Under Secretary for Science and Technology with expansive responsibilities, as outlined in Section 302, for directing and managing homeland security research, development, demonstration, testing, and evaluation (RDDT&E) activities; coordinating the federal government's civilian efforts, as well as developing a national policy and strategic plan, for meeting homeland security R&D needs; advising the Secretary and supporting the Department's efforts to analyze risks and threats; ensuring the rapid transfer and deployment of technologies capable of advancing homeland security objectives; and conducting research on countermeasures for biological and chemical threats.

RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING & EVALUATION

With respect to his RDDT&E responsibilities, the Under Secretary will act through an array of mechanisms and authorities established in H.R. 5005. The primary driver of innovation within the Directorate will be a Homeland Security Advanced Research Projects Agency (HSARPA), which is conceived to be similar in purpose and organization to the highly successful Defense Advanced Research Projects Agency (DARPA) within the Department of Defense (DOD). Over the past five decades, DARPA has been recognized as one of the most productive engines of technological innovation in the federal government. Its success has been grounded in its ability to recruit outstanding scientific and technical talent, promote creativity and adaptability under a lean, flexible organizational structure, and entice collaboration from other R&D entities by leveraging an independent source of funds. Because the HSARPA created in H.R. 5005 is purposefully patterned after the nearly identical Security Advanced Research Projects Agency (SARPA) contained in SA 4471, the legislative intent concerning the missions, roles, Acceleration Fund, and structure of that organization (see Chairman's Statement on September 4, 2002, CONGRESSIONAL RECORD, pages S8162–8163) are, of course, straightforwardly applicable to HSARPA.

In order to enable HSARPA to achieve parallel success to DARPA, Section 307 of H.R. 5005 provides HSARPA with a $500 million Acceleration Fund to support key homeland security R&D both within and outside of the federal government, leverage collaboration from R&D entities external to the Department, and accelerate the development, prototyping, and deployment of homeland security technologies. The Secretary is likewise provided with DARPA's flexible authority to hire and manage top-flight personnel. Although SA 4471 placed limits on this authority by setting a ceiling of 100 personnel who may be hired pursuant to this authority and instituting a 7-year sunset provision [SA 4471, Section 135(c)(3)(C)], those limits have been eliminated in H.R. 5005 to allow the Secretary greater discretion in exercising such authority commensurate with need [Section 307(b)(6)]. In a later section, Section 831, H.R. 5005 also confers the Secretary with another important authority currently available to the DOD—the ability to engage in "other transactions" for both research and prototype projects. This flexible contracting authority for such projects has been integral to DARPA's success, and HSARPA will therefore have the same authority. While the legislation vests this authority directly in the Secretary, it is clearly and specifically contemplated that such authority will be delegated appropriately to other officials within the Department, particularly the Under Secretary for Science and Technology and the Director of HSARPA, for use in connection with R&D and prototyping activities under their direction or management, including extramural RDDT&E projects and projects supported by the Acceleration Fund. Nothing in this legislation should be construed as requiring or encouraging HSARPA to adopt or replicate any specific programs within DARPA, such as the Total Information Awareness Program, or as conferring HSARPA with any additional authority to overcome privacy laws when developing technologies for information-collection.

Separate provisions for the Department's other extramural and intramural RDDT&E activities are set forth in Section 308. These provisions are not intended to supercede the specific provisions established for HSARPA under Section 307, and should not be in any way limiting on HSARPA. Regarding the university-based center or centers for homeland security described in Section 308(b)(2), legislative intent regarding the need for flexible application of this provision in order to avoid unfairly favoring one or more particular institutions was clarified in the November floor statements of the Republican manager of the final bill, Senator PHIL GRAMM. It should therefore be emphasized that the criteria listed under Section 308(b)(2)(B) should not be considered absolute or dispositive in nature, but rather, as factors that should be considered in the context of national homeland security needs and the relative strengths of candidate institutions in meeting those needs. Consistent with this intent, Section 308(b)(2)(C) specifically provides the Secretary and the Under Secretary with full "discretion" in determining whether, how, and when to implement these provisions. Consideration of additional relevant criteria to supplement (and, within their discretion, to supercede) those delineated under Section 308(b)(2)(B) is specifically contemplated in Section 308(b)(2)(C). This subsection anticipates as the Secretary and Under Secretary exercise their discretion that they actively engage in a comprehensive, dispassionate, and competitive review of available institutions to determine the optimal selection for serving national interests. It is contemplated that consortia of universities capable of meeting particular areas of required expertise would be eligible to serve as a university center or centers; therefore, there is no restriction on such consortia being considered under Section 308(b)(2). To assure full oversight of the fairness of the selection process, the Secretary is required to report to Congress under Section 308(b)(2)(C) on the full details of the selection and implementation of the university centers.

Regarding the headquarters laboratory described in Sections 308(c)(2)–(c)(4), it deserves reiterating that the establishment of such a headquarters laboratory is not mandatory under the legislation. The Secretary and the Under Secretary should use their discretion in determining whether the designation of such a laboratory is necessary and would better assist the Directorate in fulfilling its functions. It is the intent of H.R. 5005 that the Directorate coordinate and draw broadly upon the full range of S&T resources and expertise available in the federal government rather than creating new, duplicative stovepipes. Accordingly, the risks attaching to the latter should be weighed carefully against the potential benefits of establishing a single headquarters laboratory. As an alternative, the Secretary could certainly opt to select a group of institutions and laboratory elements with expertise in a variety of fields to fill the pertinent need.

Consequent to the principle of affording the Department with rapid, nonbureaucratic, expansive, and flexible access to existing federal S&T capabilities, the legislation in Section 309 provides the Secretary with authority to utilize any of the Department of Energy (DOE) laboratories and sites through a variety of mechanisms, most notably, joint sponsorship agreements, and in Section 309(g), establishes an Office for National Laboratories within the Directorate to create a networked laboratory system among the DOE laboratories to support the missions of the Department. With regard to Section 309(c), it should be clarified that this provision is limited to those programs and activities that are transferred from the DOE to the Department under this legislation. There is no general requirement or obligation within this or any other provision to execute or maintain separate contracts for work commissioned by the Department to non-transferred DOE laboratories or sites or their operators.

INTERAGENCY COORDINATION AND THE NATIONAL POLICY AND STRATEGIC PLAN

Notwithstanding the mechanisms described above for enabling the Department to engage and support important homeland security R&D, H.R. 5005 recognizes that the vast bulk of research and development relevant to homeland security will continue to occur outside the direct control of the Department—in other agencies, in academia, and in the private sector. A critical challenge, therefore, will be to ensure that the Department has the proper tools and mechanisms to elicit cooperation across a wide range of disparate R&D entities, each with their own missions and priorities, and to coordinate their collective efforts in service to homeland security goals.

A key coordination mechanism envisioned by the legislation is the development of a national policy and strategic plan as described in Section 302(2). This national policy and strategic plan integrates the concepts of the National Strategy for Combating Terrorism and the technology roadmap articulated in SA 4471 [Title III and Section 135(c)(2)(B)] into a single national blueprint for meeting S&T goals and objectives for homeland security. It is intended that a comprehensive technology roadmapping exercise (which is commonly accepted within the S&T community as a prerequisite to optimal organization and coordination of large-scale R&D projects) serve as a basis for, and central component of, the larger policy and plan, and that the resulting roadmap, policy, and plan provide the framework within which all relevant stakeholders, both within and outside of government, will coordinate on a common homeland security RDDT&E agenda.

Effective coordination will also require a forum and body through which intensive communication and collaboration may occur. Along these lines, the legislation in Section 311 establishes a Homeland Security Science and Technology Advisory Committee ("Advisory Committee") consisting of representatives from academia and the private sector to both advise the Department and coordinate with communities outside the federal government in conducting homeland security R&D. The utility of having an external, independent entity to inform and guide intra-Department and interagency S&T efforts has been previously demonstrated by the advisory group assembled by the National Academy of Sciences (NAS) in response to the September 11th attacks. This group, which published a prominent review of the government's homeland security R&D efforts in June 2002 (Making the Nation Safer: The Role of Science and Technology in Countering Terrorism), played an important and constructive role in identifying and stimulating much needed improvements. Section 311 requires a similar entity to be established that may, among other things, advise the Department by continuously critiquing homeland security S&T efforts in a "red team" capacity or function, and recommending new approaches for the Department and outside agencies. It is specifically anticipated that the National Research Council of the NAS, drawing on its extensive network of S&T contacts and the expertise it developed in compiling its June 2002 report, will select appropriate candidates for membership onto the Advisory Committee [Section 311(b)(2)], as well as support the Advisory Committee's work on an ongoing basis. The Advisory Committee is initially authorized for three years, which is a reasonable time period to permit the Secretary to meaningfully assess the Advisory Committee's efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Advisory Committee has provided, or is likely to provide, useful support and functionality to the Department, it is anticipated that the Secretary will reconstitute or re-establish the Advisory Committee pursuant to his authority under Section 871(a).

With respect to R&D coordination among the federal agencies, H.R. 5005 does not specifically carry over the Homeland Security Science & Technology Council ("S&T Council") from SA 4471 given that it may be unnecessarily redundant to create a new interagency council when interagency coordination mechanisms already exist in the form of the National Science and Technology Council (NSTC) and its various subcommittees. This does not diminish the importance of such an interagency body to the homeland security R&D effort. To the contrary, an active interagency coordination entity must be considered fundamental to enabling the Secretary and the Under Secretary to fulfill their core responsibilities of coordinating the federal government's civilian homeland security R&D efforts [Section 302(2)] and carrying out the Department's S&T agenda through coordination with other federal agencies [Section 302(13)]. The omission of the interagency S&T Council from H.R. 5005 assumes that the NSTC and the Office of Science and Technology Policy (OSTP), working with the Secretary and the Under Secretary, will establish and promote the strong interagency coordination mandated in Sections 302(2) and 302(13). Consequently, the Secretary, the Under Secretary, the OSTP, and all members of the NSTC are expected to commit to ensuring the viability of the NSTC as a productive coordination mechanism. In the event that such faith proves to be misplaced, a separate interagency group composed of senior R&D representatives from relevant federal agencies and officials from the Executive Office of the White House should be immediately constituted by the Secretary and the Under Secretary based on the authorization for interagency S&T coordination contained in Sections 302(2) and 302(13). These provisions also constitute a directive to agencies with S&T expertise in areas pertinent to homeland security to fully and actively participate in such interagency efforts.

SCIENTIFIC AND TECHNICAL SUPPORT, RISK ANALYSIS, AND THE HOMELAND SECURITY INSTITUTE

Another major set of responsibilities assigned to the Under Secretary relates to providing specialized advise, expertise, and support to other actors within the homeland security organization [Sections 302 (1), (2), and (3)]. Perhaps the most critical of such responsibilities is supporting the Department with respect to assessing, analyzing, and mitigating homeland security threats, vulnerabilities, and risks. Section 302(2) calls for including coordinated threat identification within the national policy and strategic plan, and Section 302(3) specifically calls for the assessment and testing of "homeland security vulnerabilities and threats." Although primary responsibility for coordinating and integrating risk analysis and risk management resides with the Secretary and the Under Secretary for Information Analysis and Infrastructure Protection, the highly complex and technical issues inherent to modern risk analysis methods demand substantial scientific and technical expertise. Section 302(3) mandates that the Under Secretary for S&T support the Under Secretary for Information Analysis and Infrastructure Protection in this regard. Therefore, Section 305 addresses the problem of obtaining the necessary S&T expertise by giving the Secretary broad authority to establish or contract with Federally Funded Research and Development Centers (FFRDCs), which could perform functions not only related to R&D, but extending to risk, threat, and vulnerability analysis. While this authority is discretionary, H.R. 5005 anticipates that it will be exercised actively in accordance with need. In fact, so compelling was the NAS's recommendation in its June 2002 report to create an independent, non-profit institution for critical analysis and decision support, that H.R. 5005 includes another provision to trigger immediate exercise of the broad FFRDC authority. Specifically, Section 312 mandates the creation of a Homeland Security Institute ("Institute") focusing expressly on capabilities related to risk analysis, scenario-based threat assessments, red teaming, and other functions relevant to homeland security. The Institute is initially authorized for three years, which is a reasonable time period to permit the Secretary to meaningfully assess the Institute's efficacy in fulfilling its defined purpose. Should the Secretary determine after the initial authorization period that the Institute has provided, or is likely to provide, useful support and functionality to the Department, it is anticipated that the Secretary will, pursuant to his authority under Section 305, renew, reconstitute, or reestablish the Institute with appropriately expanded or modified functions to service the Department's ongoing and expanding risk assessment mission.

TECHNOLOGY TRANSITION

The Under Secretary is responsible for ensuring that technologies capable of supporting homeland security are quickly tested, evaluated, transitioned, and deployed to appropriate users within or outside the Department. Section 302(6) explicitly requires the Under Secretary to establish a system for transferring such technologies. This system should include processes and mechanisms for identifying homeland security actors and entities with unmet technological needs; matching such entities and needs with available technologies or, if none are readily available, assisting in the development, testing, evaluation, and deployment of new technologies to meet identified needs; ensuring viable technology transition paths for products of homeland security R&D, including HSRAPA-derived technologies; aligning internal R&D priorities and programs to technological needs inside or outside the Department; communicating externally with both technology developers and users to promote alignment of extra-Departmental R&D efforts with homeland security-related technological needs; providing technology developers with information and guidance on interfacing with governmental customers of homeland security technologies; and providing technical assistance to potential governmental users of homeland security technologies. To support the Under Secretary in executing these responsibilities, Section 313 establishes a Technology Clearinghouse ("Clearinghouse") to serve as a national point-of-contact for both technology developers and potential users. The Clearinghouse must coordinate with the Technical Support Working Group (TSWG), and may fully integrate with the TSWG. In light of the fact that the mission of the TSWG dovetails with, and is fully embraced by, that of the Directorate, it is contemplated that the Under Secretary may assume full or joint management, technical, and/or policy oversight of the TSWG.

TESTING AND EVALUATION OF TECHNOLOGIES FOR INTERNAL ACQUISITION AND DEPLOYMENT

With respect to technologies being considered for internal use Department-wide or within one or more of its constituent entities, intelligent and well-coordinated testing, evaluation, procurement, and deployment will be crucial given that the new Department will have extensive technological needs, requirements, and dependencies. Too often, government agencies are hampered and distracted from their fundamental missions as a result of unstructured, technically unsophisticated approaches to technology acquisition and deployment that generate interoperability problems downstream. In order to effectively carry out the requirement for the Under Secretary to comprehensively conduct, direct, integrate, and coordinate the demonstrating, testing, and evaluation activities of the Department as articulated in Sections 302(4), 302(5), and 302(12), the Secretary and the Under Secretary should implement procedures to ensure that new technologies being considered for acquisition will be compatible and interoperable with other existing or anticipated technologies. New technologies should not be permitted to move to acquisition without the Under Secretary's sign off on the prior stages in the innovation process, particularly the demonstration, testing, and evaluation stages. The Under Secretary is understood to occupy the role of the Department's chief technology officer, and it is anticipated that he will be provided with responsibilities and authorities befitting that role. Accordingly, the Secretary shall act through the Under Secretary to operationally test and evaluate all major systems targeted for potential acquisition by any entity within the Department, and grant the Under Secretary authority to approve or reject such systems in his discretion. Nothing in this provision is to be construed as proscribing other Departmental entities from undertaking testing and evaluation activities so long as they do so in coordination with, and subject to the final approval of, the Under Secretary. The Under Secretary should also coordinate with the Department's Chief Information Officer, the Under Secretary for Management, and other federal agencies in promoting government-wide compatibility and interoperability of homeland security technologies and systems.

By vesting in the Under Secretary the full and broad authority to manage the Department's full spectrum of innovation, from basic research [Sections 302(4), 302(5), 302(11), and 302(12)] through demonstration, testing, and evaluation [Sections 302(4), 302(5), and 302(12)] to transition and deployment [Section 302(6)], the Under Secretary will have the means and mandate to initiate a powerful, systematic approach to innovation that generates new technologies for combating terrorism and ensures integrated acquisition and use of such technologies. Placing control of all the key innovation stages with the Under Secretary is critical to assuring that research, development, demonstration, testing, evaluation, and deployment in the Department do not become disjointed and fractured so that a coherent innovation process can prevail.

RESEARCH ON COUNTERMEASURES FOR BIOLOGICAL AND CHEMICAL THREATS

True preparation for future biological, chemical, radiological, and nuclear attacks will depend upon the development of vaccines and medicines to combat the most likely threats. At present, our nation is woefully unprepared for this type of attack. In his June 28, 2002 testimony before the Senate Governmental Affairs Committee, Dr. J. Leighton Read discussed the barriers to the development of a national medical arsenal to combat terrorism. The federal government has a long and successful history in conducting basic biomedical research. The National Institutes of Health within the Department of Health and Human Services (HHS) have served as an international model for funding and conducting human health-related research. However, in facing biological and chemical terrorism, we face a new challenge. In addition to encouraging basic research and training the next generation of scientists, the federal government will have to deliver actual pharmaceutical products and will have to deliver them quickly. Unlike the traditional pharmaceutical market, companies that choose to develop drugs to fight bioterrorist attacks that may never occur will not be able to rely on an existing market. Yet producing actual products to meet biological and chemical threats will depend upon private sector involvement. As a result, the Under Secretary should incorporate the goal of engaging the private sector into develop biothreat countermeasures into every level of his strategy, and adopt plans and policies to enable such private sector participation to occur.

H.R. 5005 provides tools to accomplish this task. While Section 302(4) states generally that the Under Secretary's responsibilities do not extend to human health-related research and development activities, this provision should be construed consistent with other specific provisions in H.R. 5005 ascribing the Under Secretary a major role in addressing biological and chemical threats related to terrorism, a role which will require the Under Secretary to conduct specific types of human health-related research and development activities. Section 302, therefore, does not circumscribe the Under Secretary's authority to conduct research necessary to implement the major biothreat-related functions delineated in Sections 302(2) (requiring the Under Secretary to develop a national policy and plan that addresses, among other things, chemical and biological terrorist threats, and further requiring the Under Secretary to coordinate the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats), 302(5) (requiring the Under Secretary to direct, fund, and conduct national research and development for detecting, preventing, protecting against, and responding to terrorist attacks, which perforce include those involving biological or chemical agents), 302(8) (requiring the Under Secretary to collaborate with the Secretary of Agriculture under the Agricultural Bioterrorism Protection Act of 2002), 302(9) (requiring the Under Secretary to collaborate with the Secretary of HHS in determining biological agents and toxins to be listed as select agents), 303(1)(A) (transferring control and management of certain chemical and biological national security programs within the Department of Energy into the Department of Homeland Security), and Sections 303(2) and 1708 (establishing and transferring into the Department a National Bio-Weapons Defense Analysis Center).

The National Bio-Weapons Defense Analysis Center ("Center") established and transferred in H.R. 5005 will, in particular, require the Under Secretary to engage in extensive human health-related R&D. The Center is intended to lead the Department's research efforts on bioterrorism by developing "countermeasures to potential attacks by terrorists using weapons of mass destruction" (Section 1708). The Center will conduct research on bioterrorism, and by definition, this should include study of the pathogenesis of bioterrorist agents, the immune response to these pathogens, and research on vaccines, drugs, and other medical antidotes. Since the Center is placed under the direction and management of the Directorate, the Under Secretary is conferred with substantial obligations to conduct human health-related R&D.

While the Secretary clearly has the authority to conduct the type of R&D discussed above internally, H.R. 5005 contemplates that the civilian human health-related countermeasures research carried out by HHS shall remain under the direction of the Secretary of HHS. Sections 304(a) and (b) mandate that while the Secretary of HHS shall retain authority for such research, he shall collaborate with the Secretary of Homeland Security in developing between the two Departments a coordinated strategy and outcome measurements for these research activities. As outlined in H.R. 5005, it is crucial that such research reflect the overall national policy and strategic plan developed by the Secretary and the Under Secretary under Section 302(2), and that the efforts of the two Departments be fully in concert. In the biothreat and chemical threat areas, the Secretary should work to ensure the resulting policy, plan, and benchmarks mandated under Section 302(2) reflect what is most needed and what pharmaceutical products can be timely developed against the most likely and dangerous threats to the public. Since this will require participation from the private sector, the policy and plan, which will include a technology roadmap, must necessarily include a strategy for translating basic science results into product development within the private pharmaceutical and biotechnology sectors.

EMERGENCY PREPAREDNESS AND RESPONSE

The Department will coordinate the federal response to disasters. This responsibility will encompass natural and manmade disasters, terrorist attacks and all incidents involving weapons of mass destruction, and other large-scale emergencies. In addition, the Department will assist the Secretaries of Health and Human Services and the Department of Agriculture in responding to public health and agricultural emergencies. The Directorate for Emergency Preparedness and Response was designed to spearhead this effort within the Department.

In order to accomplish these tasks the Department will need an interdisciplinary, well funded, and well-organized Directorate of Emergency Preparedness and Response. The initial design of this directorate was established by the Senate Governmental Affairs Committee in S. 1534. This original design was refined by the Governmental Affairs Committee amendment, SA 4471, and further explained by the Chairman's statement on September 4, 2002 (CONGRESSIONAL RECORD, pages S8162–S8164). Consistent with this original design, H.R. 5005 establishes a Directorate that includes the essential federal emergency response agencies and offices.

The Directorate shall build and direct a comprehensive national incident management system and consolidate existing federal emergency response plans into a single, coordinated national plan as outlined in H.R. 5005, Sections 502(5), 502(6), and 507(b)(1–2). States and localities should have access to and information about these systems and plans to ensure optimal coordination during an emergency. These plans should encompass all affected governmental entities and reflect both local and national needs. The consolidated federal response plan, outlined in Sections 502(6) and 507(b)(1–2), must interface with state and local response plans and should utilize local resources wherever possible.

INTEROPERABILITY

The planning responsibilities of the Under Secretary shall include the development of a comprehensive plan and effort for improving communication interoperability during emergency response (H.R. 5005, Section 502(7)). In developing the communication technology and interoperability, the Under Secretary must pay particular attention to the development, support and utilization of effective telemedicine networks, as well as the application of advanced information technology to effective training for and delivery of emergency medical services.

STANDARDS

In order to implement the missions delineated in Section 502, the Directorate shall establish and disseminate standards for equipment, personnel, training, resources, and the resulting emergency response. Standards shall be used as benchmarks for training and acquisition to ensure a uniform quality and interoperability during a response. The Under Secretary shall use these standards to provide recommendations and guidance to state and local governments.

PUBLIC HEALTH AND AGRICULTURAL EMERGENCIES

The Secretaries of Health and Human Services and the Department of Agriculture shall retain the authority to oversee the federal response to public health and agricultural emergencies, respectively. This authority includes the authority to declare such emergencies. However, these agencies shall fully collaborate with the new Department which shall support these agencies in their response, especially with regards to chemical, biological, radiological, and nuclear weapons. The Department should serve as an active and involved resource during bioterrorist and agroterrorist attacks. As outlined in Section 887 of H.R. 5005, the Department shall work in conjunction with the Department of Health and Human Services, the Federal Bureau of Investigation, and other engaged federal agencies to optimize information sharing between agencies commencing forthwith, as well as before and after the declaration of a public health emergency. This provision was intended to ensure that all involved agencies have all the information necessary to effectively perform their role in the federal response. See also, Section 892.

TRAINING

In order to help "ensure the effectiveness of emergency response efforts" as required in Section 502(1) of H.R. 5005, the Directorate shall lead federal efforts to train first responders in disaster response. The term, first responder, shall include law enforcement, fire fighting, emergency medical, health care, and volunteer personnel. To be effective, training shall encompass exercises, on-line computer simulations, drills, courses, and other interactive learning environments. Personnel should be trained in every aspect of emergency response, including prevention/preparation, mitigation, active response, and recovery efforts. Training should include utilization of the Noble Training Center, transferred to the new Department as part of the Office of Emergency Preparedness (Section 503(5)) and other training sites and campuses within the Federal Emergency Management System, as well as full coordination with the National Guard. Finally, the Directorate shall improve, and train first responders in use of, governmental on-line resources to ensure they have the latest information available during a response.

STRATEGIC NATIONAL STOCKPILE

Authority to oversee the Strategic National Stockpile shall be transferred to the new Department. In H.R. 5005, this transfer of authority is described in Sections 502(3)(B), 503(6), and 1705. This language clarifies that the existing structure of the Stockpile program, as described in Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), shall remain intact. The Stockpile shall continue to be a multi-agency effort, with significant roles for the Department of Veterans Affairs and the Department of Health and Human Services. In particular, the Department should continue to incorporate the recommendations of the Centers for Disease Control and Preparedness (CDC) and the Office of the Assistant Secretary for Public Health Emergency Preparedness (OPHEP), within the Department of Health and Human Services, in determining the composition of the stockpile and the parameters for its use. The Department shall consult the CDC and OPHEP in deciding which medications, vaccines, and medical supplies are most appropriate for the Stockpile (Section 1705(a)(1)(C)). The Department shall also coordinate with the Secretary of Health and Human Services in determining the need to deploy the stockpile, on an incident-by-incident basis. The Under Secretary should continue to use the resources of Department of Veterans' Affairs in procuring and storing the contents of the Stockpile (Section 1705(a)(1)(B)). And the Under Secretary shall call upon the Department of Defense and the National Guard to help transport and secure the contents of the stockpile as appropriate.

THE OFFICE OF EMERGENCY PREPAREDNESS

SA 4471 described, in detail, the transfer of the Office of Emergency Preparedness (OEP) from the Department of Health and Human Services to the Department. The transfer of OEP was retained in H.R. 5005 in sections 502(3)(B) and 503(5). Since the Office of Emergency Preparedness is not defined in statute, it should be clarified that the transfer of OEP shall include the Office and all of its component agencies. This includes the National Disaster Medical System, the Metropolitan Medical Response System, the Noble Training Center, the Special Events Disaster Response program, and all other programs directed by OEP. Of course, nothing in the final legislation should be construed to mean that the transfer of the OEP programs shall result in the transfer of personnel whose primary duties reside outside of OEP.

THE NATIONAL DISASTER MEDICAL SYSTEM

For example, the National Disaster Medical System (NDMS) is an interagency program. It involves personnel, facilities, and equipment from the Department of Health and Human Services, the Department of Veterans Affairs, the Department of Defense, and other federal agencies. The personnel and assets from these departments that are deployed by NDMS during the an emergency response, but whose primary day to day roles are central to the missions of agencies outside of the Department, shall remain part of their home agencies. This includes members of the Disaster Medial Assistance Teams (DMATs), the Disaster Mortuary Assistance Teams (DMATs), and the Veterinary Medical Assistance Teams (VMATs). The transfer of the NDMS component of OEP shall be restricted to the management, organizational, and coordinating personnel, functions, and assets.

THE METROPOLITAN MEDICAL RESPONSE SYSTEM

Similarly, the transfer of the Metropolitan Medical Response System (MMRS) does not include transfer of member hospitals. Rather it shall consist of a transfer of the grant programs and related personnel. The MMRS grants have been used to improve hospital and first responder preparedness in select metropolitan regions across the country. Administration of these ongoing grants will become part of the new Department.

Although H.R. 5005 transfers the authority of the Secretary of the Department of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness for OEP (Section 503(5)), the Under Secretary shall at all times attempt to maximize communication and interaction between OEP and its component programs and the Department of Health and Human Services, which will be crucial in meeting the Directorate's mission requirements. As the preceding discussion illustrates, OEP will have to coordinate efforts of personnel from several different agencies. But in addition, OEP and its programs must remain integrated into the larger national public health infrastructure. Particular efforts should be made to coordinate OEP programs with the Office of the Assistant Secretary for Public Health Emergency Preparedness. This office, within the Department of Health and Human Services, is charged with coordinating intra and interagency health preparedness efforts. OEP should remain a part of this larger whole.

CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES

Section 505 of H.R. 5005 addresses two critical issues. First, it is imperative that the efforts to improve our public health infrastructure and their emergency preparedness remain under the control of the Secretary for Health and Human Services, although coordinated with the Secretary. On June 28, 2002 the Governmental Affairs Committee heard testimony from several public health experts. In their testimony, the witnesses concurred that in order to be functional during an emergency, public health preparedness efforts had to be integrated into the larger public health system. This "dual-use" improves underlying public health efforts while ensuring health providers remain familiar with emergency preparedness networks and programs. Their testimony pointed out that dual-use was particularly important during a response to a biological attack. In this case, the terrorist attack may not be immediately apparent and detection may depend upon the ability of normal health care systems to detect unusual patterns of illness. H.R. 5005 also stressed this important theme through Section 505 and language in Section 887, which calls for interaction between the agencies before and after the declaration of a public health emergency.

Section 505 stipulates that the Department of Health and Human Services shall retain primary authority over efforts to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats "carried out by the Department of Health and Human Services." In this regard, the Secretary of Health and Human Services shall have authority to set priorities and preparedness goals. However, the Secretary of Health and Human Services, working through the Assistant Secretary for Public Health Emergency Preparedness, must develop a coordinated strategy for these activities in collaboration with the Secretary (Section 505(a)). In doing so, the Secretary of Health and Human Services will also collaborate with the Secretary in establishing benchmarks and outcome measures for success. Nothing in Section 505 should be interpreted as disrupting ongoing preparedness efforts within the Department of Health and Human Services. All ongoing emergency preparedness grants should continue. Selection criteria and the evaluation of grant application shall continue to be determined by the Department of Health and Human Services, consistent with Section 505 provisions.

HUMAN RESOURCES MANAGEMENT

H.R. 5005 contains two key provisions relating to employees at the new Department—section 841, which governs the establishment of a human resources management system, and section 842, which deals with labor-management relations at the Department. These provisions have been among the most contentious in debate on this legislation.

The Administration has consistently sought what it calls "flexibility" in the personnel area, by which it means a carte blanche to waive civil service protections and union rights of the employees at the Department. Sections 841 and 842 of H.R. 5005 are significantly more protective in this regard than the provisions in the President's original proposal (i.e., the one released June 18, 2002), but these sections remain a major disappointment. A risk remains of politicization, arbitrary treatment, and other personnel abuses in the federal government, in a way that may damage the merit-based workplace federal employees and the American people have come to depend on. I hope what I fear does not come to pass, and that this Administration and future Administrations will not overstep bounds, overexert authority, and thereby undermine the effectiveness of the new Department. I have summarized below the protections that sections 841 and 842 do provide.

Establishment of Human Resources Management System. Section 841 authorizes the Secretary, jointly with the Director of the Office of Personnel Management (OPM), to prescribe a "human resources management system" (HRMS) for the Department. The section provides that the HRMS may waive certain provisions of the civil service statutes, and specifies required procedures by which the system is to be developed, negotiated, and adopted.

When it comes to the creation of a HRMS, the law still requires that employees in the new Department will be hired, promoted, disciplined, and fired in conformity with all merit system principles and in violation of no prohibited personnel practices. If and when existing civil service rights and protections come up for consideration in the development of a HRMS, the Administration may waive, modify, or otherwise affect such rights and protections only to the extent it can clearly demonstrate that they clearly conflict with the homeland security mission, and that they are not being waived merely in the interest of administrative convenience. Fair and independent procedures must be maintained for employees with grievances, such as those who allege abuse or corruption within the Department. Changes to the system must be carefully crafted through negotiation and collaboration with employees and their representatives; and, if a disagreement arises, the period of at least 30 days that section 841 requires for bargaining and mediation between the Administration and the employee representatives must be substantial and in good faith, not cosmetic.

The provisions in section 841 that allow a HRMS to waive statutes are precisely drawn, detailing which parts of the United States Code may be waived, modified, or otherwise affected and which parts may not. For example, the legislation specifically forbids waiver of merit system principles or prohibited personnel practices. Furthermore, as to provisions referred to in 5 U.S.C. §§2302(b)(1), (8) and (9), the legislation forbids waiver not only of the provisions themselves, but also of provisions implementing those protections through affirmative action or through any right or remedy. Sections 2302(b)(1), (8) and (9) include laws against discrimination, against reprisal for whistleblowing, and retaliation for exercising rights. Section 841 thus assures that the HRMS will not affect employees' ability to appeal a personnel action to the Merit Systems Protection Board, under existing law, in a case where the employee alleges a discrimination, retaliation, or reprisal covered and referred to by §§2302(b)(1), (8) and (9). Section 841 also requires the HRMS to ensure that employees may organize and bargain collectively, subject only to exclusion from coverage or limitation on negotiability established by 5 U.S.C. chapter 71 or other law.

Furthermore, the grant of waiver authority under section 841 refers explicitly and only to part III of title 5, United States Code. Section 841 thus grants no authority to waive any provision of law outside of part III. This means, for example, that the HRMS may not waive, modify, or otherwise affect such government-wide employee rights and protections as, for example: (1) the Office of Special Counsel's authority to investigate any prohibited personnel practice and seek corrective action or disciplinary action from the Merit Systems Protection Board (MSPB) (5 U.S.C. §§1211 et seq.); (2) employees' right to seek corrective action from the MSPB in a case of reprisal for whistleblowing (5 U.S.C. §§1221–1222); (3) the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended; printed as an appendix to 5 U.S.C.); (4) Veterans benefits (including appeal rights to MSPB) (38 U.S.C.); and (5) the Fair Labor Standards Act of 1938 (29 U.S.C. §§201 et seq.). Likewise, some of the right and protections applicable to particular agencies or groups of employees being transferred to the Department are set forth in portions of the United States Code outside of part III of title 5, or were not enacted by Congress as incorporated into the United States Code at all, and these rights and protections may not be waived by the HRMS.

While the waiver authority granted by section 841 is broad, the provisions noted above and other provisions that may not be waived under section 841 can afford significant protections against politicization, arbitrary action, and abuse. The Secretary and the Director must be scrupulous in not attempting to waive, modify, or otherwise affect any provisions of law that are beyond the express waiver authority, because such an attempt would violate section 841.

Labor-Management Relations. 5 U.S.C. §7103(b)(1) states that the President may issue an executive order excluding any agency from coverage under the Federal Sector Labor-Management Relations Statute (FSLMRS) if the President determines: that the agency has a primary function in intelligence, counterintelligence, investigative, or national security work, and that the provisions of the FSLMRS cannot be applied consistent with national security. Section 842 of H.R. 5005 builds on that existing provision by stating that, for the President to issue an executive order excluding an agency transferred to the Department, not only must the criteria in 5 U.S.C. §7103(b)(1) be satisfied, but also two additional clarifying criteria must be satisfied: that the mission and responsibilities of the agency materially changed, and that a majority of the employees in the agency have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

That provision would provide employees at the Department some appropriate measure of stability in their labor relations, although the provision is subject to a subsequent provision of section 842. The President can override the earlier provision if he determines that the earlier provision would have a substantial adverse impact on the Department's ability to protect homeland security, and provides Congress a detailed written finding explaining the reasons for the determination. The President has to give the Congress 10 days' advance notice by submitting the written explanation. At the expiration of the ten day period, the President would then have the power to issue an executive order under 5 U.S.C. §7103(b)(1) under the criteria of that section only.

I still fail to understand why any President would need to remove collective bargaining rights from federal employees, whose union rights are very limited in comparison with the private sector, and who have a long history of helping to protect the homeland and continue to do the same protective work in the new Department. But if and when this President or a future President does move to eliminate collective bargaining within a unit of the Department, the President can take this step only if it is truly essential to national security and homeland security and not merely a convenience to management. This requires that the Department's leadership must first make good-faith efforts to work cooperatively with the unions before the President can determine that union representation is incompatible with national security or homeland security.

And the written explanation that the President is required to provide to Congress must of course be thorough and specific. The requirement reflects a bipartisan concern that this Administration and future Administrations must make the case for stripping workers of their right to bargain collectively before issuing an Executive Order. The President must provide Congress a comprehensive and specific explanation on the threshold issue of how and why the right of workers in a particular agency or subdivision to collectively bargain would have a substantial adverse impact on homeland security.

Other provisions. Two other provisions of H.R. 5005 relating to human resources management warrant comment.

Section 881 requires that the Secretary, in consultation with the Director of OPM, shall review the pay and benefit plans of each agency transferred to the Department and, within 90 days, submit a plan to Congress for ensuring the elimination of disparities, especially among law enforcement personnel. Nothing in section 881 provides for how the elements of the plan shall be put into effect, however, so I believe it would be desirable for the plan to identify the specific changes to law, regulation, and policy that would be needed to eliminate the disparities, and make specific recommendations for effecting those changes.

Section 1512(e) states that the Secretary, in regulations prescribed jointly with the Director of OPM, may adopt the rules, procedures, terms and conditions established by statute, rule, or regulation before the effective date of the Act in any agency transferred to the Department under the Act. This section 1512 contains the Savings Provisions for the reorganization effected by the Act, and subsection (e) is intended to enable the Secretary to keep a transferred agency subject to the same rules, procedures, terms and conditions that applied to the agency before the transfer. This provision does not, of course, provide authority to the Secretary to take a provision that was applicable to one agency before the effective date and apply it to another agency or other part of the Department.

Mr. THOMPSON. Madam President, putting a significant piece of legislation like this bill together is a difficult and time-consuming task. Many Senators have played important roles in this legislation, but the contributions of our staff members have also been of great significance. Without the aid of our staff members, little would get done in this institution. I would like to take a moment to recognize the hard work and dedication of just a few of the staff members who contributed significantly to this legislation.

For the Majority, I want to recognize the contributions of Chairman LIEBERMAN's staff, especially his staff director, Joyce Rechtschaffen, and Laurie Rubenstein, Mike Alexander, Kiersten Coon, Holly Idelson, Kevin Landy, Larry Novey, and Susan Propper. Also, let me acknowledge the contributions of staff to the other members of the Governmental Affairs Committee and of Sarah Walter of Senator BREAUX's staff, David Culver of Senator BEN NELSON's staff, and Alex Albert of Senator MILLER's staff.

On the Republican side, I must single out the work of Rohit Kumar of Senator LOTT's Leadership staff. He has been the linchpin around whom everything got done. We would have no bill without his persistence, diligence, and intellect. Mike Solon of Senator GRAMM's staff also placed a crucial role in developing the Gramm-Miller amendment on which much of the final legislation is based. David Morgenstern of Senator CHAFEE's staff was also helpful.

Finally, let me recognize my own staff on the Governmental Affairs Committee, who provided me with outstanding support. The successful adoption of this legislation is due to their hard work and constant efforts. Almost my entire staff was involved in some way or another with this bill. I want to recognize the efforts of Richard Hertling, my staff director on the Governmental Affairs Committee, who led the effort, and Libby Wood Jarvis, my legislative director. Other members of my staff whose assistance I wish to recognize are Ellen Brown, Bill Outhier, Mason Alinger, Alison Bean, John Daggett, Johanna Hardy, Stephanie Henning, Morgan Muchnick, Jayson Roehl, Jana Sinclair, and Elizabeth VanDersarl, along with Allen Lomax, a fellow in my office from the General Accounting Office.

Our staff members toil diligently and well, largely in anonymity. I think it appropriate on occasion to recognize their work publicly, so that Americans may share the knowledge of the members of this institution about how well served they are by our staff members.

I thank the Presiding Officer for allowing me to take this brief time to recognize the efforts of some of the staff members responsible for this bill.

Mr. KENNEDY. Madam President, soon after the vicious attacks of September 11, it became clear that Congress needed to act on a bipartisan basis to win the war on terrorism and protect the country from future attack. Congress quickly approved strong bipartisan legislation authorizing the use of force against the terrorists and those who harbor them. It also enacted bipartisan legislation to provide aid to victims and their families, to improve airport security, to give law enforcement and intelligence officials enhanced powers to investigate and prevent terrorism, to improve border security, and to strengthen our defenses against bioterrorism.

The September 11 attacks also demonstrated the need to consolidate overlapping functions and establish clear and efficient organizational structures within the Federal Government. I fully support these goals. Reorganization without reform, however, will not work. It is not enough to consolidate different agency functions, if the underlying problems relating to management, information sharing, and coordination are not also addressed. And we do the Nation a disservice if, in the course of reorganizing the Government, we betray the ideals that America stands for here at home and around the world.

We know that our Nation faces a very serious threat of terrorism. To protect our national security in today's world, we need an immigration system that can carefully screen foreign nationals seeking to enter the United States and protect our Nation's borders. Our current Immigration and Naturalization Service is not up to these challenges. For years, INS has been unable to meet its dual responsibility to enforce our immigration laws and to provide services to immigrants, refugees, and aspiring citizens.

The Lieberman homeland security bill included bipartisan immigration reforms that were carefully designed to correct these problems and bring our immigration system into the 21st century. It untangled the overlapping and often confusing structure of the INS and replaced it with two clear lines of command—one for enforcement and the other for services. It also included a strong chief executive officer to ensure accountability, a uniform immigration policy, and effective coordination between the service and the enforcement functions.

On these key issues, the Republican bill moves in exactly the wrong direction. It transfers all immigration enforcement functions to the Border and Transportation Security Directorate. Immigration service functions are relegated to the Bureau of Citizenship and Immigration Services, which lacks its own Under Secretary. These agencies will have authority to issue conflicting policies and conflicting interpretations of law. The formulation of immigration policy—our only chance to achieve coordination between these dispersed functions—will be subject to the conflicting views of various officials spread out in the new Department. With its failure to provide centralized coordination and lack of accountability, the Republican bill is a blueprint for failure.

The Republican bill also eliminates needed protections for children who arrive alone in the United States. Often, these children have fled from armed conflict and abuses of human rights. They are traumatized and desperately need care and protection. The Lieberman bill included safeguards, developed on a bipartisan basis, to ensure that unaccompanied alien children have the assistance of counsel and guardians in the course of their proceedings. Under this bill, immigration proceedings will remain the only legal proceedings in the United States in which children are not provided the assistance of a guardian or court-appointed special advocate.

Finally, the Republican bill will seriously undermine the role of immigration judges. Every day, immigration courts make life-altering decisions. The interests at stake are significant, especially for persons facing persecution. We need an immigration court system that provides individuals with a fair hearing before an impartial and independent tribunal, and meaningful appellate review. The Republican bill undermines the role and independence of the courts and the integrity of the judicial process.

It vests the Attorney General with all-encompassing authority, depriving immigration judges of their ability to exercise independent judgement. Even more disturbing, the bill gives the Attorney General the authority to change or even eliminate appellate review. This result is a recipe for mistakes and abuse. An independent judicial system is essential to our system of checks and balances. Immigrants who face the severest of consequences deserve their day in court.

Today, many Americans are concerned about the preservation of basic liberties protected by the Constitution. Clearly, as we work together to bring terrorists to justice and enhance our security, we must also act to preserve and protect our Constitution. Unfortunately, the Republican bill undermines the civil rights and privacy safeguards that Senator FEINGOLD and I worked to include in the Lieberman bill. In particular, I am disappointed that the civil rights officer in the new Department will not be subject to Senate confirmation, and that there will not be a designated official in the Inspector General's Office to investigate civil rights violations.

These changes to the civil rights and privacy safeguards are particularly disturbing in light of the fact that the bill explicitly authorizes the new Department to engage in the controversial practice of data mining. This practice allows the Government to establish a massive data base containing public and private information, with files on every American. The bill provides no language ensuring that the Government acts in compliance with Federal privacy laws and the Constitution.

On the issue of worker rights, we should remember that union members risked and lost their lives and saved countless others through their actions on September 11. We will never forget the fine example that firefighters, construction workers, and many Government workers set that day. Union workers have also shown great bravery and sacrificed mightily in the service of homeland security since September 11. The postal workers and the hospital worker killed as a result of bioterrorism were all union members. The brave flight attendant whom the President recognized in the State of the Union Address for preventing terrorism was a member of a union.

The dedication and resolve of these union members truly represents the best of America. Over 43,000 of the Federal workers affected by the proposed Government reorganization are currently union members. On September 11, unionized Federal workers played critical roles at both the World Trade Center and the Pentagon as they worked round the clock to make our homeland secure. These are the workers who risk their lives each day to protect our Nation's borders.

This bill completely undermines the collective bargaining rights of the unionized employees transferred to the new Department on whom our security depends. It gives the President unlimited and unchecked authority to eliminate those collective bargaining rights. He only needs to claim that continued union rights would interfere with homeland security. Federal workers will also have no opportunity to meaningfully participate in creating the personnel system for the new Department. Moreover, this bill does not include any Davis-Bacon protections, despite longstanding Federal policy that workers should be paid prevailing wages on Federal construction projects. This bill displays a contempt for the Federal workers who serve with dedication every day to keep our Nation Safe.

Denying Federal workers fundamental rights will also undermine our Nation's homeland security at a time when we can ill afford it. Among the many lessons we have learned since September 11 about lapses in intelligence efforts connected with those events is that Federal workers need protection to be able to speak out when they believe our Nation's security is at risk. Without the protections afforded by a union, Federal workers will be far less likely to speak out and protect the public for fear of unjust retaliation.

The Republican bill's fundamental flaws were compounded to by the last-minute addition of numerous special-interest provisions. These provisions include the creation of new procedural barriers for the issuance of emergency security rules deemed essential to protect travelers by the Transportation Security Agency; an earmark for a new homeland security research center program at Texas A&M; and an exemption from the open-meetings requirement of the Federal Advisory Committee Act. The bill gives broad liability protection to manufacturers of "anti-terrorism technology" for claims arising from acts of terrorism. This provision will reduce the incentive of industry to produce effective antiterrorism products and limit the ability of victims to recover if future terrorist acts occur. It also shields from liability pharmaceutical companies that produce vaccine additives such as Thimerosal—the subject of pending litigation initiated by parents of autistic children. This provision has nothing to do with bioterrorism preparedness or homeland security—and everything to do with rewarding a large contributor to the Republican Party.

While I agree with my Republican colleagues that we need to reorganize the Government in responses to the challenges that we now face, I cannot support the deeply flawed bill now before the Senate. In too many aspects, it misses the opportunity for real reform and is likely to undermine, not strengthen, the security of our homeland.

Mr. WARNER. Madam President, I rise today to urge my colleagues to reject the pending Lieberman amendment to the homeland security bill. This amendment will prevent the President from gaining the authorities he needs to effectively deal with the very real and growing threat to our homeland. We should act, and act quickly. to give the President this authority.

The current amendment would keep the President from addressing a key issue in providing protection to our homeland, that is, the issue of liability risk which must be resolved if the private sector is to actively provide innovative homeland defense technologies and solutions. Some form of indemnification or limitation of lability has been a part of U.S., war efforts since World War II, as evidence by congressional passage of the War Power Act of 1941 2 weeks after Pearl Harbor, and, since 1958, the use of the National Defense Contracts Act, or Public Law 85-804, to indemnify contracts issued by the Department of Defense and other national security agencies.

To address the current terrorist threat, I have worked on the liability issue with the High Technology Task Force under the leadership of Senators ALLEN and BENNETT to fashion various solutions to enable America to access the best private sector products and technologies to defend our homeland. This is particularly important to those innovative small businesses who do not have the capital to shoulder significant liability risk.

The Lieberman amendment would nullify the compromise recently worked out with the House to limit this liability risk through limited tort reform. The Lieberman amendment would not provide any alternative to address the underlying problem. If this amendment passes what would be the incentives for This amendment is contractors to provide innovative solutions to our homeland security? For example, contractors will not sell chemical/biological detectors already available to DOD to other Federal agencies and State and local authorities because of the liability risk. Some of our Nation's top defense contractors will not sell these products because they are afraid to risk the future of their company on a lawsuit. There is an urgent need for authority to address this situation.

While my earlier proposal on indemnification, which is another approach to addressing liability risk, is not included in the current bill, I believe that the compromise language will go a long way to addressing the problem. If it appears that additional authorities are necessary to complement the language in this bill, I pledge to work in the coming Congress to provide any necessary authority that the Present needs to ensure that innovative homeland defense technologies and solutions are available to the Federal State and local governments, as well as to the private sector.

I would also like to remark on the importance of Section 882 in the homeland security legislation to create an Office for National Capital Region Coordination within the new Department. This office will enable the Washington metropolitan region to prevent and respond to future terrorist attacks by coordinating the efforts of the Federal Government with state, local and regional authorities.

The September 11 attacks underscored the unique challenges the National Capital Region faces. As the seat of our Nation's Government, the location of many symbolic structures, the venue for many public events attended by large numbers of people, a key tourism destination point and home to thousands of Federal workers and lawmakers, it has been and may continue to be a prime location for potential future terrorist attacks.

The Washington metropolitan region needs a central Federal point of coordination for the many entities in the region which must deal with the Federal Government on issues of security. These authorities include the Federal Government, Maryland, Virginia and the District of Columbia, the Metropolitan Washington Council of Governments, the Washington Metropolitan Area Transit Authority, the Metropolitan Washington Airports Authority, the Military District of Washington, the judicial branch, the business community and the U.S. Congress. In no other area of the country must important decisionmaking and coordination occur between an independent city, two States, seventeen distinct local and regional authorities, including more than a dozen local police and Federal protective forces, and numerous Federal agencies.

A central Federal point of contact compliments the work of the Metropolitan Washington Council of Governments, COG, which established a comprehensive all-sector task force to improve communication and coordination when an incident of regional impact occurs. Currently, several Federal agencies have been involved in the task force, including the Office of Homeland Security, FEMA, the Office of Personnel Management, the Army Corps of Engineers, the Military District of Washington, the Department of Health and Human Services, the U.S. Public Health Service, and the Centers for Disease Control. Without a central Federal point of contact, it has been difficult, if not impossible, for effective coordination to occur among the region and these many entities.

For example, the Continuity of Operations Plans for several federal agencies are instructing employees to use Metrorail and Metrobus service in the event of an emergency. There is not a central Federal contact, however, for the Washington Metropolitan Area Transit Authority, WMATA, to work with to ensure that the Federal Government's needs are met and Federal employees are fully protected.

This new office within the Department of Homeland Security will resolve this problem by providing a much needed central Federal point of coordination. It will give all entities in the region a one-stop shop for dealing with the Federal Government on security issues, including plans and preparedness activities, including COG, WMATA, the Greater Washington Board of Trade and the Potomac Electric Power Company, PEPCO, whose statements have appeared in previous versions of the CONGRESSIONAL RECORD.

On behalf of the region's 5 million residents, I commend the House and Senate for recognizing the unique needs of our nation's capital in preventing and responding to terrorism by supporting creation of the Office for National Capital Region Coordination.

Passage of legislation to create a new Department of Homeland Security is crucial to our Nation's ability to respond to and prevent possible future terrorist attacks.

Mr. LEAHY. Madam President, the idea of coordinating homeland security functions in a cabinet-level department is a constructive one and a sound one. In large part it originated in this body with legislation offered by Senator LIEBERMAN and Senator SPECTER, who deserve great credit for their work. President Bush, after initially opposing this idea, also deserves credit for coming to understand its value and for reversing his administration's resistance to it.

In the several months that the Congress has spent in writing and debating this complex bill, the issue has not been whether such a department should be created, but how it should be created. The Judiciary Committee, which I chair, has played a constructive role in examining these issues in our hearings and in providing guidance in the writing of this bill, and I have supported and helped to advance the key objectives envisioned for this new department. The fact that we are on the verge of enacting a charter for the new department is good for the Nation and our efforts to defend the American people against the threats of terrorism. Many of the "hows" that have found their way into this bill, and the process by which that has happened, are a needless blot on this charter. As we act to approve this charter, we should also feel obligated to remedy many of these ill-advised and ill-considered provisions in succeeding congressional sessions, through corrective steps and through close oversight.

As they come to understand some of the imprudent extraneous additions to this bill, many Americans will feel that their trust and goodwill have been abused, and I share their disappointment about several elements of this version of the bill that has been placed, without due consideration, before the Senate. This deal, negotiated behind closed doors by a few Republican leaders in the House and Senate and the White House, has been presented to us as a done deal. It includes several blatant flaws that should at the very least be debated. That is why I could not vote for cloture to end debate on a bill almost 500-pages long that was presented to us for the first time only five days ago, on November 14.

The bill undertakes a significant restructuring of the Federal Government by relocating in the new Department of Homeland Security several agencies, including the Immigration and Naturalization Service, the U.S. Secret Service, the Federal Emergency Management Agency, the Office of Domestic Preparedness, the Transportation Security Administration, the U.S. Customs Service, and the Coast Guard. In addition, many functions of the Bureau of Alcohol, Tobacco, Firearms and Explosives would be transferred to the Department of Justice.

Overall I support the President's conclusion that several government functions should be reorganized to improve our effectiveness in combating terrorism and preserving our national security, although he has been responsible for leading all of these agencies and fulfilling their responsibilities since assuming the Presidency in January 2001, and the President himself opposed significant reorganization until recently. Homeland security functions are now dispersed among more than 100 different governmental organizations. Testimony at a June 26, 2002, Judiciary Committee hearing illuminated the problem of such a confusing patchwork of agencies with none having homeland security as its sole or even primary mission. I had thought that the Department of Justice and FBI were the lead agencies responsible for the country's security in 2001 and 2002, but I understand why the President has come to realize that the lack of a single agency responsible for homeland security increases both the potential for mistakes and opportunities for terrorists to exploit our vulnerabilities.

The bill will bring under one cabinet level officer agencies and departments that share overlapping missions for protecting our border, our financial and transportation infrastructure and responding to crises. Having these agencies under a single cabinet level officer will help coordinate their efforts and focus their mission with a single line of authority to get the job done.

This is something that I support.

The bill also encourages information sharing. Our best defense against terrorism is improved communication and coordination among local, State, and Federal authorities; and between the U.S. and its allies. Through these efforts, led by the Federal government and with the active assistance of many others in other levels of government and in the private sector, we can enhance our prevention efforts, improve our response mechanisms, and at the same time ensure that funds allotted for protection against terrorism are being used most effectively.

The recent sniper rampage in the Washington, DC area demonstrated the dire need for such coordination among Federal, State and local law enforcement agencies. Fortunately, we were able to see the productive results of effective information sharing and coordination with the arrests of the two alleged snipers on October 31.

While we all support increased sharing of relevant information with the new Department of Homeland Security by and among other Federal, State and local agencies, we must be careful that information sharing does not turn into information dumping. We want our law enforcement officials to have the information they need to do their jobs effectively and efficiently, with communications equipment that allows different agencies to talk to each other and with the appropriate training and tools so that multiple agencies are able to coordinate their responses during emergencies. We know that large amounts of information were collected, but never read or analyzed, before September 11, and we know that translators and resources are what we need to help make the already-gathered information useful.

There is no dispute that information sharing is critical, but we have to make sure we do not go overboard. Information dumping is harmful to our national security if the information is not accurate, complete, or relevant, or if it is dumped in such a bulk fashion that end-users are unable to determine its reliability. The legislation before us provides very broad authority for information collection from and sharing with not just Federal, State and local law enforcement authorities, but also other government agencies, foreign government agencies and the private sector. Highly sensitive grand jury information, criminal justice, and electronic, wire, and oral interception information is authorized to be shared to not just across this country but also around the world. Without clear guidance, this sweeping new authority can be a recipe for mischief. The Congress now will have an imperative to monitor vigilantly and responsibly the implementation of this new authority to ensure that the risks to the privacy of the American people and the potential for abuse do not become a reality.

This bill contains several constructive provisions, including establishment in the new Department of a Privacy Office and an Office for Civil Rights and Civil Liberties. The bill also includes the Sessions-Leahy bill, S. 3073, and whistleblower protections that the administration's original proposal rejected. In addition, as I will discuss in more detail in these remarks, the bill includes a prohibition on both the TIPS Program and a national identification system or card.

I am pleased the bill, in section 880, forbids the creation of Operation TIPS, a proposed citizen reporting program theoretically designed to prevent terrorism. The ill-designed program threatened to turn neighbors into spies and to discredit valuable neighborhood watch programs. When I questioned the Attorney General about the program earlier this year, I found his answers to be incomplete and far from reassuring. As such, I was prepared to offer an amendment in the Senate to bar Operation TIPS, and I welcome the House's strong opposition to the program that has made my amendment unnecessary.

Under the plan originally announced by the Justice Department, Operation TIPS would have enlisted millions of Americans as volunteers who would report their suspicions about their neighbors and customers to the government. This plan was criticized by Republicans and Democrats alike, and Justice Department officials then said they planned to make the program smaller than originally anticipated. But the Department never made clear how the program would work, what it would cost, or how the privacy interests of American citizens would be protected.

Indeed, the administration offered a constantly shifting set of explanations to Congress and the public about how Operation TIPS would work, leaving Congress unable even to evaluate a program that could easily lead to the invasion of the privacy of our fellow Americans. Even the Operations TIPS website offered differing explanations of how the program would work, depending on what day a concerned user accessed it. For example, before July 25, the web site said that Operation TIPS "involving 1 million workers in the pilot stage, will be a national reporting system that allows these workers, whose routines make them well-positioned to recognize unusual events, to report suspicious activity." By contrast, the July 25 version declared that "the program will involve the millions of American workers who, in the daily course of their work, are in a unique position to see potentially unusual or suspicious activity in public places." It was unclear whether these changes reflected actual changes in the Justice Department's plans, or whether they were simply cosmetic differences designed to blunt opposition to the program raised by concerned citizens, newspaper editorials, and Members of Congress.

The administration originally proposed Operation TIPS as "a nationwide program giving millions of American truckers, letter carriers, train conductors, ship captains, utility employees, and others a formal way to report suspicious terrorist activity." In other words, the administration would recruit people whose jobs gave them access to private homes to report on any "suspicious" activities they discovered. Nor would this program start small; the Administration planned a pilot program that alone would have enlisted 1 million Americans.

We also never received a full understanding of how the Administration planned to train Operation TIPS volunteers. The average citizen has little knowledge of law enforcement methods, or of the sort of information that is useful to those working to prevent terrorism. Such a setup could have allowed unscrupulous participants to abuse their new status to place innocent neighbors under undue scrutiny. The number of people who would have abused this opportunity is undoubtedly small, but the damage these relatively few could do would be very real and potentially devastating. In addition, it was crucial that citizen volunteers receive training about the permissible use of race and ethnicity in their evaluation of whether a particular individual's behavior is suspicious, but the Justice Department seemed not to have considered the issue.

Even participants acting in good faith may have been prone to report activity that would not be suspicious to a well-trained professional. One law enforcement agencies are already operating under heavy burdens, and I questioned the usefulness of bombarding them with countless tips from millions of volunteers. As the Washington Post put it in a July editorial: "It is easy to imagine how such a program might produce little or no useful information but would flood law enforcement with endless suspicions that would divert authorities from more promising investigative avenues."

The administration's plan also raised important questions about how and whether information submitted by TIPS volunteers would be retained. Many of us were deeply concerned about the creation of a TIPS database that would retain TIPS reports indefinitely. When he testified before the Judiciary Committee in July, the Attorney General said that he, too, was concerned about this. He told us that he had been given assurances that there would be no database, but he could not tell us who had given him those assurances. Many months later, the administration's plans on this issue still are unclear. We simply cannot allow a program that will use databases to store unsubstantiated allegations against American citizens to move forward.

Opposition to Operation TIPS has been widespread. Representative ARMEY, the House Majority Leader, has led the fight against it in the House. The Postal Service refused to participate. The Boston Globe called it a scheme Joseph Stalin would have loved. In an editorial, The New York Times said: "If TIPS is ever put into effect, the first people who should be turned in as a threat to our way of life are the Justice Department officials who thought up this most un-American of programs." The Las Vegas Sun said that "Operation TIPS has the potential of becoming a monster." The Washington Post said that the Administration "owes a fuller explanation before launch day."

In evaluating TIPS, we need to remember our past experience with enlisting citizen informants on such a grand scale. During World War I, the Department of Justice established the American Protective League, APL, which enrolled 250,000 citizens in at least 600 cities and towns to report suspicious conduct and investigate fellow citizens. For example, the League spied on workers and unions in thousands of industrial plants with defense contracts and organized raids on German-language newspapers. Members wore badges and carried ID cards that showed their connection to the Justice Department and were even used to make arrests. Members of the League used such methods as tar and feathers, beatings, and forcing those who were suspected of disloyalty to kiss the flag. The New York Bar Association issued a report after the war stating of the APL: "No other one cause contributed so much to the oppression of innocent men as the systematic and indiscriminate agitation against what was claimed to be an all-pervasive system of German espionage." No one wants to relive those dark episodes or anything close to them.

I am pleased that we have achieved bicameral and bipartisan agreement that Operation TIPS goes too far, infringing on the liberties of the American people while promising little benefit for law enforcement efforts. If the administration comes to Congress with a limited, common-sense proposal that respects liberties, Congress will likely support it. But Congress cannot simply write a blank check for such a troubled program.

I am also pleased that the bill, in section 1514, states clearly that nothing in the legislation shall be construed to authorize the development of a national identification system or card. Given the other provisions in the bill that pose a risk to our privacy, this at least is a line in the sand which I fully support.

The House-passed bill also includes, in section 601, a provision that Senator SESSIONS and I introduced last month as S.3073. This provision will facilitate private charitable giving for servicemen and other Federal employees who are killed in the line of duty while engaged in the fight against international terrorism. Under current law, beneficiaries of members of the U.S. Armed Forces get paid only $6,000 in death benefits from the government, over any insurance that they may have purchased. Moreover, these individuals may not be eligible for payments from any existing victims' compensation program or charitable organization. The Session-Leahy provision will provide much-needed support for the families of those who have made the ultimate sacrifice for their country. It encourages the establishment of charitable trusts for the benefit of surviving spouses and dependents of military, CIA, FBI, and other Federal Government employees who are killed in operations or activities to curb international terrorism. This provision also authorizes Federal officials to contact qualifying trusts on behalf of surviving spouses and dependents, pursuant to regulations to be prescribed by the Secretary of Defense. This will help to inform survivors about benefits and to ensure that those who are eligible have the opportunity to access the money. It will also spare grieving widows the embarrassment of having to go to a charity and ask for money. Finally, for the avoidance of doubt, this provision makes clear that Federal officeholders and candidates may help raise funds for qualifying trusts without running afoul of federal campaign finance laws.

I am also pleased that, unlike the President's original, the current bill would ensure that employees of the new Department of Homeland Security will have all the same whistleblower protections as employees in the rest of the Federal Government. As we saw during the many FBI oversight hearings that the Judiciary Committee has held over the last 15 months, strong whistleblower protection is an important homeland security measure in itself.

Indeed, it was whistleblower revelations that helped lead to the creation of this Department. The President was vehemently opposed to creating the new Department of Homeland Security for 9 months after the September 11 attacks. Then, just minutes before FBI whistleblower Coleen Rowley came before the Judiciary Committee in a nationally televised appearance to expose potential shortcomings in the FBI's handling of the Zacarias Moussaoui case before 9/11, the White House announced that it had changed its position and that the creation of a new cabinet-level Department of Homeland Security was vital. Of course, that made it all the more ironic that the President's original proposal did not assure whistleblower protections in the new Department.

In any event, although the new Department has the same legal protections as those that apply in the rest of the government, the protections will mean nothing without the vigorous enforcement of these laws by the administration. The leadership of the new Department and the Office of Special Counsel must work to encourage a culture that does not punish whistleblowers, and the Congress—including the Judiciary Committee—must continue to vigorously oversee the new and other administrative departments to make sure that this happens.

While I am glad that the many employees of the new Department will have the same substantive and procedural whistleblower protections as other government employees, I wish that we could have done more. Unfortunately, a Federal court with a monopoly on whistleblower cases that is hostile to such claims has improperly and narrowly interpreted the provisions of the Whistleblower Protection Act. Senators GRASSLEY, LEVIN, AKAKA and I had proposed a bipartisan amendment to this measure that would have strengthened whistleblower protections in order to protect national security. The amendment was similar to S. 995, of which I am a cosponsor, and our amendment would have corrected some of the anomalies in the current law. It is unfortunate for the success of the Department and for the security of the American people that the amendment was not part of the final measure, and I hope that we can work to pass S. 995 in the 108th Congress.

The administration was slow to accept the idea for a cabinet-level department to coordinate homeland security, but experience in the months after the September 11 attacks helped in the evolution of the Administration's position. Soon after the President invited Governor Ridge to serve as the Director of an Office of Homeland Security within the White House, I invited Governor Ridge in October, 2001, to testify before the Judiciary Committee about how he would improve the coordination of law enforcement and intelligence efforts and about his views on the role of the National Guard in carrying out the homeland security mission, but he declined our invitation at that time. The administration would not allow Director Ridge to testify before Congress.

Without Governor Ridge's input, the Judiciary Committee continued oversight work that had begun in the summer of 2001, before the terrorist attacks, on improving the effectiveness of the U.S. Department of Justice, the lead Federal agency with responsibility for domestic security. This task has involved oversight hearings with the Attorney General and with officials of the Federal Bureau of Investigation and the Immigration and Naturalization Service. In the weeks immediately after the attacks, the committee turned its attention to hearings on legislative proposals to enhance the legal tools available to detect, investigate and prosecute those who threaten Americans both here and abroad. Committee members worked in partnership with the White House and the House to craft the new anti-terrorism law, the USA PATRIOT Act, which was enacted on October 26, 2001.

We were prepared to include in the new anti-terrorism law provisions creating a new cabinet-level officer heading a new Department of Homeland Security, but we did not do so at the request of the White House. Indeed, from September, 2001, until June, 2002, the administration was steadfastly opposed to the creation of a cabinet-level department to protect homeland security. Governor Ridge said in an interview with National Journal reporters in May, 2001, that if Congress put a bill on the President's desk to make his position statutory, he would, "probably recommend that he veto it." That same month, White House spokesman Ari Fleischer also objected to a new department, commenting that, "You still will have agencies within the Federal government that have to be coordinated. So the answer is: Creating a Cabinet post doesn't solve anything."

In one respect, the White House was correct: Simply moving agencies around among departments does not address the problems inside agencies like the FBI or the INS—problems like outdated computers, hostility to employees who report problems, lapses in intelligence sharing, and lack of translation and analytical capabilities, along with what many have termed "cultural problems." The Judiciary Committee and its subcommittees have been focusing on identifying those problems and finding constructive solutions to fix them. We have worked hard to be bipartisan and even nonpartisan in this regard. To that end, the Committee unanimously reported the Leahy-Grassley FBI Reform Act, S. 1974, to improve the FBI, especially at this time when the country needs the FBI to be as effective as it can be in the war against terrorism. Unfortunately, that bill has been blocked on the Senate floor since it was reported by the Judiciary Committee in April, 2002, by an anonymous Republican hold.

The White House's about-face on June 6, 2002, announced just minutes before the Judiciary Committee's oversight hearing with FBI Special Agent Coleen Rowley, telegraphed the President's new support for the formation of a new homeland Security Department along the lines that Senator LIEBERMAN and Senator SPECTER had long suggested.

Two weeks later, on June 18, 2002, Governor Ridge transmitted a legislative proposal to create a new homeland security department. It should be apparent that knitting together a new agency will not by itself fix existing problems. In writing the charter for this new department, we must be careful not to generate new management problems and accountability issues. Yet the administration's early proposal would have exempted the new department from many legal requirements that apply to other agencies. The Freedom of Information Act would not apply, nor would the conflicts of interest and accountability rules for agency advisors. The new department head would have the power to suspend the Whistleblower Protection Act and the normal procurement rules and to intervene in Inspector General investigations. In these respects, the administration asked us to put this new department above the law and outside the checks and balances these laws are there to ensure.

Exempting the new department from laws that ensure accountability to the Congress and to the American people makes for soggy ground and a tenuous start—not the sure footing we all want for the success and endurance of this endeavor.

We all wanted to work with the President to meet his ambitious timetable for setting up the new department. Senate Democrats worked diligently to craft responsible legislation that would establish a new department but would also make sure that it was not outside the laws. We all knew that one sure way to slow up the legislation would be to use the new department as the excuse to undermine or repeal laws not liked by partisan interests, or to stick unrelated political items in the bill under the heading of "management flexibility." Unfortunately, the Republican leadership and the White House have been unable to resist that temptation, even as they urge prompt passage of a bill unveiled for the first time only 5 days ago.

This bill has its problems. As I will discuss in more detail in the balance of my remarks, this legislation has five significant problems. It would: (1) undermine Federal and State sunshine laws permitting the American people to know what their government is doing, (2) threaten privacy rights, (3) provide sweeping liability protections for companies at the expense of consumers, (4) weaken rather than fix our immigration enforcement problems, and (5) under the guise of "management flexibility," it would authorize political cronyism rather than professionalism within the new department. These problems are unfortunate and entirely unnecessary to the overall objective of establishing a new department of homeland security. Republican leaders and the White House have forced on the Senate a process under which these problem areas cannot be substantively and meaningfully addressed, and that is highly regrettable and a needless blot on this charter. Though I will support passage of this legislation in order to get the new department up and running, the flaws in this legislation will require our attention next year, when I hope to work with the administration and my colleagues on both sides of the aisle to monitor implementation of the new law and to craft corrective legislation.

First, the bill guts the FOIA at the expense of our national security and public health and safety. This bill eliminates a bipartisan Senate provision that I crafted with Senator LEVIN and Senator BENNETT to protect the public's right to use the Freedom of Information Act, FOIA, in order to find out what our Government is doing, while simultaneously providing security to those in the private sector that records voluntarily submitted to help protect our critical infrastructures will not be publicly disclosed. Encouraging cooperation between the private sector and the government to keep our critical infrastructure systems safe from terrorist attacks is a goal we all support. But the appropriate way to meet this goal is a source of great debate—a debate that has been all but ignored by the Republicans who crafted this legislation.

The administration itself has flip-flopped on how to best approach this issue. The administration's original June 18, 2002, legislative proposal establishing a new department carved out of FOIA exemption, in section 204, and required non-disclosure of any "information" "voluntarily" provided to the new Department of Homeland Security by "non-Federal entities or individuals" pertaining to "infrastructure vulnerabilities or other vulnerabilities to terrorism" in the possession of, or that passed through, the new department. Critical terms, such as "voluntarily provided," were undefined.

The Judiciary Committee had an opportunity to query Governor Ridge about the administration's proposal on June 26, 2002, when the administration reversed its long-standing position and allowed him to testify in his capacity as the Director of the Transition Planning Office.

Governor Ridge's testimony at that hearing is instructive. He seemed to appreciate the concerns expressed by Members about the President's June 18th proposal and to be willing to work with us in the legislative process to find common ground. On the FOIA issue, he described the Administration's goal to craft "a limited statutory exemption to the Freedom of Information Act" to help "the Department's most important missions [which] will be to protect our Nation's critical infrastructure." (June 26, 2002 Hearing, Tr., p. 24). Governor Ridge explained that to accomplish this, the Department must be able to "collect information, identifying key assets and components of that infrastructure, evaluate vulnerabilities, and match threat assessments against those vulnerabilities." (Id., at p. 23).

I do not understand why some have insisted that FOIA and our national security are inconsistent. The FOIA already exempts from disclosure matters that are classified; trade secret, commercial and financial information, which is privileged and confidential; various law enforcement records and information, including confidential source and informant information; and FBI records pertaining to foreign intelligence or counterintelligence, or international terrorism. These already broad exemptions in the FOIA are designed to protect national security and public safety and to ensure that the private sector can provide needed information to the government.

Current law already exempts from disclosure any financial or commercial information provided voluntarily to the government, if it is of a kind that the provider would not customarily make available to the public. *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Such information enjoys even stronger nondisclosure protections than does material that the government requests. Applying this exception, Federal regulatory agencies are today safeguarding the confidentiality of all kinds of critical infrastructure information, like nuclear power plant safety reports (*Critical Mass*, 975 F.2d at 874), information about product manufacturing processes land internal security measures (*Bowen* v. *Food & Drug Admin.*, 925 F.2d 1225 (9th Cir. 1991), design drawings of airplane parts (*United Technologies Corp. by Pratt & Whitney* v. *F.A.A.*, 102 F.3d 6878 (2d Cir. 1996)), and technical data for video conferencing software (*Gilmore* v. *Dept. of Energy*, 4 F. Supp. 2d 912 (N.D. Cal. 1998)).

The head of the FBI National Infrastructure Protection Center, NIPC, testified more than 5 years ago, in September, 1998, that the "FOIA excuse" used by some in the private sector for failing to share information with the government was, in essence, baseless. He explained the broad application of FOIA exemptions to protect from disclosure information received in the context of a criminal investigation or a "national security intelligence" investigation, including information submitted confidentially or even anonymously. [Sen. Judiciary Subcommittee On Technology, Terrorism, and Government Information, Hearing on Critical Infrastructure Protection: Toward a New Policy Directive, S. HRG. 105-763, March 17 and June 10, 1998, at p. 107]

The FBI also used the confidential business record exemption under (b)(4) "to protect sensitive corporate information, and has, on specific occasions, entered into agreements indicating that it would do so prospectively with reference to information yet to be received." NIPC was developing policies "to grant owners of information certain opportunities to assist in the protection of the information (e.g., 'sanitizing the information themselves') and to be involved in decisions regarding further dissemination by the NIPC." Id. In short, the former administration witness stated: "Sharing between the private sector and the government occasionally is hampered by a perception in the private sector that the government cannot adequately protect private sector information from disclosure under the Freedom of Information Act (FOIA). The NIPC believes that this perception is flawed in that both investigative and infrastructure protection information submitted to NIPC are protected from FOIA disclosure under current law." (Id.)

Nevertheless, for more than 5 years, businesses have continued to seek a broad FOIA exemption that also comes with special legal protections to limit their civil and criminal liability, and special immunity from the antitrust laws. The Republicans are largely granting this business wish-list in the legislation for the new Department of Homeland Security.

At the Senate Judiciary Committee hearing with Governor Ridge, I expressed my concern that an overly broad FOIA exemption would encourage government complicity with private firms to keep secret information about critical infrastructure vulnerabilities, reduce the incentive to fix the problems and end up hurting rather than helping our national security. In the end, more secrecy may undermine rather than foster security.

Governor Ridge seemed to appreciate these risks, and said he was "anxious to work with the Chairman and other members of the committee to assure that the concerns that [had been] raised are properly addressed." Id. at p. 24. He assured us that "[t]his Administration is ready to work together with you in partnership to get the job done. This is our priority, and I believe it is yours as well." Id. at p. 25. This turned out to be an empty promise.

Almost before the ink was dry on the administration's earlier June proposal, on July 10, 2002, the administration proposed to substitute a much broader FOIA exemption that would (1) exempt from disclosure under the FOIA critical infrastructure information voluntarily submitted to the new department that was designated as confidential by the submitter unless the submitter gave prior written consent, (2) provide limited civil immunity for use of the information in civil actions against the company, with the likely result that regulatory actions would be preceded by litigation by companies that submitted designated information to the department over whether the regulatory action was prompted by a confidential disclosure, (3) preempt State sunshine laws if the designated information is shared with State or local government agencies, (4) impose criminal penalties of up to one year imprisonment on Government employees who disclosed the designated information, and (5) antitrust immunity for companies that joined together with agency components designated by the President to promote critical infrastructure security.

Despite the administration's promulgation of two separate proposals for a new FOIA exemption in as many weeks, in July, Director Ridge's Office of Homeland Security released The National Strategy for Homeland Security, which appeared to call for more study of the issue before legislating. Specifically, this report called upon the Attorney General to "convene a panel to propose any legal changes necessary to enable sharing of essential homeland security information between the government and the private sector." (p. 33)

The need for more study of the administration's proposed new FOIA exemption was made amply clear by its possible adverse environmental, public health and safety affects. Keeping secret problems in a variety of critical infrastructures would simply remove public pressure to fix the problems. Moreover, several environmental groups pointed out that, under the administration's proposal, companies could avoid enforcement action by "voluntarily" providing information about environmental violations to the EPA, which would then be unable to use the information to hold the company accountable and also would be required to keep the information confidential. It would bar the government from disclosing information about spills or other violations without the written consent of the company that caused the pollution.

I worked on a bipartisan basis with many interested stakeholders from environmental, civil liberties, human rights, business and government watchdog groups to craft a compromise FOIA exemption that did not grant the business sector's wish-list but did provide additional nondisclosure protections for certain records without jeopardizing the public health and safety. At the request of Chairman LIEBERMAN for the Judiciary Committee's views on the new department, I shared my concerns about the administration's proposed FOIA exemption and then worked with Members of the Governmental Affairs Committee, in particular Senator LEVIN and Senator BENNETT, to craft a more narrow and responsible exemption that accomplishes the Administration's goal of encouraging private companies to share records of critical infrastructure vulnerabilities with the new Department of Homeland Security without providing incentives to "game" the system of enforcement of environmental and other laws designed to protect our nation's public health and safety. We refined the FOIA exemption in a manner that satisfied the Administration's stated goal, while limiting the risks of abuse by private companies or government agencies.

This compromise solution was supported by the administration and other members of the Committee on Governmental Affairs and was unanimously adopted by that Committee at the markup of the Homeland Security Department bill on July 24, 2002. The provision would exempt from the FOIA certain records pertaining to critical infrastructure threats and vulnerabilities that are furnished voluntarily to the new Department and designated by the provider as confidential and not customarily made available to the public. Notably, the compromise FOIA exemption made clear that the exemption only covered "records" from the private sector, not all "information" provided by the private sector and thereby avoided the adverse result of government agency-created and generated documents and databases being put off-limits to the FOIA simply if private sector "information" is incorporated. Moreover, the compromise FOIA exemption clearly defined what records may be considered "furnished voluntarily," which did not cover records used "to satisfy any legal requirement or obligation to obtain any grant, permit, benefit (such as agency forbearances, loans, or reduction or modifications of agency penalties or rulings), or other approval from the Government." The FOIA compromise exemption further ensured that portions of records that are not covered by the exemption would be released pursuant to FOIA requests. This compromise did not provide any civil liability or antitrust immunity that could be used to immunize bad actors or frustrate regulatory enforcement enforcement action, nor did the compromise preempt state or local sunshine laws.

Unfortunately, the new Republican version of this legislation that we are voting on today jettisoned the bipartisan compromise on the FOIA exemption, worked out in the Senate with the administration's support, and replaced it with a big-business wish-list gussied up in security garb. The Republican FOIA exemption would make off-limits to the FOIA much broader categories of "information" and grant businesses the legal immunities and liability protections they have sought so vigorously for over 5 years. This bill goes far beyond what is needed to achieve the laudable goal of encouraging private sector companies to help protect our critical infrastructure. Instead, it will tie the hands of the federal regulators and law enforcement agencies working to protect the public from imminent threats. It will give a windfall to companies who fail to follow Federal health and safety standards. Most disappointingly, it will undermine the goals of openness in government that the FOIA was designed to achieve. In short, the FOIA exemption in this bill represents the most severe weakening of the Freedom of Information Act in its 36-year history.

In the end, the broad secrecy protections provided to critical infrastructure information in this bill will promote more secrecy which may undermine rather than foster national security. In addition, the immunity provisions in the bill will frustrate enforcement of the laws that protect the public's health and safety.

Let me explain. The Republican FOIA exemption would allow companies to stamp or designate certain information as "Critical Infrastructure Information" or "CII" and then submit this information about their operations to the government either in writing or orally, and thereby obtain a blanket shield from FOIA's disclosure mandates as well as other protections. A Federal agency may not disclose or use voluntarily-submitted and CII-marked information, except for a limited "informational purpose," such as "analysis, warning, interdependency, study, recovery, reconstitution," without the company's consent. Even when using the information to warn the public about potential threats to critical infrastructure, the bill requires agencies to take steps to protect from disclosure the source of the CII information and other "business sensitive" information.

The bill contains an unprecedented provision that threatens jail time and job loss to any Government employee who happens to disclose any critical infrastructure information that a company has submitted and wants to keep secret. These penalties for using the CII information in an unauthorized fashion or for failing to take steps to protect disclosure of the source of the information are severe and will chill any release of CII information not just when a FOIA request comes in, but in all situations, no matter the circumstance. Criminalizing disclosures—not of classified information or national security related information, but of information that a company decides it does not want public—is an effective way to quash discussion and debate over many aspects of the Government's work. In fact, under this bill, CII information would be granted more comprehensive protection under Federal criminal laws than classified information.

This provision has potentially disastrous consequences. If an agency is given information from an ISP about cyberattack vulnerabilities, agency employees will have to think twice about sharing that information with other ISPs for fear that, without the consent of the ISP to use the information, even a warning might cost their jobs or risk criminal prosecution.

This provision means that if a Federal regulatory agency needs to issue a regulation to protect the public from threats of harm, it cannot rely on any voluntarily submitted information—bringing the normal regulatory process to a grinding halt. Public health and law enforcement officials need the flexibility to decide how and when to warn or prepare the public in the safest, most effective manner. They should not have to get "sign off" from a Fortune 500 company to do so.

While this legislation risks making it harder for the Government to protect American families, it will make it much easier for companies to escape responsibility when they violate the law by giving them unprecedented immunity from civil and regulatory enforcement actions. Once a business declares that information about its practices relates to critical infrastructure and is "voluntarily" provided, it can then prevent the Federal Government from disclosing it not just to the public, but also to a court in a civil action. This means that an agency receiving CII-marked submissions showing invasions of employee or customer privacy, environmental pollution, or government contracting fraud will be unable to use that information in a civil action to hold that company accountable. Even if the regulatory agency obtains the information necessary to bring an enforcement action from an alternative source, the company will be able to tie the government up in protracted litigation over the source of the information.

For example, if a company submits information that its factory is leaching arsenic in ground water, that information may not be turned over to local health authorities to use in any enforcement proceeding nor turned over to neighbors who were harmed by drinking the water for use in a civil tort action. Moreover, even if EPA tries to bring an action to stop the company's wrongdoing, the "use immunity" provided in the Republican bill will tie the agency up in litigation making it prove where it got the information and whether it is tainted as "fruit of the poisonous tree"—i.e., obtained from the company under the "critical infrastructure program."

Similarly, if the new Department of Homeland Security receives information from a bio-medical laboratory about its security vulnerabilities, and anthrax is released from the lab three weeks later, the Department will not be able to warn the public promptly about how to protect itself without consulting with and trying to get consent of the laboratory in order to avoid the risk of job loss or criminal prosecution for a non-consensual disclosure. Moreover, if the laboratory is violating any State, local or Federal regulation in its handling of the anthrax, the Department will not be able to turn over to another Federal agency, such as the EPA or the Department of Health and Human Services, or to any State or local health officials, information or documents relating to the laboratory's mishandling of the anthrax for use in any enforcement proceedings against the laboratory, or in any wrongful death action, should the laboratory's mishandling of the anthrax result in the death of any person. The bill specifically states that such CII-marked information "shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith." [H.R. 5710, section 214(a)(1)(C)]

Most businesses are good citizens and take seriously their obligations to the government and the public, but this "disclose-and-immunize" provision is subject to abuse by those businesses that want to exploit legal techniques to avoid regulatory guidelines. This bill lays out the perfect blueprint to avoid legal liability: funnel damaging information into this voluntary disclosure system and pre-empt the Government or others harmed by the company's actions from being able to use it against the company. This is not the kind of two-way public-private cooperation that our country needs.

The scope of the information that would be covered by the new Republican FOIA exemption is overly broad and would undermine the openness in government that FOIA was intended to guarantee. Under this legislation, information about virtually every important sector of our economy that today the public has a right to see can shut off from public view simply by labeling it "critical infrastructure information." Today, for example, under current FOIA standards, courts have required Federal agencies to disclose (1) pricing information in contract bids so citizens can make sure the government is wisely spending their taxpayer dollars; (2) compliance reports that allow constituents to insist that government contractors comply with federal equal opportunity mandates; and (3) banks' financial data so the public can ensure that federal agencies properly approve bank mergers. Without access to this kind of information, it will be harder for the public to hold its Government accountable. Under this bill, all of this information may be marked CII information and kept out of public view.

The Republican FOIA exemption goes so far in exempting such large amount of material from FOIA's disclosure requirements that it undermines Government openness without making any real gains in safety for families in Vermont and across America. We do not keep America safer by chilling Federal officials from warning the public about threats to their health and safety. We do not ensure our nation's security by refusing to tell the American people whether or not their federal agencies are doing their jobs or their Government is spending their hard earned tax dollars wisely. We do not encourage real two-way cooperation by giving companies protection from civil liability when they break the law. We do not respect the spirit of our democracy when we cloak in secrecy the workings of our Government from the public we are elected to serve.

Notably, another part of the bill, section 892, would further undermine Government sunshine laws by authorizing the President to prescribe and implement procedures requiring Federal agencies to "identify and safeguard homeland security information that is sensitive but unclassified" The precise type of information that would be covered by this new category of "sensitive" information that is not classified but subject to carte blanche executive authority to keep secret is not defined and no guidance is provided in the Republican bill as to how far the President may go.

As the Rutland Herald so aptly put it in an editorial on November 16, the Republicans "are moving to cloak the Federal Government in an unprecedented regime of secrecy." The argument over the scope of the FOIA and unilateral executive power to shield matters from public scrutiny goes to the heart of our fundamental right to be an educated electorate aware of what our government is doing. The Rutland Herald got it right in explaining, "The battle was not over the right of the government to hold sensitive, classified information secret. The government has that right. Rather, the battle was over whether the government would be required to release anything it sought to withhold."

Second, extraneous provisions added by the House also pose significant privacy risks. As I noted before, increased information sharing is necessary but also poses privacy risks if the government is not properly focused on the information necessary to collect, the people appropriate to target for surveillance and the necessary controls to ensure that dissemination is confined to those with a need to know.

Recent press reports have warned that this bill will turn it into a "super-snoop's dream" because it will allow creation of a huge centralized grand database containing a dossier or profile of private transactions and communications that each American has had within the private sector and with the government. Indeed, in section 201, the bill authorizes a new Directorate for Information Analysis and Infrastructure Protection to collect and integrate information from government and private sector entities and to "establish and utilize . . . data-mining and other advanced analytical tools." In addition, in section 307, the bill authorizes $500,000,000 next year to be spent by a new Homeland Security Advanced Research Projects Agency, HSARPA, to make grants to develop new surveillance and other technologies for use in detecting, preventing and responding to homeland security threats.

We do not want the Federal Government to become the proverbial "big brother" while every local police and sheriff's office or foreign law enforcement agency to become "little brothers." How much information should be collected, on what activities and on whom, and then shared under what circumstances, are all important questions that should be answered with clear guidelines understandable by all Americans and monitored by Congress, in its oversight role, and by court review to curb abuses.

Other provisions added in haste to the Republican House-passed bill raise serious concerns about privacy protections for the sensitive electronic communications of law-abiding Americans. In particular, the so-called "emergency disclosure" amendment in section 225(d) would greatly expand the ability of Internet service providers to reveal private communications to Government agencies without any judicial authority or any evidence of wrongdoing.

As Americans move their lives online, the privacy of their sensitive e-mails, instant messages, and web traffic is of growing concern. Current law protects the privacy of electronic communications by prohibiting service providers from revealing the contents of those communications to anyone without proper lawful orders. Emergency disclosure provisions exist in the current law based on the reasonable premise that ISPs who encounter an imminent threat of death or serious injury should be able to reveal communications to law enforcement agencies on an emergency basis, even without judicial oversight. We just recently expanded that emergency exception a year ago in the USA PATRIOT Act to provide even more flexibility for service providers.

In practice, however, the emergency disclosure authority is being used in a different way. Reports in the press and from the field indicate that ISP's university and libraries are approached by Government agents and asked to disclose communications "voluntarily" for ongoing investigations. Providers are then faced with a terrible choice—turn over the private communications of their customers without any court order, or say "no" to a government request. Of course, many comply with the requests. Small providers have few legal resources to challenge such requests. The agents who are making the requests may be the same agents to whom the providers will have to turn for help in the event of hacking attacks on other problems. So without proper restrictions, such "voluntary disclosure" provisions risk becoming a major exception to the law. Section 225(d) takes this exception even further and turns it into a loophole big enough to drive a truck through. It would allow literally thousands of local, State and Federal employees to seek private e-mails, instant messages, and other sensitive communications without any judicial orders ad even a subpoena. ISPs could turn over those communications based on vague concerns of future injury to someone, even if those concerns are totally unreasonable.

Section 225(d) makes three important changes to the already very generous authorities for these extraordinary disclosures, which Congress gave to law enforcement in the USA PATRIOT Act just one year ago. First, it would remove the requirement that there be "imminent" danger of injury or death. Instead it would allow these extraordinary disclosures when there is some danger, which might be far in the future and far more hypothetical. As the Attorney General and the President have warned us consistently over the last year, the entire country faces some risk of future attack. Under this new language, there will always be a rationale for using the so-called "emergency" disclosure provision.

Second, section 225(d) would remove even the low hurdle that there be a "reasonable belief" in danger on the part of the ISP. Instead, this new provision would allow these sensitive disclosures if there is any good faith belief—even if totally unreasonable—of danger. Vague, incoherent, or even obviously fictitious threats of future danger could all form the basis for disclosing our most private electronic communications under this new provision of law.

Finally, section 225(d) would allow disclosure of sensitive communications to any local, State or Federal Government entity, not just law enforcement agents. That could include literally hundreds of thousands of Government employees. The potential for abuse is enormous. More importantly, in cases of real threats of death or serious injury, it is law enforcement agencies—trained to deal with such situations and cognizant of legal strictures—who should be the first contact point for concerned citizens.

As a result of Section 225(d), many more disclosures of sensitive communications would be permitted without any court oversight. Moreover, these disclosures would happen without any notice to people—even after the fact—that their communications have been revealed. It would allow these disclosures to be requested by potentially thousands of government employees, ranging from cotton inspectors to dog-catchers to housing department administrators.

The public's most sensitive e-mails, web transactions, and instant messages sent to love ones, business associates, doctors and lawyers, and friends deserve the highest level of privacy we can provide. The provisions of section 225(d) make a mockery of our privacy laws, and the carefully crafted exceptions we have created in them, by allowing disclosure of our most private communications to thousands of Government officials based on the flimsiest of excuses. These provisions were never approved by any committee in the Senate, are not in the interests of the American people, and should not now be finding there way into the law of the land.

Third, the bill provides liability protections for companies at the expense of consumers. I am disappointed that the measure also contains sweeping liability protection for corporate makers of vaccines and any other products deemed to be "anti-terrorism technology" by the Secretary of Homeland Security. This unprecedented executive authority to unilaterally immunize corporations from accountability for their products is irresponsible and endangers the consumers and our military service men and women.

These provisions, for example, would apply to negligence, gross negligence and even willful misconduct in producing vaccines, gas masks, airport screening machines and any other "anti-terrorism technology" used by the general public and our service men and women.

In addition, the bill would completely eliminate punitive damages against the maker of such a defective product. Without the threat of punitive damages, callous corporations can decide it is more cost-effective to continue cutting corners despite the risk to American lives. This would let private parties avoid accountability in cases of wanton, willful, reckless, or malicious conduct.

There is no need to enact these special legal protections and take away the rights of victims of defective products. At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror, these "tort reform" proposals are unprecedented, inappropriate, and irresponsible. At the very moment that the President is calling on all Americans to be especially vigilant, this legislation lets special interests avoid their responsibility of vigilance under existing law.

I am disappointed that some may be taking advantage of the situation to push "tort reform" proposals that have been rejected by Congress for years. This smacks of political opportunism. I strongly oppose rewriting the tort law of each of the 50 States for the benefit of private industry and at the expense of consumers and our service men and women, and their families.

Further, I am saddened that this so-called compromise provides retroactive liability protection for some private airport security firms involved in the September 11th terrorist attacks. Last year, Congress explicitly excluded private airport security firms from the liability limits for airlines in the Aviation and Transportation Security Act because we did not know if any airport screening firm may have contributed to the September 11th attacks through willful misconduct or negligence. Unfortunately, we still do now know all the facts regarding the 9/11 attacks because the Bush Administration has opposed Congressional oversight and an independent commission to investigate the attacks.

This special-interest provision in the so-called compromise is a travesty to the families of the victims of September 11th. Indeed, I have already been contacted by a family member of a 9/11 victim outraged by this retroactive liability protection. I share their outrage.

I also find it particularly galling, that just because "the White House wants it," this bill includes a provision that balantly puts the interests of a few corporate pharmaceutical manufacturers before the interests of thousands of consumers, parents, and children. Sections 714 through 716 give a "get out of court free card" to Eli Lilly and other manufacturers of thimerasol. Let's be clear, this provision has nothing to do with homeland security. Smallpox and anthrax vaccines do not use thimerosal. Thimerasol is a mercury-based vaccine preservative that was used until recently in children's vaccines for everything from hepatitis B to diphtheria. By making changes to the Vaccine Injury Compensation Program sought by the pharmaceutical industry, this provision cuts the legs out from under thousands of parents currently in court seeking compensation for the alleged harm caused by thimerosal.

For years, I have been working to remove sources of mercury from our environment because of the neurological effect of mercury on infants and children. Although Eli Libby's own documents show that they knew of the potential risks from mercury-based preservatives in the 1940s, its use was not stopped until 1999 when pediatricians and the Public Health Service acted. Instead of looking into why pharmaceutical companies and the Federal Government failed to act for so long or improving the current compensation system, the Homeland Security bill takes away the legal options of parents and gives pharmaceutical companies new protections from large penalties.

Fourth, the bill weakens immigration enforcement just when we need it the most. The Republican House-passed bill fails to take important steps to help fix and restructure our immigration agencies. This Republican package abandons the close coordination between immigration enforcement and immigration services that was included in the Lieberman amendment to the Homeland Security bill. Instead, immigration enforcement falls under the Undersecretary for Border and Transportation Policy, while immigration services are relegated to a bureau that lacks its own undersecretary. Apparently, the Undersecretary for Border and Transportation Security is expected to be an expert in immigration enforcement, FEMA, agriculture, and other issues. Meanwhile, there is no one figure within the Homeland Security Department who is responsible for immigration policy. Testimony before the Judiciary Committee showed clearly the numerous links between the enforcement of our immigration laws and provision of immigration benefits—it is unfortunate that this bill fails to acknowledge those links.

Unfortunately, this legislation fails to codify the Executive Office of Immigration Review appropriately. Instead of defining the functions, shape, and jurisdiction of the EOIR as the Lieberman amendment did, it simply says there shall be an EOIR and the Attorney General shall have complete discretion over it. It is critical that both immigrants and the Government have a meaningful opportunity to appeal adverse decisions, and we should have done more through this legislation to guarantee it.

In addition, I am disappointed that provisions designed to guarantee decent treatment for unaccompanied minors were not included in the Republican amendment. Through Senator FEINSTEIN's leadership, the Lieberman substitute assured that unaccompanied alien minors received counsel. The Judiciary Committee heard earlier this year from children who had been mistreated by the immigration system, and we had a real opportunity to solve that problem through this bill. We have failed to take advantage of that opportunity.

I will continue to work to ensure that the reorganization of our immigration service proceeds in as orderly and appropriate a fashion as possible. I have spoken often about the valuable service provided by employees of the Immigration and Naturalization Service in Vermont, and the need to retain their expertise in any reshuffling of the agency's functions. We will not make our nation safer by alienating, underutilizing, or discarding knowledgeable employees, and I will do what I can to prevent that outcome.

Finally, the bill undermines the professionalism in favor of the "management flexibility" to engage in political cronyism at the new Department. Although it has already received substantial comment, I want to add my voice to those who have criticized the administration for its heavy-handed and wrong-headed approach to the rights of employees who will come under the new Department. At the same time we are seeking to motivate the Government workers who will be moved to the new Department with an enhanced security mission, the administration is insisting on provisions that threaten the job security for these hardworking Government employees.

The administration should not use this transition as an excuse to cut the wages and current workplace security and rights of the brave employees who have been defending the Nation. That is not the way to encourage retention or recruitment of the vital human resources on which we will need to rely.

I represent some of those employees and have firsthand knowledge of their dedication to our nation and their jobs. Contrary to the administration's pre-election rhetoric, where disputes over employment conditions have had potential effects on the public safety, they have been resolved quickly. I am disappointed that the bill we consider today contains so few protections for these vital employees, and that the White House chose to use these valuable public servants in an election year tactic.

So our vote today will help answer the question of whether a new Department of Homeland Security will be created—a question that has never really been at issue or in doubt. Perhaps there are members of the Senate who oppose creation of this Department, though I am not aware of such opposition. But many troubling questions remain about the "hows" as we move forward to charter this massive new agency. A process has been imposed on the Senate that prevents addressing them adequately in the remaining hours of this session. But answering and resolving these questions, in the interest of the security and privacy and well-being of the American people, will be an imperative that the administration and the next Congress must not shirk.

OFFICE OF DOMESTIC PREPAREDNESS

Mr. GREGG. Madam President, one of the Senate's highest priorities, and one of my own personal priorities, has been ensuring that State and local first responders are prepared to handle a terrorist attack, especially one involving weapons of mass destruction. One of the principal ways I have tried to do this is through the Office of Domestic preparedness at the Department of Justice. Through the Appropriations subcommittee that Senator HOLLINGS and I oversee, the Senate built ODP from a $5 million program into an $800 million program in just five years. Since 1998, ODP has been the focal point within the Federal Government for State and local jurisdictions to receive equipment grants, training, technical assistance, and exercise support for combating terrorism.

The original legislation creating the Department of Homeland Security would have combined the preparedness functions of ODP and the response functions of FEMA into a single Directorate, the Directorate of emergency Preparedness and Response. The problem with this framework is that the much larger FEMA would have dominated the new Directorate, and its priorities and philosophies would have obscured those of ODP. ODP possesses unique experience and expertise when it comes to preparing the State and local jurisdictions to handle terrorism. FEMA has very little experience with this side of the equation: its role has always been to respond after an event occurs.

FEMA employs something called the "all-hazards" approach to disaster response. Under the all-hazards approach, all disasters are handled the same way. But we cannot treat terrorism the same way we treat other disasters. The attack on the World Trade Center provides an excellent case in point. On September 11, New York City first responders treated the first explosion as a high-rise fire and set up their command center in Tower II. Because the responders employed a generic, all-hazards response, they did not anticipate the second explosion in Tower II. Our approach to terrorism must be different from our approach to natural disasters—it must be innovative and adaptive. It must anticipate a predatory adversary that constantly devises new ways to get around each new set of measures we take.

There are four key components, or "pillars", involved in combating terrorism: prevention, preparedness, crisis management, and consequence management. Justice has traditionally been responsible for preparedness, and FEMA has traditionally been responsible for consequence management, or disaster response. The Homeland Security legislation, as originally written, would have lumped these components together. However, the people who are responsible for responding in the immediate aftermath of an attack cannot also be responsible for carrying out sustained training, equipment, and exercise programs. These are programmatic initiatives that must be executed day in and day out. FEMA is a response agency. It will not be able to give terrorism preparedness the time and attention it deserves because it must constantly respond to disasters around the country.

The amendment I offered to the Homeland Security bill acknowledged the importance of consolidating the preparedness and response functions in the new Department of Homeland Security. However, the amendment set them apart in order to preserve both FEMA's and ODP's areas of expertise. The amendment created the Office for Domestic Preparedness under the Directorate of Border and Transportation Security and transferred terrorism preparedness functions to this new office from both the Justice Department and FEMA. Specifically, the new Office for Domestic Preparedness includes Justice's current Office for Domestic Preparedness and parts of FEMA's Office of National Preparedness. ODP will be responsible for all of our preparedness activities and FEMA will continue to have the lead for consequence management. Under this framework, the preparedness and response functions will be preserved, yet will be closely coordinated by the Secretary of Homeland Security. This is the best way to prevent FEMA's and ODP's critical functions from being blurred within the Department of Homeland Security.

The responsibilities of the new Office for Domestic Preparedness will be similar to what they are now under the Department of Justice: coordinating terrorism preparedness at the Federal level; assisting State and local jurisdictions with their preparedness efforts; conducting strategic and operational planning; coordinating communications at all levels of government; managing the preparedness grants to State and local jurisdictions; and assisting them in the implementation of the President's National Strategy. This is, in fact, one of the key reasons why I have pushed for the creation of the Office for Domestic Preparedness within the new Department. It ensures the continuity of preparedness assistance for State and local jurisdictions. The office they have looked to for the last five years for equipment, training, and exercise assistance will continue to exist, but under the leadership of the Undersecretary for Border and Transportation Security.

If not for this amendment, ODP would most likely have been subsumed by FEMA, and all of the work ODP has accomplished would have been lost. ODP's successful methodologies for providing assistance to State and local jurisdictions would have been scrapped in favor of FEMA's undeveloped and untested approach. An example of one such successful methodology is the system of accountability ODP established by requiring States to have a terrorism preparedness strategy before they could receive Federal funding. The State strategies have allowed ODP to make informed and strategic decisions about how to allocate funding for equipment, training, and exercises. FEMA has no such system in place. By keeping ODP's and FEMA's activities distinct, we preserve the progress each has made in their respective areas of expertise.

The amendment permits FEMA to concentrate on a mission that it is uniquely equipped to perform: disaster response. This is extremely important, especially in light of the fact that there is an average of 34 major disaster declarations per year in the U.S. I know that my coastal State colleagues were very concerned that FEMA's natural disaster responsibilities, in particular its mission of responding to hurricanes, would be eclipsed by its new homeland security responsibilities. I am certain that this concern is shared by Senators from States that face the threat of earthquakes, floods, and wildfires. This provision makes it clear that FEMA is out of the preparedness business.

This was one of the primary reasons why I felt such an amendment was necessary. It will help prevent competition between terrorism response and natural disaster response within the new Department. Under the original legislation, the Directorate of Emergency Preparedness and Response would have been pressured on the one hand to focus its resources and attention on natural disasters, and on the other hand on combating terrorism. This competition would have weakened our level of preparedness for either type of disaster. By setting them apart within the new Department, we have built in a natural balance between these two critical areas.

I was disappointed to learn that some at FEMA are already busy planning ways to avoid having to execute the directive. I am told that FEMA intends, during the next few weeks, to re-designate all of the preparedness staff at the Office of National Preparedness as "all-hazards staff". By renaming them all-hazards, FEMA could retain its preparedness functions. These actions come despite the fact that at least 38 U.S. Senators believe those functions should reside at the Office for Domestic Preparedness and not at FEMA. These actions come despite our having negotiated in good faith with the White House. These actions come despite agreement among the Office of Homeland Security, the House of Representatives, and the Senate.

On a different note, it has recently come to my attention that the Office of Management and Budget is considering requiring State and local jurisdictions to match the Federal preparedness grants. OMB should not impose this requirement on State and local jurisdictions. They do not have the fiscal resources to support such a requirement. The equipment, training, and exercise initiatives that I have here discussed are part of a comprehensive National preparedness program. State and local jurisdictions will not be able to achieve the standards or readiness that are required, especially at this time of increased threat to our Nation, if they are forced to comply with matching requirements. In point of fact, State and local governments already bear most of the burden in protecting our Nation from terrorism. They—the first responders, who willingly and courageously put themselves in harm's way—protect the American people. Just after September 11, the President duly acknowledged how critical first responders are to our National security. We cannot shortchange them now. We are at war and the Federal Government must fully support our State and local first responders.

ODP has provided training to approximately 114,000 first responders and exercise support to more than 100,000 first responders nationwide. It has given out nearly $600 million in equipment grants to State and local jurisdictions since its creation in 1998. It also executed the largest terrorism exercise in U.S. history, TOPOFF. I have heard reports that those who participated in the multi-venue TOPOFF were the only ones truly prepared to handle the challenges presented on September 11. The amendment acknowledges that we do have an effective system in place and it preserves what has been accomplished.

The amendment I submitted acknowledges that the Office of Domestic Preparedness and FEMA both perform critical roles and must work closely together. I commend the administration for recognizing the need and working with the Senate to get the job done. I would also like to thank Senator LOTT for his excellent work on this bill, as well as his counsel Rohit Kumar. Finally, I would like to recognize Dean Kueter, Jr., of the National Sheriffs Association for his tireless work in generating grassroots support on this important issue.

Ms. MIKULSKI. Madam President, there is nothing more important than America's national security. I will vote for the Homeland Security Act because it organizes our Government to better detect, prevent and respond to acts of terrorism.

This bill organizes twenty-two very different agencies into a one-stop-shop for homeland security a single, mission-driven agency whose primary goal is protection of the homeland. Why is this important? Because it will improve our ability to detect terrorism before it occurs, by strengthening immigration systems, better coordination of intelligence. It will improve our ability to prevent terrorism, through stronger port security, border security, transportation security. It will improve our ability to respond to acts of terrorism through the Federal Emergency Management Agency.

Yet I am disappointed that this legislation has been politicized in addressing an issue as important as national security. Congress and the President shouldn't be Democrats or Republicans. We should be the Red, White, and Blue Party. In recent weeks, I've seen some cynical actions. I've seen Federal employees treated as if they're the enemy. I've seen a Vietnam War hero's patriotism questioned. I've seen this administration claim that the creation of a Department of Homeland Security was its idea and its priority, though we all know they long opposed it—just as they opposed the creation of a national commission to look at what went wrong on September 11. I've seen a package of special interest goodies forced into a bill for no other reason than pay-back politics.

Let's consider some of these issues. First, on Federal employees, I resent that I am being forced to chose between Homeland Security and protecting the rights of those who guard the homeland—our Federal employees who have the constitutional right to organize, to have freedom of assembly, to do collective bargaining. In standing up for America, why aren't we also standing up for those who are protecting America? Our brave and gallant Federal employees who are out there every day on the front line wanting to do their job, whether they are customs inspectors, border agents or FEMA's emergency workers.

Federal workers stand sentry every day to protect America. When our firefighters ran up those burning buildings at the World Trade Center, nobody asked if they were union. They didn't look at the clock or check their work rules. When our emergency workers from Maryland dashed over to be part of the mutual aid at the Pentagon, they were mission driven. They were there because they were union members. They belong to a union. They belong to a union called the United States of America. That's the union that they belong to, and that's the union they put first.

America is in the midst of a war against terrorism. We have a long way to go. Yet instead of focusing on the war effort, we're waging war on Federal employees. The administration must use this new flexibility responsibly and judiciously. It is not a blank check. If anyone takes undue advantage of this new flexibility, I will lead the charge to change it. But it is sad and disgraceful that the rights of our Federal employees were held hostage in an effort to make our Nation secure against terrorism.

I'm also disappointed with the special interest provisions that were added to this bill. The late Senator Wellstone added a provision on companies that move overseas to avoid paying U.S. taxes. His amendment would have prevented these corporations from being able to contract with the new Department of Homeland Security. Why does the House of Representatives insist on helping those companies who make their money in the U.S. but then turn their backs on the U.S.? What about their responsibility to the U.S.?

This legislation also provides immunity from liability for manufacturers of products or technologies that harm Americans. Why did the House think it's important to protect companies that are grossly negligent, and how does this improve the security of Americans?

Another special interest provision would provide liability protection for pharmaceutical companies that are being sued for using vaccine preservatives that some people believe have caused autism. This should be decided by scientists and the courts: not by Members of the House of Representatives trying to sneak unrelated provisions into a bill on homeland security. The list of special interest pay backs goes on and on.

I strongly oppose the provisions of this bill that limit the rights of Federal employees, as well as the administration's plan to privatize much of the Federal workforce. I will continue to fight these proposals. I'm also disappointed that the House Republicans have used the need for homeland security to sneak so many special interest give backs into the bill.

Yet despite the serious problems with this bill, I will vote for it because it will enable our government to better detect, prevent and respond to terrorism. Nothing the Senate does is more important than providing security for America. That is why I will vote to create the Department of Homeland Security—for America's national security.

I'm tired of the cynical manipulation of the legislative process. I'm tired of the politicization of something as important as Homeland Security. I hope this is the last time that an issue of national security is politicized. Let's put these politics and hard feelings behind us. Let us get our act together, and let's show America we can govern. Let's show the bullies of the world we're willing to take them on.

Mr. McCAIN. Madam President, I strongly support the creation of the Department of Homeland Security. I am a cosponsor of the Gramm-Miller substitute and the President's proposal, and have consistently voted to overcome Democratic roadblocks to create a Homeland Security Department. I want this legislation to be enacted, but the House-passed bill includes a number of egregious special interest riders that should not be part of this landmark measure.

If the legislative process had allowed us an opportunity to vote on many of the provisions Senators DASCHLE and LIEBERMAN are now seeking to strike, I believe most of them would have been rejected. Unfortunately, we now find ourselves in a "take it or leave it" situation. This is an artificial and unnecessary construct. The Homeland Security legislation effectuates the most dramatic restructuring of the Federal Government in half a century. With the goal of safeguarding our citizens, it creates a 170,000-person cabinet-level department that encompasses almost every governmental function that contributes to protecting Americans against terrorism in the United States. That the Senate is being told that the House will effectively kill the entire bill if this body dare remove politically motivated riders signals to me that the other chamber's priorities have become grossly confused.

I do not approach this vote lightly, but I must vote my conscience, just as each of my colleagues must do. I sincerely hope that upon resolution of the vote, we can move forward expeditiously with the House to resolve the differences and still send a bill to the President by the end of the week.

The Daschle-Lieberman amendment would strike seven special interest provisions that were included in this 484-page bill by the House.

Texas A&M: among them, the amendment proposes to strike a provision that many believe is designed to provide an earmark for Texas A&M University. Specifically, the House-passed bill requires the Secretary to designate a university-based center or centers for homeland security. However, the bill further stipulates 15 specific criteria to be used in making this designation, criteria that many suspect are tailored to describe only one university—Texas A&M. While the provision allows the Secretary to expand the criteria, it doesn't permit the Secretary to eliminate or alter the 15 criteria set forth in the bill.

How many colleges have "strong affiliations with animal and plant diagnostic laboratories, expertise in water and wastewater operations, and demonstrated expertise in port and waterway security," not to mention 12 other requirements?

I have long opposed attempts in Congress to by-pass competitive, merit-based selection processes. There is absolutely no justification for attempting to do so in the Homeland Security bill for a function as important as the one to be fulfilled by the university-based centers.

The Safety Act: the Daschle-Lieberman amendment strikes a provision in the House-passed bill titled "The SAFETY Act", which purports to provide reasonable liability protections for antiterrorism technologies that would not be deployed in the absence of these protections.

I believe that real harm has been inflicted on our economy by trial attorneys' abuse of our tort system. I have seen the unfathomable greed of certain attorneys who use "consumer protection" as an excuse to extort billions of dollars from corporations, and ultimately, the same consumers they claim to protect. Outrageous awards that may benefit only the lawyers have stifled innovation, kept products off the market, and hurt consumers.

As chairman of the Commerce Committee, I have advanced legislation to reform products liability litigation, and overseen the enactment of a law to limit litigation and damages that might have arisen from the Y2K bug. Despite its potential to kill the bill because of opposition from trial lawyers, I voted to cap attorneys' fees on the comprehensive tobacco legislation that I sponsored. I am appalled that the demise of that bill opened the door for a private settlement under which a handful of lawyers have received literally billions of dollars, and I intend to ensure that these fees are closely examined in the Commerce Committee next year. In addition, I have repeatedly voted for limitations on damages for medical malpractice.

In short, I appreciate the need for legal reform and have long supported it. Despite this, I cannot support the "SAFETY Act", which never received a hearing in either chamber, and which was inserted into the House Homeland Security bill late in that chamber's process when Members decided that the government indemnification provisions previously considered would be too costly.

This ill-considered "SAFETY Act", which I understand is supported by defense contractors and others seeking liability protection, does not provide reasonable limitations on liability. Intentionally or not, it appears to eliminate all liability in tort claims against Sellers for the failure of any "antiterrorism technology." Whereas previous tort reform measures have sought to limit the abuse of our system by avaricious lawyers, while protecting plaintiffs' rights to obtain a quick and reasonable award, no such balance is reflected in the "SAFETY Act."

While many of my Democratic colleagues object instinctively to liability limitations such as those in the SAFETY Act, including the creation of a Federal cause of action, the prohibition on punitive damages, and the requirement for proportional liability for non-economic damages, I have supported these concepts in the past, and continue to support them in this context. What I find objectionable, however, fatally so, is that the SAFETY Act was never the subject of any hearing, was never considered by a committee in either chamber, and, perhaps as a consequence, is to confused in its wording and concepts as to be almost incomprehensible.

While the need for liability protection for manufacturers and sellers of antiterrorism technologies may be very real, this is an issue of significant import that deserves more careful consideration. At a minimum, the SAFETY Act must be rewritten to ensure that its language is consistent with what I understand to be its intent. At present, it is not.

One particularly troublesome provision in the SAFETY Act appears to transform a common law doctrine known as the "government contractor's defense," into an absolute defense to immunize the seller of an antiterrorism technology of all liability. This is a dramatic departure from current law and one that does not seem to have been well thought-out.

Currently, the "government contractor's defense" provides immunity from liability when the federal government has issued the specifications for a product; the product meets those specifications; and the manufacturer does not have any knowledge of problems with the product that it does not share.

While I am told that the House advocates of the SAFETY Act did not intend to provide protections for products whose specifications are not issued by the government, or which do not meet these specifications, the bill language indicates otherwise. It says "Should a product liability or other lawsuit be filed for claims . . . and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies to such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection."

What happens if the Seller submits proper information to the Secretary, and the Secretary certifies a technology, such as a vaccine or chemical detection device, but a year later there is a gross defect in the manufacturing process, and as a result, the product doesn't work and Americans are injured or killed in a terrorist attack. The language in the bill suggests that the Seller still is not liable. But who is? Can the injured victim seek compensation under the Federal Tort Claims Act? The SAFETY Act does not say. Should they be able to? This is one of many questions affecting plaintiffs that does not seem to have been contemplated or considered when the SAFETY Act was included on the House bill.

Clearly, Congress as a whole should work to address the legitimate liability concerns that may be keeping protective technology off the market. We should do this, however, thoughtfully, if swiftly, and ensure that the language reflects our considered intent.

Prohibition on Contracts with Corporate Expatriates: the Homeland Security bill prohibits the Secretary from contracting with any "inverted domestic corporation", which is an American corporation that has reincorporated overseas. More and more U.S. companies are using this highly profitable accounting scheme that allows a company to move its legal residence to offshore tax havens such as Bermuda, where there is no corporate income tax, and shield its profits from taxes.

I applaud efforts to discourage this practice. Already, at least 25 major corporations have reincorporated or established themselves in Bermuda or the Cayman Islands in the past decade. Although I understand that American tax policy has encouraged them to do so, corporations that have moved their legal headquarters offshore to avoid taxes give the appearance of ingratitude to the country whose sons and daughters are risking their lives today to defend them.

This provision, however, has not escaped untouched by special interests. Although the Senate adopted an amendment offered by the late Senator Wellstone that flatly barred the Secretary of Homeland Security from contracting with inverted domestic corporations unless doing so was in the interest of national security, the measure being offered to us on a "take it or leave it" basis contains loopholes you could drive a truck through or an entire fleet of trucks to be supplied by a relocated corporation. Although it generally prohibits the Secretary from entering into contracts with inverted domestic corporations, the House-passed measure allows the Secretary to waive this prohibition in the interest of homeland security, or to "to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur."

The Daschle-Lieberman amendment tightens this loophole by permitting the Secretary to waive the contracting limitation only in the interest of homeland security. That is what this bill is about, it is not a jobs bill, or a fiscal belt-tightening bill. The Senate determined, in adopting the Wellstone amendment, that it was important to stop more corporations from adopting corporate "flags of convenience." We should honor this.

Childhood Vaccines: among the most inappropriate provisions that the Daschle-Lieberman amendment strikes is a modification to the Childhood Vaccine Injury Act of 1986. The language included in the House-passed bill has far-reaching consequences and is wholly unrelated to the stated goals of this legislation. Inserted without debate in either chamber, this language will primarily benefit large brand name pharmaceutical companies which produce additives to children's vaccines with substantial benefit to one company in particular. It has no bearing whatsoever on domestic security.

The National Vaccine Injury Compensation, VIC, Program, established under the Childhood Vaccine Injury Act of 1986, set up a no-fault compensation program as an alternative to legal action to compensate children injured or killed by a vaccine. The VIC Program was adopted in response to a flood of plaintiffs' suits in the early 1980s which ravaged the vaccine industry. Incentives, such as limitations on damages, were established to encourage manufacturers to continue to produce safer vaccines, while education programs and an adverse reaction reporting system were established to ensure prevention of future vaccine injuries.

The 1986 law did not define "vaccine," and suits emerged between families and manufacturers of vaccine additives, many of which are still ongoing. The language contained within the House-passed Homeland Security Act would modify the definition of a "vaccine" to include additives. Originally contained within a well-rounded bill written by my friend, Senator FRIST, this language served a sound purpose. However, I am concerned that the passage of these select provisions which benefit pharmaceutical manufacturers will eliminate the incentive to continue negotiations on the important reforms within Senator FRIST's bill which has been negotiated in the HELP Committee for close to a year. Additionally, unlike the bill in Committee, this language would intervene in ongoing litigation without modifying the statute of limitations for bringing a claim under the Vaccine Act, and in so doing, would leave families of some injured children with no available recourse.

As I stated earlier, I am not opposed to reasonable legal reform. I support a comprehensive reform package such as the bill sponsored by Senator FRIST, and hope that such a measure will pass early in the next Congress. It is wrong, however, to cherry pick provisions beneficial to industry and insert them in a Homeland Security bill and to leave for another day those provisions that protect children.

Special interests have no place in any congressional action, least of all one of this magnitude. For this reason, I am compelled to support the Daschle-Lieberman amendment. This administration has worked tirelessly with the House and Senate to produce an extraordinary restructuring of Government to better protect the American people. They have accomplished an amazing feat. Legislation of this gravity should not be sullied by a few special interest riders. I urge my colleagues to join me in striking them.

Mrs. FEINSTEIN. Madam President, today I voted for the Thompson substitute amendment to the Homeland Security Act—the largest restructuring of the Federal Government in over 50 years and perhaps the most important legislation considered in this Congress.

This historic legislation would create a new department combining some 22 Federal agencies with what would amount to about 200,000 Federal employees.

The bill would create one of the biggest departments in the U.S. Government, with an initial annual budget of at least $37 billion.

I voted for this legislation because our current terrorism policy is terribly disjointed and fragmented. I have long supported additional efforts to consolidate and coordinate our terrorism policy.

Currently, homeland security functions are scattered among more than 100 different Government organizations. There is much unnecessary overlap and duplication. There is also a failure to communicate and share information—making it hard to for the law enforcement and intelligence community to "connect the dots" to prevent a terrorist attack.

I also voted for the bill because I believe our country is currently at great risk. Terrorists are doing all they can to launch a catastrophic attack on our homeland.

The status quo is simply unacceptable. For example, just last week, I chaired a subcommittee hearing on a new report released by Senators Hart and Rudman.

Their report is chilling—and its conclusion distributing. It reads:

> A year after September 11th, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to American lives and the economy.

The creation of a Homeland Security Department is critical to our efforts to try to prevent another devastating terrorist attack against us.

Now, for the first time in our history, this Nation will have one Federal agency charged with the primary mission of preventing terrorist attacks within the United States, reducing the vulnerability of the U.S. to terrorism at home, and minimizing damage and assisting in the recovery from any attacks that may occur.

The new department will have four major divisions: border transportation and security, emergency preparedness and response, science and technology, and information analysis and infrastructure protection.

The border directorate will include a number of key homeland security agencies, including Customs and the Transportation Security Agency.

The emergency preparedness directorate will include FEMA and some other smaller response agencies.

The science directorate will include a number of programs and activities of the Department of Energy, Department of Agriculture, and some agencies.

The information analysis directorate will synthesize and analyze homeland security information from intelligence and land enforcement agencies throughout the government.

This crucial division will identify and assess terrorist threats and vulnerabilities, issue warnings, and act to prevent terrorist acts against critical infrastructures such as bridges, dams, and electric power grids.

Other agencies such as the Coast Guard and Secret Service will be moved to the new department, and there will be an office to coordinate with state and local governments. The legislation also creates a Homeland Security Council in the White House to coordinate the domestic response to terrorist threats.

I am very pleased that this legislation does not neglect State and local law enforcement and first responders. No homeland security solution can be just federal. The reality is the 650,000 State and local law enforcement officers are additional eyes and ears in the war on terrorism. They cannot operate deaf, dumb, and blind.

Moreover, in the event of a terrorist attack, the first people on the scene will be local firefighters, emergency medical technicians, National Guardsman, and other people in the local community. The need proper information, organization, training, and equipment.

Thus, I am pleased that this legislation includes a measure I introduced to increase state and local access to federally collected terrorism information.

This legislation directs the President to establish procedures for sharing homeland security information with state and local officials, ensures that our current information sharing systems and computers are capable of sharing such information, and increases communications between government officials.

The bill also includes a broad exemption under the Freedom of Information Act for cybercrime and cyberterrorism information. This exemption will encourage the private companies that operate over 85 percent of our critical infrastructure to share information about computer break-ins with law enforcement—so criminals and terrorists can be stopped before they strike again and severely punished. I have long advocated for such an exemption, and am pleased that it ended up in the final bill.

While I strongly support the creation of a Homeland Security Department, I am disappointed that the bill we passed today includes a number of extraneous special interest provisions and lacks language to ensure appropriate oversight and transparency.

In addition, there is nothing in this legislation addressing what is perhaps the most pressing homeland security problem we face today: the vulnerability of our ports to terrorism.

The issue of port security was left to separate legislation that was passed last Thursday. In my view, that legislation does not go far enough. I believe that Congress needs to return to this issue next year and pass more comprehensive legislation.

The Hart-Rudman Independent Terrorism Task Force, for example, recently issued a report describing major holes in the security of our ports and endorsed such a comprehensive, layered approach.

This new comprehensive legislation would be based on S. 2895, the Comprehensive Seaport and Container Security Act of 2002, which I introduced last summer with Senators, KYL, HUTCHINSON, and SNOWE.

The Comprehensive Seaport and Container Security Act of 2002 is the result of hearings we have had in the Technology, Terrorism, and Government Information Subcommittee of the Senate Judiciary Committee as well as my testimony two years ago to the Interagency Commission on Crime and Security in U.S. Seaports.

The main section in the bill would create a Container Profiling Plan that would focus our nation's limited inspection resources on high-risk cargo.

In addition, the bill also contains provisions requiring: earlier and more detailed container information; comprehensive radiation detection; heightened container security measures—including high-security seals; restricted access to ports; increased safety for sensitive port information; enhanced inspection of cargo at foreign facilities; stronger penalties for incorrect cargo information; improved crime data collection; upgraded Customs service facilities; and better regulation of ocean transport intermediaries.

Unfortunately, we were not able to get much of this Bill included in the conference legislation that passed last week. Indeed, the Conference Bill even omits a number of security provisions included in S. 1214 as it passed the Senate.

That is why, in my view, we will need to revisit this issue early in the 108th Congress. I plan to work with my colleagues to fine-tune my legislation and reintroduce it. I hope that my colleagues will support it.

I am also disappointed with this bill because it does not contain the entire "Unaccompanied Child Protection Act," bipartisan legislation I introduced at the beginning of this Congress and that was included as Title XII of the Lieberman substitute to H.R. 5005.

I have spoken on this issue in some detail already, but feel compelled to reiterate a few points.

Last year, over 5300 children came to this country unaccompanied by a parent or guardian and were held by the INS, many of them in detention facilities. these children have no rights. Many of them can't speak English, they can be detained for years, they have no resort to counsel, and they don't understand the process.

We all remember the Elian Gonzalez case. Every year, there are thousands of Elians. But unlike Elian, these children have no family members to help them navigate the immigration process. They are completely at the mercy of a complex bureaucratic and legal system they cannot begin to understand.

The good news is that this bill transfers authority over the care and custody of unaccompanied alien children from the INS to the Office of Refugee Resettlement within the Department of Health and Human Services.

The bad news is that almost all the "help" provisions for these children are left out. This bill is lacking because it does not provide either for a guardian ad litem, or pro bono legal assistance.

This is insufficient, and it is my full intention to reintroduce legislation in the next session to redress this, and to include pro bono counsel and guardian ad litem provisions.

Protecting children, on the one hand, must not prevent us from devising an immigration policy that protects us from those that would do America harm.

We do not want to burden the Secretary of Homeland Security with policy issues unrelated to the threat of terrorism. The Department will have a daunting mission as it is, and must never lose that focus.

Two positive steps regarding immigration include the transfer of the visa issuance process from the State Department to the Department of Homeland Security, thereby giving it the regulatory and oversight authority over issuances and denials.

It also prohibits third-party visa processing, referred to as "Visa Express", to ensure closer scrutiny of visa applications and to preserve the integrity of the visa issuance process. These reforms are essential.

Overall, while this legislation's shortcomings cause me serious concern, I believe that they pale in comparison to the dangers facing America, both immediately and in the long-term, at home and abroad.

The terrorist threat to the United States is far too real, and in our freedom-loving country we must now do everything we can to protect our people.

And this, after all, is the Federal Government's paramount task—protecting our citizens. Further delay in creating a Department of Homeland Security would only leave us increasingly vulnerable—and this is something we simply cannot afford.

Ms. SNOWE. Madam President, I rise today in support of this bipartisan legislation creating a new Department of Homeland Security.

Since the horrific terrorist attacks of September 11, we have acted to increase our efforts to counter terrorism by strengthening borders, improving information sharing among agencies, and giving our law enforcement agencies the legal tools to investigate and prosecute terrorists and those that help terrorists financially.

Congress has considered and passed both the USA PATRIOT Act and the

Enhanced Border Security and Visa Entry Reform Act which have both changed laws to ensure that providing for our national security in order to prevent future terrorist attacks is a top priority. This bill also ensures that the 22 agencies with a substantial role in protecting our homeland have the materials and resources they require.

This legislation is recognition that homeland security has taken on an entirely new meaning since 9/11. What was once a concern with terrorists acting against U.S. interests overseas has been realized and expanded to include those same acts happening right here at home. The war has been brought to the U.S. and we are now rising to the challenge.

This was precisely the type of thinking demonstrated by President Bush in the summer of 2001, when he instructed the intelligence community to provide an assessment of the threat posed by al-Qaida domestically rather than overseas. And President Bush did exactly the right thing in the wake of last year's horrific attacks when he established the Office of Homeland Security, now headed by Governor Ridge, to coordinate counter-terrorism activities by the various U.S. agencies and departments as well as develop an overall strategy. This strategy has culminated in the proposal of a new Department of Homeland Security.

As the principal advisor to the President on homeland security issues, the service of Governor Ridge has been exemplary. The time has come, however, for the perpetuity of purpose ensured by statutory status for a new Department of Homeland Security.

A Department responsible for safeguarding our homeland defense must not be dependent solely on the relationship between a particular President and his or her Homeland Security director. Rather, it must be run as efficiently and effectively as possible under the leadership of a permanent, cabinet level official. That is the only way to achieve the kind of "continuity of urgency" the security of our homeland demands.

The fact of the matter is, we cannot afford a descent into complacency when it comes to this life-or-death obligation to protect the American people. If ever there were a Federal responsibility, this is it.

And while my fervent hope and prayer is that we do not suffer another attack on or anywhere near the scale of 9/11, the reality is that, absent future tragedies and absent a cabinet-level homeland security department, we don't know what kind of attention the issue will receive 5, 10, 20 years down the road. Because the tendency is to focus on the most visible, pressing issues of the day, but we cannot allow ourselves to let down our guard, not for a moment, not a decade from now, not a quarter century from now, never.

So this initiative is not a knee-jerk reaction. It is not a passing whim—far from it. There is no serious debate about the fact that we are now in a new age that will not quickly pass. The threat will be pervasive, and enduring. The level of our vigilance must be equally so.

Under a new cabinet-level department, responsibility would rest with a Secretary of Homeland Security, a position created under law, who would manage the vital day-to-day functioning of the new department. Critically, this person would have their own budget, while they work closely with the administration to develop and implement policy. It is vital that this budgetary authority be granted—otherwise, the department will become a paper tiger, without the teeth that we all know a separate budget provides in terms of authority as well as the ability to get things done.

The bottom line is, I support the creation of the Department of Homeland Security—the largest re-organization of our Government since WWII—because it will centralize our efforts to prevent and respond to any future terrorist attack.

Currently, at least 22 agencies and departments play a direct role in homeland security, encompassing over 170,000 people. This legislation consolidates these various responsibilities into one Department which will oversee border security, critical infrastructure protection, and emergency preparedness and response.

Overall, the new Department, with the Secretary's leadership, will integrate the vast number of government agencies that formulate, support and carry out the functions critical to homeland security such as the border patrol, the Transportation Security Administration, TSA, and the Federal Emergency Management Agency, FEMA.

This new and dynamic Department will utilize all tools and resources of our Government to enhance our homeland security by strengthening and augmenting the preparation, communication, coordination and cooperation of not only the agencies that will be included, but the rest of the government including States and localities.

First, it is important to keep in mind that the functions of many of the agencies that will soon become a part of the new Homeland Security Department are integrated so that dividing them would be detrimental to the purpose of that agency, many of which have non-homeland security functions.

For example, as a member of the Finance Committee, I shared the concerns raised by other members of the committee about any division of the Customs Service when it relocates to the new Department. I supported the Finance Committee's position that Customs move into Homeland Security but that the Secretary of the Treasury maintain the legal authority to issue regulations relating to the customs revenue function.

Defending the country's borders and facilitating legitimate trade are intertwined functions that should not be separated. By moving Customs in its entirety into the Border and Transportation Directorate, this legislation recognizes that the personnel who perform trade enforcement and compliance activities at the border are the same personnel who perform inspections for security and other enforcement purposes. In addition, the information Customs receives from trade compliance examinations and manifests is the same information used to assess security risks for shipments. This information is the cornerstone of many of Custom's counter-terrorism efforts.

This bill also maintains a cohesive and complete Border and Transportation Security Directorate by transferring all key border and transportation security agencies to this directorate, including the Coast Guard, Customs, and TSA. This includes the Border Patrol and a restructured INS which is not included in the Lieberman bill where it is part of a separate Immigration Directorate. Thus, the Directorate responsible for border security is not responsible for the Border Patrol or inspecting aliens arriving at ports of entry.

The same is true for the Coast Guard. Since the terrorist attacks of September 11, the Coast Guard has conducted its largest port security operation since World War II to protect and defend our ports and waterways. But this significant amount of effort is simply not enough.

The Coast Guard needs to be positioned with the other transportation and border security agencies if we are going to improve interagency coordination, maximize the effectiveness of our resources, and ensure the Coast Guard receives the intelligence it needs. I strongly believe the Coast Guard is an outstanding role model for Homeland Security and will serve as a cornerstone upon which this new Department will be built.

At the same time, these new priorities must not diminish the Coast Guard's focus on its other traditional missions such as marine safety, search and rescue, aids to navigation, fisheries law enforcement, and marine environmental protection which are all critically important.

The legislative solution I developed with Senators STEVENS and COLLINS, that is included in the bill, strikes the proper balance and ensures the Coast Guard's non-Homeland Security missions will not be compromised by the transfer.

To the contrary, our language maintains the primacy of the Coast Guard's diverse missions by assuring the Coast

Guard Commandant will report to the new Secretary of Homeland Security, rather than to a deputy secretary; assures no Coast Guard personnel or assets will be transferred to another agency; and provides a mechanism to annually audit the Coast Guard's performance of its non-homeland security missions.

I am pleased to see the inclusion of my amendment requiring the administration to report to Congress within 90 days outlining the benefits of accelerating the Coast Guard's Deepwater procurement timeline from 20 years to 10. The Deepwater project, which will recapitalize all of the Coast Guard assets used off of our coast, is already underway. However, the Coast Guard must wait up to 20 years, in some instances, to acquire already existing technology. We must accelerate the Deepwater acquisition project and acquire much needed assets for the Coast Guard now, not 20 years down the road.

Of course, securing our homeland requires that we figuratively "push out our borders" as far as possible, and that means we must consider the issuance of visas at our overseas embassies as another vital area to be addressed by legislation. After all, consular officers represent the first line of defense against terrorists seeking entry to the U.S. Entering the U.S. is a privilege, not a right, and this must be the attitude of those reviewing visa applications.

That is why I am pleased that this bill grants the Department of Homeland Security the authority to determine regulations for issuing visas and provides Homeland Security supervision of this process through the stationing of Homeland Security Department personnel in diplomatic and consular posts abroad.

This legislation also builds on a provision I included in the Enhanced Border Security and Visa Entry Reform Act establishing Terrorist Lookout Committees. These committees, comprised of law enforcement and intelligence agency personnel in our embassies, meet once a month to discuss names of terrorists or potential terrorists to be added to the lookout list. The inclusion of Homeland Security personnel to the Terrorist Lookout Committees will ensure that our first line of defense also has the input of this new Department.

I introduced Terrorist Lookout Committee legislation in 1995 as part of my efforts to strengthen our borders and increase information sharing. This, and legislation I introduced to modernize the State Department's antiquated microfiche lookout system, were a result of a trail of errors by our agencies with regard to Sheikh Rahman, the radical Egyptian cleric and mastermind of the 1993 World Trade Center bombing.

In working on terrorism and embassy security issues on the House Foreign Affairs International Operations Subcommittee, what we discovered was startling. We found that the Sheikh had entered and exited the country five times totally unimpeded, even after the State Department formally revoked his visa and even after the INS granted him permanent resident status. In fact, in March of 1992, the INS rescinded that status which was granted in Newark, New Jersey about a year before.

But then, unbelievably, the Sheikh requested asylum in a hearing before an immigration judge in the very same city, got a second hearing and continued to remain in the country even after the bombing with the Justice Department rejecting holding Rahman in custody pending the outcome of deportation proceedings and the asylum application, stating that "in the absence of concrete evidence that Rahman is participating in or involved in planning acts of terrorism, the assumption of that burden, upon the U.S. government, is considered unwarranted."

Securing our visa process is the reason why legislation I have introduced that requires the new Department to conduct a national security study of the use of foreign nationals in handling and processing visas has been included in this bill.

As was shown in Qatar this summer, foreign nationals handling visas are entrusted with a great responsibility and we must make sure that does not compromise our security. For instance, in July it was discovered that several foreign employees at the U.S. Embassy in Qatar may have been involved in a bribery scheme that allowed 71 Middle Eastern men, some with possible ties to al-Qaida, to obtain U.S. visas.

To strengthen security, my provision requires the Department of Homeland Security to review the specific role that foreign nationals play in handling visas and determine the security impact this has at each overseas mission and make recommendations as to the role foreign national should have with regard to visas.

On this same note, I am also pleased that another provision of mine to stop "visa shopping", the practice of a foreign national traveling to different U.S. Embassies in order to find one that will grant a visa, has also been included in this bill.

Now, current State Department regulations calling on consular officers to enter a visa denial into the lookout list database so it can be accessed by other Embassies will be codified in law. Seeing that a foreign national has traveled to another Embassy and been denied will make the decision of a consular officer on whether to grant a visa that much simpler.

Ensuring that the new Department has its own capabilities to analyze intelligence is critical to the functioning of the Directorate of Information Analysis and Infrastructure Protection. The Directorate will be responsible for accessing, receiving, and analyzing information such as intelligence, law enforcement and other information from agencies from Federal, State and local governments to detect and identify threats to homeland security. The legislation also will ensure that threat analysis, vulnerability assessments, and risk assessments is the responsibility of one Directorate.

Also, the bill contains specific language authorizing the Secretary to provide a staff of analysts with "appropriate expertise and experience" to assist the Directorate in reviewing and analyzing intelligence as well as making recommendations for improvements. Moreover, the legislation contains specific language I advocated authorizing the Department to hire its own analysts.

It is vital that clear language be included to ensure that the new Department has its own people and does not rely solely on detailees from other agencies. The bill also permits the new Department to have personnel detailed for analytical duties from the intelligence community. It is clear that in the beginning, intelligence analysts will have to be detailees from other agencies until additional people can be fully trained. However, this must not be a permanent situation. That is why I worked with Senator GRAMM to ensure the new Department has its own intelligence analysts.

Finally, one of the most challenging hurdles to overcome in passing this legislation was a provision of law that has been in statute for almost a quarter-century. This provision referred to as the President's "national security exclusion authority" allows the President to exclude agencies, or smaller subdivisions within agencies, from collective bargaining agreements if he determines that the agency or subdivision as a primary function intelligence, counterintelligence, investigative or national security work.

During this debate, attempts to rescind the President's authority which has been in place since President Kennedy first allowed Federal employees to unionize in 1962 and put into statute by President Carter in 1978 stalled the consideration of the entire bill. I am pleased, however, that both sides were ultimately able to come together to find a workable solution that allows the President to maintain the national security exclusion authority that every President has had since President Kennedy.

Once again, the President was right to create a new Department of Homeland Security and I applaud the efforts of Governor Ridge to formulate this proposal and present it to Congress. We need to come to grips with the reality that a repeat attack could happen at any time and, accordingly, not only work to prevent it but also be prepared to respond. The new Department of Homeland Security will bring us closer to bringing all of our Nation's resources to bear in securing our homeland.

This defining time, as the President has stressed, requires constant vigilance as our permanent condition. Because in our war against terrorism, to quote Churchill, "Now is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning." We have now begun a "new normalcy" and we can never again let down our guard. We owe taking this historic step to the American people and to future generations of Americans to ensure an enduring level of security.

Mrs. BOXER. Madam President, there is not a person in this Chamber who questions the importance of homeland security or the need to improve the Federal Government's ability to protect our people from terrorism. We all saw what happened on September 11th of last year: There was not enough anticipation or coordination, and not enough accountability. We can and must do better.

What happened last September 11th was a tragedy on a monumental scale. It is a date that we will always remember. It is an anniversary that we will always somberly commemorate.

But, as I have said before, we must learn from the tragedy of September 11th and ensure that our Nation is never again subjected to such horror. The events of that dark day should spur us to take the necessary steps to establish the instruments and institutions that will provide real protection for the American people. The lessons of September 11th will mean little if we are unable to craft a concrete response to terrorism that demonstrates our unwavering resolve to those who would do us harm.

Since shortly after September 11, I have argued that we needed a Cabinet-level Department to address these concerns. That is why, I have decided to vote for the legislation now before the Senate.

We are faced with the choice of either this bill or no bill. And I believe that we must move the process forward, and send the all-important message to the people we represent that we are serious about protecting them that we are serious about having better cooperation, coordination, and preparation in the fight against terrorism.

That is not to say that I do not have reservations. This bill should have been written differently. I supported an amendment proposed by Senator BYRD that would have made the new department less bureaucratic and would have provided more accountability, not less. It also would have ensured that Congress played a greater role as the department got up and running. Unfortunately, the Byrd amendment was defeated.

I was also shocked to see that several special interest riders were added to this bill at the last minute, in the dark of night. I am especially troubled by the new provision that holds harmless any company that makes mercury-based preservatives for vaccines. One example is Thimerosal, which, evidence shows, may be responsible for causing autism in children.

What in the world does such a provision have to do with homeland security? I believe this provision will create insecurity in our homeland by sending a message to thousands and thousands of families that their children's health takes a distant second place to the interests of large corporations. This bill should be about homeland security, not family insecurity.

With one call from the White House, these special interest additions to the bill could have been eliminated. But that did not happen, and the Daschle amendment to strip them from the bill, which I strongly supported, was defeated. As a result, this bill has been perverted from its original meaning and intent. I expect to work with my colleagues next year to reverse these special interest riders.

I am troubled by this bill's treatment of the new department's workers. It gives the President virtually unfettered authority to strip even the most minimal worker protections affecting everything from job classification, pay rates, rules for labor management relations, and the process for firing and demoting employees. These provisions were unnecessary and unfair.

Finally, I am concerned about the effect this legislation will have on my State of California on matters that have nothing to do with homeland security. Many existing Federal agencies will be moved lock, stock and barrel into this new department, with little regard to the services that those agencies provide to the American people and to the people of California. The Department of Homeland Security is largely about protection and enforcement. When vital services for the people of this country such as FEMA disaster assistance and the Coast Guard's search and rescue role are thrown into an agency whose mission and purpose is primarily enforcement, I fear that these much-needed services will suffer.

However, despite these reservations, I will vote for this bill. We must move forward on protecting the American people from another possible terrorist attack. And creating a new Cabinet-level Department of Homeland Security, which I have supported for the past year, is an important step in that direction.

Through my committee assignments and by enlisting the support of my colleagues, I will keep a sharp eye on the new Department of Homeland Security and work to make sure we take the additional steps necessary to truly protect the security of the American people.

Mr. GRASSLEY. Mr. President, I rise in support of the homeland security bill. I believe that today we are taking definitive action to put the Government in a better position to prevent and respond to acts of terrorism. The creation of a Department to oversee homeland security has been a tremendous undertaking for the White House and Congress. It has forced all of us to face multiple challenges, including overcoming the various agencies' desire for self-preservation and the longstanding turf battles we are all too familiar with. Regardless of these difficulties, we have no choice but to strengthen our national security. A Department of Homeland Security is our best answer, and I have tried to do all that I could to enhance the effectiveness of the New Department.

This new Department will have to improve and coordinate our intelligence analysis and sharing functions, as well as our law enforcement efforts. Our Nation needs to do everything possible to make sure the attacks of a year ago never happen on American soil again. The creation of the Department will help coordinate our homeland security efforts and better protect the United States from terrorist attack.

The new Department will also identify and destroy barriers to effective communication and cooperation between the many entities involved in America's national security. It will identify our security and intelligence shortcomings and resolve them appropriately. It should also guarantee that the various infrastructure protection agencies moving to it have a smooth and seamless transition, and that whistle protections are given to each and every employee, without exception.

I was glad to have an opportunity to work with the sponsors of the bill to secure adequate whistleblower rights for Department employees. Because rights are worthless unless you have a process by which those rights can be addressed, I worked with the sponsors to ensure that whistleblowers have procedural remedies. The bill's whistleblower protection language grants the Department's employees the same Whistleblower Protection Act rights that are currently enjoyed by almost all other Federal employees.

Another big part of the homeland security bill includes provision to restructure the Immigration and Naturalization Service. The new Department will be instrumental in securing our border, but we will have to steadily implement changes to improve the agency's service and enforcement functions. Improvements to this agency are long overdue and cannot be ignored after this bill passes. Just because we have streamlined their management, the INS's performance will be scrutinized in the years to come. The INS will be accountable to the American people, and I look forward to seeing some changes in the way they do their business.

I am pleased that I was able to work on an immigration reform measure that will strengthen the Secretary's visa issuance powers. This provision authorizes the DHS Secretary to put DHS agents at consular posts or requires a finding that DHS agents aren't needed, and it gives the DHS Secretary influence in the State Department personnel matters relating to visa issuance. It also requires annual reports to the Congress on security issues at each consular post. These changes will help us avoid dangerous programs like visa express that let terrorists in without any real screening.

I am also pleased that the homeland security bill we are considering today incorporates a number of our recommendations to ensure that the international trade functions of the Customs Service are not subsumed by the need for strong law enforcement under the Department of Homeland Security. In order to achieve this, we included a number of procedural protections. However, even with these safeguards, I am somewhat concerned that an attitude could prevail over time in which the trade function of the Customs Service become nothing more than a tool for the enforcement functions. I do not think this is an insignificant concern. Today, Customs operates under the umbrella of the Treasury Department, whose core mission it is to serve as a steward of the economy. Moving the 200 year old agency to Homeland Security could fundamentally alter the traditional mission and culture of the U.S. Customs Service. As the ranking member of the Finance Committee, I plan to exercise my oversight function diligently to make sure that this does not happen.

Another provision that I worked hard to secure, along with Senator HERB KOHL of Wisconsin, is the transfer of ATF agents to the Justice Department. The firearms and explosives experts will work alongside the FBI and the DEA at Justice Department. The firearms and explosives expert will work alongside the FBI and the DEA at Justice, and the revenue-collection experts and auditors will stay at the Treasury Department. This move will help coordinate criminal and antiterrorism investigatives at the DOJ, but will keep the ATF's revenue-collection duties at Treasury where they belong. So I thank the leadership for making sure these important changes were made.

I also applaud the inclusion of language that I advocated requiring the new Secretary to appoint a senior official to be responsible for ensuring the adequacy of resources of drug interdiction. The smuggling, transportation, and financing organizations that facilitate illegal drug trafficking can just as easily smuggle terrorists or terror weapons into the United States. Many of the agencies being moved into the new Department were previously focused on the fight against narcotics. By coordinating counternarcotics policy and operations, this new official will ensure that our efforts to respond to future acts of terrorism will not come at the price of relaxing our efforts against the dehumanizing and painful effects of drug use on society and families.

I was also pleased to work with Senators LOTT and BENNETT on FOIA provisions that encourage the private sector to alert government officials about risks to our critical national infrastructures. While public disclosure laws such as FOIA are central to the policy of preserving openness in government, they sometimes serve to inhibit our ability to receive vitally important national security-related information from information from businesses that fear unwarranted loss of public confidence and use by competitors, criminals, and terrorists. This new language will strike the dedicate balance between "sunshine" in government and the responsibility that we have to collect and share sensitive information about infrastructure vulnerabilities in an atmosphere of trust and confidence.

The ultimate goal here before us is to help our intelligence and law enforcement communities at being the best they can be at protecting our nation and the American people. But we can't build a new house with broken blocks. If we don't fix the problems at the various agencies that will make up the new Department, we won't see real homeland security. A lot of work has been done, and I believe we are on the right track. I believe this plan is indeed the answer for effective homeland security, now and for the future. Let's move forward from here and get it done.

HOMELAND SECURITY

Mr. CONRAD. Madam President, I will vote for the bill before us today, but I do so with some serious reservations.

First, and most importantly, I do not want the American public to conclude that by passing this one bill we do not need to do anything else in order to protect our homeland. While housing such agencies as FEMA, the Customs Department, and the Border Patrol under one roof will be advantageous, especially in the long run, little in this bill goes the heart of what went wrong leading up to September 11. Simply put, our country has been plagued, and we continue to be plagued, by a myriad of intelligence shortcomings. We have not done an effective job of gathering intelligence on al Qaeda cells residing right now in our country, and, perhaps even more importantly, our intelligence agencies have not been effectively sharing intelligence with each other. We hear story upon story about a lack of analysts with language skills, outdated computer systems, and turf battles.

And now we hear, for the first time, that the administration is considering the need to create a new domestic intelligence agency. We hear that our Nation's top national security officials met for 2 hours this past Veterans Day to discuss this issue. Clearly, we need a plan to deal with domestic terrorism surveillance and to implement systems, procedures, and oversight to make sure that our intelligence agencies are talking to each other. Unfortunately, the current bill is largely silent on these issues.

Second, I have serious concerns that the administration will be undertaking the most massive government reorganization in over 50 years while we are in the middle of our war against terrorism. Osama Bin Laden is still at large, and just last week he threatened new attacks. Indeed, the administration recently has warned us about "spectacular" attacks against our country. We must take great care that this massive reorganization does not compromise any of our ongoing efforts in our campaign to protect our homeland.

Finally, I cannot stand silent about the egregious, superfluous, special-interest giveaways put into this bill at the very last minute by the administration acting in concert with Republican leaders in the House and Senate, everything from shutting the courtroom doors to families injured by pharmaceutical companies to allowing offshore tax haven companies to compete for homeland security contracts.

So while I support the bill before us today, it is certainly not a perfect bill. Even more importantly, our work has just begun. The administration now needs to ensure that in creating this massive new Department it does so in a way that does not compromise the vital and ongoing work of the agencies involved. It is also imperative that we fix the central problem with our Nation's homeland security defenses, that of the lapses in our Nation's intelligence gathering and sharing efforts, and that we do so now. I wish we would have dealt with this more gaping security hole first, but all we can do now is to redouble our efforts in this most vital pursuit.

Mrs. MURRAY. Madam President, the Senate today took an important step to combat domestic terrorism and improve safety at home. The Department of Homeland Security will help protect our communities by coordinating prevention and response efforts throughout the country.

The legislation also maintains the integrity of the Coast Guard, so that the important function of search and rescue, drug interdiction, and environmental protection will not be degraded.

Throughout his tenure, I have found Governor Tom Ridge to be a responsive member of this Administration, and I look forward to continuing to work with him in a constructive manner.

While much of this legislation is important and necessary, I am concerned about several of the provisions.

First, are the special interest gifts to the pharmaceutical and manufacturing industries that House Republican leaders slipped into the bill last week.

Second, are the new surveillance powers granted to the Federal Government, and the potential impact on Americans' civil liberties. The Administration has assured Congress and the American people that the new authority will be used judiciously, and the Administration now must act responsibly and prudently.

Third, I believe that men and women who serve their country in uniform are entitled to the same civil service protections as other federal workers, and I am disappointed that because of this bill, some workers will lost important rights.

I intend to work with the new Department to protect Washington State's interests and will continue to monitor the implementation of this bill.

Mr. INHOFE. Madam President, our world has changed dramatically since the tragic events of September 11, and by passing this bill, we are taking a momentous step forward in providing for the security of Americans at home. But I am concerned we might be missing an integral component to this secure system. We have outlined parameters for information security, privacy and authentication. But, how can we truly ensure someone is who he/she says they are before we give them these high-tech credentials? We have gone to great lengths to ensure the security of these counterfeit-proof credentials, but we need to also account for the validity of the information used to establish identity in the first place. What happens if we give someone a secure document with a biometric under a false name?

The events of September 11 were orchestrated by a group of foreign individuals who used false information to receive legitimate U.S. identification documents like visas, passports, driver's licenses, and illegally entered this country. Identity fraud is no longer just a crime perpetrated by a common criminal to steal a credit card. Identity theft is now a tool employed by terrorist organizations to infiltrate America and harm our citizens. Terrorists have been able to take advantage of our ineffective and antiquated systems and assume false identities.

In this bill, we establish an Under Secretary for Border and Transportation Security with the charge of preventing terrorists from entering this country. We need to make sure he or she has the tools necessary to authenticate a person's identity. Authentication of non-U.S. citizens entering the United States must be a top priority. We have bipartisan support for such an effort and we must establish a system that ensures the identity of foreign individuals upon initial entrance into this country.

For years, identity authentication systems have been used in the U.S. to prevent fraud in the consumer banking industry. Following the terrorist attacks on September 11, these systems have been adapted for national security purposes. These systems access a wide number of identifiers in domestic public records and use scoring and modeling methods to determine whether a particular person is who they say they are. These systems must be expanded to include publicly available information on individuals from foreign countries.

The President has said, "This nation, in world war and in Cold War, has never permitted the brutal and lawless to set history's course. Now, as before, we will secure our nation, protect our freedom, and help others to find freedom of their own." Let me be clear. There are people who deserve to enter this country and there are people who don't deserve to enter any country. We must have the ability to verify an individual is who they say they are the first time they apply for a visa. As we move forward, we must establish an identity authentication system that targets the 26 nations designated by the State Department as state sponsors of terrorism.

Mr. REED. Madam President, I rise to discuss the legislation before the Senate to create a Department of Homeland Security. I have said throughout the debate on this legislation that I support the creation of a homeland security department, and despite my strong reservations about many of the specific provisions in the bill, I intend to support final passage today. The Senate has expressed its will through the amendment process, and while I have been disappointed with the outcome of many of the votes, the bill before us has the potential to improve our government's ability to combat terrorism against our people. Insuring domestic tranquility and providing for the common defense are among the most sacred Constitutional duties our constituents sent us here to fulfill, and on that basis alone this bill, while far from perfect, deserves to move forward.

I will discuss many of the positive aspects of this legislation shortly, but first I want to outline some of my concerns with the bill. First, I am deeply disappointed that the House Republican leadership inserted into this must-pass legislation to protect our homeland a host of special interest giveways. The bill creates new liability protection for pharmaceutical companies by wiping out pending litigation; guts the Wellstone amendment that prohibited contracting with corporate expatriates; reverses the aviation security bill by providing special immunity to the companies that provided passenger and baggage screening in airports—companies that may have violated numerous security regulations on September 11; allows the Department to hold secret advisory committee meetings with hand picked industry advisors, even on non-sensitive matters, waiving the Federal Advisory Committee Act; and provides immunity from liability for manufacturers of products or technologies that cause harm to Americans.

I also have concerns about provisions in this bill that would undermine the basic rights of federal employees to belong to unions and to bargain collectively with management over working conditions.

Forty years ago, President Kennedy issued Executive Order 10988 granting federal employees the right to organize and bargain collectively. President Nixon expanded employees' rights in 1969, and these rights were subsequently codified in the 1978 Civil Service Reform Act. These fundamental rights have never interfered with the provision of government services, including homeland security, and in fact I would argue they have strengthened our government by helping us to recruit and retain highly qualified employees who might otherwise look elsewhere for work. Union members are among our nation's most patriotic, dedicated and selfless public servants. When the World Trade Center was burning on September 11, the unionized firemen, police officers, and emergency medical personnel in New York did not stop and ask for a collective bargaining session. They went up the stairs, into the fire, and gave their lives so that others might be saved.

Of the 170,000 federal employees who would likely be moved to the new Department of Homeland Security, at least 40,000 belong to unions and possess collective bargaining rights, including employees of the Customs Service, Border Partrol, and other important agencies. Our goal, as was proposed in the bill drafted by Senator LIEBERMAN and reported by the Senate Governmental Affairs Committee, was to ensure that no federal employee who currently has the right to join a union would lose that right under the homeland security reorganization. Agencies where employees currently do not have collective bargaining rights, such as the Transportation Security Administration and the Secret Service, would not have been affected.

To maintain the existing rights of union members transferred into the new Department, the Governmental Affairs Committee bill included a bipartisan provision that would update this formula. Under that bill, management could deprive transferred employees of their collective bargaining rights if their work is "materially changed" after the transfer; their "primary job duty" is "intelligence, counterintelligence, or investigative duties directly related to the investigation of terrorism"; and their rights would "clearly" have a substantial adverse effect on national security." This provision was carefully crafted on a bipartisan basis to give the new Secretary of Homeland Security the flexibility he or she needs while preserving the rights of tens of thousands of employees who have possessed collective bargaining rights for decades and will be performing exactly the same work under a different letterhead.

Unfortunately, the House drafted bill before us today does away with these protections. Under this bill, the President may waive existing union rights if he determines they would have a substantial adverse impact on the Department's ability to protect homeland security. He must send a written explanation to the House and Senate at least 10 days in advance, but no Congressional approval is required. Furthermore, the bill allows the Administration to waive existing civil service protections over union objections. Although he would be required to notify Congress and engage in a 30-day mediation administered by the Federal Mediation and Conciliation Service, if mediation is not successful the President could waive civil service provisions notwithstanding union objections and act without Congressional approval.

I am also concerned about the provisions related to the Vaccine Injury Compensation Program, VICP. The VICP is a no-fault alternative to the tort system for resolving claims resulting from naturally occurring, adverse reactions to mandated childhood vaccines.

Over the years, the VICP has proven to be a successful component of our National Immunization Program. It has protected vaccine manufacturers, who play a critical role in the protection of public health against unlimited liability while also providing injured parties with an expeditious and relatively less contentious process by which to seek compensation.

However, the provisions contained in this homeland security bill consist of one page of a 26-page bill introduced by Senator FRIST earlier this year, S. 2053, the Improved Vaccine Affordability and Availability Act. While it has been argued that these provisions are needed to protect vaccine manufacturers, the fact is that manufacturers are already protected under VICP.

Senator FRIST's bill contains a number of provisions related to increasing vaccine rates among adolescents and adults, bringing greater stability to the vaccine market through the creation of a rigorous stockpile of routine childhood vaccines and reforms to the Vaccine Injury Compensation Program. Letters of support that have been cited on the Senate floor, from the Advisory Committee on Childhood Vaccines and the American Academy of Pediatrics, expressed support for these provisions, but only in the context of the comprehensive legislation set forth by Senator FRIST, not on their own. The three sections that have been inserted simply have no place in a homeland security bill. These sections lack the thoughtful and comprehensive approach that is required to address the myriad challenges facing our childhood immunization program.

Finally, I am concerned with the immigration provisions in this legislation. There is general agreement on the proposal to transfer all functions of the Immigration and Naturalization Service into the new Department. However, rather than establishing a single, accountable director for immigration policy, the bill calls for enforcement functions to be carried out by the new Bureau of Border Security within the Border and Transportation Security Directorate, while immigration service functions will be in a separate Bureau of Citizenship and Immigration Services that reports directly to the Deputy Secretary. While the bill does call for coordination among policymakers at each of the bureaus, they will ultimately establish their own immigration policy and interpretation of laws. I urge the Administration to ensure that policy coordination among the enforcement and services bureaus is comprehensive and consistent, so that the result for the nation's immigration system is real reform and not a new period of disarray.

Nothwithstanding all of the concerns I have summarized, I believe that this legislation and the new department it creates have the potential to make the American people safer. The legislation will consolidate more than two dozen disparate federal agencies, offices, and programs into a focused and accountable Department of Homeland Security. The bill will bring together into a single Border and Transportation Security Directorate our Customs Service, the border quarantine inspectors of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, the new Transportation Security Administration, and the Federal Law Enforcement Training Center. Within this directorate, the bill also creates an Office of Domestic Preparedness to oversee our preparedness for terrorist attacks and to provide equipment, exercises, and training to states. The Coast Guard will also be in the new department, reporting directly to the Secretary of Homeland Security.

The Directorate for Information Analysis and Infrastructure Protection will enable the Department to "connect the dots" by organizing analyzing, and integrating data it collects at ports and points of entry with intelligence data from other parts of the government. The bill also provides the Department with access to unevaluated intelligence. It establishes separate Assistant Secretaries for information analysis and infrastructure protection, and has language making it clear that the Directorate's intelligence mandate is broader than infrastructure protection and including deterring, preempting, and responding to terrorist attacks.

The Directorate for Science and Technology will conduct and promote long-term homeland security research and spearhead rapid technology development and deployment. It will bring together scientific capabilities now spread throughout the federal government to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats.

In addition, the bill establishes a directorate of Emergency Preparedness and Response, with the Federal Emergency Management Agency, FEMA at its core, which will help to ensure the effectiveness of emergency response to terrorist attacks,major disasters and other emergencies by bringing under the Department's directorate several federal programs in addition to FEMA: the Domestic Emergency Support Teams of the Department of Justice, and the Strategic National Stockpile and the National Disaster Medical System of the Department of Health and Human Services. The Department will also have the authority to coordinate the response efforts of the Nuclear Incident Response Team, made up of elements of the Environmental Protection Agency and the Department of Energy. One of most important responsibilities of this directorate will be to establish comprehensive programs for developing interoperative communications technology, and to ensure that emergency response providers acquire such technology.

These are all laudable and important goals, but because we have been blocked from passing the appropriations bills that would provide the resources the Department needs to perform its mission, our work is far from complete. Providing these resources will be our task on homeland security in the months ahead, and I hope my colleagues and the President give this task the same attention and effort they gave to creating a Department of Homeland Security.

Madam President, because I believe the people of Rhode Island and Americans everywhere want to see the creation of a Homeland Security Department that will improve our ability to prevent and respond to terrorist attacks, I intend to support this legislation despite my concerns about many of the specific provisions included in the House draft of the bill before us today.

Mr. BUNNING. Madam President, I am pleased the Senate is able to pass legislation to establish the Department of Homeland Security before Congress adjourns the 107th Congress sine die. After the terror attacks on September 11, 2001 it has been the mission of President Bush and many in Congress to create this new Department, and it is particularly pleasing to get this done now rather than waiting until Congress starts up the 108th Congress in January of 2003. And I know as well the American people are supportive of getting this legislation passed now rather than later.

Those who oppose this legislation before us may have some legitimate and principled concerns as to why they do not support this bill. By all means, the bill is not entirely perfect and I think most members of Congress would attest to that. But neither were the original bills to create any other federal department or agency perfect on the first try. That is why we have committee hearings on these issues, and I am sure we will pass supplemental and technical bills over the years to legislatively mold the new Department of Homeland Security so that it is stronger and more efficient.

But we needed to get this bill rolling now. Every day is vital as we fight this new war on terrorism. Delaying the creation of this new department another three or four months could set America back in her defenses. Every day that goes by without work being done to create and organize this new department simply puts us back further and further. We just can't afford to let that happen. This is serious business.

Although this bill may not be perfect and some may disagree with a few of its provisions, it is not so controversial that the bill deserves nor needs to be killed outright. We can come back and revisit those extraneous provisions some of my colleagues have been talking about. But we need to get the ball rolling. Agencies need to be realigned. We need to get rid of some of the duplicity amongst some of these agencies. Communication and information channels need to be streamlined. There is a lot of work to be done and every day counts.

Earlier in this debate I came to the floor and spoke about the need for President Bush and future presidents to be able to have the authority and flexibility to hire and transfer employees, and even be able to terminate some employees, within the new Department of Homeland Security to ensure its mission can be undertaken. For weeks we had a real disagreement on this issue. Some wanted to ensure that workers were protected and preserved in their employment regardless of their performance or real need.

Fortunately, in the end we have a piece of legislation that frees the hands of the president by giving him the necessary management and personnel flexibilities to integrate these new agencies into a more effective whole. While providing this flexibility, we still preserve the fundamental worker protections from unfair practices such as discrimination, political coercion, and whistle-blower reprisal. This flexibility and authority will better serve our president, the homeland and Americans.

New provisions are also added to this bill to help protect our borders. We do this by moving the Coast Guard, Customs Service, Immigration and Naturalization Service, and border inspectors at Animal Plant Health Inspection Services all under the new Department of Homeland Security. This action is long overdue and a reminder to us that the first step in defending America is to secure her borders.

As well, this bill helps to ensure that our communities and first responders are prepared to address threats. This bill does this by moving FEMA and the Secret Service under the new Department of Homeland Security. By moving FEMA, we are clarifying who's in charge, and response teams will be able to communicate clearly and work with one another. We will also benefit by the Department of Homeland Security being able to depend on the Secret Service's protective functions and security expertise.

Some have voiced concerns that we are limiting and not protecting the freedoms and privacy of Americans in this bill. I would say to my colleagues that at the core, the real reason for this bill is to ensure just the opposite, to provide security and protect our freedoms. We have in this bill specific legal protections to ensure that our freedom is not undermined. This bill prohibits the federal government from having the authority to nationalize drivers' licenses and other ID cards.

Also, the bill establishes a privacy officer. This is the first such officer established by law in a cabinet department. Working as a close advisor to the Secretary of the Department of Homeland Security, this privacy officer will ensure technology research and new regulations respect the civil liberties Americans enjoy.

There are many other vital provisions in this bill which are needed to better protect our freedom and the homeland. It is a good and solid bill. It may not be perfect, but rarely are there any perfect pieces of legislation we pass here in the Senate. I am sure we will revisit this legislation and issue again, in committee hearings as well as considering technical and supplemental homeland legislation on the Senate floor.

But it is imperative we pass this legislation now. We have worked hard on this bill, too hard to just let it die in the 107th Congress. We need to get it to President Bush's desk before we adjourn sine die. The sooner we get it to him, the better it is for the protection of the homeland and Americans.

Ms. CANTWELL. Madam President, I rise to express my support for the creation of a Cabinet level Department of Homeland Security that better enables our border security agencies to coordinate and work together. I believe that if properly implemented such a Department will better protect our country from the threat of terrorism.

The tragedy of September 11 demonstrated that our homeland security apparatus is dangerously disorganized, and that our vulnerabilities were real; we learned that we need organizational clarity and accountability to face the crucial challenge of improving homeland security.

On balance, the new Department of Homeland Security will reduce our vulnerability to the terrorist threat and minimize the damage and help recover from any attacks that do occur. However, we need to recognize that this is only a first step. The challenge of homeland security will require more than bureaucratic reorganization, we need to ensure that our efforts are bolstered with a real commitment to the attention and funding necessary to implement some of the goals of this legislation.

Although I will ultimately support the homeland security bill, I do so with the recognition that no legislation is perfect. This legislation is, indeed, not perfect and it will demand continued attention and oversight by Congress to ensure that it lives up to its aspirations in ensuring our homeland security, while not betraying our principles of governance and freedom.

One area that I have particular concerns is in regards to our continued efforts to address the issue of information and information sharing within the careful balance of security goals and civil liberty protections.

I am particularly concerned with provisions of the bill that fail to explicitly address the broader concerns of privacy for American citizens and that reduce our access to public information through the FOIA process. I am particularly frustrated because both of these troubling provisions, provisions to enhance sharing of information about suspected terrorist activity with local law enforcement, and provisions to limit access to sensitive information available under the Freedom of Information Act, were negotiated and careful compromises were arrived at in the earlier version of the Gramm-Miller Senate substitute and in Senator SCHUMER's bill, S. 1615, the Federal-Local Information Sharing Partnership Act.

The timely sharing of investigative information between various enforcement and intelligence agencies can provide necessary improvements in our nation's security. Unfortunately, the version that is contained in this legislation provides absolutely no limitations on how this information can be used or disseminated. This is particularly troubling because we have already expanded the type and amount of personal information available in federal databases. To greatly expand access to personal information without providing any protections on its use is a dangerous erosion of our valued right to privacy and has the potential to eviscerate the protections that the Constitution guarantees Americans against unfettered government intrusion into privacy. I support greater access to information, and I believe that it is primarily through appropriate use of information technology that we are likely to make real improvements in our domestic security, but greater access to personal information cannot come without offsetting protections against its misuse.

The very broad language, inserted for the first time by the House, offers no procedural mechanisms to assure the government adheres to protections of privacy or civil liberties. Information sharing without citizen recourse or correction, without adequate procedural safeguards, has the potential to undermine the privacy of every citizen. The Senate has already acted on this issue and language exists that can better provide access to local law enforcement while also providing real protections to our citizens. This legislation has already passed the Judiciary Committee and I am committed to working with Senator SCHUMER to passing this legislation next year.

In addition, this bill previously contained carefully crafted language that protected sensitive information from discovery through the Freedom of Information act. The Freedom of Information act is a valuable tool in assuring open and accountable government and I believe that any effort to alter it must be carefully considered. This careful consideration produced the language in the original bill, a compromise crafted by Senators BENNETT, LEVIN and LEAHY. As the editorial board of the Olympian wrote today "The public is already leery of government and understands that public records are one means of keeping elected and appointed officials in check" Unfortunately, this bill contains a very broad exemption which has the potential to protect much information from public scrutiny. We must be cautious in taking steps that reduce open access to government and I am concerned about the broad nature of this language.

I am also very disappointed by how the Immigration and Naturalization Service is reorganized within the Homeland Security Agency. By completely separating the service and enforcement functions of the INS, I believe that we will only be compounding the problems that already plague this moribund agency. Coordination between the service and enforcement arms of the INS is required to make the agency more efficient and to ensure that its dual missions of enforcing the law against those here illegally and facilitating residence and citizenship for those here legally achieve the same level of support.

Last, a major stumbling block in passing this legislation has been the concern with the rights of many talented employees already employed by agencies who will be moving into the Homeland Defense Department. I do not believe this legislation provides adequate safeguards for these employees and I believe that the Congress will need to perform a great deal of oversight to make certain that abuses do not occur in this arena.

As I said before, no legislation is perfect, and our job in Congress is not over with the passage of this bill. We need to remain dedicated and focused in our task of ensuring that the implementation of this bill is accomplished effectively and consistent with the principles and rights that have made this country great.

Mr. REID. Mr. President, I want to discuss the bill before us dealing with the creation of a department of Homeland Security.

I applaud Senator LIEBERMAN for developing this idea of a new department to protect our Nation against the horrible specter of terrorist attacks on our cities and citizens.

The people of Nevada look to the Federal Government to make sure that our State and our Nation are secure.

We all agree that our Federal Government can, and should, do much better at preventing attacks, defending against attacks, and mitigating the consequences of attacks.

In Nevada, we have already begun to help. The Nevada Test Site has established itself as one of the premier centers for emergency responder training. Under the new Department, this facility will only flourish. The new Department will also help develop the burgeoning counterterrorism programs at Nevada's major research institutions, including the University of Nevada-Las Vegas and the University of Nevada-Reno. The people of Nevada have a proud history of providing the nation with the necessary skills, hard work and vision to protect our Nation. I know Nevada will do the same for the war on terrorism.

A new department of Homeland Security will be a good start, but this new Department is by no means the finish line in the effort to defense our nation.

More important, this new Department must not be a distraction from the job of protecting our Homeland. If it turns our that the consolidated departments, agencies and bureaus are spending more time looking for their new desks instead of hunting down Osama Bin Laden, I will be the first one to work on legislation to fix it.

We must not believe that establishing this Department ends the need for vigilant oversight, and we must not give in to the false security that a new Department could provide. Protecting our Nation from the horrors of terrorist attacks involves more than changing the name, moving offices and shuffling desks around.

Protecting our Nation requires strengthening our intelligence gathering and analysis—it means improving the communication between many Federal departments and agencies—it means providing the funding we need for research and technology investments—it means tapping the resources of the American entrepreneur and the soul of the American worker.

The proposed Department will address many of these concerns, but not all of them.

I am voting to support this legislation, because the President claims that it will be more than just a name change. I will be watching very closely to make sure that it is.

There are several areas that I plan to keep a close eye on.

First, this new Department, though it has some new intelligence sharing responsibilities, will not fix the problems at either the Federal Bureau of Investigation or the Central Intelligence Agency or the lack of coordination and cooperation between the two. Those agencies were left out of the Department of Homeland Security, even though they share tremendous responsibility for the Administration's failure to properly interpret the intelligence warnings before September 11.

Second, this bill gives tremendous authority to the executive branch of the Government. With that authority comes tremendous responsibility. In particular, this new strong authority presents a tremendous potential for abuse and misuse. I am disappointed that such an important piece of legislation would be used to weaken important provisions of our law. This bill makes unnecessary attacks on the ability of the American people to access Federal documents, and on the protections afforded the people who work for the Federal Government.

The labor provisions of this bill still fall far short of what I'd like to see. I still believe that it is entirely possible to reorganize our homeland defense efforts and dramatically improve the state of our Nation's security without stripping dedicated and loyal workers of basic protections in their jobs. All across the country, there are union members holding jobs that require flexible deployment, immediate mobilization, quick response, and judicious use of sensitive information. Police and firefighters have union protections, and their ability to bargain collectively actually improves our ability to fight crime and fires. The union protections make the jobs attractive enough for talented individuals to want to stay in the positions for long periods of time. We as a society gain because we are able to retain skilled people to work on our behalf.

Senator LIEBERMAN's bill was able to preserve a fair balance in this respect. His legislation retained most labor rights, but in cases where national security might otherwise be compromised, the President would have the flexibility to do whatever was necessary to protect the country.

This bill, on the other hand, will drive many talented individuals to look for employment elsewhere, in positions that afford at least a minimal level of job security and due process. I fear that over time we will see a deterioration in the caliber of employees that join this department, and I expect to revisit the labor provisions before many years have passed.

I am also deeply troubled by the efforts to allow this department to operate in secrecy. We have seen the unfortunate impacts of secrecy in the development of a national energy policy by the administration. This bill would continue this dangerous trend on the part of the administration. The administration appears to be more concerned with protecting the corporations' bottom-line than defending the citizens right-to-know.

I also have strong concerns about many of the provisions included in this bill that do not relate directly to the creation of the department of security.

A tax loophole has allowed dozens of U.S. corporations to move their headquarters, on paper only, to tax haven countries to avoid paying their fair share of U.S. taxes. Several months ago, Paul Wellstone and I offered an amendment to bar the Department of Homeland Security from awarding government contracts to these corporate tax runaways. The Senate adopted that amendment unanimously, but this bill guts that agreement. It is a sad reality that these corporate expatriations are technically legal under current law. But legal or not, there is no reason why the U.S. government should reward tax runaways with lucrative government contracts.

Paul and I felt that if these corporations want Federal contracts so badly, they should come home. Just come back to the United States, and they'd be eligible to bid on homeland security contracts. And if they didn't want to do that, then they should go lobby the Bermuda government for contracts there. It should have been a priority of this legislation to guarantee that the Department of Homeland Security conduct its business with corporations who do their share to bear the burdens of protecting this country. This legislation is more concerned with window-dressing on this issue.

Although I agree that the agency primarily responsible for the security and safeguarding of nuclear material, the Nuclear Regulatory Commission, should not be in the new Department, the bill does not address the important issues of chemical and nuclear power plant security. Protecting our energy infrastructure involves challenges related to the appropriate sharing of responsibility between the private companies who own and operate these facilities and the Federal Government. Our existing laws do not considered fully the implications a terrorist attack would have on our ability to prevent and respond to terrorist attacks on these facilities.

These concerns are real. In fact, the President raised the specter of a terrorist attack on one of our nation's nuclear power plants in his State of the Union address. And just a few days ago we were warned again that these facilities are potential targets. The Department of Homeland Security should work quickly with other federal agencies to improve their security, until the Congress is able to enact appropriate legislation to protect them.

Many of my colleagues have eloquently described the outrageous special interest provisions that were included in this bill, so I won't repeat many of those points. I do want to say that I am disappointed that the administration chose to include these provisions. They knew that this bill would pass, because it is so important to our country. They knew they could try to sneak these outrageous provisions in. This is not the way to increase the security of our country following the horrendous attacks of September 11.

There are several provisions I am particularly pleased will be enacted into law. These provisions deal primarily with the aviation industry in the aftermath of September 11.

I am pleased that a provision to allow the Transportation Security Administration flexibility to extend the baggage claim deadline for airports was included in the legislation. This is extremely important to Las Vegas McCurran and Reno/Tahoe International Airports in Nevada. Las Vegas is the second leading airport in the nation for origination and destination passengers. Only Los Angeles International airport handles more. In fact, Las Vegas handles more luggage than most of the nation's larger airports. Allowing TSA to work with selected airports to implement the 100 percent baggage screening requirement over a reasonable time period will in the long run be the most secure course for the traveling public.

This legislation also includes language extending the time frame and expanding the scope of War Risk Insurance made available to commercial airlines under the FAA's War Risk Insurance program. This was a top priority for the airline industry, described by leading industry officials as the single most important and cost effective action Congress could take at a time when commercial airlines are facing enormous financial challenges. The provision in the bill should help stabilize the insurance crisis resulting from the terrorist attacks of September 11th. The War Risk Insurance provision of the bill mandates extension of coverage through August 31st, with an option to extend War Risk coverage through December 31, 2003. It also calls for expansion of the scope of War Risk Insurance made available to airlines, adding coverage for passengers and crew and loss of aircraft to the coverage for third party liability currently made available by the FAA.

Finally, the bill reinstates a short term limitation of third party liability in cases of terrorist acts involving commercial aircraft. Last year's airline stabilization bill capped third party liability at $100 million where the Secretary of Transportation certifies that an air carrier was a victim of an act of terrorism. This short term limitation of liability expired in March, however, and has now been reinstated through the end of 2003.

Today I am supporting the creation of the Department of Homeland security. Establishing a new department is an important way to ensure we have a coordinated Federal response to potential terrorist attacks.

This legislation may have flaws, but the principle is correct. So today I am choosing to support the legislation, but I will keep a close eye on its implementation. If there are changes that need to be made, I will work hard to fix the flaws.

Mrs. CLINTON. Madam President, in the months following September 11, a new reality took hold in every corner of our country. We saw the National Guard standing guard at our airports and in front of Government buildings. Bioterrorism and border security were discussed every day. The skies over New York and Washington, DC were patrolled by our military. And every American believed that these new measures made our Nation stronger and protected us against terrorist attacks.

But time has passed and that vigilance has faded. Not by our police officers, firefighters, or emergency response personnel. Not by the brave men and women who are serving in Afghanistan. Not by the workers along our borders and in our ports. But by the Federal Government. We have slipped into an almost piecemeal approach to Homeland Security and that has to change, starting today.

"Are we safer today than we were on the morning of September 11, 2001?"

The answer is only marginally, because somewhere along the line, we lost our way.

Those individuals who are sacrificing and working to do their best and secure our country want to do more. But each day, despite some of our efforts, we do less and less for them. We issue warnings about new threats. We expect people and cities and towns to react accordingly, but we do not provide enough funding, support, or guidance for them to do their jobs. We need to redefine our focus on Homeland Security, and one way to do that is to reorganize the way our Government works.

The votes we cast today for the creation of a new Homeland Security Department are just that-votes for the creation of a department. Our Nation and particularly the people I represent in New York, learned the hard way on September 11, 2001—the status quo is unacceptable.

My hope is that approval of this bill sets in motion a necessary reorganization process that will ultimately result in improved coordination, information sharing, and a stronger and safer America. We need to send a clear message that our Government is doing more than simply talking about strengthening our homeland security; that we are once again focused on concrete steps that will defeat the terrorists and protect our people.

But we must be clear about what we are voting on today—this bill has much to do with structural reorganization and very little to do with enacting real steps that will protect our Nation against terrorist attacks. There are many things in this bill that should not be; and there are many things that should be in this bill that are not.

I am concerned that the American people will think that simply because we have passed this bill that our Nation is safer. They need to know that this measure does not increase patrols along our northern borders.

It does not give our firefighters, police officers, and emergency personnel the resources, training, and equipment they need to protect our frontlines at home. It does not increase security measures at our ports, along our railroads, and public transportation systems. It does not increase our capabilities of detecting biological, chemical, and nuclear weapons. What this bill does is it falls short on many counts, especially when it comes to real measures that would improve our security.

We had the opportunity to do this right. We had the opportunity to do more than create a department, but we missed it. The Senate's original bill included critical measures that would make our country safer today than it was yesterday. But in the end, this Congress failed to put safety first and special interests last.

There is a lot in this bill that secures the future for the special interests and very little that secures our country. Those who are using this legislation—this legislation that's about the security of our Nation—as a vehicle for the special interests have done this country a great disservice.

That is why Congress must not, cannot, stop here. Our job is far from over. We must continue to fight to make sure that every substantive part of the old bill that increased our security gets passed in the next Congress.

Let's start with the obvious-supporting our first responders. They are a critical part of our Homeland Security. Our firefighters, police officers, and emergency personnel need direct funding, training, and additional equipment to keep our Nation safe.

When it comes to Homeland Security, we need to listen to the experts—our mayors, police commissioners, fire chiefs, and our public health workers.

They continue to ask for direct funding, and that is why I proposed legislation that would provide direct funding to local communities, the Homeland Security Block Grant Act.

Since we began the war on terrorism, we have done everything to ensure that our men and women in the military have the resources, equipment and training they need to fight the war on terrorism, and that's how it should be. But we are not doing the same at home. It is unconscionable to me that a Homeland Security Bill such as this one would not include support for our Nation's frontline defenders.

At the end of October, Senators Hart and Rudman released the Terrorism Panel's report that clearly states that we are not doing enough to support our first responders and keep our country safe. They expressed grave concern that 650,000 local and state police officers still operate without adequate US Intelligence information to combat terrorists. We haven't done enough to help local and State officials detect and respond to a biological attack. The report expressed concern that our firefighters and local law enforcement agencies still do not have the proper equipment to respond to a chemical and biological attack. Their radios are outdated and do not allow them to communicate in an emergency.

What kind of tribute is this to the heroes who lost their lives in last September? What would the firefighters, police officers, and emergency response workers who did not think twice about rushing to Ground Zero to save lives say about the lack of progress that's been made?

Additionally, the SAFER Act, a provision that allows our country to hire 25,000 firefighters over the next couple of years has been eliminated from this bill. This is the time for us to do more for our first responders, not less. They are the most important link in our Homeland defense, and to shortchange them in these difficult times is incredibly shortsighted.

We must also act to better secure our Nation's nuclear power infrastructure. While the Homeland Security Bill will create a new department, it does not adequately address the very real threat of terrorists' capabilities and desire to destroy our nuclear power plants. Our efforts to protect our infrastructure is moving much too slow. Last year, Senators JEFFORDS, REID, and I introduced the Nuclear Security Act. This summer, we succeeded in moving the Act through Committee.

It is a shame that the Homeland Security Bill does not address nuclear security and it should. These protections should be included in this discussion, and the new Congress must work together to pass the Nuclear Security Act promptly.

We must also better protect ourselves against the very real threat of terrorists detonating a dirty bomb in our country. It is imperative that we better secure our domestic radioactive materials. Every year, highly active sources used in industrial, medical and research applications are lost or stolen in America. This is why I introduced the Dirty Bomb Act to strengthen these security measures and enhance our security.

And, while we work in the Congress to pass security measures like these, we will have to also work to get rid of provisions that do not belong here.

As I described on the Senate floor and in a press conference last week, this bill includes unrelated vaccine liability provisions. Protecting manufacturers from liability can be appropriate as part of a comprehensive vaccine bill that addresses a balanced range of important goals, including strengthening vaccine supply and addressing families' interest in compensation. But plucking out industry liability protections and addressing only that side of the issue clearly prioritizes manufacturers over families, and puts politics ahead of homeland security.

The provisions protect one particular manufacturer by dismissing existing lawsuits brought by parents of autistic children who believe there may be some connection between the mercury-based preservative and their child's illness. There may or may not be a connection, and the tort system may or may not be the right solution.

However, enacting only provisions that help manufacturers, while ignoring families concerns for compensation, and children's needs for a strong vaccine supply not only fail to protect homeland security, they fail to adequately protect children from preventable disease. All they do is protect vaccine manufacturers against lawsuits and undermine our bipartisan efforts to assure that every child is vaccinated safely.

While I believe the Congress should debate issues of tort reform and reasonable arguments have been made, I am also concerned that some of the tort provisions included in this legislation have nothing to do with homeland security and have not been debated by the Senate. One provision is the "Support Anti-Terrorism by Fostering Effective Technologies Act of 2002," ironically named the "SAFETY Act."

This measure lowers standards by giving manufacturers immunity from liability for the products they make that our first responders will use. How will this help America build a stronger homeland defense? It doesn't—it just makes it easier for manufacturers to get away with indefensible actions.

There is a provision in this bill that upsets the balance between the public's right to know and the Government's responsibility to protect certain information so that it can better secure our country.

The House-passed bill contains significant loopholes that would provide protections for certain information by limiting access, prohibiting its use in court, and even making it a crime to make such information available. It appears that the bill may even allow companies to decide for themselves what information should be afforded such protections. This means certain protections could potentially be extended to information that doesn't even have anything to do with security, thereby shielding potentially damaging information from the public and the courts.

While private entities should be encouraged to provide critical infrastructure information to the Government in order to help assess and address vulnerabilities to future terrorist attacks, it should not come at the expense of the public's right to know.

I am also troubled by the so-called compromise over the civil service and labor provisions in the new bill. The bill gives the President the authority to waive civil service protections in six key areas including rules for labor-management relations and appeals to the Merit Systems Protection Board.

I am concerned that this will hinder the ability of the new department to recruit and retain civil service employees who have expertise in the agencies that will be shifted to the new Department. This shortchanges the workers and shortchanges all Americans who believe we should have the most qualified individuals working in this new department.

The bill will also allow the Administration to strip workers of their collective bargaining rights through a waiver authority. I must say that we have every reason to believe that this Administration will take advantage of this authority. It has already taken away these rights from secretaries at the U.S. Attorney's offices. And I fully expect that it will use this authority, if it is granted, to strip away the rights from the more than 50,000 workers who will make up the newly formed Department of Homeland Security.

As a Senator from New York, I have a particular interest in this new department and have some specific concerns on behalf of my State. When it comes to protecting New York and New York City, I do not believe that this bill goes far enough and I will work to fix these provisions so that they do. The bill ensures a special coordinator of homeland security in the Capitol Region, DC, Maryland and Virginia, but does not establish a similar coordinator for New York City's metropolitan region.

Intelligence reports indicate that like Washington, DC, New York City is a high-risk area, still a target for terrorists and a symbol of our Nation. Even as we recover, we are still vulnerable, and the New York region needs its own coordinator.

In the aftermath of September 11, FEMA was able to respond to an unprecedented kind of disaster, precisely because it was a highly functioning, well-run agency. All of us in New York are indebted to Director Allbaugh and his staff for their good work. I am concerned that transferring FEMA into the new department could force a highly competent independent agency into a new bureaucracy that will have challenging integration issues and thus diminish the effectiveness of FEMA's ability to respond to crises of all kinds.

I also oppose moving Plum Island from the Department of Agriculture into the new Department. Also, I fear that this move could be a precursor to raising the biosafety level at the Plum Island facility. This would allow research on life-threatening exotic animal diseases and these harmful materials could be transmitted through the air. This would pose too many risks to those in my State who live near the facility, and I will strongly oppose any efforts to raise the biosafety level at Plum Island.

As I have said throughout the last fourteen months, we need this new department to better coordinate and share information. There is no question we must change the way things work in Washington so that we adapt to the post 9/11 world. There are many problems with this bill, some of which I have outlined here. These problems will need to be addressed in the months and years ahead.

Today, the Senate will also vote on a continuing resolution to fund the Government at last year's funding levels from now through January 11th. While it is imperative we keep the Government running, it is shameful, not to mention ironic, that we will depart without ensuring that we fund homeland security. It is not enough to create a new Department without investing in the necessary funding to protect against bioterrorism, increase our port inspections, secure our Nation's nuclear weapons plants, invest in technology so that our first responders can communicate in a disaster.

At best, we are sending mixed messages to the American people about our priorities; even more troubling is that these actions reflect what actually are the Government's present priorities.

But at the end of the day, we must move forward with this bill. Hopefully, it will spur us to focus once again with the same commitment and vigilance we had in those weeks and months after that tragic day in September. The threats continue to come in. Attacks occurred in Bali, Yemen, and in Kuwait. A new tape reveals that Osama Bin Laden is most likely alive. And al-Qaida is plotting all the while.

We do not have the time or the luxury to remain in this status quo. This bill is the smallest step forward we can take, but it is a step forward nonetheless and that is why I support it.

On its own, it will not make us safer but it pulls us out of this piecemeal approach to Homeland Security and directs our Government to pursue one fundamental goal—to make sure that we do everything in our power to make America stronger and safer so that no other American life is taken by the hands of a murderous few.

Mr. HOLLINGS. Madam President, I am voting against the legislation before the Senate to institute a new Department of Homeland Security. The President says we need a Department to prevent another September 11, but all this legislation does is produce an elephantine bureaucracy. It does nothing to fund the people on the front lines, who really could fight terrorism; instead funds will be spent in Washington by bureaucrats for bureaucrats.

The proposed department excludes the very entities that failed on September 11, but includes all the ones that did not. On September 11 the CIA dropped the ball on intelligence it possessed. So did the FBI. Yet they aren't included. But the Coast Guard did not mess up on September 11th, nor did FEMA, nor did the Agriculture Department's Animal and Plant Health Inspection Service yet they are all included.

This is a game of musical chairs. It shuffles and reorganizes 170,000 employees, at 22 different agencies, involving more than 100 bureaus or branches. Yet roughly 110,000 of the personnel scheduled to be moved are already together. Airport, seaport, rail security, and the Coast Guard are already part of the Transportation Department.

The legislation is loaded with items purporting to be helpful to our national security, but which may have little effect or would even hinder security. It rolls back the deadline for all airports to check every passenger's luggage, not just the few dozen that may need some additional time. It is crazy to call for the urgency of a new

Homeland Security Department, and then say to our highest profile targets, "take your time."

It lets pilots carry guns in cockpits, but doesn't require impenetrable cockpit doors, which the Senate agreed was critically needed. What more proof do we need then on Sunday, when the locked door on an El Al airplane helped prevent the hijacker from flying into skyscrapers in Tel Aviv?

The bill is full of payoffs and surprises the House leadership included at midnight, right before they left town. Suddenly, we are helping Eli Lilly—why? Suddenly, we are helping American companies that went to Bermuda to avoid taxes. Suddenly, we are absolving private aviation screening companies from liabilities related to their September 11 failures. What does any of that have to do with homeland security?

This legislation is supposed to create an independent commission to determine what went wrong on September 11. Incredibly, the very provisions Congress inserted to establish this Commission, freeing the investigation from political hand wringing in the Select Committee on Intelligence, were dropped by House leaders after the elections. The so-called independent commission is now anything but independent.

And in nearly 500 pages, the legislation fails to contain a very important item that would be immediately helpful. No where is the National Security Council re-organized. September 11 was an intelligence failure. It was not due to lack of information. As soon as the terrorists struck we knew who they were. Immediately, we rounded up suspects here and moved into Afghanistan. Instead, the problem was a failure on the part of the National Security Council to coordinate, analyze, and deliver the intelligence to the President.

The President should be able to get well-analyzed reports of domestic threats on a timely basis. But how can he when his own National Security Council does not even include the Attorney General or the Director of the FBI? If Congress wants to re-organize, we should re-organize the Council to include law enforcement and to make certain intelligence is shared with Customs, INS, the Coast Guard, and the others who need to know. Equally important, intelligence should be shared with and received from state and local officials, but it's not here in this bill.

Right to the point: this Senator has not waited for a behemoth bill to take action on homeland security. In the Commerce Committee, we moved several concrete measures to improve our transportation security, insofar as air and sea ports, and trains and buses that criss-cross the country.

When Americans fly this holiday, they will see huge improvements in the way security is provided. Congress just passed our legislation to close the gaps that exist at ports along America's coasts, for the first time creating a national system for securing our maritime borders.

Is there more this Senator wants this Congress to do for those on the frontlines of homeland security? Absolutely. We should provide for the security of Amtrak's 23 million passengers. We should improve security on buses and freight rail. We should finish the job at our airports and at our seaports. We should prepare our hospitals and other first responders to react to an act of bioterrorism.

But how can we when we are going to throw billions to shuffle bureaucrats from one side of Washington to the other. Designing a new logo is not going to help secure our homeland. Nor is renting office space, or buying more desks, and everything else like that. We will be paying more for nonsense redecorating than arming those on the front lines.

We have our priorities messed up. A new Department of Homeland Security is unnecessary. And the worse case is for the Department to be set up and our country lulled into thinking we are all safe and secure. A September 11 could still easily happen again.

Mr. FEINGOLD. Madam President, I regret that I am unable to support the Department of Homeland Security bill. While this reorganization may make sense, it should not have come at the expense of unnecessarily undermining our privacy rights or weakening protections against unwarranted government intrusion into the lives of ordinary Americans.

We need to be better able to review and identify critical information, take more rapid steps to address terrorist threats and, when necessary, share information quickly with local law enforcement. I had hoped that the proposed creation of a new Department of Homeland Security would have focused on those priorities.

Protecting the American people is the number one responsibility of our government. As a result of the tragic events of September 11, we all recognized that a major review of our government was needed. As we have debated the need for, and the details of, the new Department of Homeland Security, I have been guided by two principles: Will this reorganization make all of us safer? And will it preserve our liberties as Americans? Unfortunately, while there is much that is good in this bill, there are a number of critical areas where the bill simply goes too far, or falls short.

After careful review, I must conclude that this bill is not well thought out. The American people would benefit from the Congress paying closer attention to the details of this new version of the bill. This proposal threatens to erode the fundamental civil liberties and privacy of all Americans. It does not ensure that the new Department will be able to effectively communicate and share information with agencies like the FBI. It is weighed down with special interest provisions that have nothing to do with the creation of the new department. It does not give our first responders all of the tools and information necessary to protect our communities. It lacks adequate civil rights oversight, and it needlessly undermines the employment rights of the dedicated workers in this new Department who will be protecting all Americans. At times, the proposal reads like a dusted off copy of an earlier administration wish list, much of which has nothing to do with our fight against terrorism.

We need not unnecessarily sacrifice treasured civil liberties and privacy in order to be secure. I fear that the bill we are voting on today will authorize the federal government to maintain extensive files on each and every American without limitations. The data mining provisions in the bill encourage retired Rear Admiral John Poindexter's massive government effort to create a computer file on the private life of every American. The Total Information Awareness system now under development needs active congressional oversight, particularly in these early days of the program. Rather than giving further authorization to this kind of effort in this bill, we should be demanding that the administration immediately suspend the Total Information Awareness initiative until Congress has conducted a thorough review and refrain from implementing this program in the new Department.

In addition, the present proposal, in a section about cyber-security, actually creates a sense of insecurity for all of us. The Federal Government would have the right to obtain the contents of our private computers without adequate judicial oversight. This bill weakens important safeguards on government access to our e-mails and information about what we do on the Internet without the need for a court order. The Department should be focused on protecting us from our enemies, not on snooping on innocent activity.

While the bill does make some progress toward enhancing communication among many agencies that are charged with protecting Americans, it falls short in ensuring that the essential work of agencies like the FBI will be adequately shared with and utilized by the new department. Overall, the proposal fails to enable the new department to be a full participant in the intelligence community.

While our public safety must be our highest priority, we should not turn a blind eye to the bottom line. And we should not aggravate our budget problems by adding expensive special interest provisions that have nothing to do with this new department.

Special interest provisions in the bill would cap liability for drug companies for vaccine additives, give the Secretary of the new department broad authority to designate certain technologies as so-called "qualified anti-terrorism technologies," thus entitling the seller of that technology to broad liability protection no matter how negligent the seller, and apparently earmark the university-based homeland security research center for Texas A&M.

All of us know that local law enforcement, fire fighters, and other first responders are on the front lines in the fight against terrorism. The Department of Homeland Security needs to ensure that Federal, State and local law enforcement agencies, fire fighters, and other first responders are able to work together to adapt and respond to the evolving challenges of terrorism. Unfortunately, the new department is not organized in a manner that provides the maximum possible help to those on our front lines. A Department of Homeland Security must ensure that it provides our local first responders with the necessary information, tools, and resources that are required to adapt and respond to the evolving challenges facing our First Responders.

I am disappointed that my bill, the First Responder Support Act, introduced with the Senator from Maine, Ms. COLLINS, is not part of the present proposal. It had been included in the Lieberman bill, but was stripped out of the bill last week without any warning by the House leadership. The First Responder Support Act will help first responders get the information and training they need from the Department of Homeland Security, and that measure will be a top priority for me in the next Congress.

I am also concerned with the proposal's disdain for the public's right to open government. The bill would undermine the protections of the Freedom of Information Act and exempt the proposed department's advisory committees from the open meetings requirements of the Federal Advisory Committee Act. Current law already provides adequate protection for sensitive information. The broad language of this bill is far too sweeping.

Finally, I believe that while this bill includes some civil rights oversight, it offers weaker protections than are found in other federal agencies. Steps should have been taken to strengthen the Civil Rights Office in the new department by requiring that the head of that office be subject to confirmation by the Senate and therefore accountable to the Congress and the American people. The bill should have designated an official in the office of the Inspector General to fully investigate allegations of civil rights violations. This bill also should have included stronger protections for the Americans who will be working in this new Department and protecting our Nation. Congress owes these Americans the same employment rights that other public servants enjoy.

We must not forget that we are having this debate because of what happened on September 11. We need to learn from September 11 and ensure that we do not fall victim to a similar tragedy in the future. I believe that we could have given the American people a Department of Homeland Security that would ensure their safety and security, and protect their civil liberties. Unfortunately, this bill has too many provisions that unnecessarily jeopardize our basic freedoms, and I cannot support it.

Mrs. LINCOLN. Madam President, I rise tonight to strongly support the creation of a Department of Homeland Security. By consolidating the agencies responsible for protecting our borders and infrastructure, we can make significant progress in ensuring the security of the American people, and this body would be remiss if we were to fail in passing this critical legislation before we adjourn.

Just this week we've learned that Osama bin Laden is still alive and still posing a threat to American interests at home and abroad. Recent activity and communications by his al-Qaida terrorist network, which we have seen reported in the media, suggest that the threat is as serious today as it was 14 months ago. These are glaring reminders that the War on Terrorism is far from finished and that we must be vigilant both at home and abroad to protect and defend this Nation.

I also want to reassure all Arkansans that the creation of this Department is not the only step in the protection of this Nation. Homeland security must be an ongoing process as we respond to new threats and the inevitable needs to correct deficiencies in this legislation—including modifications to this department over time. I intend to continue to seek any and all ways that we can increase the security of our homeland.

As I said in remarks on the Senate floor last week, I would like to state for the record my disappointment with some provisions that were added by the House of Representatives in the final hours without any opportunity for debate.

Three provisions in particular give me pause: waivers that the administration will be able to use to grant Federal contracts to companies that reincorporate offshore to avoid paying U.S. taxes; provisions that would broaden limits on lawsuits against vaccine makers to manufacturers of other vaccine components, covering still-pending litigation; and highly specific criteria that would be used to designate universities as part of a homeland security research system. A few of other provisions added by the House have merit, but they deserve an open debate. For example, I believe that we need to limit the liability of companies that make "qualified anti-terrorism technology" against claims arising from acts of terrorism, but this issue deserves more debate. We also ought to limit lawsuits against companies that manufacture aviation security equipment. It's unfortunate that these provisions, which may be perfectly worthy legislative remedies, have been slipped in to the bill without full consideration by Congress. I certainly hope each of these provisions will be revisited and fully debated next year.

Again, I'm deeply disappointed by some special interest provisions that were added to the homeland security bill. However, I believe that the necessary creation of a Department of Homeland Security outweighs the special interest provisions added to this legislation and I am proud to aid in its creation. I'm casting my vote in order to serve the higher good of protecting the American people from present and future terrorist threats.

Mr. LEVIN. Madam President, I am a strong supporter of creating a new department for homeland security, and I was glad to be able to cosponsor the bipartisan legislation that passed out of the Governmental Affairs Committee in July of this year. But this legislation, now, falls so short of the promise of that committee-passed bill, that I am compelled to vote no. The legislation the Senate will pass tonight has numerous unrelated and inappropriate special interest provisions, omits numerous related and appropriate homeland security provisions, and fails to address probably the most central question to our security the coordination and sharing of information between the CIA and the FBI.

The homeland security bill that we are debating today is a dramatic departure from the bipartisan legislation that passed out of the Governmental Affairs Committee.

The new bill now has numerous provisions that no one had seen until the Thompson amendment was presented to the Senate late last week, and too many of the provisions have less to do with homeland security and more to do with the access of special interests.

One of these provisions provides liability protection for pharmaceutical companies that make a mercury-based vaccine preservative that may cause autism in children.

Another provision guts the Wellstone amendment, which would prohibit Federal agencies from contracting with corporations that have moved offshore to avoid paying their fair share of U.S. taxes—taxes that are used for important security agencies such as the FBI, Coast Guard, Customs Service, the INS, and the Border Patrol.

Another provision provides an earmark to Texas A&M University for research.

At the same time the Thompson amendment added weakening and special interest provisions like these, it deleted important provisions that would enhance our homeland security—including a grant program for additional firefighters, a program to improve the security and safety for the Nation's railroads, and a program to improve information flow amongst key Federal and State agencies with responsibility for homeland security. The bill completely removes key areas that we had come to bipartisan agreement on at the committee level such as important language relative to foreign intelligence analysis and the Freedom of Information Act, FOIA.

Finally, it hands the President a blank check with regard to so-called reforms of the civil service.

The over-reaching by the Republicans to include special interest provisions and to exclude strong bipartisan provisions is nothing less than shocking. The exclusion of strong bipartisan provisions addressing key issues with respect to homeland security is nothing less than dangerous to our security.

Let's back up and look how we got to where we are today. Senator LIEBERMAN initiated legislation to create a new Department of Homeland Security last year shortly after the September 11 terrorist attacks. We had hearings on the proposal and the first committee markup, and at that time, President Bush opposed the creation of a new Department. As a result, the vote to report the bill we reported from Governmental Affairs was along party lines, with all of the Democrats, including myself, voting for it and the Republicans voting against it.

In the spring, President Bush changed his mind and put forth his own proposal for a new department. We in the Governmental Affairs Committee then worked on a compromise committee amendment, merging most of what the President wanted with the committee-passed bill. We reported that to the floor at the end of July. A great deal of time went into crafting that bill. Chairman LIEBERMAN held 18 hearings on various issues dealing with homeland security. We had a two day mark-up; we considered dozens of amendments; and we passed the bill out of the Governmental Affairs Committee by a 12–5 vote. We ultimately came up with what I believe was a good bill.

However, the bill before us today takes some major step backwards.

For one, this bill muddles the issue of responsibility for foreign intelligence analysis at precisely the time we should be clarifying it. The intelligence issues we face are some of the most important issues in this reorganization. Many of us on the Intelligence Committee have been taking a hard look at possible intelligence failures before 9/11. Whether or not these failures, if they hadn't occurred, could have avoided 9/11 could be the subject of endless speculation, and that is not the point. The point is, we need to do a better job of coordinating our intelligence. We need to give those who do coordinate our intelligence the resources that they need, and we need to better define their roles and responsibilities. The Governmental Affairs Committee passed bill contains language I offered with respect to the new Department's role in gathering and analyzing intelligence on possible terrorist attacks in the United States. My language clarified the intelligence gathering functions and assigned responsibility. The language in the Thompson amendment leaves the intelligence community without clearly defined roles and creates the possibility for unnecessary and costly duplication of efforts. We cannot afford that kind of situation post 9/11.

Let me explain. Right now we have an office at the CIA called the Counter Terrorist Center or CTC, where all information, regardless of source, about international terrorism is sent and analyzed. Whether it is obtained overseas or in the U.S., the CTC is the central place for counter terrorism intelligence.

The CTC, which has 250 analysts, receives 10,000 incoming intelligence reports a month about international terrorism from the State Department, Customs, local law enforcement, FBI, INS, and a range of other sources. Representatives from the FBI, Department of Defense, Department of State, Department of Justice and other agencies that are involved in collecting and receiving information about international terrorism, work at the CTC with CIA analysts. One of the questions we faced in the Governmental Affairs Committee was how the responsibilities of the new Department in terms of intelligence gathering and analysis related to the ongoing role of the CTC.

My language in the Governmental Affairs passed bill kept the principal responsibility for analyzing information about international terrorism at the CTC. Under my language, the CTC would receive all foreign intelligence, regardless of source, and would be primarily responsible for its analysis. As defined by the National Security Act, 50 U.S.C. 401(a), "foreign intelligence" is "information relating to the capabilities, intentions or activities of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." My language makes it clear that the principal responsibility for collecting and analyzing information about international terrorism would be at the CTC.

Under the Committee-passed bill the new Department of Homeland Security would have a directorate of intelligence that would be responsible for the receipt and analysis of all information relating to acts of terrorism in the United States including the foreign intelligence analyses from the CTC, as well as information and analyses relating to terrorist activities of U.S. persons or organizations. The new directorate would be responsible for linking all that information and analyses to an assessment of vulnerabilities to acts of terrorism on U.S. soil.

Under the Governmental Affairs Committee bill, the new Department would, therefore, not only be responsible for the domestic terrorism intelligence analyses, but it would fuse foreign intelligence analyses with the domestic intelligence analyses and obtain an assessment of vulnerabilities to terrorism existing in the U.S. In other words, the new Department would, as many have used the phrase, "connect the dots"—intelligence analyses, foreign and domestic, and U.S. vulnerabilities.

By maintaining the role of the CTC in international intelligence and adding the role of the new Department in the overall analytical responsibility with respect to terrorism in the United States, we would avoid duplication and redundancy.

The Thompson amendment includes language that would appear to duplicate the CTC at the new Department, and I cannot support that.

Duplicating the responsibility of analysis of foreign intelligence would only waste valuable and limited resources and undermine our objective of getting the best counter terrorism intelligence we can get. According to the Congressional Research Service, the number of experienced and trained analysts "tends to be in short supply." We just don't have the resources or the people to duplicate analyses of foreign intelligence. It is important not to duplicate the CTC's capability, but to strengthen it and keep the primary responsibility for the analysis of information about international terrorism, from wherever obtained, in one place.

Another reason that I am voting against this bill is because the Bennett-Levin-Leahy compromise with respect to the Freedom of Information Act, a compromise that the administration supported at the Governmental Affairs Committee mark-up, is not in this bill.

One of the primary functions of the new Department will be to safeguard the Nation's infrastructure, much of which is run by private companies. The Department will need to work in partnership with private companies to ensure that our critical infrastructure is secure. To do so, the homeland security legislation asks companies to voluntarily provide the new Department with information about their own vulnerabilities, the hope being that one company's problems or solutions to its problems will help other companies with similar problems.

Some companies expressed concern that current law did not adequately protect the confidential business information that they may be asked to provide to the new Department from public disclosure under the Freedom of Information Act. They argued that without a specific statutory exemption they would be less likely to voluntarily submit information to the new Department about critical infrastructure vulnerabilities.

We crafted a compromise to put into statute important protections established in case law. The resulting compromise would protect from public disclosure any record furnished voluntarily and submitted to the new Department that:

First, pertains to the vulnerability of and threats to critical infrastructure, such as attacks, response and recovery efforts;

Second, the provider would not customarily make available to the public;

Third, are designated and certified by the provider as confidential and not customarily made available to the public.

The Bennett-Levin-Leahy compromise made clear that records that an agency obtains independently of the Department are not subject to the protections I just enumerated. Thus, if the records currently are subject to disclosure by another agency, they would remain available under FOIA even if a private company submits the same information to the new Department. The language also allowed the provider of voluntarily submitted information to change a designation and certification and to make the record subject to disclosure under FOIA. The language required that the new Department develop procedures for the receipt, designation, marking, certification, care and storage of voluntarily provided information as well as the protection and maintenance of the confidentiality of the voluntarily provided records.

The Bennett-Levin-Leahy com-promise is not included in the Thompson amendment. Instead, the bill cuts back on FOIA access by the public by expanding the type of information that the new department can keep from the public. The language in this bill could result in the issuance of rules by the new Department based on information not included in the rule making record. It could prevent the Federal Government from using critical infrastructure information in a civil suit seeking to protect public safety. Finally, the language in the Thompson amendment could result in a criminal penalty against a whistle blower who leaks the kind of information presented to the new Department on critical infrastructure.

The principles of open government and the public's right-to-know are cornerstones upon which our country was built. With this bill, we are sacrificing them in the name of protecting them. The Bennett-Levin-Leahy compromise would have balanced the need between openness and security to protect these principles.

I will also be voting against this bill because of the civil service provisions that President Bush is calling "flexibility" but that I consider an unnecessary blank check. There are really two issues here, one concerns collective bargaining, and the other concerns the civil service in general.

Under existing law, the President can issue an executive order excluding any agency or subdivision of an agency from collective bargaining if it is involved in a matter of "national security." For example, in January of this year, the President issued an executive order which took collective bargaining rights away from hundreds of Department of Justice employees, many of them clerical workers involved in civil issues under the label of "national security."

But even without the national security exception, under current law, in an emergency, the new Department could waive collective bargaining rights, because under 5 U.S.C. 7106, "nothing, in the chapter establishing collective bargaining rights, shall affect the authority of any management official of any agency . . . to take whatever actions may be necessary to carry out the agency mission during emergencies." In addition, current law prohibits federal employees from striking under any circumstances.

The Thompson bill would allow the President to waive collective bargaining rights, whether or not there is an emergency, as long as he gives 10 days notice and sends a written explanation to Congress. This provision does not provide a standard under which the President's authority is to be exercised. So in the most extreme example, under this provision, the President could remove the collective bargaining rights of every single employee who was transferred into the new Department. That is unacceptable. What we tried to do in the Governmental Affairs Committee bill was to allow workers with collective bargaining rights transferred into the new Department to maintain those rights if their job descriptions did not change. Given the President's authority to act in an emergency under current law, I believe that protected our national security without unnecessarily trampling on rights of employees.

The Thompson amendment also allows the Secretary of the new Department to alter civil service rules. If the Secretary does so, then the employee unions would have 30 days to review the changes and make recommendations to the Secretary. If the Secretary doesn't agree with those suggestions, he or she could declare an impasse and send the dispute to federal mediators. After another 30 days, the Secretary could go ahead with the changes, regardless of what the mediator suggests. The President argues that this process gives the unions a say in any changes, but the reality is that the unions have no real substantive remedy to the Secretary's proposed changes. No matter how much the employees and unions oppose the new rules, how much they fight against them, in the end, the Secretary has unilateral power to issue the rules under the Thompson amendment.

I supported creating a Department of Homeland Security from the beginning—like many of my Democratic colleagues well before the President came on board. It's disheartening that the President and the Republican leadership couldn't accept the bipartisan bill reported by the Governmental Affairs Committee and work with that to develop a bill without the major flaws described above. It's also distressing indeed that the President and the Republican leadership chose to use the Homeland Security Department legislation as a vehicle for unrelated special interest legislation while leaving behind a number of very important security-related provisions.

I would have been happy to stay here to work out the differences in this legislation and develop the strongest legislation possible. But with this vote, now, that is an impossibility. So, I hope in the next Congress to work with my colleagues who share my views on some of these provisions to make some needed changes to this legislation.

Let me add one more thing about how far astray we have gone with this legislation. While the President has been holding out on passage of this legislation in order to get the authority to waive collective bargaining rights for employees at the new Department, the key agencies in the Federal Government that are at the front lines of protecting our homeland have gone underfunded in this fiscal year. According to the House Appropriations Committee Staff: while we have authorized $38 billion for homeland defense, we have actually appropriated only $640 million to the new Department and other agencies; while we have authorized an additional 200 immigration inspectors and 200 immigration investigators, to date we have appropriated no money for these positions; and while we have authorized $520 million for hospital emergency rooms, we have only appropriated $135 million. The Republican leadership in the House has failed to send us the appropriations bills for fiscal year 2003 that would increase funding for the Customs Service, the Border Patrol, the Coast Guard, the FBI, the CIA—all of the agencies we need to have additional resources to stave off or adequately respond to a terrorist attack. That is the unfortunate final chapter to this story. By not taking up the appropriations bills for next year, we are delaying the delivery of desperately needed dollars to the very agencies charged with protecting us from terrorist attacks. The misdirection of priorities involved is harrowing.

Mr. KOHL. Madam President, today the Senate will finally pass a homeland security bill. This debate began in the Senate with Senator Lieberman's efforts in the Government Affairs Committee last Spring, and it ends today with the Senate left with no choice but to pass the House of Representative's version of the bill. This is an imperfect bill, and it has come to this point through an imperfect process. The desire to create a domestic agency capable of protecting Americans from terrorism is bipartisan—even universal. Unfortunately, the creation of the bill to do that has been partisan and destructively political.

Few of us have had a chance to consider this new proposal carefully. And what we have found has not been encouraging. The House version of the homeland security bill includes too many special interest provisions slipped in at the last minute. The Daschle-McCain amendment, which I supported, would have eliminated the most egregious of these, but the Senate narrowly rejected it. It is shameful that some used this vital Government reorganization legislation to pay back unrelated political debts.

I also must go on record strongly in opposition to the bill's provisions on Federal employees and their rights to organize a union and exercise their rights as members of a union. The President's authority to manage the Federal workforce has never been an issue before now. No one claimed that if the President had more flexibility over the Federal workforce that the September 11 attacks would have been avoided or that new work rules would have made it easier for the CIA and FBI to exchange information. Again, these unprecedented restrictions on workers' rights were inserted in must-pass legislation. Again, it is shameful that this vehicle was used to pursue a political agenda.

The House bill, however, at its core does take some needed steps to make us all safer. The United States must better focus its counter-terrorism efforts if we are to avoid future attacks. Too many agencies and organizations inside the Government share responsibility for responding to terrorism domestically. The old saying has been quoted on the floor many times during this debate, but is worth doing it one more time: "When every one is in charge—no one is in charge." By making one Cabinet level agency in charge of Homeland Security we will have only one person in charge. The bureaucracy underneath the Secretary will have only one unifying priority. The advantages of that change cannot be overestimated.

However difficult the crafting of the homeland security legislation has been, it was the easy part. Now we face the difficult and monumental task of actually putting the parts together into a whole greater than its sum. The offices that make up the Department of Homeland Security cannot forget the other important missions they perform. Organizations like the Coast Guard and the Animal and Plant Health Inspection Service have valuable missions outside of their homeland security function that cannot be overlooked.

The Congress's work on homeland security should not stop here. As the transfer of offices begins, there will no doubt be changes necessary. Congressional oversight is more important now than ever. With this bill Congress has decided that the Executive Branch needs to take homeland security more seriously. But Congress needs to take it seriously, too. That means giving up our short-term political games in order to work together—Republican and Democrat, White House and Congress—to build a bipartisan, functioning agency that will deliver all Americans the security they deserve.

Mr. KERRY. Madam President, since September 11, 2001, many in Congress have been assiduously working to create a Department of Homeland Security, and I am pleased that today we are finally completing our work. After the terrorist attacks on New York and Washington it became clear that to thwart future attacks on the United States the Federal Government would have to do a better job gathering and coordinating intelligence. Since September 11 I, along with several colleagues, have believed that a reorganization of the Federal Government is critical to improving the security of this country. Though the President and many Congressional Republicans initially opposed this major reorganization, there is now consensus on the need to create a new department.

It is imperative that we move quickly and urgently to reorganize the Federal Government. Vulnerabilities exist in our homeland security infrastructure and we should not squander a single day addressing them. An independent task force, chaired by former Senators Gary Hart and Warren Rudman, recently advised that "America remains dangerously unprepared to prevent and respond to a catastrophic attack on U.S. soil." There is also new evidence that Osama bin Laden is alive and recently recorded an audio tape. We must act now to create this agency and to ensure that the United States Government is doing everything in its power to better protect its borders, coasts, cities, and towns.

The Transportation Security Agency continues to play a vital role in our domestic security policy under this legislation. At no time in our Nation's history has increased security for our transportation infrastructure been as critical, and I am confident that as part of this new department the TSA will perform up to task and help ease the fears many Americans have concerning the safety of our airports, trains, and ports.

The legislation also address the impending baggage screening deadline. Although the Congress mandated a December 31, 2002 deadline for screening all baggage at airports, deploying and installing the necessary devices for the over 400 airports has proved to be a monumental challenge and it is clear that many airports are unable to meet this requirement. I am pleased that this legislation includes a common sense provision to extend the deadline for the major airports and strictly monitor their progress in screening baggage. The extension through December 31, 2003 will also give the TSA more time to properly train and deploy the 22,000 federal baggage screeners necessary to staff the devices and oversee the screening process. Rushing this process in anticipation of the deadline would have seriously compromised the effectiveness of the enhanced security measures.

Also included in this legislation is a provision that will allow financially strapped airlines to purchase "war risk" insurance from the Government at a reasonable cost, alleviating some of the costs the industry has incurred after September 11. This provision is critically important, as many airlines have been forced to spend upwards of $100 million to insure their planes against war and the continued threat of terrorism. Tens of thousands of aviation workers have lost their jobs because of the financial crisis in the industry. It is my hope that Government issued insurance will help expedite the recovery of this important sector of our economy.

As Chairman of the Oceans, Atmosphere and Fisheries Subcommittee, which has jurisdiction over the Coast Guard, I want to make a few comments about the Coast Guard provisions in the legislation. The Coast Guard is comprised of approximately 36,000 military personnel, roughly the size of the New York City Police Department. Recently passed legislation will expand the Coast Guard to 45,500 military personnel by the end of this fiscal year. Expansion is important to homeland security when you consider that the Coast Guard must patrol and protect more than 1,000 harbor channels, and 25,000 miles of inland, intra coastal, and coastal waterways that serve more than 300 ports. The Coast Guard is also responsible for a number of non-homeland security missions such as search and rescue, maintaining aids to navigation, marine safety, marine environmental protection and fisheries law enforcement.

I am pleased that this legislation does not split up the Coast Guard. The Coast Guard is a multi-mission agency with personnel and assets that are capable of performing a variety of missions with little or no notice. The legislation preserves this flexibility by keeping the Coast Guard in tact. In addition the bill ensures that the Coast Guard receives the proper attention it deserves in the new Department by requiring the commandant of the Coast Guard to report directly to the new Secretary. The commandant has this authority within the Department of Transportation, clearly he should have the same authority in the Department of Homeland Security.

Since September 11, the Coast Guard has had to divert resources from its non-homeland security missions in order to beef up homeland security. I asked the General Accounting Office to document the change in Coast Guard missions since September 11 and to make recommendations on how best for the Coast Guard to operate under the "new normalcy" post September 11. The GAO just released its report and they note that many of the Coast Guard's core missions, including enforcement of fisheries and other environmental laws, are still not back to pre-September 11 levels. The GAO recommends that the Coast Guard develop a long-range strategic plan for achieving all of their missions, as well as a means to easily monitor progress in achieving these goals.

Many of us are concerned, that the traditional non-homeland security missions of the Coast Guard will suffer once the agency is transferred. In response to these concerns this bill contains safeguards that will ensure that non-homeland security missions will get done. I look forward to working with the Coast Guard to ensure these missions are getting done. Search and rescue, oil spill response and fisheries law enforcement are important and we cannot afford to ignore or under fund these missions.

This bill also includes a study on accelerating the Integrated Deepwater System, a long overdue modernization of Coast Guard ships and aircraft that operate off-shore in the deepwater environment. The Coast Guard is operating World War II-era cutters in the deepwater environment to perform environmental protection, national defense, and law enforcement missions. Coast Guard aircraft, which are operated in a maintenance intensive salt water environment, are reaching the end of their useful lives as well. Besides high operating costs, these assets are technologically and operationally obsolete. The Integrated Deepwater System will not only reduce operational and maintenance costs, but will significantly improve upon current command and control capabilities in the deepwater environment. I support this study. I look forward to reviewing the results of this study next year and if acceleration makes sense, supporting that well.

While I support much of what this legislation does and while I believe we should quickly move forward to create the Department, I have serious concerns with particular provisions of the bill. First, I am extremely disappointed that this legislation provides the administration with the authority to rewrite civil service laws without guaranteeing that Federal workers will receive fair treatment without regard to political affiliation, equal pay for equal work, and protection for whistleblowers. The hallmark of civil service is protection from political influence through laws designed to ensure the independent hiring, promotion, and firing of employees based exclusively on merit. And by allowing the administration to rewrite the civil service laws without guaranteeing these protections and without meaningful labor union participation, we are putting these important protections at risk.

I am also troubled by a provision in this legislation that gives the President essentially unfettered discretion to forbid Department of Homeland Security employees to belong to unions if he determines that is necessary not only for the interest of national security but also to protect the Department's ability to protect homeland security. I do not object to working to reform how government operates, to make it easier to manage and more effective. But what has been proposed in this legislation is not an improvement in the system, it just takes rights away from workers.

One of the most troubling provisions in this legislation deals with protecting critical infrastructure information that is voluntarily submitted to the Department, a worthy goal and one that I strongly support. After all, companies will be unwilling to turn over information about possible vulnerabilities if doing so would make them subject to public disclosure or regulatory actions. To encourage companies to provide this valuable information to the Department, the legislation would exempt the information from public disclosure under the Freedom of Information Act. The reason for my concern, is that the definition of information is so broad that it could include any information that a company turns over to Department of Homeland Security. What this means is that information that is currently available to the public would be barred from release if it is labeled by the company as critical infrastructure. One can easily imagine a company turning over incriminating documents to the Government so that it would not be accessible by anyone else. I am discouraged by inclusion of this provision, because earlier in this debate we developed a compromise that more narrowly defined what information could be exempt from FOIA, one that protected critical infrastructure information without opening up a loophole for companies to avoid Government regulation and public disclosure.

I am concerned by how the Immigration and Naturalization Service will be treated in the new Department under this legislation. For years the INS has been badly in need of reform and it seemed that creating the Department of Homeland Security would provide an opportunity to make improvements in enforcement and provide better visa and processing services. Under the Lieberman proposal to create the Department of Homeland Security, there was an Under Secretary for Immigration Affairs who would act as a central authority to ensure a uniform immigration policy and provide effective coordination between the service and enforcement functions. The Republican legislation unfortunately does not include an elevated immigration function headed by one under secretary, and instead buries the immigration enforcement function within the "Border and Transportation Security" division and places the immigration services function with the Deputy Secretary of Homeland Security.

There is no easy split between border enforcement and services. For example, countering schemes for wrongful entry is not just a border challenge, it requires close coordination among all units within immigration responsibilities. Both functions rely on shared information and intelligence. I am afraid, that with two people interpreting immigration law and policy there are likely to be conflicting interpretations, a situation that could exacerbate the current coordination and communications problems that exist within INS.

I am extremely concerned that this legislation includes liability protections inserted by the House for manufacturers of anti-terrorism technology and childhood vaccines. The new provisions allow the Secretary to designate equipment and technology used by the Department as official "anti-terrorism technology." In the event of a terrorist attack this designation will prevent injured parties from seeking compensation against manufacturers of such technology, even if a manufacturer exercised gross negligence in marketing its product. The same is true for manufacturers of childhood vaccines who will be exempt from liability if a child dies or sustains injury as a result of negligence stemming from the inclusion of a "component or ingredient" in any vaccine listed under the Vaccine Injury Table. This provision is absolutely unconscionable. We should not give manufacturers an incentive to experiment with questionable formulas or risky ingredients for vaccines which are intended to immunize children from disease. Likewise, we should not give manufacturers of anti-terrorism technologies any incentive to sell a product they know to be below par.

Another provision added by the House would remove Senate-approved legislation to bar Government contracts with corporations that have moved their headquarters offshore to avoid U.S. taxes. The Republicans say that this provision will unnecessarily interfere with our national security. Well, I believe that it also affects our national security when corporate use of tax havens and loopholes is at an all-time high. Various estimates show that this sort of tax evasion is costing the government tens of billions of dollars a year which means that tax burdens must be higher on law-abiding citizens and small businesses that pay by the rules. To remove this sound provision at the last minute is not only bad policy, it also insults the memory of Senator Wellstone, who worked so hard to ensure that this provision was passed.

Despite my concerns with particular provisions in this legislation, I do support the creation of the Department of Homeland Security and believe it is an important element in our efforts to protect the American people from terrorism.

Mr. CRAPO. Madam President, providing for homeland security and securing our Nation against the threat of terrorism must continue to be our foremost challenge. However, many of my Senate colleagues and I recognize the budgetary strains caused by the mounting expenditures of our limited resources—and the potential future costs—of responding to the multiple and varied threats of terrorism. Our State, county, and local agencies are struggling to fund the prevention and mitigation of every imaginable attack on our citizens and our critical infrastructure. Further, providing multi-million dollar allocations at the Federal level to prevent or mitigate all perceived threats to homeland security, or to respond to each terrorism incident, could in itself bankrupt our national economy.

The best management decisions at all levels of Government and industry on allocating scarce resources to the war on terrorism need an effective analytical approach to help understand the risks and to help improve the strategic and operational decisions to address those risks. Most current approaches to analyzing the "terrorist threat" are limited to addressing the vulnerability of—or what will happen to—critical infrastructure if it is attacked. These "vulnerability analyses" generally produce long lists of security-related deficiencies and equally long checklists of expensive things to do to correct the deficiencies, but they do not help communities appropriately allocate scarce resources, people, time, and money, in the context of an organization's strategic-level goals and objectives. A more robust approach is needed to support decision-making, one that can enable Government officials and private company executives to characterize the risks of rare, high-consequence events; to identify those that pose the greatest threats; and to best evaluate mitigation alternatives.

Mr. GRAHAM. Would Senator CRAPO yield a minute of his time?

Mr. CRAPO. Yes.

Mr. GRAHAM. Recognizing the need for better decision support, the leaders of Miami-Dade County established late last year a team comprised of representatives from the departments of police, fire, emergency management, general services, computer and communications services, seaport, aviation, and administration. They were tasked to work in concert with a consultant and a national laboratory to develop a process for defining, identifying, and evaluating physical and cyberterrorism threats and vulnerabilities; developing a consistent basis for making meaningful comparisons among risks to county assets so that the most important risks can be addressed first; using the structure of the process to develop strategies and associated tactics for mitigating threats and vulnerabilities; and prioritizing mitigation activities so that the biggest gains for the resources spent are implemented first, resulting in the fastest possible reduction in risk for the limited resources available, including not only dollar resources, but the key resources of people and time. The initial work of the team, a pilot project, has been successfully completed, and it has generated considerable interest both in Florida and in Washington.

Mr. DURBIN. Would Senator GRAHAM yield a minute of his time?

Mr. GRAHAM. Yes.

Mr. DURBIN. Argonne National Laboratory, The DecisionWorks, Inc., Idaho National Engineering and Environmental Laboratory, and Miami-Dade County would like to build upon the results of the pilot project to fully develop and to implement a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources to the War on Terrorism. The development of this risk-based prioritization process would be based on the methodology and results of the successful pilot project, and the capability developed in the original pilot would be further enhanced by the physical security, cybersecurity, critical infrastructure, homeland security, decision analysis, and systems engineering expertise resident in the project team.

Specifically, the purpose of the proposed risk-based prioritization program for Homeland Security would be to develop and deliver a process for helping decision-makers in both the public and private sectors to assess the likelihood of a successful terrorist attack on critical infrastructure and other assets; to understand the safety, economic, and other consequences of a successful attack; to formulate and evaluate alternatives for reducing or mitigating the risk of a successful attack; and to select a portfolio of alternatives that prioritizes the allocation of scarce resources to meet the threat of terrorism. Using risk-based prioritization to manage non-traditional risks like terrorism would have four important benefits. It would provide an objective, defensible method for deciding how to allocate resources, people, time, and money, across all risks and organizational units. It would align resource allocations with an organization's strategic objectives and its willingness and capacity to accept risk. It would provide a way to evaluate the costs and benefits associated with various alternatives for mitigating risk, from physically removing the source of risk to actively retaining the risk internally. It would improve the quality and relevance of information available to managers at all levels of the organization.

Mr. CRAPO. Would Senator DURBIN yield a minute of his time?

Mr. DURBIN. Yes.

Mr. CRAPO. The original amendment that Senator LIEBERMAN submitted to the underlying bill, H.R. 5005, to establish the Department of Homeland Security, contained a section that would have established an Office of Risk Analysis and Assessment within the Directorate of Science and Technology. Recognizing the successes of this Miami-Dade County pilot project and the tremendous contribution that a comprehensive, risk-based prioritization process that decision-makers could use to allocate scarce national, State, and local resources to the War on Terrorism, Senator DURBIN and I offered an amendment that would have enhanced and strengthened this risk assessment function. This amendment would have required the Department of Homeland Security to establish a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security response. It also would have authorized $15 million in appropriations for Fiscal Year 2003, and such sums as necessary in subsequent years, for the development of the risk-based prioritization process. Unfortunately, the current version of the Homeland Security Act before the Senate does not contain our amendment.

Mr. DURBIN. Would Senator CRAPO yield a minute of his time?

Mr. CRAPO. Yes.

Mr. DURBIN. Although our amendment was not included, clearly the risk-based prioritization process we have described has significantly benefitted the local community in which it has been tested. Would Senator THOMPSON concur that a comprehensive, risk-based process for prioritizing and allocating the Federal, State, and local activities and resources necessary to combat terrorism and to provide for homeland security response should be given serious attention by the new Department of Homeland Security?

Mr. THOMPSON. Would Senator DURBIN yield a minute of his time?

Mr. DURBIN. Yes.

Mr. THOMPSON. As ranking member on the Senate Governmental Affairs Committee, I appreciate your bringing this project to the committee's attention. I am confident that the Department of Homeland Security will give it fair consideration when reviewing grant applications in the coming years.

Mr. CRAPO. Senator DURBIN, Senator GRAHAM, and I thank the Senator for his consideration and support.

Mr. HATCH. Madam President, it has long been obvious that homeland security was the most critical issue facing our nation today. I am pleased and proud to speak today on the compromise that this body has struck to approve of this measure through landmark legislation. We are finally in a position to give the President the tools he needs to fight the war against terrorism with every resource that this great nation can muster. Our country will be safer because of the enormous hard work and patriotism shared by members on both sides of the aisle.

The final bipartisan compromise is something that we can all be proud of. It incorporates a crucial compromise on labor rights. I always have believed that the President must be given the ability to hire and retain the very best people to do the work of keeping our country safe. While the final version of the bill gives the President sufficient flexibility to effectively manage the employees in the new Department of Homeland Security, it also provides sufficient procedures to protect the rights of workers. This strikes, in my view, an appropriate balance.

I also am pleased to note that the bill maximizes the new Department's ability to take advantage of the tremendous resources and expertise of America's private sector. It is perfectly clear that America's businesses will play a vital role in enhancing our nation's security. Private businesses, after all, own and operate most of our infrastructure, and provide most of the cutting edge technologies that will support our nation's defense efforts. The bill helps the private sector help our nation by crafting some reasonable protections from frivolous tort litigation, and such a measure will ultimately save lives.

This legislation incorporates my proposal to stiffen the criminal penalties for cyberterrorism and to provide law enforcement agencies with new tools to use in emergency situations involving immediate threats to our national security interests. The cyberterrorism section of the bill also provides statutory authorization for the Office of Science and Technology located within the National Institute of Justice of the Department of Justice. The bill strikes language, contained in earlier versions, that would have provided OST to be "independent of the National Institute of Justice." Accordingly, I understand subtitle D to place operational authority over OST—as authorized by the bill—in the NIJ Director in the same manner and to the same extent that the NIJ Director currently exercises over OST—as it currently exists—and that the NIJ Director's authority over grants, cooperative agreements, and contracts for science and technology research and development, and the publications that disseminate the results of that research and development remain unchanged by this bill. Furthermore, I wish to make clear that I do not understand the administrative language in the bill that provides that certain publications decisions "shall rest solely" with the Director of the Office to affect the bill's overarching—and controlling—provision that expressly places the new Office "under the general authority of the Assistant Attorney General."

The bill likewise incorporates a drastic reorganization of the Immigration and Naturalization Service, abolishing the INS as it currently exists and separating the enforcement and service responsibilities within the new Department. This new structure recognizes the importance of both functions, allows for coordination, and confers appropriate funding and management to both enforcement and services. This top-to-bottom reorganization of INS is something that numerous members of the Judiciary Committee have worked tirelessly with me to do and to do right. The Homeland Security Bill also includes a valuable provision that will significantly reduce the availability of explosives to certain prohibited persons, including terrorists and felons. Senator KOHL and I have worked hard on this provision, which will improve law enforcement's ability to track explosives purchases and help prevent the criminal use and accidental misuse of explosives materials.

I want to conclude by taking a moment to discuss the ban on the TIPS program that was inserted in the final version of the Homeland Security Bill. Let me make clear that none of us wants an Orwellian version of Big Brother watching over us at all times. I made my own concerns on this issue very clear to Attorney General Ashcroft during an oversight hearing a few months ago, as did other members of the Judiciary Committee. I was concerned, for example, that the Department would keep a historical database of such information, but the Attorney General assured the Committee that this would not occur. Since then, I have been gratified to learn that the Attorney General has taken our concerns to heart, implementing fundamental changes to the program that are designed to protect our privacies in a balanced manner. In fact, the Department of Justice now has committed to not include within the TIPS program any workers, such as postal or utility workers, whose work puts them in contact with homes and private property.

I think all of us can agree that some type of voluntary reporting program that permits but does not require concerned citizens to report information is appropriate. This is, of course, exactly what drives the highly successful results obtained by the popular TV program, "America's Most Wanted." In fact, John Walsh, the host of that program, has publicly endorsed the concept of a TIPS program. Moreover, I fully support the Amber Alert Program, which was created in 1996 after a 9-year-old girl, Amber Hagerman, was kidnapped and murdered in Texas. This program is a voluntary partnership between law-enforcement and broadcasters to create a voluntary reporting program in child-abduction cases. The Amber Alert system recently led to the rescue of two teenage girls who were abducted in California; an anonymous tip from a motorist who responded to the program ultimately led to the girls' safe return. I am so convinced of this program's effectiveness that I recently co-sponsored legislation to create a national Amber Alert system.

In sum, we need to structure the TIPS program in a way that is responsible and effective. We do not want big government to enlist millions of Americans to snoop into the daily affairs of ordinary citizens. But, just as importantly, we need to provide an avenue for citizens to voluntarily alert law enforcement when they see things that cause them concern. It very well may be the case that the next 9/11 is averted because an accountant out walking his dog sees something unusual in his neighborhood park. We need to let that person know who he can call to report that information. As the Chairman-designate of the Judiciary Committee, I think that we will need to consider what type of voluntary reporting system would be acceptable to meet the real concerns posed by terrorist activity when we return for the 108th Congress.

We have debated this measure for many days now. I am delighted that we have finally—and successfully—come to the end of the road. By passing this legislation, we are taking a big step forward in helping to defend our nation from terrorism. I support the final compromise version of the Homeland Security Bill and hope that all of my colleagues will do the same.

Mr. GRASSLEY. Madam President, I rise today to support the Homeland Security Act of 2002, but must register my disappointment with the scope of this bill's ban on granting Federal contracts to corporate inverters.

In October of this year, Senator BAUCUS and I introduced the Reclaiming Expatriated Contracts and Profits, RECAP, Act to address the issue of inverting corporations that are awarded contracts by the Federal Government. Inverting corporations set up a folder in a foreign filing cabinet or a mail box overseas and call that their new foreign "headquarters." This allows companies to escape millions of dollars of federal taxes every year. In April of this year, Senator BAUCUS and I introduced the Reversing the Expatriation of Profits Offshore, REPO, Act to shut down these phony corporate inversions. Today, our REPO bill has still not been enacted by the Senate.

You would think that the "greed-grab" of corporate inversions would satisfy most companies, but unfortunately it is not enough. After these corporations invert and save millions in taxes, they then come back into the United States to obtain juicy contracts with the Federal Government. They create phony foreign headquarters to escape taxes and then use other peoples' taxes to turn a profit.

Chairman BAUCUS and I offered our bipartisan RECAP bill as a complement to our earlier REPO bill on corporate inversions. For future corporate inversions, our RECAP bill will bar the inverting company from receiving Federal contracts. For the inversions that have already gotten out before the REPO bill can be enacted, our RECAP bill will make them send back their ill-gotten tax savings by forcing them to lower their bids in order to obtain Government contracts.

Unfortunately, the Government contracting ban in the Homeland Security Act of 2002 only applies prospectively to a narrow band of inversions where 80 percent of the shareholders are the same before and after the inversion. The homeland security ban bill does not address the broader range inversion transactions involving less than 80 percent of the shareholders. It also does not touch inverters that have gotten out under the wire. This omission allows companies which have already inverted to avoid millions in U.S. taxes while easily reducing their taxable profits from Federal contracts by creating phony deductions through their inversion structures. This failure to address inverted companies gives them an unfair cost advantage over competing Federal contractors that choose to stay and pay in the U.S.A.

So let me be clear. The Government contracting ban in the homeland security bill is merely a down payment on this issue, and it isn't good enough for me. The Homeland Security ban isn't half a loaf—it's barely two slices of bread. So to everyone developing or contemplating one of these inversion deals, you proceed at your own peril. We will continue to pursue corporate expatriation abuse, and the abusers who seek fat Government contracts while skirting their U.S. tax obligations. I will continue this issue in the 108th Congress and beyond. I look forward to enlisting the support of my colleagues with the Committee on Governmental Affairs as we march forward to shut down this abuse in all its forms.

Mr. BIDEN. Madam President, like many important decisions in the Senate, we are today faced with something of a Hobson's choice. I agree that the consolidation of agencies currently responsible for securing the homeland will, if done right, result in greater security for the Nation and I support establishing a Department of Homeland Security. But, in my view, it would be better for us if we were implementing this massive government reorganization more gradually. We are shifting close to 200,000 workers under the new homeland security umbrella in this bill, and it would make more sense to do so in stages. Here we are trying to do too much at once and, if history is any guide, we will be back at this department many, many times in the years to come with amendments designed to fix what we enacted in haste this year.

What we are left with is the choice of doing nothing, or taking the next best option of passing this bill and launching a new Federal agency. After careful thought, I come to the conclusion that passing this flawed bill is better than doing nothing. Consider our current structure. Today, homeland security responsibilities are spread among over 100 different government agencies. The structure of the Treasury Department provides a good example of the problem. That agency houses the U.S. Customs Service, an agency tasked with monitoring the shipping containers that come into our country. Keeping the Customs Service in the agency concerned primarily with fiscal matters makes little sense when Customs' primary mission should know be safeguarding those imports. Or consider the Coast Guard, an agency in charge of patrolling our borders. The Coast Guard currently reports to the Secretary of Transportation. The Immigration and Naturalization Service is tasked with enforcing our immigration laws and securing our borders, yet its director reports to the Nation's chief law enforcement officer, the Attorney General. These examples are just the beginning. The need for reorganization is clear.

Modern management principles teach that the agencies and functions of government should be grouped together based on their major purposes and missions, and the bill before us accomplishes that goal. Once it is fully implemented, the Department of Homeland Security will be the one Federal agency with the responsibility of securing our borders, safeguarding our transportation systems, and defending our critical infrastructures. One agency will be charged with synthesizing and analyzing intelligence related to homeland security. One agency will be responsible for equipping and training the police officers, firefighters, and emergency medical technicians who are often the first to respond to a terrorist incident.

These are constructive organizational changes, ones that I am hopeful will help us better defend the country against attack. But should we be rushing their implementation without thoughtful consideration? During debate on this measure I voted in favor of an amendment offered by Senator BYRD that would have required the Congress and the Administration to work together to develop a staged implementation of the new homeland security agency, an implementation far more deliberate than the one we consider today. I am sorry Senator BYRD's amendment was not adopted.

Without Senator BYRD's approach, I fear we are doing things in reverse and I predict we will have to revisit this new Department's structure several times before we get it right. The government reorganization most similar to the one we consider today provides a guide. In 1947, we enacted the National Security Act and created the Department of Defense, the Central Intelligence Agency and the National Security Council. That approach still had to be revisited several more times, in 1949, 1953, 1958, and 1986, to perfect the structure.

Given the choice we now face, between the current state of homeland security disorganization and this bill's approach, I am forced to vote in favor of the bill. I do so with the understanding that vigorous congressional oversight of the new agency will be critical to insure it is not only accomplishing its primary mission of protecting our Nation but also to guarantee that the vast new authorities we give to the President here are not abused.

I will be watching to see if the administration abuses its authority over workers in this new Department. We must be wary of the potential politicization of our workforce. The employees of the new Department must be highly dedicated professionals, free from political pressure. We must be certain that the most expert and experienced employees are free to speak their minds and to act quickly and aggressively to defend our national security. They must not be looking over their shoulders, concerned about the ins and outs of Washington politics. They must be safe from the kinds of influence that could cause them to slant their analysis or trim their opinions to fit what is popular. I will be watchful that the employees of the new Department are free from the threat of political retaliation, and secure in their jobs so that they can perform their important tasks to the highest professional standards.

I support the creation of a Department of Homeland Security, and I will vote in favor of this bill today. The increased coordination and communication that may result from the new governing structures created in this bill could, if properly implemented, provide the Nation with vastly improved security. But because of the speed with which we considered this proposal, the rapid, sweeping reorganization it immediately envisions, and the prospect for abuse in several of its provisions, I fear this bill will need to be revisited several times and its implementation will need to be closely monitored by Congress if we hope to get it right. I will be closely watching the new agency's creation, and I hope each of my colleagues does the same.

Mr. DASCHLE. Madam President, we are finally about to vote on a bill to create a new Homeland Security Department. Many Senators worked long and hard to get us to this point. But one man was indispensable. He is the chairman of the Senate Government Affairs Committee, JOE LIEBERMAN. Under his leadership, the Government Affairs Committee held its first hearing on homeland security 10 days after September 11. It was at that hearing that former Senators Warren Rudman and Gary Hart, the co-chairs of a bipartisan blue-ribbon commission, shared their recommendation that the Government should create a permanent, cabinet-level Department to protect the American people from terrorism. Three weeks later, on the one-month anniversary of September 11, Senator LIEBERMAN announced his plan to create such a department. He had the vision to see what needed to be done and the patience and flexibility to work through disagreements and come up with workable, bipartisan alternatives. He also had the courage to stand his ground for months while the President threatened to veto any Homeland Security bill. I also want to thank Democrats on the Governmental Affairs Committee for standing with Chairman LIEBERMAN.

There are some who would like to rewrite the history of this effort. They want the American people to believe that Democratic opposition is the reason it has taken this long for Congress to pass a Homeland Security bill. That is simply not so. Creating a Homeland Security Department was a Democratic idea to begin with. It was disturbing to see that truth twisted in the recent campaigns. There are some who are threatening publicly to try to exploit homeland security again for partisan political advantage in the Louisiana Senate race next month. For the sake of our Nation, I hope they do not. Our war is with terrorism, not each other.

In the months since Senator LIEBERMAN introduced his bill, we have heard countless chilling reasons why a Homeland Security Department is needed. We have heard about dots that were not connected, intelligence reports that weren't shared and urgent warnings that were not heeded. I will vote for this bill because I believe a Homeland Security Department is right and necessary. I have thought so for more than a year. But we need to be honest with the American people about what this means.

I am very concerned about what I fear are false hopes and false assurances being given by some of those who came late to this cause.

Many of the same people who claimed just a few months ago that creating a Department of Homeland Security would detract from the war on terrorism now seem to want the American people to believe that creating this Department will solve the war on terrorism. They seem to want people to believe that, once we pass this bill, there is nothing else that needs to be done—no other changes that need to be made—to prevent another September 11. This is worse than wishful thinking. It is dangerous thinking. And it is not true.

Reorganizing parts of our Government in order to better connect the dots is only part of the solution. A much greater and far more comprehensive effort is still needed to protect America from terrorism. That effort will be difficult, it will be complicated, it will be costly. To pretend otherwise is a disservice to the American people.

Our public health system is still dangerously under-prepared for the possibility of future biological or chemical attacks. Our borders are still not secure as they need to be. Neither are our seaports; we still search only 2 percent of the roughly 6 million containers that are unloaded every year at America's ports. The U.S. has 150,000 miles of train track plus rail yards, bridges, tunnels, and switches that are all still vulnerable to terrorist attacks. This bill does not provide the resources to secure them. Our food supply—domestic and imported—remains highly vulnerable to biological attacks. This bill does not change that fact.

A study last year by the Army Surgeon General warned that a terrorist attack on a toxic chemical plant in a densely populated area could kill 2.4 million people. There are more than 120 such plants in America. Even after we pass this bill, those plants will remain vulnerable to terrorist attacks. The Department of Energy estimates that there are 603 tons of weapons-grade material inside the former Soviet republics—enough to build 41,000 nuclear weapons. So far, only about a third of this material has been properly secured. This bill alone won't keep that deadly material out of the hands of terrorists who want to use it to build "dirty bombs." Last year, the President's budget cut the programs that safeguard weapons of mass destruction. Fortunately, the Senate reversed that decision. It is urgent that we continue to work with Russia and with other nations to shut down the nuclear black market. In addition, we know that there were intelligence failures leading up to September 11. Yet, unlike the bill introduced by Senator LIEBERMAN and passed by the Governmental Affairs Committee, this bill leaves most critical intelligence functions outside of the Homeland Security Department. We need to do a much better job of coordinating intelligence efforts regarding terrorism—or critical pieces of information will continue to fall between cracks.

Nearly as troubling as what was left out of this bill is what was added to it at the eleventh hour. The American people should know that this is not the same Homeland Security bill that Congress was debating before the election. It was re-written in secret after the election. It has been stripped of a number of bipartisan, workable solutions that had been worked out on difficult problems. It has also been used as a Trojan horse for special interest giveaways that have little or nothing to do with making America safer from terrorism.

We offered an amendment to strip out seven of these last-minute changes—changes that have not been debated publicly. But the White House lobbied hard to keep them, and the White House won. As a result, this Homeland Security bill now rewards US companies that use Carribean tax havens to avoid paying their fair share of taxes by allowing those companies to compete for Government contracts with the Department of Homeland Security. It says to those companies: Even if you refuse to help pay for the war on terrorism, you can still profit from it. What does that say about this administration's commitment to corporate responsibility? You tell me. Better yet, tell the American people.

This bill now guts a critical part of the aviation security bill the Senate passed last year by a vote of 100 to nothing. It does so by providing special immunity for private companies that perform passenger and baggage screening at airports. It is likely to slow enactment of other new emergency transportation security rules that the Transportation Security Administration has said are essential to protect air and rail passengers, as well.

In the name of protecting Americans, this bill actually eliminates some legal protections for ordinary Americans. It grants legal immunity to countless private companies. All the Federal Government has to do is designate a company's product an "anti-terrorism technology" and the company can't be sued—even if it acts in ways that are grossly negligent. This bill also provides special legal protections to the maker of a mercury-based, vaccine additive that has been alleged to harm children. For parents who are involved in class-action lawsuits against the makers of that additive, this bill slams the courthouse door in their face.

This bill abandons the bipartisan effort to make workplace rules in the new Department more flexible without trampling worker protections and making workers more vulnerable to partisan political pressure. History has already shown that no one—no one—sacrificed more on September 11th than did public workers. I believe history will also show that using September 11 to justify taking away public employees' basic rights is a mistake. I regret deeply that it is part of this bill.

This bill also undermines the Federal Freedom of Information Act and community right-to-know laws. It says that any information a company offers voluntarily to the Homeland Security Department—or any information a company gives to another government entity, which is then turned over to the Homeland Security Department—is classified. And it makes releasing such information a criminal offense. You don't have to worry about shredding damaging documents anymore. If a company wants to hide information from the public, all it has to do is give the information to the Federal Government and releasing it becomes a criminal offense. This is not necessary. The Freedom of Information Act already allows exceptions for national security reasons. We will not make America safer by denying people critical information or throwing conscientious whistle-blowers in prison.

Finally, this bill authorizes the creation of a university-based homeland security research center. That sounds like a good idea. But this bill is now written in such a way that only one university in all of America is eligible to compete for the research center: Texas A&M.

We shouldn't have to be here, working on this bill, on November 19. It has been nearly 14 months since Senator LIEBERMAN first proposed creating a Department of Homeland Security. The Senate could have passed a strong Homeland Security bill, and President Bush could have signed it into law, long before the election. Democrats tried five times to break the Republican filibuster on homeland security. The reason we couldn't break the filibuster is because Republican leaders wanted to use homeland security as an election issue. They wanted to be able to blame Democrats for the impasse they created, and question the patriotism of good and decent people. As I said, for the sake of the American people and their security, I hope we have seen the last of those tactics.

I will vote for this bill because there is no doubt that we need to create a Department of Homeland Security. But we must be honest with the American people. Passing this bill does not solve the problem of terrorism on American soil. Creating a new Department of Homeland Security is only one part of the solution. A much greater and far more comprehensive effort is still needed to prevent future terrorist attacks. That effort will be difficult, it will be complicated, it will be costly. We should not pretend otherwise.

Last year, after September 11, this Senate put aside partisan differences and acted quickly to protect America from terrorism. It is deeply regrettable that much of that unity seems to have been lost, or sacrificed for partisan advantage, in the closing months of this Congress. We are capable of better. The American people deserved better. And I hope that in the next Congress, we will give them better.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. I thank the Chair. Madam President, it is a happy twist of fate that the Senator from Pennsylvania is on the floor as I rise to support final passage of this legislation, which would create the unified and accountable Department of Homeland Security that the American people urgently need to protect them.

It is a happy twist of fate because the legislative journey that brings us to the eve of adoption of this critically important legislation began on October 11, 2001, more than a year ago, but clearly a month after September 11, 2001, when I was privileged, along with Senator SPECTER, to introduce the first legislation that would authorize the creation of this Department. I thank him for joining me on that occasion and for working with us right through the road we have traveled, which has been long and taken twists and turns we never could have foreseen. We have even run into a few potholes along the way.

The important point is we are about to reach the destination, and we are going to reach it together—in a broad, bipartisan statement of support for this critically necessary new Department.

Giving credit where it is due, the journey actually began before October 11 and September 11, more than 18 months ago, when the visionary Commission on National Security in the 21st Century, led by our former colleagues Gary Hart and Warren Rudman, warned us of our vulnerabilities to terrorism with a painful prescience, and urged the creation of exactly the kind of new consolidated federal department to fight terrorism that we are about to adopt.

As I say, we have reached our destination, and that, I believe, is testament to the power of the basic idea underlying this legislation. It is also a reflection that our history changed on September 11, our vulnerabilities were exploited by our terrorist enemies, and we can never let that happen again. Those vulnerabilities remain, notwithstanding the improvements that have been made over the last year.

We recognize that protecting ourselves from terrorism will take an unprecedented commitment of people and resources. Building this Department will involve no shortage of problems, as any massive undertaking of this kind would—but we, after this initial act of creation, must be ready to improve, to support, and ultimately to protect the American people with this Department. We have no choice.

Obviously, as I have said earlier today and at other times in the debate on the bill, the measure before us is not perfect. No legislation ever is. There are parts of the legislation before us that I think are not only unrelated to homeland security and unnecessary, but unwise and unfair. Of course, we made an attempt to eliminate those provisions with the motion to strike that came very close to passing earlier today. But this is the legislative process here on Earth, not a perfect process such as that which might exist in a heavenly location. We do not always get what we want here.

Hopefully, though, through compromise, steadfastness, and hard work, the American people will get what they need. And that, I think, is what is happening with the adoption of this bill, which will occur in just a few hours.

We must remember also—to say what is clear—that this bill will be written in the law books. It is not written in stone. If we need to make changes down the road, we can and we will.

Nonetheless, all of those caveats, conditions, and concerns about certain elements of the legislation notwithstanding, we are about to be part of an historic accomplishment. It is the largest reorganization of the Federal Government since 1947, probably the most complex Federal reorganization in history, but that is what our present circumstances require to sustain our security.

When we pass this bill, we in Congress must then not turn away but turn our attention toward overseeing the Department, with a clear vision and commitment. We must provide the necessary resources, which we still have not done, not just to this Department but to all of those throughout America, the Federal, county, State, and local governments who will partner with us to protect the security of the American people.

Early next year, we will have to confirm the Department's leaders and begin to review its strategies and objectives. I look forward to playing an active oversight role under the new leadership of the new chairman of the Governmental Affairs Committee, Senator COLLINS of Maine, and in the Senate at large. Part of that oversight role must be taking great care to make sure this administration and future administrations use the authorities this bill gives them in a constructive and constitutional manner.

The important thing to say is we are ending this journey mostly together, certainly with a strong bipartisan vote. Though we have made the twists and turns and had the obstacles along the way I have referred to, the fact is, once we end this part of the journey, we begin the next phase. On that phase, I hope and believe nonpartisanship will be the rule, not the exception. I hope and believe that we will oversee and support the historic new effort to achieve homeland security in our new circumstances with as little partisanship as has been demonstrated by those of us who have been privileged to work as members of the Senate Armed Services Committee, where there are disagreements, but rarely are they partisan.

That, I hope and believe, will characterize our work in support of the new Department of Homeland Security.

I want to speak to some of the conditions this legislation will correct. As I said earlier, we have made some progress over the past 14 months in trying to close the vulnerabilities September 11 revealed. The Office of Homeland Security has been created. The FBI and CIA have begun the process of reform. FEMA has focused more resources on countering terrorism. Smallpox vaccines are stockpiled around the country. We have begun efforts to link Federal law enforcement authorities to State and local police and to give community first responders some of the guidance, if not yet the resources, they so critically need. But the fact is we remain fundamentally and unacceptably disorganized, and that is why we need to restructure in exactly the way this legislation will require.

Today, there are a lot of people and agencies in the government whose responsibilities include homeland security. Their duties often overlap. Everyone is in charge of their own domain and, therefore, no one is in charge of the overall homeland security effort.

A year ago, we came to understand tragically, painfully, that the status quo was untenable. We knew we had these gaps in preparedness, but in the aftermath of September 11, there was no agreement on how to move forward. Our Governmental Affairs Committee held 18 hearings, and over time we grew more convinced our weaknesses were so profound they cried out for fundamental reorganization.

We saw border patrol agencies that seemed unable to communicate with each other, let alone to stop dangerous goods and people from entering the United States of America.

We saw intelligence agencies, despite strong signals about a potential terrorist attack of the type we sustained on September 11, failing to put those pieces together.

We saw first responders around the country spread thinner than ever.

And we saw deviously creative terrorists acquiring and applying technology to advance their own ends—but an American government that had not yet sought to marshal the most innovative people, our people, in the history of the world to meet this life-or-death challenge.

We did not like what we saw.

So we worked hard to better organize it, to make it more efficient, to make it more focused, to create a bill that would empower a Secretary with budget authority to get the agencies involved in homeland security to work together. That is what led to our introduction of the bill with Senator SPECTER and others, including Senator CLELAND, and ultimately to report the bill out of the Governmental Affairs Committee in May.

I don't think we can count the ups and downs since then. The finished product we are prepared to vote on today is, notwithstanding the concerns I have expressed, a great leap forward for the security of the American people. It is a great achievement to have reached agreement on a governmental reorganization of this magnitude.

This is, after all, a very turf-conscious town, one in which we often speak volumes about the need for change, but just as often, probably more often, fail to deliver change. This bill will deliver change.

Former Senators Hart and Rudman, who ably led that commission I referred to, this year were asked again to head an independent task force created by the Council on Foreign Relations. The final report of the task force, released October 24, 2002, was entitled titled "America Still Unprepared—America Still in Danger." I read from the conclusion.

> Quickly mobilizing the nation to prepare for the worst is an act of prudence, not fatalism. In the 21st century, security and liberty are inseparable. The absence of adequate security elevates the risk that laws will be passed immediately in the wake of surprise terrorist attacks that will be reactive, not deliberative. Predictably, the consequence will be to compound the initial harm incurred by a tragic event with measures that overreach in terms of imposing costly new security mandates and the assumption of new government authorities that may erode our freedoms. Accordingly, aggressively pursuing America's homeland security imperatives immediately may well be the most important thing we can do to sustain our cherished freedoms for future generations.

That is exactly what we will do when we adopt this legislation in a few hours.

And pursuing America's homeland security imperatives is not only critically important for future generations of Americans; let us also realize that, as we adopt and create this new Department, we set a powerful example for the nations of the world. Terrorists threaten innocent lives everywhere. When we demonstrate that we are willing and able to earn both security and more freedom, we will show free nations that they can preserve their way of life without living in fear of terror. And, equally important, we will demonstrate to those nations remaining in the world whose people are not free that they can embrace freedom and tolerance and democracy without compromising their safety.

There are few more important signals we can send by our example to the nations of the world.

In 1919, Henry Cabot Lodge said famously: "If the United States fails, the best hopes of mankind fail with it."

I add today, when the United States succeeds, the best hopes of mankind succeed with it. When we succeed in protecting our homeland security and preserving our freedom, we will show the way to nations throughout the world.

This evening we say to the people of America: have confidence, your government is organizing itself to protect your security. We need not accept another September 11 type terrorist attack as inevitable. It is not.

We are the strongest nation in the world. If we marshal our strength as this new Department can, no future terrorist attack such as September 11 will ever occur again.

Finally, I give credit and thanks to the Members of the Senate Governmental Affairs Committee, and to the majority staff for their passion, precision, and persistence. They were tireless, working day and night, through recesses, weekends, and holidays, and they have every right to be proud of this product of their labor: a new Department that will better protect the American people for generations. The names of the staff members, from both the Committee and from my personal staff, are:

Holly Idelson, Mike Alexander, Larry Novey, Susan Propper, Kevin Landy, Josh Greenman, Bill Bonvillian, Michelle McMurry, Kiersten Todt Coon, Joyce Rechtschaffen, Laurie Rubenstein, Leslie Phillips, Fred Downey, Adrian Erckenbrack, Yul Kwon, Thomas Holloman, Donny Williams, Janet Burrell, Darla Cassell, Wendy Wang, Megan Finlayson, and Adam Sedgewick.

I thank them all for their commitment.

I would also like to thank the numerous staff for other members who have been so helpful throughout the process. On the Governmental Affairs Committee, so many staff played an important role in this bill. On Senator DURBIN's Staff, Marianne Upton and Sue Hardesty. On Senator AKAKA's staff, Rick Kessler, Nanci Langley, Sherri Stephan and Jennifer Tyree. On Senator LEVIN's staff, Laura Stuber. On Senator CLELAND's staff, Donni Turner. On Senator CARNAHAN's staff, Sandy Fried. On Senator CARPER's staff, John Kilvington. On Senator DAYTON's staff, Bob Hall. Senator DASCHLE's staff also has contributed greatly to the enactment of this legislation; I'd like to thank in particular Andrea LaRue.

From the Office of Legislative Counsel, I'd like to thank Tony Coe and Matthew McGhie for their assistance and guidance.

I thank Senator THOMPSON, who is leaving the Senate soon—tonight, presumably—for the pleasure of his company on this journey, and the contributions he made to the historical accomplishment this legislation represents.

I yield the floor.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from West Virginia has 60 minutes.

Mr. BYRD. Mr. President, I understand the Senator from Kansas, Mr. BROWNBACK, wishes some time.

Mr. BROWNBACK. Mr. President, if the Senator would yield, yes, I would like 5 minutes, if that is possible, to speak on the homeland security bill.

Mr. BYRD. The Senator gets his time from whom?

Mr. BROWNBACK. From Senator THOMPSON. I believe he has some time remaining.

The PRESIDING OFFICER. The Senator from Tennessee has 7 minutes remaining.

Mr. BROWNBACK. I seek 5 of those 7 minutes.

Mr. BYRD. I promised to yield 5 minutes of my time to Mr. JEFFORDS, after which I would yield for whatever time the Senator from Kansas desires, after which, then, I will speak.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, Mark Twain once said. "Always do right—this will gratify some people and astonish the rest." I rise today to explain why I believe voting against this bill is the right thing to do.

Of the may reasons to vote against the bill, I will focus on three—the bill's treatment of the Federal Emergency Management Agency, the bill's treatment of the Freedom of Information Act, and the process used to create this new Department.

With the passage of this Homeland Security legislation, we will destroy the Federal Emergency Management Agency, losing years of progress toward a well-coordinated Federal response to disasters.

As it now exists, FEMA is a lean, flexible agency receiving bipartisan praise as one of the most effective agencies in government. But it hasn't always been that way.

Throughout the 1980s, FEMA's focus on Cold War civil defense preparedness left the Agency ill-prepared to respond to natural disasters.

The Congressional chorus of critics decried the Agency's misguided focus and reached a crescendo after bungled responses to Hurricane Hugo in 1989 and Hurricane Andrew in 1992.

One of FEMA's leading Congressional critics, then-Representative Tom Ridge said in 1988, "I was convinced that somewhere along the way, the Federal Emergency Management Agency had lost its sense of mission."

Over the last decade, refocusing the agency's mission and priorities on natural disasters has left the agency well-equipped to respond to all types of disasters. FEMA's stellar response to September 11th provided this.

I cannot understand why, after years of frustration and failure, we would jeopardize the Federal government's effective response to natural disasters by dissolving FEMA into this monolithic Homeland Security Department.

I fear that FEMA will no longer be able to adequately respond to hurricanes, fires, floods, and earthquakes, begging the question, who will?

Also of great concern to me are the new Freedom of Information Act exemptions contained in the latest substitute.

Unfortunately, the current Homeland Security proposal chokes the public's access to information under the Freedom of Information Act. I ask, are we headed toward an Orwellian society with an all-knowing, secretive big brother reigning over an unknowing public?

The bill defines information so broadly that almost anything disclosed by a company to the Department of Homeland Security could be considered secret and kept from the public. Although I believe the current law contains an adequate national security exemption, in the spirit of compromise I supported the carefully crafted bipartisan Senate language contained in both the Lieberman substitute and the Gramm-Miller substitute. The current bill ignores this compromise.

The process by which we received this substitute seems eerily similar to the way the White House sprung its original proposal on Congress some time ago. Late last week we received a bill that had magically grown from 35 pages to an unwieldy 484 pages. There was no compromise in arriving at the current substitute, only a mandate to pass the substitute or be branded as weak on homeland security or, worse yet, unpatriotic.

Still more troubling, the current bill places little emphasis on correcting what went wrong on September 11, or addressing future threats. Correcting intelligence failures should be our prime concern. Instead, this bill recklessly reshuffles the bureaucratic deck.

Furthermore, as my colleague Senator CORZINE stated earlier this week, this bill does not address other vitally important issues such as security at facilities that store or use dangerous chemicals. Without provisions to address yet another gaping hole in our Nation's security, why are we now being more deliberate in our approach?

In closing, I feel it is irresponsible to divert precious limited resources from our fight against terrorism to create a dysfunctional new bureaucracy that will only serve to give the American people a false—false sense of security. I will vote against this bill because it does nothing to address the massive intelligence failure that led up to the September 11 attacks, it dismantles the highly effectively Federal Emergency Management Agency, and creates dangerous new exemptions to the Freedom of Information Act that threaten the fundamental democratic principle of a well-informed citizenry.

I am sorry for having to take this position, but I believe so deeply in what I have said that I must do it.

I am pleased to have been able to express myself, and I thank the Senator from West Virginia, my faithful friend.

Mr. REID. Will the Senator from West Virginia allow me to direct a statement, through the Chair, to the Senator.

The PRESIDING OFFICER. The Senator from Kansas has the floor.

Mr. REID. I am sorry, the Senator from Kansas.

Mr. BROWNBACK. I am happy to yield to the Senator from Nevada.

Mr. REID. I want to say, because the opportunity may not be right at a subsequent time, how much I appreciate the days the Senator from West Virginia has spent on the floor on this issue. Because of my having responsibility to help move legislation along here, sometimes I was concerned it was taking so much time. But in hindsight, this legislation we are going to soon pass—it will pass sometime tonight—is better legislation. And while it may not be—484 pages may not be better, the knowledge of the American people of this legislation is so much better than if we had passed this as people wanted on September 11.

So I want to commend and applaud the Senator from West Virginia for educating the Senate and the American public about what is in this bill and what is not in this bill. As I said, this legislation will pass. But as a result of what the Senator has done over these many months about this legislation, everyone is going to be looking at what is taking place in this new agency that would not have taken place but for the persistence of the Senator from West Virginia. The American public owe you a tremendous debt of gratitude for your knowledge about legislation and, most of all, for understanding what the Constitution is all about and the role, in that Constitution, of the legislative branch of Government.

Mr. BYRD. Mr. President, if I may just respond: First of all, I thank the distinguished Senator, who is the majority whip in this body. I deeply appreciate what he has said. I appreciate very much what he has said.

May I say, in turn, that the American people don't owe me anything. But I will say this, that the American people are listening. And with respect to the resolution dealing with a war with Iraq, the American people were listening. The American people heard what we said. As a result of speeches—I made two or three speeches in that instance—as a result of those two or three speeches that I made, my office received 21,000 telephone calls, and my office received over 50,000 e-mails.

That is an indication that there is somebody out there listening, somebody cares, somebody is paying attention. That is gratifying to me. So somebody heard. And I don't pay all that much attention to the polls. I don't think they ask the right questions. What are the right questions? I don't know what the right questions are. But those polls reflect responses to questions. And whether they are the right questions or the questions that ought to be asked, I cannot say.

But I can say the American people do listen. And somebody has to fulfill the duty Woodrow Wilson was speaking about when he said the informing function of the legislative branch is as important, if not more so, than the legislative function.

I thank the Senator. I am well paid.

When Plato was about to pass away from this earthly sphere, he said:

> I thank the Gods that I was born a man.

He said:

> I thank the Gods that I was born a Greek.

And he said:

> I am grateful to the Gods for the fact that I live—I live in the same era in which Sophocles lived.

So, I am thankful to God, and to my angel mother and my father, and to the people of West Virginia, for the fact that I have had this great privilege to work in this body, now, for 44 years and I have been able to contribute. God gives me my faculties almost as they were 50 years ago, except for my feet. I was always told the first place will be your feet; your feet and legs will give way. I am finding that to be pretty true. But I thank heaven that I was able to be here, to say what I have been able to say about the resolution dealing with Iraq and the homeland security legislation.

I think we have performed a service. I said what I thought. I am on no man's payroll. I am on the people's payroll. And I wear no man's collar but my own. That may be kind of a small collar.

But, anyhow, I do what I think. I could leave here any moment and get just as big a check as I get as being a Senator because I have paid in the system, now, 50 years this coming January 3.

I am doing what I want to do. I don't have to do this. I probably ought to be home with my wife. We will be married, in another 6 months, 66 years, if the Good Lord lets me live.

But I do think the Senator from Nevada, has made a tremendous contribution himself. He has listened to what we had to say, to what PAUL SARBANES and I and the distinguished Senator from Vermont, Mr. JEFFORDS, and others have said. We have warned about this measure. We have not been in agreement with the administration in connection with this homeland security agency. We think we have legislated too fast. We think we have been in too big a hurry. We think we have paid too much attention to the polls, and that we ought to have taken more time in this body.

It is said to be the greatest deliberative body in the history of the world. It hasn't been very deliberative in this case. But I am glad that, although the intent was to pass this bill in a hurry—I was told down at White House, I say to the distinguished Senator from Maryland, Mr. SARBANES—I went down there at the invitation of the President. I am not invited very often down there. But on this occasion the President invited me down. He said:

> I have got to go to St. Louis. I can only be here a few minutes. So we had a picture taken. All the cameras came in and took pictures. Then he sat down and said: I have this package here. I thank the congressional leaders for their input into this package.

I scratched my head. What input is he talking about? I knew the congressional leaders had not had one ounce of input into it—not one.

This thing was patched together down in the bowels of the White House by four eminent public servants—not quite perhaps up to the caliber of Thomas Jefferson and Benjamin Franklin. Who else was on that committee that wrote the Declaration of Independence? Robert Livingston. And who else? There was John Adams, and one more: Roger Sherman. So they weren't quite up to that caliber.

But this bill was the egg that was hatched down at the White House. I can just picture them walking around there with their shadows on the walls of the subterranean caverns, walking around with lanterns or candles. And they hatched this great idea down there all of a sudden to get ahead of this Mack truck that was coming down upon them fast in the appropriations bills which provided that the Director of Homeland Security would have to be confirmed by the Senate. The purpose of that was, as Senator STEVENS and I intended, Mr. Director, when the Senate confirms you, you will come before the Senate Appropriations Committee.

So much for that.

The thing that is being missed probably most in this deliberation is the fact that the Appropriations Committee and the Senate and the Congress have appropriated moneys for homeland security that will make the country far more safe than will this piece of legislation. It is going to take a year or 2 years for this legislation to be implemented and to get this thing going. In the meantime, the people who are now out there on the borders, who are protecting the nuclear facilities of the country, the food lines, and the clean water are the same people who will be here a year or two from now when this agency is supposed to be full blown.

But the President has a year in which to send up his plan as to how this organization is to be implemented. Imagine that—a year. He has a year. In the meantime, I am afraid that the people who are out there now at midday and midnight working to secure the safety of the American people will be distracted. They are going to be worrying about where their offices are going to be; What is going to be the label over my office? Where will my typewriter be? Where is the telephone going to be? What is going to be the vision and the objective of this new agency?

These people are going to be distracted. I am afraid that is what gives the terrorist a good opportunity to work havoc in some way.

I thank the distinguished Senator from Nevada for his kind words. I also thank the distinguished Senator from Vermont who summed up in a few words, in 5 minutes, what I could say in 30 minutes, the very good reasons that we should oppose this bill. I admire him for that. I admire him for his courage, his pluck, and for his good sense. He has made my speech for me. I can just sit down. I thank the Senator from Vermont.

I thank the distinguished Senator from Kansas for his unlimited patience and for his consideration and always for his good humor.

I yield while he speaks.

The PRESIDING OFFICER. The Senator from Kansas is recognized for 5 minutes.

Mr. BROWNBACK. Thank you, Mr. President. I thank the distinguished Senator from West Virginia for allowing me to take time previously allocated on the floor to speak.

I want to make a couple of comments about homeland security, and in particular about the INS.

I have been privileged to serve for the last couple of years as ranking member on the Immigration Subcommittee of the Judiciary Committee. Immigration is a subject on which we have focused.

We passed two major pieces of legislation already in this Congress dealing with immigration issues—trying to strengthen our borders and trying to give the enforcement agencies some better information, and also better information for the INS and the State Department about terrorists abroad before they get here. There are two good pieces of legislation that we passed.

What we are attempting to do in this bill is to restructure the INS. The reason I want to talk about the INS is that it is a troubled agency, by anybody's definition—whether you are pro-immigration or anti-immigration. I hear everybody complaining about the INS. It just does not function well from any perspective that you look at. It may be an impossible task. Some people may look at it as just impossible. We have too many people seeking entry into the country each year. The number varies. There are over 250 million entries into the country each year by people who are legally seeking entry into the country. And 1 person may come in and out 10 times. That is 10 entries. But still, you are talking about a large number of entries by people, who are not U.S. citizens, into this country each year, making this a difficult job. It is a troubled agency. It is not functioning well. We need to change it. A lot of that is put in the bill.

I am pleased about some of the ideas that I and several others put forward that are incorporated into the INS restructuring that is in the homeland security bill. There is a clear distinction between the enforcement and services functions at the INS. We recognize the importance of keeping immigration enforcement and services in the same department. Some people wanted to split them. I think that would work poorly. I think you need to have the same functions together. They are there. There are clear distinctions between the enforcement and services functions, which clearly need to be delineated, but they need to work together. Those are two positive features of this reorganization.

I must be frank as well. I think there is some failing that we want corrected in the INS restructuring portion of this homeland security bill. I am concerned that the new Department be true and coordinated well—both in the enforcement and services functions. It looks to me as if some of the restructuring may not have good lines of clear distinction in organization and functioning in the enforcement services functions the way it is set up.

I am concerned about the services component of the Department of Homeland Security being effectively coordinated with the enforcement. I am troubled about how this is set up. I have communicated those concerns to Governor Ridge, and I am hopeful that those concerns are going to be taken seriously.

I think we need strong leadership at the head of the immigration services office. It has to be a strong leader. That is a function of who is picked—not a function of how it is structured. But if we weaken that services component of it, and if we don't have somebody who has knowledge, stature, and ability to communicate this going forward, I think we are going to be left with a continuing troubled agency.

I think the leadership has to have the ear of the Secretary of the new Department. Part of my concern is this is built to the side—not built into the positive agency—to the side of the Secretary. If you do not have a strong voice there, if they do not have the ear of the Secretary, I think we are going to have some real problems in this immigration portion.

We want strong and effective immigration enforcement. We don't want the invaluable services of citizenship, family, and business petitions, asylum, and the many public service components of immigration to be forgotten. We don't want that. We want a strong enforcement, and we want to provide homeland security. But we also are a nation of immigrants. We need to take people who are legally here and build this society.

We want strong security. We should never compromise our values or lose sight of the immigration benefits to our culture or to our economy. It is critical that we monitor the development of this new Department to ensure the immigration services component receive the attention and resources it deserves.

I have shared these concerns with Governor Ridge. I am comforted by the fact that he is aware of those facts.

One of the other aspects I want to make note of is the issue of the immigration courts. I want to quickly commend this legislation for keeping the Executive Office for Immigration Review within the Department of Justice. It didn't move over homeland security. I think permitting the Attorney General to retain control of the immigration court system is going to be positive.

I think those are some problems we need to revisit. We should do so in the future.

It is time we pass the homeland security legislation.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, we have come to the end of a long, long road. For nearly 5 months, this Chamber has engaged in discussions about homeland security. But for nearly as long a time as that, this Congress has not engaged in seeing to it that there is actual funding to make our people any safer from the threat of another horrific terrorist attack. It has been over 4 months—over 4 months—since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God created all of creation. He created the universe. He created the Earth. He created man in 7 days, in the Book of Genesis. The greatest scientific treatise that has ever been written can be found in that first chapter of Genesis. Go to it. Those of you who are scientists, look over that one, the first chapter of Genesis. Do you have any problem with the chronological order in which the creation was made possible, as set forth in that chapter? No. The scientists won't have any objection to that chronological order, not any. I have four physicists in my own family, and they agree with that, that chronological order.

So 6 days, and God rested on the Sabbath.

How long has it taken for us to pass a regular appropriations bill? The last regular appropriations bill came out of the House 4 months ago. It has been over 4 months since the House of Representatives has seen fit to pass a single regular appropriations bill.

Now, God would not have gotten very far in the creation of this universe, would He, if it had taken Him that long at that pace?

We have talked a lot about homeland security. We have plenty of talk. We just open our mouths, and it just rolls out—rolls out. So talk is cheap.

But we have done very little. We have not given the cities and municipalities, the police, the firemen, the hospital workers, the first responders who are on the front line, we have not given these people one red cent—I will say, one copper cent—not one, to help them keep us safer from the madmen within our midst—in 4 months. Now, get that.

Nothing was said about that during the campaign. The President went all over this country—from the Pacific to the Atlantic, to the Canadian border, to the Gulf of Mexico—talking about this great bill here, this magnificent product of human genius in the bowels of the White House. Not one word was said about these appropriations that have been passed by the Senate and the House that have been on the President's desk—$5.1 billion, in one instance, made available to the President for homeland security. All that was needed was the President to flourish the pen, attach his signature, and designate that money as an emergency. The Congress has already done it. He said no.

So homeland security has gone wanting. That money has been there—$2.5 billion for homeland security. That is two and a half dollars for every minute since Jesus Christ was born, two and a half dollars for every minute.

So it has been a little over a year and 2 months now since America was jolted from its tranquility by the noise, the smoke, the flames of two exploding commercial airlines as they smashed into the Twin Towers in New York City. Yet in these intervening months—except for the initial help that we provided to New York and to Washington to aid in closing the hemorrhaging wounds of economic disruption and human devastation caused by the terrorist attacks—not enough has changed here at home.

It is true that we have chased bin Laden across the landscape of Afghanistan. We have spent over $20 billion chasing him around in Afghanistan. And now we don't actually know where he has been chased to. We have chased bin Laden across the landscape of Afghanistan and probably cleansed that nation of the training camps for terrorists, for now.

We have made some progress, I am sure, in some disruption of the al-Qaida network worldwide, but no one in this Chamber, and no one in this city, can look the American people in the eye and say to them: "Today you are much safer here at home than you were 14 months ago." I can't do it.

This Government continues to send out first one alert and then another. Practically the whole litany of top people in this administration has been out there at one time or another saying: Something may happen here tomorrow. Something may happen here within the next week. So the Nation has been put on alert after alert. So I ask the question: Are you better off than you were a year ago?

Because of reckless disregard for the reality of the threat to our domestic security, this administration and many in this Congress have taken part in an irresponsible exercise in political chicanery.

The White House has pressured its Republican colleagues in the Congress—and some of the Democrats as well—to reject billions of dollars in money which could have added to the tangible safety of the American people.

This White House has stopped—stopped—this year's normal funding process in its tracks. I have never seen such action before. This White House has stopped this year's normal funding process in its tracks. This year—since 1976, when the beginning of the fiscal year was changed from July 1 to October 1—only two appropriations bills have passed the Congress and been sent to the White House—only two. That is the most dismal record since 1976; the most dismal record, only two bills. What a lousy record.

But this Senate Appropriations Committee reported out all 13 appropriations bills to the Senate no later than July—the best record in years. And yet only two bills have been signed by the President. Why? Because this administration, down there in the White House—we all know who is in the White House—has told the Republican leadership in the other body: Don't let any more appropriations bills pass.

This White House has stopped this year's normal funding process in its tracks and even turned back funds for homeland security in emergency spending bills that could have shored up existing mechanisms to prevent or respond to another devastating blow by fanatics who hate the United States.

They do not hate the United States because of its freedoms. The President says they hate us because of our freedoms. I do not believe that. I think they hate us because of our arrogance.

They have done this plain disservice to the people. They have done this plain disservice to the people in order to gain some perceived political advantage in a congressional election year, and in order to be able to say that they were holding down spending.

So they kept 11 of the appropriations bills from coming down to the White House. But you watch this administration after the turn of the new year. You will never see such fast operating on appropriations bills as we will see then. We have done our work on these bills. But for the most part they have not been sent to the White House because the administration said: We don't want them.

The administration told the Republican leadership in the other body: We don't want them. Hold them up.

But once this new leadership takes over in January, you watch how quickly they will say: Now send those bills on down. We want to show the American people how fast we can appropriate money, how fast we can move appropriations bills—when all the while the "we" they are thinking about is the "we" that has held up those appropriations bills and not let them come to the White House.

In order to avoid criticism of the too meager dollars for homeland security, this White House suddenly did an about-face and embraced the concept of a Department of Homeland Security. Don't send us your appropriations for homeland security. Send that bill up there because that is a great political hat trick. Send us the bill on homeland security. Make the people think they are going to have more security in their schools and their homes and their businesses and on their farms.

So the people are being offered a bureaucratic behemoth complete with fancy top-heavy directorates, officious new titles, and noble sounding missions instead of real tools to help protect them from death and destruction. How utterly irresponsible. How utterly callous. How cavalier.

With this debate about homeland security, politics in Washington has reached the apogee of utter cynicism and the perigee of candor. No one is telling our people the plain, unvarnished truth. It is simply this: This Department is a bureaucratic behemoth cooked up by political advisors to the President to satisfy several inside Washington agendas.

One, it is intended to protect the President from criticism and fault should another attack occur.

Two, it is intended to eliminate large numbers of dedicated, trained, experienced, loyal, patriotic Federal workers so that lucrative contracts for their services may be awarded to favored private entities. Watch. Watch and see.

Three, it would be used to channel Federal research moneys and grants to big corporate contributors without the usual Federal procurement standards that ensure fair competition and best value for the tax dollar.

Four, it will foster easier spying and information gathering on ordinary citizens which may be used in ways which could have nothing whatsoever to do with homeland security. And now with this new bill, with the blue ribbon that will be tied around it, the fancy trimmings that will be around that bill when it goes down to the White House and then to be invited—how wonderful, how glorious that will be, to be invited. I haven't been down there in so long. It is called the Rose Garden—into that Rose Garden, just to be there in the presence of the chief executive, the Commander in Chief, when he signs this bill into law, this new bill which showed up only last week on the doorstep of the Senate, how wonderful that will be, how utterly wonderful that will be.

Insult has been added to injury by provisions that further exploit the already shamefully exploited issue of homeland security with pork for certain States and certain businesses. My, my, my, how low we have sunk.

Senators seem to be unaware or unconcerned about the transfer of power that will take place under this bill. Some of the Senators who have walked down to that table and who have voted aye on this bill and who voted no on amendments that have been offered to improve it, they will have room, they will have time to remember. They will have time to remember how they were stampeded into voting without asking questions.

The most glaring example can be found in title XV of the bill which requires the President to submit a reorganization plan to the Congress which would outline how he plans to transfer to the new Department 28 agencies and offices authorized by the Congress. The authority granted to the President under this title is very broad. The President can reorganize, streamline, or consolidate the 28 agencies and offices being transferred.

The President can determine which functions of the agencies being transferred will be moved to the new Department and which will be left behind. The

President can determine how the functions transferred to the new Department will be delegated among the officers within the new Department. The President can set any effective date he wants for transferring these agencies within a 12-month transition period. The President can change his plan at any time before the plan takes effect.

The only requirement placed on the President is that heavy charter, that great burdensome charge; namely, that he inform the Congress of his plans before those plans take effect. My, what a heavy burden. The Congress does not have the opportunity to approve or disapprove of the President's plan. We have no mechanism by which to object to the President's plan. The Congress is locked out by our own doing, forced to watch from the sidelines as the administration implements this new Department.

What a great Senate this is, in this hour of God. The Senate, I have to say, has let the people down. The Senate has grown timid. It has lost its nerve. I cannot for the life of me understand why the Congress would cut itself out of the loop like that. Congress is authorizing the President to reorganize, consolidate, or streamline any one of the 28 agencies and offices being moved to the new Department and to delegate functions among the officers however he wishes. And the only requirement placed on the President, as I say, is that he humble himself enough just to let the Congress know what he plans to do.

After we pass this bill, the Congress will have abdicated its role in the implementation of the new Department. We might as well just dive under the bed and say: Here goes nothing.

I find this to be unacceptable and unwise. Other Senators should agree.

Last September I offered an amendment that would have allowed the Congress to stay involved and to help provide for a more orderly, efficient, effective transition of agencies to this new Department. The Congress would have had a mechanism in place to guard against abuses of this authority that we are granting to the President, if my amendment had been adopted.

The distinguished Senator from Minnesota, presently sitting in the chair, voted for my amendment. But the Senate rejected my amendment—incidentally, the Senator who sits in the chair had, I will say, a kinsman who signed the Constitution of the United States. How many signers were there? Thirty-nine. He was one of the signers; his name was Jonathan Dayton. How old was he? He was the youngest member of the convention, the youngest, younger than Charles Pinckney. I believe Charles Pinckney was the next youngest. Dayton was the youngest, 24 years old, I believe, 25 or 26—24, I believe—choosing instead to trust the administration to handle the implementation of the new Department without congressional input.

That decision, in my view, was a disservice to our States and the people who sent us here to look out for them. With passage of the new House bill, we have in effect washed our hands of any further ability to affect decisions regarding the way the Department is organized or the functions that it will perform.

The Nation will have this unfortunate creature, this behemoth bureaucratic bag of tricks, this huge Department of Homeland Security, and it will hulk across the landscape of this city, touting its noble mission, shining up its new seal, and eagerly gobbling up tax dollars for all manner of things, some of which will have very little to do with protecting or saving the lives of the American people.

Maybe in 5 years or so it will sort out its mission and shift around its desks enough to actually make some real contribution to the safety of our people. I sincerely hope so. But if the latest tape from bin Laden is to be believed, we won't have time for all of that.

If the latest threat assessment from the FBI can be believed, we will experience something catastrophic before that new Department even finishes firing all of the Federal workers it wants to get rid of.

What does it take to wake us up? What does it take to make the gamesmanship cease? When will we stop the political mud wrestling and begin to wrestle with the most potentially destructive force ever to challenge this Nation?

Let us hope that when the gavel bangs to close down this session of Congress, it will awaken us to all of the dreadful consequences of continued posturing and inaction.

I know that this administration, with its newfound majorities in both Houses of Congress, will quickly pass the remaining 2003 bills, which will provide at least some modicum of real security for our people as soon as Congress reconvenes in January of the new year. They will want to claim that they can get things done.

Although I deplore the motivation and the gamesmanship behind such tactics, I wish them well and pledge my help. It is long past time for us to finally do our best to prevent another deadly strike by those who hate us and wish us ill. Terrorism is no plaything. Political service is no game. Political office is no place for warring children.

The oath of office which we take is no empty pledge to be subjugated to the tactics of election year chicanery perpetrated on a good and trusting people.

Yesterday, a Federal appeals court upheld broad, new powers given to the Justice Department to investigate and prosecute people suspected of terrorism. The ruling of the special appeals court, which was created by Congress to oversee secret Government actions involving national security, will make it easier for the Justice Department to spy on U.S. citizens by circumventing traditional constitutional protections. This court decision gives the executive branch a green light to run roughshod over the civil liberties of innocent Americans in the name of national security.

The Justice Department argued that the expanded authority it is claiming is nothing more than what Congress authorized in last year's USA Patriot Act, in which Congress tore down the protective walls that had previously separated foreign intelligence and domestic law enforcement activities. A three-judge appeals panel agreed with the Justice Department, concluding that the new antiterrorism law did have the effect of weakening procedures that safeguard our civil liberties.

The Justice Department now wields dangerous, new power to conduct secret surveillance on American citizens for potential criminal prosecutions. This expanded power is a license for abuse, and Senators should be concerned about the consequences for our constitutional system.

But any of us who wants to point his finger at the administration for overreaching its authority should also place that blame squarely on himself or herself, because it was the actions of this Senate that set the wheels in motion.

As the Washington Post points out in an editorial entitled "Chipping Away at Liberty" from this morning's paper:

> The fault for the problem . . . lies not with the court, but with Congress, for the carelessness and haste with which it passed the USA Patriot Act in the wake of the September 11 attacks, and for its unwillingness to push back against Bush administration excesses.

The editorial goes on to explain that this new authority grants the Government one more sphere in which it gets to unilaterally choose the rules under which it will pursue the war on terrorism. . . .Which parts of this system need to be reigned in is a profoundly difficult question, one that Congress seems depressingly uninterested in asking. This is a war, the administration has said, without a foreseeable end, so the legal regime that handles these cases may become a permanent feature of American justice. Such a regime should be enacted deliberately, after careful inquiry by legislators—an inquiry that has so far scarcely begun.

Mr. President, this Senate passed the USA Patriot Act in October of 2001 by a vote of 98 to 1. I voted for it. Ninety-eight Senators, including myself, this Senator from West Virginia, voted for the bill. Perhaps many of us now realize that we may indeed have acted too hastily to hand over this unchecked power to the executive branch.

During the debate on that bill, one Senator stood up and pleaded with us to take the time to consider the legislation more carefully before we unleashed such a dangerous and uncontrolled threat to our civil liberties. Senator FEINGOLD stood alone in the path of that Mack truck that was barreling through the Senate, warning that many of us would come to regret our decision to stand out of the way and cheer on the rumbling big rig.

I believe that Senator FEINGOLD was right to caution the Senate during that debate. I believe we did pass the Patriot Act too hastily. As the media continue to uncover more stories about the lengths to which this administration will go to shroud its actions in secrecy, I hope other Senators will also come to the conclusion that these issues deserve more attention from this Congress.

During this debate on homeland security, I have tried to convince the Senate to slow down and look closely at this legislation before giving the executive branch such a broad grant of virtually unchecked authority. I have tried to draw attention to some of the problems in this bill in the short time that we have had to examine it. I have tried to persuade Senators not to give into the political pressures that have loomed over our consideration of this bill before and after this year's election.

So I hope that Senators will heed the warnings and vote against this bill, although I do not really believe that will happen. I have seen the handwriting on the wall, and I know that this bill has the votes to pass. But I hope that those Senators who worry that we are acting too hastily will have the courage to vote against the bill.

There will be a lot of work to be done in the next Congress to clean up the mess we will make by enacting this homeland security legislation. Congress will have already cut itself out of the loop with regard to the implementation of this new Department. It will be incumbent upon individual Members of the Senate to attempt to shed light on the administration's actions whenever possible. It will be the responsibility of individual Members to fight to defend the constitutional powers of Congress and the constitutional protections of our personal privacy and civil liberties.

There will be a lot left to do in the name of homeland security during the next Congress. I hope each Senator will remember that when he or she votes on this bill, and I hope the Senators do not treat this vote as something to put behind them. When Senators cast their votes on final passage of this homeland security legislation, I hope that they will understand and think about what that vote will mean a year from now when their voters ask them: "Where were you when the Senate approved this bill?

I urge those Senators who are troubled by this legislation, as I am, to vote with me against the bill. I know where I will be when the Senate votes to hand over this power, and my people will know that I did what I could to put the brakes on this process. I hope that other Senators will also send a message to the people they represent about where they stand by voting against the final passage of the homeland security bill.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. DURBIN). There are 12 minutes remaining.

Mr. BYRD. I reserve that time.

FAREWELL TO SENATOR FRED THOMPSON

Mr. President, with the closing of the 107th Congress, the Senate will be saying farewell to a very talented and successful and effective colleague, a Senator who in a relatively short period of time has made important contributions to this Chamber and to our country.

Senator FRED THOMPSON has accomplished so much that it is difficult to realize he has only been here since 1995. As a Senator, he has served on the Senate Finance Committee, the Senate Select Committee on Intelligence, and the National Security Working Group. In 1997, he became chairman of the Committee on Governmental Affairs where he conducted a number of important and controversial investigations.

As a national lawmaker, Senator FRED THOMPSON has played an important role in developing this Nation's trade policies, including pushing for an export control policy to protect our country's national security and proposing legislation to curb the proliferation of weapons of mass destruction. He has been an active and important advocate for campaign finance reform. He has authored legislation to protect Government computers from outside infiltration. He has been a major force for regulatory reform.

As chairman of the Governmental Affairs Committee, he helped lead the fight to reduce waste, fraud, and abuse in Government, and along with Senator FRIST, Senator THOMPSON secured funding to establish a School of Government at the University of Tennessee named in honor of University of Tennessee graduate and one of my favorite Senators of all time, Senator Howard Baker.

He is one of my favorite Senators of all time. He is a statesman. He is not just a politician. He is a statesman. If it had not been for Howard Baker, for his statesmanship, the Senate would never have approved the Panama Canal treaties. It would never have done it. It required a two-thirds vote, and all the polls showed the Senate was swimming upstream. The majority of the people were against those treaties. But Howard Baker stepped to the plate, at a political sacrifice to himself, and stood for those treaties.

I was majority leader of the Senate at that time. Howard Baker was the minority leader. I could not have gotten those treaties approved but for the strong support of Howard Baker. It was kind of the same way for Howard Baker as his father-in-law, Everett Dirksen. If Everett Dirksen had not stepped to the plate, the Senate would never have passed the 1964 Civil Rights Act. It was Everett Dirksen who joined with Mike Mansfield and that legislation was passed.

I should point out that Senator THOMPSON has not always been successful in his efforts. At times, his has been a lonely voice and a lonely vote against popular measures that went against his sense of federalism and his concern that the National Government was encroaching upon the rights of the States. Even when I opposed him on some of these issues, I admired the strength of his convictions.

I will miss him and his courage, and so will the people of Tennessee. In 1996, the people of Tennessee cast more votes for him than for any previous candidate for any office in the history of the State. Now how about that? That is pretty remarkable.

In addition to his many legislative accomplishments, perhaps the reason Senator THOMPSON seems to have been with us for a longer period of time than is reflected by his actual years as Senator is that he is so associated in the public mind with politics.

In 1973, when I was the majority whip in the Senate, FRED THOMPSON served as minority counsel on the Senate Select Committee on Presidential Campaign Activities, known as the Watergate Committee. He was a very effective staff person. I can remember his work.

Many people have also seen him on the silver screen portraying a CIA chief, an FBI Director, a White House Chief of Staff. I am not about to ask which of these roles best prepared him for his real-life role as a Senator.

This has truly been a remarkable career for the son of a used car salesman who worked his way through law school while raising a family. I applaud FRED THOMPSON, and I congratulate him. We will miss Senator THOMPSON.

I have watched him during this short time when he has been in the Senate. I have admired him. I admire his bearing, his manner of talking, moving about the Senate and doing his work. He is not a show horse here in the Senate, but he has been a workhorse. I do not know of any enemies he has made in this Senate on either side of the aisle.

We will miss him. I understand he will be resuming an acting career. I can only say that the Senate's loss is Hollywood's gain. All of us look forward to seeing him as he resumes his earlier career as a fine actor. I do not watch TV much, and I have not been to a movie in the 50 years I have been in Congress. I have not been to a movie, not one. I have watched some good movies on television. Alistair Cooke, for example, used to have good movies. If I know FRED THOMPSON is going to play, I will make a point to go and see him.

RETIREMENT OF SENATOR PHIL GRAMM

Mr. President, seldom in all my years in the Senate have I encountered a Senator for whom my feelings and attitudes have covered such a wide spectrum as they have for Senator PHIL GRAMM. They have ranged from intense opposition, as they did in our battles over the Gramm-Rudman legislation, to close cooperation as we worked together during his 6 years on the Appropriations Committee.

Always prepared, always thoughtful, he was always ready to speak on any subject at the drop of a hat. PHIL GRAMM was always ready to talk and, oh, was he ready to talk. I quickly learned he can talk about anything, everything, and do so intelligently, and always with a good humor, in the best of good humor.

It was during our years together on the Appropriations Committee that I learned of his respect for the Senate and its role in our democratic Republic. He once referred to his work in the Senate as doing the Lord's work. He has often referred to it as doing the Lord's work. I liked that. I wish I had said that first.

He has also demonstrated an understanding that fundamental power of Congress is the power of the purse. For that, I applaud Senator GRAMM, and I thank him.

In addition to our work together on the Appropriations Committee, we have worked together on important national legislation, including the highway reauthorization bill, TEA–21. I saw that he has a remarkable talent for grassroots organizing.

I watched him here today as he moved around the Chamber. I knew what he was doing. He was talking with some of these Democratic Senators. I knew what he was talking with them about. Someone said: That Senator, you see Senator GRAMM, that Democratic Senator will vote against the amendment by Mr. DASCHLE and Mr. LIEBERMAN. I knew what he was doing, but I respected that.

During a difficult struggle on that highway bill, TEA–21, PHIL and I met with representatives from a number of organizations interested in highway construction. I believe my friend from New Mexico was in on some of those meetings.

Mr. DOMENICI. I was opposed.

Mr. BYRD. He was opposed. When the Senator from New Mexico is opposed, I pay even more attention to him. Anyhow, after each meeting, our friends would walk away with plans for spreading the good word in favor of our plan, charged up with a pep talk by PHIL GRAMM. He also has a talent, a great talent, for negotiating. Even when he wins a negotiation and you have lost everything, he can make you feel like you prevailed and he lost everything. Suddenly, on the way home you will pinch yourself and say, wait a minute, that is not quite the way it was.

So this is PHIL GRAMM, a biting, partisan bulldog one minute, and a gentle, cuddly puppy the next. At times, it is difficult to decide if you should jump back in fright or reach out and pet him.

He is one of those rare Members of Congress who has had a powerful impact not only upon this institution but on our country and its policies. Just last year, the National Review pointed out that no Member of Congress—not Jack Kemp, not Newt Gingrich, not Bob Dole—played a more decisive role in launching the Reagan agenda.

PHIL GRAMM is perhaps this country's most consistent and strongest promoter of smaller taxes and smaller government. The legislation he has authored, sponsored and promoted, from Gramm-Latta to Gramm-Rudman, to the Bush tax cuts, give the lie to Emerson's observation that a "foolish consistency is the hobgoblin" of little minds. It is also the hobgoblin of big minds.

PHIL GRAMM definitely has a big mind. I have learned so much from him. I certainly learned a lot about his "mamma." Among other things, I learned she receives Social Security, that she carries a gun, and she knows how to use it. That is what PHIL says.

I certainly learned more than I ever wanted to know about Dicky Flatt, the hard-working print shop owner in Mexia, TX, and how the Government keeps taking away his money to spend on someone else.

I learned do not mess with PHIL GRAMM. He has an intellect second to none. He has a tenaciousness and he has a razor tongue second to none. But throughout it all, let me assure my colleagues that my disagreements have never lessened my respect and my admiration for the man and Senator. He was always straightforward and fair and always sincerely dedicated to the cause he was espousing or supporting, and that no doubt was because his positions on the most important issues facing our Nation were always deeply thought out and heartfelt convictions; not simply political calculations. That is why I came to respect his integrity, his wisdom, and his courage.

In his book, "Profiles in Courage," Senator John F. Kennedy wrote:

> Surely in the United States of America, where brother once fought brother, we did not judge a man's bravery under fire by examining the banner under which he fought.

Senator GRAMM and I have fought under different banners, but we have always fought under and for the same flag. Whatever he did, whatever he said, whatever he promoted, it came from his deep, undeviating love of the United States of America. While he is always ready to tell you what is wrong with our country, he will never hesitate to tell you what is right with it. We will miss him.

There he is. I did not realize that while I was talking about the man, he was sitting here listening, but I can say to the Senate that on more than one occasion, Senator PHIL GRAMM has come to my office on difficult matters, in which I may have had some interest, as in mountaintop mining or the highway bill, whatever it was, and in many instances he has proposed a compromise which enabled us to get over a mountain, get over a hump, and get on with the business.

I appreciate the contributions he has made to legislation in this body. I do not know of any Senator who has been a more knowledgeable and able legislator. The Senator has exemplified reverence for the Constitution, respect for the Senate, and an unbounded love for his country.

While he will no longer be my colleague, PHIL GRAMM will always be my friend.

I yield the floor.

The PRESIDING OFFICER. The Senator's time has expired.

The majority leader.

Mr. DASCHLE. Mr. President, what is the order?

The PRESIDING OFFICER. The majority leader has 5 minutes. The minority retains 2 minutes of time.

Mr. DASCHLE. Mr. President, I will have more to say about our departing colleagues tomorrow, but let me share as well my admiration for our colleague Senator GRAMM. He is a hardened legislative adversary, but I have a great deal of respect for his ability and the manner with which he conducts himself on the floor. I have fond memories of the many years we have served together.

I recall so vividly our first days together riding a bus as freshmen Congressman in 1979. So we wish him well. As I said, I will have much more to say about him and about our colleagues tomorrow.

I wanted to come to the floor simply to express what I have said on several occasions. It is with some misgivings that I will cast my vote tonight in favor of the creation of this Department. I do so, fearful we have not done the kind of work on this legislation I wish we could have. I do so even though language has been inserted in the bill I think we are going to regret, but I do so recognizing we have to start rebuilding our infrastructure, reorganizing our Government, recognizing more consequentially the threat that is now posed by terrorism within our borders as well as without. I intend to support this legislation with every expectation that this is the first in a long series of steps which must be taken to better prepare our country and our Government. I have no doubt we will be back next year addressing many of the shortcomings we will be incorporating in this legislation tonight.

This bill still needs work. This Department needs work. But as much work as it needs, not to have done anything in recognition of the tremendous challenges we face as a country is something I could not accept either. So I will support it, recognizing as well that it is critical for us to provide the funding—and there is no funding. In fact, if I have any regret about what we are doing tonight, it is that we are not passing the requisite resources needed to get started in an earnest and successful way. We are going to have to wait until next year. The more we wait, the harder it will be. The more we wait, the more complicated our mission. The more we wait, the more underfunded will be our effort in so many other ways.

I regret we are not willing to commit the resources that match the infrastructure we will be authorizing tonight.

Finally, let me say there are many people who deserve recognition and thanks. I acknowledge especially the leadership of Senator JOE LIEBERMAN, the chair of the Governmental Affairs Committee. He and others on the committee have done an outstanding job getting us to this point, whether or not you agree with all of the components of the bill. I congratulate Senator THOMPSON as the ranking member. They worked oftentimes together, and where they could not work together, they worked in a way that was not disagreeable.

I thank the whole Governmental Affairs Committee for the work they did in getting us to this point over the many months they have been involved.

Let me say I also thank Senator BYRD. He and I may come down on different sides tonight, but he has done the Senate and the country a real service. I have admired him for many reasons for many years. But his powerful advocacy of his position, the extraordinary effort he has made to enlighten us, to educate us, to sensitize us, and to ensure that we are fully aware of all of the concerns he has about the creation of this Department is something for which we all ought to express our deep indebtedness to him. I thank him for what he has done in adding to the debate, acknowledging as he has the inevitability of our consideration and ultimately the passage of this legislation tonight. There are many others, including Senator HARRY REID, our extraordinary deputy Democratic leader, all the work he has done to allow this opportunity to complete our work tonight.

As I said, we will be in session tomorrow and we will have much more to say about many of these issues, reflecting back, but I close simply by thanking our colleagues for the work they have done. I hope we can complete our work and pass this legislation tonight.

I also ask, following the first vote, all subsequent votes be limited to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding we have 2 minutes remaining.

The PRESIDING OFFICER. Two minutes.

Mr. GRAMM. I could hardly say what I feel in my heart in 2 minutes. Too often, as people leave the Senate, they talk about things they are unhappy about. I want people to know I am not discouraged; I am not disillusioned; I am not disappointed. I am proud and I am honored. I am proud to have had an opportunity to serve the greatest country in the history of the world. I am proud to have served with extraordinary men and women. I think we are so close to them and what they have done here that it is hard to put it all in perspective. But someday when I am sitting in a nursing home talking to my grandchildren, I think I will have that perspective right and there will be names such as Senator BYRD, Senator DOMENICI, and others that will flow from my lips as men I was honored to know and to love.

I thank the people of Texas for giving me an opportunity to serve. I conclude by reading a remark by, of all people, Aaron Burr. Senator BYRD is familiar with it. It is wonderful and I want to conclude by reading it. Aaron Burr was leaving the Senate, and he concluded with these remarks:

> . . . this house is a sanctuary and a citadel of law, of order, of liberty—and it is here—it is here—in this exalted—refuge, here, if anywhere will resistance be made to the storms of popular phrenzy and the silent arts of corruption:—And if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue of the Usurper, which God avert, its expiring agonies will be witnessed on this floor.

I am honored to have served here. I am honored to have served with those who will be sure, in their efforts, in their work, that the Constitution never expires.

I yield the floor.

The PRESIDING OFFICER. All time has expired. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read a third time.

Mr. GRAMM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 9, as follows:

[Rollcall Vote No. 249 Leg.]

YEAS—90

Allard
Allen
Barkley
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Helms
Hutchinson
Hutchison
Inhofe
Johnson
Kerry
Kohl
Kyl
Landrieu
Leahy
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murray
Nelson (FL)
Nelson (NE)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Schumer
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wyden

NAYS—9

Akaka
Byrd
Feingold
Hollings
Inouye
Jeffords
Kennedy
Levin
Sarbanes

NOT VOTING—1

Murkowski

The bill (H.R. 5005), as amended, was passed, as follows:

Resolved, That the bill from the House of Representatives (H.R. 5005) entitled "An Act to establish the Department of Homeland Security, and for other purposes.", do pass with the following *amendment:*

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeland Security Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information
Sec. 211. Short title.
Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security
Sec. 221. Procedures for sharing information.
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology
Sec. 231. Establishment of office; Director.
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY
Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Federally funded research and development centers.
Sec. 306. Miscellaneous provisions.
Sec. 307. Homeland Security Advanced Research Projects Agency.
Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
Sec. 312. Homeland Security Institute.
Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security
Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.

Subtitle B—United States Customs Service
Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 413. Preservation of customs funds.
Sec. 414. Separate budget request for customs.
Sec. 415. Definition.
Sec. 416. GAO report to Congress.
Sec. 417. Allocation of resources by the Secretary.
Sec. 418. Reports to Congress.
Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions
Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 422. Functions of Administrator of General Services.
Sec. 423. Functions of Transportation Security Administration.
Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
Sec. 425. Explosive detection systems.
Sec. 426. Transportation security.
Sec. 427. Coordination of information and information technology.
Sec. 428. Visa issuance.
Sec. 429. Information on visa denials required to be entered into electronic data system.
Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions
Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.
Sec. 442. Establishment of Bureau of Border Security.
Sec. 443. Professional responsibility and quality review.
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services
Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 452. Citizenship and Immigration Services Ombudsman.
Sec. 453. Professional responsibility and quality review.
Sec. 454. Employee discipline.
Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
Sec. 459. Report on improving immigration services.
Sec. 460. Report on responding to fluctuating needs.
Sec. 461. Application of Internet-based technologies.
Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions
Sec. 471. Abolishment of INS.
Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
Sec. 476. Separation of funding.
Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE
Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
Sec. 507. Role of Federal Emergency Management Agency.
Sec. 508. Use of national private sector networks in emergency response.
Sec. 509. Use of commercially available technology, goods, and services.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS
Sec. 601. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations.

TITLE VII—MANAGEMENT
Sec. 701. Under Secretary for Management.
Sec. 702. Chief Financial Officer.
Sec. 703. Chief Information Officer.
Sec. 704. Chief Human Capital Officer.
Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.
Sec. 706. Consolidation and co-location of offices.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities
Sec. 801. Office for State and Local Government Coordination.

Subtitle B—Inspector General
Sec. 811. Authority of the Secretary.
Sec. 812. Law enforcement powers of Inspector General agents.

Subtitle C—United States Secret Service
Sec. 821. Functions transferred.

Subtitle D—Acquisitions
Sec. 831. Research and development projects.
Sec. 832. Personal services.
Sec. 833. Special streamlined acquisition authority.
Sec. 834. Unsolicited proposals.
Sec. 835. Prohibition on contracts with corporate expatriates.

Subtitle E—Human Resources Management
Sec. 841. Establishment of Human Resources Management System.
Sec. 842. Labor-management relations.

Subtitle F—Federal Emergency Procurement Flexibility
Sec. 851. Definition.
Sec. 852. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 853. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 854. Increased micro-purchase threshold for certain procurements.
Sec. 855. Application of certain commercial items authorities to certain procurements.
Sec. 856. Use of streamlined procedures.
Sec. 857. Review and report by Comptroller General.
Sec. 858. Identification of new entrants into the Federal marketplace.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002
Sec. 861. Short title.
Sec. 862. Administration.
Sec. 863. Litigation management.
Sec. 864. Risk management.
Sec. 865. Definitions.

Subtitle H—Miscellaneous Provisions
Sec. 871. Advisory committees.
Sec. 872. Reorganization.
Sec. 873. Use of appropriated funds.

Sec. 874. Future Year Homeland Security Program.
Sec. 875. Miscellaneous authorities.
Sec. 876. Military activities.
Sec. 877. Regulatory authority and preemption.
Sec. 878. Counternarcotics officer.
Sec. 879. Office of International Affairs.
Sec. 880. Prohibition of the Terrorism Information and Prevention System.
Sec. 881. Review of pay and benefit plans.
Sec. 882. Office for National Capital Region Coordination.
Sec. 883. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections.
Sec. 884. Federal Law Enforcement Training Center.
Sec. 885. Joint Interagency Task Force.
Sec. 886. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act.
Sec. 887. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 888. Preserving Coast Guard mission performance.
Sec. 889. Homeland security funding analysis in President's budget.
Sec. 890. Air Transportation Safety and System Stabilization Act.

Subtitle I—Information Sharing

Sec. 891. Short title; findings; and sense of Congress.
Sec. 892. Facilitating homeland security information sharing procedures.
Sec. 893. Report.
Sec. 894. Authorization of appropriations.
Sec. 895. Authority to share grand jury information.
Sec. 896. Authority to share electronic, wire, and oral interception information.
Sec. 897. Foreign intelligence information.
Sec. 898. Information acquired from an electronic surveillance.
Sec. 899. Information acquired from a physical search.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

Sec. 901. National Homeland Security Council.
Sec. 902. Function.
Sec. 903. Membership.
Sec. 904. Other functions and activities.
Sec. 905. Staff composition.
Sec. 906. Relation to the National Security Council.

TITLE X—INFORMATION SECURITY

Sec. 1001. Information security.
Sec. 1002. Management of information technology.
Sec. 1003. National Institute of Standards and Technology.
Sec. 1004. Information Security and Privacy Advisory Board.
Sec. 1005. Technical and conforming amendments.
Sec. 1006. Construction.

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

Sec. 1101. Legal status of EOIR.
Sec. 1102. Authorities of the Attorney General.
Sec. 1103. Statutory construction.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

Sec. 1111. Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1112. Technical and conforming amendments.
Sec. 1113. Powers of agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1114. Explosives training and research facility.
Sec. 1115. Personnel management demonstration project.

Subtitle C—Explosives

Sec. 1121. Short title.
Sec. 1122. Permits for purchasers of explosives.
Sec. 1123. Persons prohibited from receiving or possessing explosive materials.
Sec. 1124. Requirement to provide samples of explosive materials and ammonium nitrate.
Sec. 1125. Destruction of property of institutions receiving Federal financial assistance.
Sec. 1126. Relief from disabilities.
Sec. 1127. Theft reporting requirement.
Sec. 1128. Authorization of appropriations.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

Sec. 1201. Air carrier liability for third party claims arising out of acts of terrorism.
Sec. 1202. Extension of insurance policies.
Sec. 1203. Correction of reference.
Sec. 1204. Report.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

Sec. 1301. Short title.
Sec. 1302. Agency Chief Human Capital Officers.
Sec. 1303. Chief Human Capital Officers Council.
Sec. 1304. Strategic human capital management.
Sec. 1305. Effective date.

Subtitle B—Reforms Relating to Federal Human Capital Management

Sec. 1311. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 1312. Reform of the competitive service hiring process.
Sec. 1313. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 1314. Student volunteer transit subsidy.

Subtitle C—Reforms Relating to the Senior Executive Service

Sec. 1321. Repeal of recertification requirements of senior executives.
Sec. 1322. Adjustment of limitation on total annual compensation.

Subtitle D—Academic Training

Sec. 1331. Academic training.
Sec. 1332. Modifications to National Security Education Program.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

Sec. 1401. Short title.
Sec. 1402. Federal Flight Deck Officer Program.
Sec. 1403. Crew training.
Sec. 1404. Commercial airline security study.
Sec. 1405. Authority to arm flight deck crew with less-than-lethal weapons.
Sec. 1406. Technical amendments.

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

Sec. 1501. Definitions.
Sec. 1502. Reorganization plan.
Sec. 1503. Review of congressional committee structures.

Subtitle B—Transitional Provisions

Sec. 1511. Transitional authorities.
Sec. 1512. Savings provisions.
Sec. 1513. Terminations.
Sec. 1514. National identification system not authorized.
Sec. 1515. Continuity of Inspector General oversight.
Sec. 1516. Incidental transfers.
Sec. 1517. Reference.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

Sec. 1601. Retention of security sensitive information authority at Department of Transportation.
Sec. 1602. Increase in civil penalties.
Sec. 1603. Allowing United States citizens and United States nationals as screeners.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 1701. Inspector General Act of 1978.
Sec. 1702. Executive Schedule.
Sec. 1703. United States Secret Service.
Sec. 1704. Coast Guard.
Sec. 1705. Strategic national stockpile and smallpox vaccine development.
Sec. 1706. Transfer of certain security and law enforcement functions and authorities.
Sec. 1707. Transportation security regulations.
Sec. 1708. National Bio-Weapons Defense Analysis Center.
Sec. 1709. Collaboration with the Secretary of Homeland Security.
Sec. 1710. Railroad safety to include railroad security.
Sec. 1711. Hazmat safety to include hazmat security.
Sec. 1712. Office of Science and Technology Policy.
Sec. 1713. National Oceanographic Partnership Program.
Sec. 1714. Clarification of definition of manufacturer.
Sec. 1715. Clarification of definition of vaccine-related injury or death.
Sec. 1716. Clarification of definition of vaccine.
Sec. 1717. Effective date.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms "American homeland" and "homeland" means the United States.

(2) The term "appropriate congressional committee" means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term "critical infrastructure" has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term "Department" means the Department of Homeland Security.

(6) The term "emergency response providers" includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term "executive agency" means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term "key resources" means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term "local government" means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term "major disaster" has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term "personnel" means officers and employees.

(13) The term "Secretary" means the Secretary of Homeland Security.

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term "terrorism" means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term "United States", when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this Act shall be construed to modify the definition of "United States" for the purposes of the Immigration and Nationality Act or any other immigration or nationality law.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) A Director of the Bureau of Citizenship and Immigration Services.

(7) An Under Secretary for Management.

(8) Not more than 12 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the department.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Officer for Civil Rights and Civil Liberties.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) UNDER SECRETARY OF HOMELAND SECURITY FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—

(1) IN GENERAL.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) RESPONSIBILITIES.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS; ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—

(1) ASSISTANT SECRETARY FOR INFORMATION ANALYSIS.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) ASSISTANT SECRETARY FOR INFRASTRUCTURE PROTECTION.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) RESPONSIBILITIES.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) DISCHARGE OF INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) RESPONSIBILITIES OF UNDER SECRETARY.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public advisories related to threats to homeland security; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) Private Sector Analysts.—Analysts under this subsection may include analysts from the private sector.

(3) Security Clearances.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) Detail of Personnel.—

(1) In General.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) Covered Agencies.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) Cooperative Agreements.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) Basis.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) Functions Transferred.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) Inclusion of Certain Elements of the Department as Elements of the Intelligence Community.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking "and" at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and".

SEC. 202. ACCESS TO INFORMATION.

(a) In General.—

(1) Threat and Vulnerability Information.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) Other Information.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) Manner of Access.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) Treatment Under Certain Laws.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107-56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) Access to Intelligence and Other Information.—

(1) Access by Elements of Federal Government.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) Sharing of Information.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

Subtitle B—Critical Infrastructure Information

SEC. 211. SHORT TITLE.

This subtitle may be cited as the "Critical Infrastructure Information Act of 2002".

SEC. 212. DEFINITIONS.

In this subtitle:

(1) Agency.—The term "agency" has the meaning given it in section 551 of title 5, United States Code.

(2) Covered Federal Agency.—The term "covered Federal agency" means the Department of Homeland Security.

(3) Critical Infrastructure Information.—The term "critical infrastructure information" means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) Critical Infrastructure Protection Program.—The term "critical infrastructure protection program" means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) Information Sharing and Analysis Organization.—The term "Information Sharing and Analysis Organization" means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) Protected System.—The term "protected system"—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) Voluntary.—

(A) In General.—The term "voluntary", in the case of any submittal of critical infrastructure information to a covered Federal agency,

means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) Exclusions.—The term "voluntary"—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(l)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) Protection.—

(1) In general.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) Express statement.—For purposes of paragraph (1), the term "express statement", with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: "This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002."; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) Limitation.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) Independently Obtained Information.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) Treatment of Voluntary Submittal of Information.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) Procedures.—

(1) In general.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) Elements.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) Penalties.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) Authority To Issue Warnings.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) Authority To Delegate.—The President may delegate authority to a critical infrastructure protection program, designated under section 213, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle C—Information Security

SEC. 221. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

SEC. 224. NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as "NET Guard", comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the "Cyber Security Enhancement Act of 2002".

(b) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.—

(1) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) STUDY AND REPORT ON COMPUTER CRIMES.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) EMERGENCY DISCLOSURE EXCEPTION.—

(1) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking "or" at the end;

(B) in paragraph (6)(A), by inserting "or" at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

"(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.".

(2) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting "or 2511(2)(i)" after "2511(3)".

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting "or disseminates by electronic means" after "or other publication"; and

(2) by inserting "knowing the content of the advertisement and" before "knowing or having reason to know".

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting "except as provided in paragraph (5)," before "a fine under this title";

(3) in paragraph (4)(C), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

"(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.".

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting ", statutory authorization" after "subpoena".

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting ", statutory authorization," after "court order" the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(C) an immediate threat to a national security interest; or

"(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;".

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting ", or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State" after "commercial gain";

(B) in paragraph (1)(A), by striking "one year" and inserting "5 years";

(C) in paragraph (1)(B), by striking "two years" and inserting "10 years"; and

(D) by striking paragraph (2) and inserting the following:

"(2) in any other case—

"(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

"(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.".

Subtitle D—Office of Science and Technology

SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the "Office").

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 232. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as-necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) COMPETITION REQUIRED.—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) INFORMATION FROM FEDERAL AGENCIES.—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) PUBLICATIONS.—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) TRANSFER OF FUNDS.—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) ANNUAL REPORT.—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this title, the term "law enforcement technology" includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) AUTHORITY TO TRANSFER FUNCTIONS.—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) TRANSFER OF PERSONNEL AND ASSETS.—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office.

(c) REPORT ON IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as "Centers") and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) PURPOSE OF CENTERS.—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) ANNUAL MEETING.—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting "coordinate and" before "provide".

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting ", including cost effectiveness where practical," before "of projects"; and

(2) by striking "and" after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting "; and", and by adding at the end the following:

"(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

"(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.".

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as "select agents" in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 302(2).

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(c) ADMINISTRATION OF COUNTERMEASURES AGAINST SMALLPOX.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding the following:

"(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

"(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

"(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

"(A) AUTHORITY TO ISSUE DECLARATION.—

"(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

"(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (8)(A)) for purposes of administration to individuals during the effective period of the declaration.

"(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

"(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

"(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

"(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

"(ii)(I) the individual was within a category of individuals covered by the declaration; or

"(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

"(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

"(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

"(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

"(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in accordance with the terms of such declaration and as described by subparagraph (B).

"(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

"(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

"(II) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

"(3) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.

"(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

"(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

"(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney

General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

"(5) DEFENDANT TO COOPERATE WITH UNITED STATES.—

"(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

"(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

"(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

"(ii) the United States shall not be liable based on the acts or omissions of such person; and

"(iii) the Attorney General shall not be obligated to defend such action.

"(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

"(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

"(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

"(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

"(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', or 'covered countermeasure against smallpox', means a substance that is—

"(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

"(II) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

"(ii) specified in a declaration under paragraph (2).

"(B) COVERED PERSON.—The term 'covered person', when used with respect to the administration of a covered countermeasure, includes any person who is—

"(i) a manufacturer or distributor of such countermeasure;

"(ii) a health care entity under whose auspices such countermeasure was administered;

"(iii) a qualified person who administered such countermeasure; or

"(iv) an official, agent, or employee of a person described in clause (i), (ii), or (iii).

"(C) QUALIFIED PERSON.—The term 'qualified person', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.".

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 308.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 303(1)(D) of this Act, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term "Fund" means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) HOMELAND SECURITY RESEARCH.—The term "homeland security research" means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term "HSARPA" means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) UNDER SECRETARY.—The term "Under Secretary" means the Under Secretary for Science and Technology.

(b) HSARPA.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105–261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 302(4) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 302(14); and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(A) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) CRITERIA FOR SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) DISCRETION OF SECRETARY.—The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—

(1) CONSULTATION.—In carrying out the duties under section 302, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) LABORATORIES.—The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) LIMITATION ON OPERATION OF LABORATORIES.—No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

(1) IN GENERAL.—In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any "work for others" basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—

(1) LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) SITES.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) FEDERAL ACQUISITION REGULATION.—Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of that Act (15 U.S.C. 3710, 3710a).

(e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

(g) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title XV, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180

days after the completion of the transition period (as defined in section 1501.

SEC. 311. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) Establishment.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) Membership.—

(1) Appointment.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) National research council.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) Terms of Office.—

(1) In general.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) Original appointments.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

(3) Vacancies.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) Eligibility.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(e) Meetings.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) Quorum.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) Conflict of Interest Rules.—The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) Reports.—

(1) Annual report.—The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) Additional reports.—The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA Exemption.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(j) Termination.—The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this Act.

SEC. 312. HOMELAND SECURITY INSTITUTE.

(a) Establishment.—The Secretary shall establish a federally funded research and development center to be known as the "Homeland Security Institute" (in this section referred to as the "Institute").

(b) Administration.—The Institute shall be administered as a separate entity by the Secretary.

(c) Duties.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) Consultation on Institute Activities.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded research and development centers.

(e) Use of Centers.—The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

(f) Annual Reports.—The Institute shall transmit to the Secretary and Congress an annual report on the activities of the Institute under this section.

(g) Termination.—The Homeland Security Institute shall terminate 3 years after the effective date of this Act.

SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) Establishment of Program.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) Elements of Program.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) Miscellaneous Provisions.—

(1) In general.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) Certain proposals.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) Coordination.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.

(4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subtitle C, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

Subtitle B—United States Customs Service

SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

"Commissioner of Customs, Department of the Treasury"

and inserting

"Commissioner of Customs, Department of Homeland Security.".

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 413. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 415. DEFINITION.

In this subtitle, the term "customs revenue function" means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 416. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) DEFINITION.—In this section, the term "customs revenue services" means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 415.

SEC. 418. REPORTS TO CONGRESS.

(a) CONTINUING REPORTS.—The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

SEC. 419. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

"(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).";

(2) in paragraph (4), by striking "(other than the excess fees determined by the Secretary under paragraph (5))"; and

(3) by striking paragraph (5) and inserting the following:

"(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

"(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

"(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.".

(b) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

Subtitle C—Miscellaneous Provisions

SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term "functions" does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 1501, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period defined under section 1501, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting "or the Department of Homeland Security" after "Department of Agriculture"; and

(B) by inserting "or the Secretary of Homeland Security" after "Secretary of Agriculture";

(2) by striking "Secretary" each place it appears (other than in sections 501(a) and 501(e)) and inserting "Secretary concerned"; and

(3) by adding at the end of section 501 the following new subsection:

"(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

"(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

"(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.".

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 490(f) of title 40, United States Code.

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 425 of this Act.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 425. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

"(2) DEADLINE.—

"(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

"(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

"(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

"(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

"(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

"(ii) the need to ensure that such installations and modifications are effective; and

"(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

"(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

"(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

"(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

"(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

"(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.".

SEC. 426. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

"(A) The Secretary of Homeland Security, or the Secretary's designee.".

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

"(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.".

SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term "affected agency" means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this subsection, the term "consular office" has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999); 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) CONSULAR OFFICERS AND CHIEFS OF MISSIONS.—

(1) IN GENERAL.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) FUNCTIONS.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) EVALUATION OF CONSULAR OFFICERS.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) REPORT.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) TRAINING AND HIRING.—

(A) IN GENERAL.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) USE OF CENTER.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) EFFECTIVE DATE.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.

(a) IN GENERAL.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) PROHIBITION.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.

(a) IN GENERAL.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) DIRECTOR.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) RESPONSIBILITIES.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate; and

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

(d) FISCAL YEARS 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

Subtitle D—Immigration Enforcement Functions

SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title XV (relating to transition provisions), there shall be transferred *from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:*

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) Establishment of Bureau.—

(1) In general.—There shall be in the Department of Homeland Security a bureau to be known as the "Bureau of Border Security".

(2) Assistant secretary.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) Functions.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 441 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under subtitle E, including potentially conflicting policies or operations.

(4) Program to collect information relating to foreign students.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) Managerial rotation program.—

(A) In general.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) Report.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) Chief of Policy and Strategy.—

(1) In general.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) Functions.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under subtitle E), as appropriate.

(c) Legal Advisor.—There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 444. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) In General.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) Consultation.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

Subtitle E—Citizenship and Immigration Services

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) Establishment of Bureau.—

(1) In general.—There shall be in the Department a bureau to be known as the "Bureau of Citizenship and Immigration Services".

(2) Director.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) Functions.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) Managerial rotation program.—

(A) In general.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) Report.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) Pilot initiatives for backlog elimination.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) Transfer of Functions From Commissioner.—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the "Ombudsman"). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 454. EMPLOYEE DISCIPLINE.

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

SEC. 455. EFFECTIVE DATE.

Notwithstanding section 4, sections 451 through 456, and the amendments made by such *sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.*

SEC. 456. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.

(2) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.".

SEC. 458. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking "not later than one year after the date of enactment of this Act;" and inserting "1 year after the date of the enactment of the Homeland Security Act of 2002;".

SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the "Technology Advisory Committee") to assist the Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b).

The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 462. CHILDREN'S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they are not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term "placement" means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term "unaccompanied alien child" means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term "covered entity" means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term "transfer date" means the date on which the transfer of functions specified under section 441 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the "appropriate committees of Congress" are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this

section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) Final basic pay defined.—In this subsection, the term "final basic pay" means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) Effect of Subsequent Employment With the Government.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) Effect on Employment Levels.—

(1) Intended effect.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) Use of voluntary separations.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) In General.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) Scope.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) Procedures.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) Actions Involving Discrimination.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) Certain Employees.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code.

Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) Reports.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) Definition.—In this section, the term "covered entity" has the meaning given such term in section 472(a)(2).

SEC. 474. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 475. DIRECTOR OF SHARED SERVICES.

(a) In General.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) Functions.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

SEC. 476. SEPARATION OF FUNDING.

(a) In General.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) Separate Budgets.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) Fees.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) Fees Not Transferable.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 477. REPORTS AND IMPLEMENTATION PLANS.

(a) Division of Funds.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) Division of Personnel.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) Implementation Plan.—

(1) In general.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) Contents.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) Comptroller General Studies and Reports.—

(1) Status reports on transition.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) Report on management.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 478. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed "FIRESAT".

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 506. DEFINITION.

In this title, the term "Nuclear Incident Response Team" means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through

providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) Federal Response Plan.—

(1) Role of FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) Revision of response plan.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS IN EMERGENCY RESPONSE.

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

SEC. 509. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) Findings.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) Designation of Johnny Micheal Spann Patriot Trusts.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a "Johnny Micheal Spann Patriot Trust".

(c) Requirements for the Designation of Johnny Micheal Spann Patriot Trusts.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) Treatment of Johnny Micheal Spann Patriot Trusts.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) Notification of Trust Beneficiaries.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) Regulations.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

TITLE VII—MANAGEMENT

SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) In General.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations; expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) Immigration.—

(1) In General.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) Transfer of Functions.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(F) Adjudication of immigrant visa petitions.

(G) Adjudication of naturalization petitions.

(H) Adjudication of asylum and refugee applications.

(I) Adjudications performed at service centers.

(J) All other adjudications performed by the Immigration and Naturalization Service.

SEC. 702. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 703. CHIEF INFORMATION OFFICER.

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 704. CHIEF HUMAN CAPITAL OFFICER.

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) In General.—The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer.

(b) Report.—The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) and any actions taken by the Department in response to such allegations.

SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such offices are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) Establishment.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) Responsibilities.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Subtitle B—Inspector General

SEC. 811. AUTHORITY OF THE SECRETARY.

(a) In General.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) Prohibition of Certain Investigations.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) Notification Required.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of Congress.

(d) Access to Information by Congress.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) Oversight Responsibility—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

"SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"Sec. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.".

SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) In General.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

"(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

"(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

"(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

"(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

"(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

"(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

"(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

"(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

"(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

"(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

"(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

"(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

"(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

"(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

"(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.".

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term "memoranda of understanding" means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

Subtitle C—United States Secret Service

SEC. 821. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle D—Acquisitions

SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the 5-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term "nontraditional Government contractor" has the same meaning as the term "nontraditional defense contractor" as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 832. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) DELEGATION.—The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the

President with the advice and consent of the Senate.

(3) NOTIFICATION.—Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—

(1) IN GENERAL.—The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

(2) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.

(2) CONFORMING AMENDMENTS.—Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by adding at the end the following:

"(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002.".

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) LIMITATION.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 834. UNSOLICITED PROPOSALS.

(a) REGULATIONS REQUIRED.—Within 1 year of the date of enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) CONTENT OF REGULATIONS.—The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term "expanded affiliated group" means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term "foreign incorporated entity" means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms "person", "domestic", and "foreign" have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701 (a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVERS.—The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

Subtitle E—Human Resources Management

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and

have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

"Sec.

"9701. Establishment of human resources management system.

"§9701. Establishment of human resources management system

"(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

"(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

"(1) be flexible;

"(2) be contemporary;

"(3) not waive, modify, or otherwise affect—

"(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

"(B) any provision of section 2302, relating to prohibited personnel practices;

"(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

"(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

"(I) providing for equal employment opportunity through affirmative action; or

"(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

"(D) any other provision of this part (as described in subsection (c)); or

"(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

"(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

"(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

"(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

"(1) subparts A, B, E, G, and H of this part; and

"(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

"(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

"(1) to modify the pay of any employee who serves in—

"(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

"(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

"(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

"(3) to exempt any employee from the application of such section 5307.

"(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

"(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

"(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

"(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

"(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

"(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

"(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

"(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

"(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

"(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

"(C) IMPLEMENTATION.—

"(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

"(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

"(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

"(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

"(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

"(ii) give each employee representative adequate access to information to make that participation productive.

"(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

"(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

"(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

"(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

"(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

"(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

"(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

"(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

"(A) shall be issued only after consultation with the Merit Systems Protection Board;

"(B) shall ensure the availability of procedures which shall—

"(i) be consistent with requirements of due process; and

"(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

"(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

"(g) PROVISIONS RELATING TO LABOR-MANAGEMENT RELATIONS.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify

any of the provisions of section 842 of the Homeland Security Act of 2002.

"(h) Sunset Provision.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.".

(3) Technical and Conforming Amendment.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

"97. Department of Homeland Security 9701".

(b) Effect on Personnel.—

(1) Nonseparation or Nonreduction in Grade or Compensation of Full-Time Personnel and Part-Time Personnel Holding Permanent Positions.—Except as otherwise provided in this Act, the transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) Positions Compensated in Accordance with Executive Schedule.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) Coordination Rule.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) Limitation on Exclusionary Authority.—

(1) In general.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) Exclusions allowable.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) Provisions Relating to Bargaining Units.—

(1) Limitation relating to appropriate units.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) Limitation relating to positions or employees.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) Waiver.—If the President determines that the application of subsections (a), (b), and (d) would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) Coordination Rule.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(e) Rule of construction.—Nothing in section 9701(e) of title 5, United States Code, shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5, United States Code, by virtue of an order issued in accordance with section 7103(b) of such title and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 851. DEFINITION.

In this subtitle, the term "executive agency" has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) Temporary Threshold Amounts.—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.

(b) Simplified Acquisition Threshold Definitions.—In this section, the term "simplified acquisition threshold definitions" means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) Small Business Reserve.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 852, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) Authority.—

(1) In general.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

(2) Commercial item laws.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) Inapplicability of Limitation on Use of Simplified Acquisition Procedures.—

(1) In general.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB guidance.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) Continuation of Authority for Simplified Purchase Procedures.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 856. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 852.

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

SEC. 861. SHORT TITLE.

This subtitle may be cited as the "Support Anti-terrorism by Fostering Effective Technologies Act of 2002" or the "SAFETY Act".

SEC. 862. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States, Code, as may be necessary to carry out this subtitle.

SEC. 863. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) DEFINITION.—For purposes of subparagraph (A), the term "noneconomic damages" means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—

(1) IN GENERAL.—Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) EXCLUSIVE RESPONSIBILITY.—The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) CERTIFICATE.—For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT.

(a) IN GENERAL.—

(1) LIABILITY INSURANCE REQUIRED.—Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal government customers ("Seller") shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) MAXIMUM AMOUNT.—For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) SCOPE OF COVERAGE.—Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) THIRD PARTY CLAIMS.—Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 865. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term "qualified anti-terrorism technology" means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term "act of terrorism" means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term "insurance carrier" means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term "liability insurance" means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term "loss" means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term "non-Federal Government customers" means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle H—Miscellaneous Provisions

SEC. 871. ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

(b) TERMINATION.—Any advisory committee established by the Secretary shall terminate 2 years after the date of its establishment, unless the Secretary makes a written determination to extend the advisory committee to a specified date, which shall not be more than 2 years after the date on which such determination is made. The Secretary may make any number of subsequent extensions consistent with this subsection.

SEC. 872. REORGANIZATION.

(a) REORGANIZATION.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(1) pursuant to section 1502(b); or

(2) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(b) LIMITATIONS.—

(1) IN GENERAL.—Authority under subsection (a)(1) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(2) ABOLITIONS.—Authority under subsection (a)(2) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

SEC. 875. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation *has with respect to the Department of Transportation under section 324 of title 49, United States Code.*

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.

(a) REGULATORY AUTHORITY.—Except as otherwise provided in sections 306(c), 862(c), and 1706(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

SEC. 878. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

(A) Exchange of information on research and development on homeland security technologies.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the "Posse Comitatus Act"), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the "Insurrection Act"), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

SEC. 887. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term "non-homeland security missions" means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term "homeland security missions" means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(i) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.

(a) IN GENERAL.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

"(33)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

"(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

"(II) an estimate of the current service levels of homeland security spending;

"(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

"(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

"(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

"(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

"(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 'Annual Report to Congress on Combatting Terrorism', the term 'homeland security' refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

"(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Committees, the House and Senate Appropriations Committees, and the Congressional Budget Office.".

(b) REPEAL OF DUPLICATIVE REPORTS.—The following sections are repealed:

(1) Section 1051 of Public Law 105–85.

(2) Section 1403 of Public Law 105–261.

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall apply beginning with respect to the fiscal year 2005 budget submission.

SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

"(1) AIR CARRIER.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after and commenced services no later than February 17, 2002, to provide such security, and had not been or are not debarred for any period within 6 months from that date.".

Subtitle I—Information Sharing

SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CONGRESS.

(a) SHORT TITLE.—This subtitle may be cited as the "Homeland Security Information Sharing Act".

(b) FINDINGS.—Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) SENSE OF CONGRESS.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) RESPONSIBLE OFFICIALS.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) FEDERAL CONTROL OF INFORMATION.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) DEFINITIONS.—As used in this section:

(1) The term "homeland security information" means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term "intelligence community" has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "State and local personnel" means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 893. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 894. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 892.

SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6"; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting "or of a foreign government" after "(including personnel of a state or subdivision of a state";

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: "or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation";

(ii) in subclause (IV)—

(I) by inserting "or foreign" after "may disclose a violation of State";

(II) by inserting "or of a foreign government" after "to an appropriate official of a State or subdivision of a State"; and

(III) by striking "or" at the end;

(iii) by striking the period at the end of subclause (V) and inserting "; or"; and

(iv) by adding at the end the following:

"(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat."; and

(C) in subparagraph (C)(iii)—

(i) by striking "Federal";

(ii) by inserting "or clause (i)(VI)" after "clause (i)(V)"; and

(iii) by adding at the end the following: "Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

"(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

"(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: "Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking "section 2517(6)" and inserting "paragraphs (6) and (8) of section 2517 of title 18, United States Code,"; and

(2) by inserting "and (VI)" after "Rule 6(e)(3)(C)(i)(V)".

SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the "Homeland Security Council" (in this title referred to as the "Council").

SEC. 902. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 903. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 905. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

TITLE X—INFORMATION SECURITY

SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the "Federal Information Security Management Act of 2002".

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

"SUBCHAPTER II—INFORMATION SECURITY

"§3531. Purposes

"The purposes of this subchapter are to—

"(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

"(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

"(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

"(4) provide a mechanism for improved oversight of Federal agency information security programs;

"(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

"(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.".

"§3532. Definitions

"(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

"(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

"(1) the term 'information security' means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

"(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

"(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

"(C) availability, which means ensuring timely and reliable access to and use of information; and

"(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

"(2) the term 'national security system' means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

"(A) involves intelligence activities;

"(B) involves cryptologic activities related to national security;

"(C) involves command and control of military forces;

"(D) involves equipment that is an integral part of a weapon or weapons system; or

"(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

"(3) the term 'information technology' has the meaning given that term in section 11101 of title 40; and

"(4) the term 'information system' means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

"(A) computers and computer networks;

"(B) ancillary equipment;

"(C) software, firmware, and related procedures;

"(D) services, including support services; and

"(E) related resources.".

"§3533. Authority and functions of the Director

"(a) The Director shall oversee agency information security policies and practices, by—

"(1) promulgating information security standards under section 11331 of title 40;

"(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

"(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

"(A) information collected or maintained by or on behalf of an agency; or

"(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

"(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

"(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

"(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

"(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

"(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

"(A) a summary of the findings of evaluations required by section 3535;

"(B) significant deficiencies in agency information security practices;

"(C) planned remedial action to address such deficiencies; and

"(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g-3).".

"(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

"§3534. Federal agency responsibilities

"(a) The head of each agency shall—

"(1) be responsible for—

"(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

"(i) information collected or maintained by or on behalf of the agency; and

"(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

"(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

"(i) information security standards promulgated by the Director under section 11331 of title 40; and

"(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

"(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

"(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

"(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

"(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

"(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

"(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

"(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance

with the requirements imposed on the agency under this subchapter, including—

“(A) designating a senior agency information security officer who shall—

“(i) carry out the Chief Information Officer's responsibilities under this section;

“(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

“(iii) have information security duties as that official's primary duty; and

“(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

“(B) developing and maintaining an agencywide information security program as required by subsection (b);

“(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

“(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

“(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

“(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

“(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

“(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

“(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

“(2) policies and procedures that—

“(A) are based on the risk assessments required by paragraph (1);

“(B) cost-effectively reduce information security risks to an acceptable level;

“(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

“(D) ensure compliance with—

“(i) the requirements of this subchapter;

“(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

“(iii) minimally acceptable system configuration requirements, as determined by the agency; and

“(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

“(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

“(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

“(A) information security risks associated with their activities; and

“(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

“(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

“(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

“(B) may include testing relied on in a evaluation under section 3535;

“(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

“(7) procedures for detecting, reporting, and responding to security incidents, including—

“(A) mitigating risks associated with such incidents before substantial damage is done; and

“(B) notifying and consulting with, as appropriate—

“(i) law enforcement agencies and relevant Offices of Inspector General;

“(ii) an office designated by the President for any incident involving a national security system; and

“(iii) any other agency or office, in accordance with law or as directed by the President; and

“(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

“(c) Each agency shall—

“(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

“(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

“(A) annual agency budgets;

“(B) information resources management under subchapter 1 of this chapter;

“(C) information technology management under subtitle III of title 40;

“(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

“(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

“(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

“(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the ‘Federal Managers Financial Integrity Act’); and

“(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

“(A) as a material weakness in reporting under section 3512 of title 31; and

“(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

“(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

“(A) the time periods, and

“(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

“(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

“(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

“§3535. Annual independent evaluation

“(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

“(2) Each evaluation by an agency under this section shall include—

“(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

“(B) an assessment (made on the basis of the results of the testing) of compliance with—

“(i) the requirements of this subchapter; and

“(ii) related information security policies, procedures, standards, and guidelines; and

“(C) separate presentations, as appropriate, regarding information security relating to national security systems.

“(b) Subject to subsection (c)—

“(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

“(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

“(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

“(1) only by an entity designated by the agency head; and

“(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

“(d) The evaluation required by this section—

“(1) shall be performed in accordance with generally accepted government auditing standards; and

“(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

“(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

“(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

“(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

“(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to

ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

"(h) The Comptroller General shall periodically evaluate and report to Congress on—

"(1) the adequacy and effectiveness of agency information security policies and practices; and

"(2) implementation of the requirements of this subchapter.

"§3536. National security systems

"The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

"(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

"(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

"(3) complies with the requirements of this subchapter.

"§3537. Authorization of appropriations

"There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

"§3538. Effect on existing law

"Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.".

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading "SUBCHAPTER II" are amended to read as follows:

"3531. Purposes.
"3532. Definitions.
"3533. Authority and functions of the Director.
"3534. Federal agency responsibilities.
"3535. Annual independent evaluation.
"3536. National security systems.
"3537. Authorization of appropriations.
"3538. Effect on existing law.".

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking "(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)" and inserting "(b) OBJECTIVES OF THE PROGRAM.—";

(ii) in subsection 2224(b), by striking "(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code."; and

(iii) in subsection 2224(c), by inserting ", including through compliance with subtitle II of chapter 35 of title 44" after "infrastructure".

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Section 11331 of title 40, United States Code, is amended to read as follows:

"§11331. Responsibilities for Federal information systems standards

"(a) DEFINITION.—In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44.

"(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

"(1) IN GENERAL.—

"(A) REQUIREMENT.—Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

"(B) REQUIRED STANDARDS.—Standards promulgated under subparagraph (A) shall include—

"(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

"(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

"(C) REQUIRED STANDARDS BINDING.—Information security standards described under subparagraph (B) shall be compulsory and binding.

"(2) STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

"(c) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

"(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

"(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

"(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.—

"(1) DEADLINE.—The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

"(2) NOTICE AND COMMENT.—A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, is amended by striking the item relating to section 11331 and inserting the following:

"11331. Responsibilities for Federal information systems standards.".

SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

"(a) The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

"(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

"(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

"(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

"(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

"(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

"(B) guidelines recommending the types of information and information systems to be included in each such category; and

"(C) minimum information security requirements for information and information systems in each such category;

"(2) a definition of and guidelines concerning detection and handling of information security incidents; and

"(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

"(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

"(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

"(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

"(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code—

"(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

"(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

"(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

"(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

"(d) The Institute shall—

"(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

"(2) provide assistance to agencies regarding—

"(A) compliance with the standards and guidelines developed under subsection (a);

"(B) detecting and handling information security incidents; and

"(C) information security policies, procedures, and practices;

"(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

"(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

"(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

"(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

"(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

"(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

"(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

"(e) As used in this section—

"(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

"(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

"(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

"(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40, United States Code; and

"(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.".

SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking "Computer System Security and Privacy Advisory Board" and inserting "Information Security and Privacy Advisory Board";

(2) in subsection (a)(1), by striking "computer or telecommunications" and inserting "information technology";

(3) in subsection (a)(2)—

(A) by striking "computer or telecommunications technology" and inserting "information technology"; and

(B) by striking "computer or telecommunications equipment" and inserting "information technology";

(4) in subsection (a)(3)—

(A) by striking "computer systems" and inserting "information system"; and

(B) by striking "computer systems security" and inserting "information security";

(5) in subsection (b)(1) by striking "computer systems security" and inserting "information security";

(6) in subsection (b) by striking paragraph (2) and inserting the following:

"(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and";

(7) in subsection (b)(3) by inserting "annually" after "report";

(8) by inserting after subsection (e) the following new subsection:

"(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.";

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

"(h) As used in this section, the terms "information system" and "information technology" have the meanings given in section 20.".

SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.

(a) FEDERAL COMPUTER SYSTEM SECURITY TRAINING AND PLAN.—

(1) REPEAL.—Section 11332 of title 40, United States Code, is repealed.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, as amended by striking the item relating to section 11332.

(b) FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X (44 U.S.C. 3531 note).

(c) PAPERWORK REDUCTION ACT.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "sections 11331 and 11332(b) and (c) of title 40" and inserting "section 11331 of title 40 and subchapter II of this title"; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end the following:

"(c) INVENTORY OF INFORMATION SYSTEMS.—(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

"(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

"(3) Such inventory shall be—

"(A) updated at least annually;

"(B) made available to the Comptroller General; and

"(C) used to support information resources management, including—

"(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

"(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

"(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

"(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

"(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

"(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.".

(3) Section 3506(g) of such title is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "section 11332 of title 40" and inserting "subchapter II of this chapter"; and

(ii) by striking "; and" and inserting a period; and

(C) by striking paragraph (3).

SEC. 1006. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

SEC. 1101. LEGAL STATUS OF EOIR.

(a) EXISTENCE OF EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1102.

SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows:

"POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL";

(2) in subsection (a)—

(A) by inserting "Attorney General," after "President,"; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

"(g) ATTORNEY GENERAL.—

"(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

"(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.".

SEC. 1103. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1102, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the "Bureau").

(2) DIRECTOR.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the "Director"). The Director shall be appointed by the Attorney General and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V, United States Code, for positions at level III of the Executive Schedule.

(3) COORDINATION.—The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(4) PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) ADMINISTRATION AND REVENUE COLLECTION FUNCTIONS.—There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

(d) TAX AND TRADE BUREAU.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) RESPONSIBILITIES.—The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8D(b)(1) by striking "Bureau of Alcohol, Tobacco and Firearms" and inserting "Tax and Trade Bureau"; and

(2) in section 9(a)(1)(L)(i), by striking "Bureau of Alcohol, Tobacco, and Firearms" and inserting "Tax and Trade Bureau".

(b) Section 1109(c)(2)(A)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by striking "(on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms" and inserting "by manufacturers of tobacco products to the Tax and Trade Bureau".

(c) Section 2(4)(J) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173; 8 U.S.C.A. 1701(4)(J)) is amended by striking "Bureau of Alcohol, Tobacco, and Firearms" and inserting "Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice".

(d) Section 3(1)(E) of the Firefighters' Safety Study Act (15 U.S.C. 2223b(1)(E)) is amended by striking "the Bureau of Alcohol, Tobacco, and Firearms," and inserting "the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,".

(e) Chapter 40 of title 18, United States Code, is amended—

(1) by striking section 841(k) and inserting the following:

"(k) 'Attorney General' means the Attorney General of the United States.";

(2) in section 846(a), by striking "the Attorney General and the Federal Bureau of Investigation, together with the Secretary" and inserting "the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives"; and

(3) by striking "Secretary" each place it appears and inserting "Attorney General".

(f) Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a)(4)(B), by striking "Secretary" and inserting "Attorney General";

(2) in section 921(a)(4), by striking "Secretary of the Treasury" and inserting "Attorney General";

(3) in section 921(a), by striking paragraph (18) and inserting the following:

"(18) The term 'Attorney General' means the Attorney General of the United States";

(4) in section 922(p)(5)(A), by striking "after consultation with the Secretary" and inserting "after consultation with the Attorney General";

(5) in section 923(l), by striking "Secretary of the Treasury" and inserting "Attorney General"; and

(6) by striking "Secretary" each place it appears, except before "of the Army" in section 921(a)(4) and before "of Defense" in section 922(p)(5)(A), and inserting the term "Attorney General".

(g) Section 1261(a) of title 18, United States Code, is amended to read as follows:

"(a) The Attorney General—

"(1) shall enforce the provisions of this chapter; and

"(2) has the authority to issue regulations to carry out the provisions of this chapter.".

(h) Section 1952(c) of title 18, United States Code, is amended by striking "Secretary of the Treasury" and inserting "Attorney General".

(i) Chapter 114 of title 18, United States Code, is amended—

(1) by striking section 2341(5), and inserting the following:

"(5) the term 'Attorney General' means the Attorney General of the United States"; and

(2) by striking "Secretary" each place it appears and inserting "Attorney General".

(j) Section 6103(i)(8)(A)(i) of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by striking "or the Bureau of Alcohol, Tobacco and Firearms" and inserting ", the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury,".

(k) Section 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury) is amended—

(1) by striking "SECRETARY.—Except" and inserting "SECRETARY.—

"(1) IN GENERAL.—Except"; and

(2) by adding at the end the following:

"(2) ADMINISTRATION AND ENFORCEMENT OF CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

"(A) IN GENERAL.—The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term 'Secretary' or 'Secretary of the Treasury' shall, when applied to those provisions, mean the Attorney General; and the term 'internal revenue officer' shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

"(i) Chapter 53.

"(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

"(B) USE OF EXISTING RULINGS AND INTERPRETATIONS.—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.".

(l) Section 2006(2) of title 28, United States Code, is amended by inserting ", the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice," after "the Secretary of the Treasury".

(m) Section 713 of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

"§713. Audit of Internal Revenue Service, Tax and Trade Bureau, and Bureau of Alcohol, Tobacco, Firearms, and Explosives";

(2) in subsection (a), by striking "Bureau of Alcohol, Tobacco, and Firearms," and inserting "Tax and Trade Bureau, Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice"; and

(3) in subsection (b)

(A) in paragraph (1)(B), by striking "or the Bureau" and inserting "or either Bureau";

(B) in paragraph (2)—

(i) by striking "or the Bureau" and inserting "or either Bureau"; and

(ii) by striking "and the Director of the Bureau" and inserting "the Tax and Trade Bureau, Department of the Treasury, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice"; and

(C) in paragraph (3), by striking "or the Bureau" and inserting "or either Bureau".

(n) Section 9703 of title 31, United States Code, is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii)(III), by inserting "and" after the semicolon;

(B) in clause (iv), by striking "; and" and inserting a period; and

(C) by striking clause (v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated by paragraph (3), by striking "Bureau of Alcohol, Tobacco and Firearms" and inserting "Tax and Trade Bureau".

(o) Section 609N(2)(L) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking "Bureau of Alcohol, Tobacco, and Firearms" and inserting "Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice".

(p) Section 32401(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is amended—

(1) by striking "Secretary of the Treasury" each place it appears and inserting "Attorney General"; and

(2) in subparagraph (3)(B), by striking "Bureau of Alcohol, Tobacco and Firearms" and inserting "Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice".

(q) Section 80303 of title 49, United States Code, is amended—

(1) by inserting "or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General" after "section 80304 of this title."; and

(2) by inserting ", the Attorney General," after "by the Secretary".

(r) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "(b) and (c)" and inserting "(b), (c), and (d)";

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c), the following:

"(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302 (a)(2) or (a)(5).".

(s) Section 103 of the Gun Control Act of 1968 (Public Law 90–618; 82 Stat. 1226) is amended by striking "Secretary of the Treasury" and inserting "Attorney General".

SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

Chapter 203 of title 18, United States Code, is amended by adding the following:

"§3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

"(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

"(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

"(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property;

"(B) the disposition of such property;

"(C) the remission or mitigation of such forfeiture; and

"(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

"(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

"(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.".

SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) ESTABLISHMENT.—There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) PURPOSE.—The facility established under subsection (a) shall be utilized to train Federal, State, and local law enforcement officers to—

(1) investigate bombings and explosions;

(2) properly handle, utilize, and dispose of explosive materials and devices;

(3) train canines on explosive detection; and

(4) conduct research on explosives.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to establish and maintain the facility established under subsection (a).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION PROJECT.

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

Subtitle C—Explosives

SEC. 1121. SHORT TITLE.

This subtitle may be referred to as the "Safe Explosives Act".

SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter."; and

(2) by adding at the end the following:

"(r) 'Alien' means any person who is not a citizen or national of the United States.

"(s) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.".

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking "and" at the end;

(2) by striking subsection (a)(3) and inserting the following:

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive any explosive materials; or

"(B) to distribute explosive materials to any person other than a licensee or permittee; or

"(4) who is a holder of a limited permit—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

"(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder."; and

(3) by striking subsection (b) and inserting the following:

"(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

"(1) a licensee;

"(2) a holder of a user permit; or

"(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.".

(c) LICENSES AND USER PERMITS.—Section 843(a) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting "or limited permit" after "user permit"; and

(B) by inserting before the period at the end the following: ", including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person";

(2) in the second sentence, by striking "$200 for each" and inserting "$50 for a limited permit and $200 for any other"; and

(3) by striking the third sentence and inserting "Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.".

(d) CRITERIA FOR APPROVING LICENSES AND PERMITS.—Section 843(b) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);";

(2) in paragraph (4)—

(A) by inserting "(A) the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that" before "the applicant"; and

(B) by adding at the end the following:

"(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and";

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

"(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.".

(e) APPLICATION APPROVAL.—Section 843(c) of title 18, United States Code, is amended by striking "forty-five days" and inserting "90 days for licenses and permits,".

(f) INSPECTION AUTHORITY.—Section 843(f) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking "permittees" and inserting "holders of user permits"; and

(B) by inserting "licensees and permittees" before "shall submit";

(2) in the second sentence, by striking "permittee" the first time it appears and inserting "holder of a user permit"; and

(3) by adding at the end the following: "The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) POSTING OF PERMITS.—Section 843(g) of title 18, United States Code, is amended by inserting "user" before "permits".

(h) BACKGROUND CHECKS; CLEARANCES.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

"(h)(1) If the Secretary receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

"(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

"(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

"(i) confirms the determination;

"(ii) explains the grounds for the determination;

"(iii) provides information on how the disability may be relieved; and

"(iv) explains how the determination may be appealed.".

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) EXCEPTION.—Notwithstanding any provision of this Act, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) DISTRIBUTION OF EXPLOSIVES.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking "or" at the end;

(2) in paragraph (6), by striking the period at the end and inserting "or who has been committed to a mental institution;"; and

(3) by adding at the end the following:

"(7) is an alien, other than an alien who—

"(A) is lawfully admitted for permanent residence (as defined in section 101 (a)(20) of the Immigration and Nationality Act); or

"(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

"(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

"(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

"(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

"(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

"(8) has been discharged from the armed forces under dishonorable conditions;

"(9) having been a citizen of the United States, has renounced the citizenship of that person.".

(b) POSSESSION OF EXPLOSIVE MATERIALS.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking "or" at the end; and

(2) by inserting after paragraph (4) the following:

"(5) who is an alien, other than an alien who—

"(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

"(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

"(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

"(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

"(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

"(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

"(6) who has been discharged from the armed forces under dishonorable conditions;

"(7) who, having been a citizen of the United States, has renounced the citizenship of that person"; and

(3) by inserting "or affecting" before "interstate" each place that term appears.

SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

"(i) FURNISHING OF SAMPLES.—

"(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

"(A) samples of such explosive materials or ammonium nitrate;

"(B) information on chemical composition of those products; and

"(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

"(2) REIMBURSEMENT.—The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.".

SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the word "shall" the following: "or any institution or organization receiving Federal financial assistance,".

SEC. 1126. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

"(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

"(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

"(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.".

SEC. 1127. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(p) THEFT REPORTING REQUIREMENT.—

"(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

"(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.".

SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this subtitle and the amendments made by this subtitle.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.

Section 44303 of title 49, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "The Secretary of Transportation";

(2) by moving the text of paragraph (2) of section 201(b) of the Air Transportation Safety and System Stabilization Act (115 Stat. 235) to the end and redesignating such paragraph as subsection (b);

(3) in subsection (b) (as so redesignated)—

(A) by striking the subsection heading and inserting "AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—";

(B) in the first sentence by striking "the 180-day period following the date of enactment of this Act, the Secretary of Transportation" and inserting "the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary"; and

(C) in the last sentence by striking "this paragraph" and inserting "this subsection".

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

"(f) EXTENSION OF POLICIES.—

"(1) IN GENERAL.—The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

"(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

"(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

"(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.".

SEC. 1203. CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by striking "(b)" and inserting "(c)".

SEC. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

SEC. 1301. SHORT TITLE.

This title may be cited as the "Chief Human Capital Officers Act of 2002".

SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

"Sec.

"1401. Establishment of agency Chief Human Capital Officers.

"1402. Authority and functions of agency Chief Human Capital Officers.

"§ 1401. Establishment of agency Chief Human Capital Officers

"The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

"(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

"(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

"(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"§ 1402. Authority and functions of agency Chief Human Capital Officers

"(a) The functions of each Chief Human Capital Officer shall include—

"(1) setting the workforce development strategy of the agency;

"(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

"(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

"(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

"(5) identifying best practices and benchmarking studies, and

"(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

"(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

"(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

"(A) are the property of the agency or are available to the agency; and

"(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

"(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Agency Chief Human Capital Officers .... 1401".

SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

"(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

"(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

"(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

"(ii) integrating those strategies into the budget and strategic plans of those agencies;

"(B) closing skill gaps in mission critical occupations;

"(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

"(D) sustaining a culture that cultivates and develops a high performing workforce;

"(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

"(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.".

SEC. 1305. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Reforms Relating to Federal Human Capital Management

SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

"(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).".

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended—

(1) in paragraph (4), by striking "and" after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

"(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and".

SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking "and" after the semicolon;

(B) in paragraph (2), by striking the period and inserting "; and"; and

(C) by adding at the end of the following:

"(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

"(A) public notice has been given; and

"(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria."; and

(2) by inserting after section 3318 the following:

"§3319. Alternative ranking and selection procedures

"(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

"(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

"(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

"(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

"(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

"(1) the number of employees hired under that system;

"(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

"(3) the way in which managers were trained in the administration of that system.

"(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

"3319. Alternative ranking and selection procedures.".

SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

"SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

"§3521. Definitions

"In this subchapter, the term—

"(1) 'agency' means an Executive agency as defined under section 105; and

"(2) 'employee'—

"(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

"(i) is serving under an appointment without time limitation; and

"(ii) has been currently employed for a continuous period of at least 3 years; and

"(B) shall not include—

"(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

"(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

"(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

"(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

"(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

"(vi) any employee who—

"(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

"(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

"(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

"§3522. Agency plans; approval

"(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

"(b) The plan of an agency under subsection (a) shall include—

"(1) the specific positions and functions to be reduced or eliminated;

"(2) a description of which categories of employees will be offered incentives;

"(3) the time period during which incentives may be paid;

"(4) the number and amounts of voluntary separation incentive payments to be offered; and

"(5) a description of how the agency will operate without the eliminated positions and functions.

"(c) The Director of the Office of Personnel Management shall review each agency's plan an may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

"§3523. Authority to provide voluntary separation incentive payments

"(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

"(b) A voluntary incentive payment—

"(1) shall be offered to agency employees on the basis of—

"(A) 1 or more organizational units;

"(B) 1 or more occupational series or levels;

"(C) 1 or more geographical locations;

"(D) skills, knowledge, or other factors related to a position;

"(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

"(F) any appropriate combination of such factors;

"(2) shall be paid in a lump sum after the employee's separation;

"(3) shall be equal to the lesser of—

"(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

"(B) an amount determined by the agency head, not to exceed $25,000;

"(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

"(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

"(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

"(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

"§3524. Effect of subsequent employment with the Government

"(a) The term 'employment'—

"(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

"(2) in subsection (c) does not include employment under such a contract.

"(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

"(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

"(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

"(B) in case of an emergency involving a direct threat to life or property, the individual—

"(i) has skills directly related to resolving the emergency; and

"(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

"(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

"(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

"§3525. Regulations

"The Office of Personnel Management may prescribe regulations to carry out this subchapter.".

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

"CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT";

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

"SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

"3521. Definitions.
"3522. Agency plans; approval.
"3523. Authority to provide voluntary separation incentive payments.
"3524. Effect of subsequent employment with the Government.
"3525. Regulations.".

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

"(B) is serving under an appointment that is not time limited;

"(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

"(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

"(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

"(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

"(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

"(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

"(i) 1 or more organizational units;

"(ii) 1 or more occupational series or levels;

"(iii) 1 or more geographical locations;

"(iv) specific periods;

"(v) skills, knowledge, or other factors related to a position; or

"(vi) any appropriate combination of such factors;".

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

"(ii) is serving under an appointment that is not time limited;

"(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

"(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

"(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

"(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

"(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

"(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

"(I) 1 or more organizational units;

"(II) 1 or more occupational series or levels;

"(III) 1 or more geographical locations;

"(IV) specific periods;

"(V) skills, knowledge, or other factors related to a position; or

"(VI) any appropriate combination of such factors.".

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking "and a member of a uniformed service" and inserting ", a member of a uniformed service, and a student who provides voluntary services under section 3111".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking "chapter 81 of this title" and inserting "section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81".

Subtitle C—Reforms Relating to the Senior Executive Service

SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking "3393a";

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43."; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking "or removal from the Senior Executive Service for failure to be recertified under section 3393a";

(4) in chapter 83—

(A) in section 8336(h)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8339(h), in the first sentence, by striking ", except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive"; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8421(a)(2), by striking ", except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age".

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) IN GENERAL.—Section 5307 of title 5, United States Code, is amended by adding at the end the following:

"(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting 'the total annual compensation payable to the Vice President under section 104 of title 3' for 'the annual rate of basic pay payable for level I of the Executive Schedule' in the case of any employee who—

"(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

"(B) holds a position in or under an agency which is described in paragraph (2).

"(2) An agency described in this paragraph is any agency which, for purposes of the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance.

"(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

"(B) An agency's certification under this subsection shall be for a period of 2 calendar years, except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

"(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

"(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).".

(b) CONFORMING AMENDMENTS.—(1) Section 5307(a) of title 5, United States Code, is amended by inserting "or as otherwise provided under subsection (d)," after "under law,".

(2) Section 5307(c) of such title is amended by striking "this section," and inserting "this section (subject to subsection (d)),".

Subtitle D—Academic Training

SEC. 1331. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

"§ 4107. Academic degree training

"(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

"(1) contributes significantly to—

"(A) meeting an identified agency training need;

"(B) resolving an identified agency staffing problem; or

"(C) accomplishing goals in the strategic plan of the agency;

"(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

"(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

"(b) In exercising authority under subsection (a), an agency shall—

"(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

"(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

"(B) provide employees effective education and training to improve organizational and individual performance;

"(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

"(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

"(A) a noncareer appointment in the senior Executive Service; or

"(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

"(4) to the greatest extent practicable, facilitate the use of online degree training.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

"4107. Academic degree training.".

SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren

National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

"(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or"; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

"(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and".

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

SEC. 1401. SHORT TITLE.

This title may be cited as the "Arming Pilots Against Terrorism Act".

SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

"§44921. Federal flight deck officer program

"(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as 'Federal flight deck officers'.

"(b) PROCEDURAL REQUIREMENTS.—

"(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

"(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

"(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

"(A) The type of firearm to be used by a Federal flight deck officer.

"(B) The type of ammunition to be used by a Federal flight deck officer.

"(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

"(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

"(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

"(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

"(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

"(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

"(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

"(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

"(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

"(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

"(M) Any other issues that the Under Secretary considers necessary.

"(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

"(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

"(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

"(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

"(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

"(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

"(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

"(2) TRAINING.—

"(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

"(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

"(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

"(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

"(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

"(C) TRAINING IN USE OF FIREARMS.—

"(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

"(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

"(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

"(d) DEPUTIZATION.—

"(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

"(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

"(A) the pilot is employed by an air carrier;

"(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

"(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

"(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

"(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

"(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

"(f) AUTHORITY TO CARRY FIREARMS.—

"(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

"(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

"(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of

State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

"(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

"(h) LIMITATION ON LIABILITY.—

"(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

"(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

"(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

"(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

"(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

"(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

"(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

"(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

"(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

"(k) APPLICABILITY.—

"(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

"(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.".

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

"44921. Federal flight deck officer program.".

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 1403. CREW TRAINING.

(a) IN GENERAL.—Section 44918(e) of title 49, United States Code, is amended—

(1) by striking "The Administrator" and inserting the following:

"(1) IN GENERAL.—The Under Secretary";

(2) by adding at the end the following:

"(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

"(A) require both classroom and effective hands-on situational training in the following elements of self defense:

"(i) recognizing suspicious activities and determining the seriousness of an occurrence;

"(ii) deterring a passenger who might present a problem;

"(iii) crew communication and coordination;

"(iv) the proper commands to give to passengers and attackers;

"(v) methods to subdue and restrain an attacker;

"(vi) use of available items aboard the aircraft for self-defense;

"(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

"(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

"(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

"(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

"(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

"(C) establish the required number of hours of training and the qualifications for the training instructors;

"(D) establish the intervals, number of hours, and elements of recurrent training;

"(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

"(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

"(3) RESPONSIBILITY OF UNDER SECRETARY.—(A) CONSULTATION.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

"(B) DESIGNATION OF OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

"(C) NECESSARY RESOURCES AND KNOWLEDGE.—The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge."; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

(b) ENHANCE SECURITY MEASURES.—Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by adding at the end the following:

"(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.".

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.

(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

"(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.".

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in paragraph (1) by striking "Secretary" the first and third places it appears and inserting "Under Secretary"; and

(2) in paragraph (2) by striking "Secretary" each place it appears and inserting "Under Secretary".

SEC. 1406. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

SEC. 1501. DEFINITIONS.

For purposes of this title:

(1) The term "agency" includes any entity, organizational unit, program, or function.

(2) The term "transition period" means the 12-month period beginning on the effective date of this Act.

SEC. 1502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE STRUCTURES.

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

Subtitle B—Transitional Provisions

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 1512. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term "completed administrative action" includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) Statutory Reporting Requirements.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

SEC. 1513. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b).

SEC. 1516. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

SEC. 1517. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF TRANSPORTATION.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "and the Administrator of the Federal Aviation Administration each" after "for Security"; and

(B) by striking "criminal violence and aircraft piracy" and inserting "criminal violence, aircraft piracy, and terrorism and to ensure security"; and

(2) in subsection (b)(1)—

(A) by striking ", the Under Secretary" and inserting "and the establishment of a Department of Homeland Security, the Secretary of Transportation";

(B) by striking "carrying out" and all that follows through "if the Under Secretary" and inserting "ensuring security under this title if the Secretary of Transportation"; and

(C) in subparagraph (C) by striking "the safety of passengers in transportation" and inserting "transportation safety".

(b) Section 114 of title 49, United States Code, is amended by adding at the end the following:

"(s) Nondisclosure of Security Activities.—

"(1) In general.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

"(A) be an unwarranted invasion of personal privacy;

"(B) reveal a trade secret or privileged or confidential commercial or financial information; or

"(C) be detrimental to the security of transportation.

"(2) Availability of information to Congress.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

"(3) Limitation on transferability of duties.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.".

SEC. 1602. INCREASE IN CIVIL PENALTIES.

Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

"(8) Aviation security violations.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).".

SEC. 1603. ALLOWING UNITED STATES CITIZENS AND UNITED STATES NATIONALS AS SCREENERS.

Section 44935(e)(2)(A)(ii) of title 49, United States Code, is amended by striking "citizen of the United States" and inserting "citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))".

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1701. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting "Homeland Security," after "Transportation," each place it appears; and

(2) by striking "; and" each place it appears in paragraph (1) and inserting ";";

SEC. 1702. EXECUTIVE SCHEDULE.

(a) In General.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting "Secretary of Homeland Security." as a new item after "Affairs.";

(2) in section 5313, by inserting "Deputy Secretary of Homeland Security." as a new item after "Affairs.";

(3) in section 5314, by inserting "Under Secretaries, Department of Homeland Security.", "Director of the Bureau of Citizenship and Immigration Services." as new items after "Affairs." the third place it appears;

(4) in section 5315, by inserting "Assistant Secretaries, Department of Homeland Security.", "General Counsel, Department of Homeland Security.", "Officer for Civil Rights and Civil Liberties, Department of Homeland Security.", "Chief Financial Officer, Department of Homeland Security.", "Chief Information Officer, Department of Homeland Security.", and "Inspector General, Department of Homeland Security.'"as new items after "Affairs." the first place it appears; and

(5) in section 5315, by striking "Commissioner of Immigration and Naturalization, Department of Justice.".

(b) Special Effective Date.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 1703. UNITED STATES SECRET SERVICE.

(a) In General.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking "of the Treasury", each place it appears and inserting "of Homeland Security".

(2) Section 208 of title 3, United States Code, is amended by striking "of Treasury" each place it appears and inserting "of Homeland Security".

(b) Effective Date.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 1704. COAST GUARD.

(a) Title 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(b) Title 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(2) Section 801(1) of such title is amended by striking "the General Counsel of the Department of Transportation" and inserting "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security".

(3) Section 983(d)(2)(B) of such title is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(4) Section 2665(b) of such title is amended by striking "Department of Transportation" and inserting "Department in which the Coast Guard is operating".

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking "Secretaries of the Army, Air Force, and Transportation" both places it appears and inserting "Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security"; and

(B) in subsection (b), by striking "Department of Transportation" and inserting "Department of Homeland Security".

(6) Section 7361(b) of such title is amended in the subsection heading by striking "Transportation" and inserting "Homeland Security".

(7) Section 12522(c) of such title is amended in the subsection heading by striking "Transportation" and inserting "Homeland Security".

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(d) TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(e) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking "of Transportation" and inserting "of Homeland Security"; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking "of Transportation" and inserting "of Homeland Security".

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking "after consultation with the Secretary of Transportation".

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking "of Transportation" in the fourth paragraph and inserting "of Homeland Security";

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking "Secretaries of Army, Navy, Air Force, or Transportation" and inserting "Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,"; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(f) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(g) EFFECTIVE DATE.—The amendments made by this section (other than subsection (f)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security";

(B) by inserting "the Secretary of Health and Human Services and" between "in coordination with" and "the Secretary of Veterans Affairs"; and

(C) by inserting "of Health and Human Services" after "as are determined by the Secretary"; and

(2) in subsections (a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO TITLE 40.—Section 581 of title 40, United States Code, is amended—

(1) by striking subsection (a); and

(2) in subsection (b)—

(A) by inserting "and" after the semicolon at the end of paragraph (1);

(B) by striking "; and" at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

(b) LAW ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Section 1315 of title 40, United States Code, is amended to read as follows:

"§ 1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

"(a) IN GENERAL.—To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security (in this section referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

"(b) OFFICERS AND AGENTS.—

"(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

"(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

"(A) enforce Federal laws and regulations for the protection of persons and property;

"(B) carry firearms;

"(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(D) serve warrants and subpoenas issued under the authority of the United States; and

"(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

"(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

"(c) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

"(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

"(d) DETAILS.—

"(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

"(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

"(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

"(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

"(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

"(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

"(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

"(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) preclude or limit the authority of any Federal law enforcement agency; or

"(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.".

(2) DELEGATION OF AUTHORITY.—The Secretary may delegate authority for the protection of specific buildings to another Federal agency where, in the Secretary's discretion, the Secretary determines it necessary for the protection of that building.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 40, United States Code, is amended by striking the item relating to section 1315 and inserting the following:

"1315. Law enforcement authority of Secretary of Homeland Security for protection of public property.".

SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting "for a period not to exceed 90 days" after "effective"; and

(2) in section 114(l)(2)(B), by inserting "ratified or" after "unless".

SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

SEC. 1709. COLLABORATION WITH THE SECRETARY OF HOMELAND SECURITY.

(a) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The second sentence of section 351A(e)(1) of the Public Health Service Act (42 U.S.C. 262A(e)(1)) is amended by striking "consultation with" and inserting "collaboration with the Secretary of Homeland Security and".

(b) DEPARTMENT OF AGRICULTURE.—The second sentence of section 212(e)(1) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401) is amended by striking "consultation with" and inserting "collaboration with the Secretary of Homeland Security and".

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking "Secretary of Transportation" in the first sentence of subsection (a) and inserting "Secretary concerned";

(2) by striking "Secretary" each place it appears (except the first sentence of subsection (a)) and inserting "Secretary concerned";

(3) by striking "Secretary's duties under chapters 203–213 of this title" in subsection (d) and inserting "duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)";

(4) by striking "chapter." in subsection (f) and inserting "chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)."; and

(5) by adding at the end the following new subsection:

"(g) DEFINITIONS.—In this section—

"(1) the term 'safety' includes security; and

"(2) the term 'Secretary concerned' means—

"(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

"(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.".

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after "1970." the following: "When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.".

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting "and laws, regulations, and orders related to railroad security" after "safety" in the first sentence;

(2) by inserting "or security" after "safety" each place it appears after the first sentence; and

(3) by striking "Transportation" in the second sentence and inserting "Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),".

SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking "transportation" the first place it appears in subsection (b)(1) and inserting "transportation, including security,";

(2) by striking "aspects" in subsection (b)(1)(B) and inserting "aspects, including security,"; and

(3) by adding at the end the following:

"(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.".

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking "chapter or a regulation prescribed under this chapter" in subsection (a)(1) and inserting "chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security";

(2) by striking "chapter or a regulation prescribed under this chapter." in subsection (a)(2) and inserting "chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security."; and

(3) by striking "chapter or a regulation prescribed under this chapter," in subsection (b)(1) and inserting "chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,".

SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting "homeland security," after "national security,"; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting "the Office of Homeland Security," after "National Security Council,".

SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

"(14) Other Federal officials the Council considers appropriate.".

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking "under its label any vaccine set forth in the Vaccine Injury Table" and inserting "any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine"; and

(2) in the second sentence, by inserting "including any component or ingredient of any such vaccine" before the period.

SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: "For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.".

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

"(7) The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.".

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

Mr. SANTORUM. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXECUTIVE SESSION

NOMINATION OF DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to vote on the Shedd nomination.

The majority leader.

Mr. DASCHLE. Mr. President, let me remind my colleagues that the votes from here on out will be 10 minutes in length. And I intend to cut off the votes at 10 minutes. I hope everybody will stay on the floor and cast their votes so we can complete our work at a reasonable hour.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

Mr. KENNEDY. Mr. President, I oppose the confirmation of Judge Shedd to the Court of Appeals for the Fourth Circuit. His nomination is also opposed by a large number of individuals, law professors, bar association and civil rights groups across the country, because he has not shown the commitment to the protection and vindication of Federal rights that is essential for this high position in the judiciary.

Judge Shedd has an unacceptable record in cases involving race and gender discrimination. In race discrimination cases, for example, he consistently grants summary judgment against African-American civil rights plaintiffs, preventing even close cases from reaching a jury, and he often does so with little or analysis. In one case, he granted summary judgment for the defendant after the EEOC determined there was a reasonable cause to find that the plaintiff was denied promotion and the denial was based on race. In another case, the plaintiff was denied a pay increase despite the recommendation of his immediate supervisor, where the employer was found by the State to have been discriminating against African-Americans on pay increases.

Judge Shedd has a similar record in gender discrimination cases. He granted summary judgment for an employer in a sexual harassment case in which the male supervisor's conduct was so inappropriate that Judge Shedd himself stated that the supervisor's conduct was "sufficiently severe and pervasive to constituent a hostile work environment." Nonetheless, Judge Shedd granted summary judgment for the employer, finding no evidence that the plaintiff herself thought the work environment had been hostile. This ruling is impossible to reconcile with the facts of the case—the plaintiff had told her supervisor that his comments were offensive, she had reported the conduct to her supervisor, she had taken concrete steps to pursue the complaint, and she eventually quit her position.

In another case, Judge Shedd reversed a magistrate judge's decision to deny summary judgment for an employer. In this case, the plaintiff's supervisor had harassed both the plaintiff and a number of other female employees. Yet Judge Shedd dismissed this case, against the recommendation of the magistrate, because the plaintiff had complained to two different people, a supervisor and the company's chief financial officer, but did not complain to the president of the company, as required by company policy. Judge Shedd ignored the fact that the company's policy also called for the supervisor and the CFO themselves to report the plaintiff's complaints to the president, which they failed to do. Judge Shedd also relied on the fact that the plaintiff's complaint referred to "harassment," instead of "sexual harassment."

These were not merely cases in which Judge Shedd ultimately decided on the facts that discrimination had not taken place. These are cases in which he determined that the jury should not even be permitted to hear the plaintiff's claim. Judge Shedd dismissed the vast majority of race discrimination cases brought by African-Americans, before those cases could reach the jury. By contrast, in the five discrimination cases brought by white males, Judge Shedd allowed four to go to a trial. This pattern is very disturbing. The people of the Fourth Circuit deserve better from their Federal judges.

In addition, Judge Shedd has often reached out from the bench to affect the litigation of the cases before him. In discrimination cases, he is known to raise arguments on behalf of the defense from the bench, even arguments not raised by the defendants themselves. He has gone so far as to dismiss cases on grounds not raised by the defendant. In one case, he initiated an inquiry into finances of an unemployed woman who had been granted pauper status by another Federal judge; Judge Shedd ruled that she did not deserve such status, in large part because of the money she had spent pursuing her claim, and recommended that the Fourth Circuit dismiss an appeal the woman had pending in a different suit. He published his conclusions, he said, because other judges may want to know of his personal findings shout this woman.

The States of the Fourth Circuit have a large minority population, the highest percentage of African-Africans of any circuit in the country, and they deserve a fair judiciary, committed to protecting basic rights.

For all of these reasons, I oppose this nomination. the administration can, and must, do better for the people of the Fourth Circuit.

U.S. CIRCUIT COURT NOMINEES

Mrs. MURRAY. Mr. President, I rise to express my opposition to the confirmation of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit, and the confirmation of Professor Michael McConnell to the United States Court of Appeals for the Tenth Circuit.

At every level of the Federal court system, federal judges have a tremendous impact on the rights and protections of all Americans. The federal judiciary effectively ended segregation and ensured a woman's right to reproductive choice. Every day we count on federal judges to protect our civil rights and liberties.

The Senate serves as the only effective check on the Federal judiciary. The Constitution gives the Senate the power to advise and consent to the President's judicial appointments. These are lifetime appointments. Furthermore, because the U.S. Supreme Court hears only a few cases, the Circuit Courts of Appeals are often the courts of last resort for citizens seeking justice from the federal bench. As Senators, we have a constitutional responsibility to evaluate these candidates.

I believe judicial candidates should be experienced, even-handed, possess a fair judicial temperament, and be committed to upholding the rights and liberties of all Americans.

Dennis Shedd does not meet that standard. He has failed to show this Senator that he possesses the characteristics necessary to receive a lifetime appointment to the Circuit Court of Appeals.

As a Federal District Court Judge, Shedd's rulings and actions on the bench indicate he lacks the even-handedness we expect from our federal judges. He has consistently sided with employers in workplace discrimination suits on issues ranging from sexual harassment to race and age discrimination. In fact, in his 11 years on the Federal bench not a single plaintiff in a civil rights or employment discrimination case has prevailed in his courtroom.

His willingness to inject his own personal bias about the rights of individuals shows he also lacks the requisite judicial temperament we should require in a Federal judge. He has shown hostility to those seeking justice from the bench by assisting the defense and granting summary judgment for the defense in a disproportionate number of cases.

Aside from employee rights and discrimination cases, he has also shown an unwillingness to uphold the basic civil liberties and rights of all Americans. He has favored a state government's ability to violate an individual's right of privacy by selling their personal information despite a federal law to the contrary. He also struck down part of the Family and Medical Leave Act, FMLA, by arguing a State cannot be sued under FMLA due to sovereign immunity.

He has further shown a disregard for protecting the rights of voters, and has displayed an insensitivity on issues concerning race.

Considering his history of narrowly interpreting the rights of individuals and his hostility toward civil liberty protections, we can only assume he would not uphold the civil liberty of privacy, including honoring the Roe v. Wade decision. In fact, at his confirmation hearing he refused to commit to upholding the fundamental right of reproductive freedom.

Dennis Shedd's record clearly illustrates he is not even-handed, that he lacks the right temperament for the appeals bench, and that he has consistently failed to protect the rights and liberties of our people. He should not be confirmed for the Federal appeals court. I urge my colleagues to vote against this nomination.

I would also like to express my opposition to Professor Michael McConnell's recent confirmation to the United States Court of Appeals for the Tenth Circuit.

Professor McConnell has consistently expressed strong opposition to protecting civil rights and liberties, going so far as to call the Roe case "a gross misinterpretation of the Constitution."

He has also argued, contrary to existing law, that abortion protestors have a "constitutional right to protect against abortion—forcefully and face-to-face."

He holds extreme opinions on the separation of church and state and other key civil rights protections. Professor McConnell has severely criticized the Supreme Court's 8 to 1 decision in Bob Jones University v. United States. In that case, the Supreme Court held that the IRS may deny tax-exempt status to a religious school with racially discriminatory policies. Professor McConnell wrote that the racial discriminatory practices at Bob Jones University should be tolerated because they were religious in nature. He has also argued for giving religious institutions preferential treatment and has advocated direct federal funding of religious institutions. Clearly, Professor McConnell's opinion on the separation of church and state strays far from the mainstream and far from generally recognized conservative legal analysis.

Finally, Professor McConnell has argued for weakening both statutory and constitutional protections against discrimination based on race, gender, and sexual orientation through exemptions for private entities.

Like Judge Shedd, I believe Professor McConnell lacks the basic qualities needed to serve on the Federal appellate bench.

Mr. LEVIN. Mr. President, I will vote against the confirmation of Dennis Shedd to be a United States Judge for the 4th Circuit Court of Appeals. Judge Shedd's record as a judge on the United States District Court raises a number of concerns about both his approach on the bench and his commitment to equal justice—leading me to the conclusion that he should not be promoted to the second highest court in the land.

Of particular concern to me are Judge Shedd's extreme view on the limits of Congressional authority and his record of hostility to plaintiffs in civil rights and employment discrimination cases. This combination is extremely dangerous given the critical role that Congress plays in passing laws to ensure that Constitutional protections are afforded to all Americans. Further, I am troubled by what appears to be a lack of thorough consideration in Judge Shedd's approach. This is particularly unsettling given the significant Constitutional issues that have been at stake in his courtroom.

With respect to Judge Shedd's view of the Constitutional role of the Congress, two cases stand out, Condon v. Reno and Crosby v. South Carolina.

I voted for, and Congress enacted, the Drivers Privacy Protection Act in 1994 to limit the availability of personal information—such as photographs, social security numbers, addresses and telephone numbers, and even some medical information—contained in motor vehicle records. In Condon v. Reno, the state of South Carolina challenged the law, claiming that it was an unconstitutional infringement on the state's rights because it restricted South Carolina from setting its own standards for releasing State motor vehicle records. In Condon v. Reno, Judge Shedd ruled that the law was unconstitutional and in the process endorsed a view that—if permitted to stand—would have severely limited Congress's ability to legislate under the Commerce clause of the Constitution. Judge Shedd's decision endorsed a view of congressional authority so far out of the mainstream that the Supreme Court ruled unanimously to overturn him in a decision written by Chief Justice Rehnquist.

Judge Shedd's decision in Crosby v. South Carolina Department of Health and Environmental Control also deeply troubles me. In Crosby, Judge Shedd adopted a magistrate's recommendation granting defendant's summary judgement—agreeing with the magistrate that the 11th Amendment doctrine of state sovereign immunity should prevent the plaintiff from suing the state for violation of the Family and Medical Leave Act because he believed that Act was an improper exercise of Congress's enforcement power under the 14th amendment. Despite the obvious and profound implications of this decision for Congress's authority, Judge Shedd offered virtually no analysis to support his decision. This is despite the absence of directly controlling precedent and the presence of a split among other Federal district courts on the issue. Acts of Congress are entitled to a presumption of Constitutionality. Ruling to overturn a Federal law should not be taken lightly. In a case of this import, Judge Shedd's failure to articulate a rationale for his decision is deeply disturbing. The fact that other judges may have reached the same conclusion as Judge Shedd is not the point here. Parties before the court on an issue of this magnitude are entitled to a judge's reasoning. Judge Shedd offered none.

The Crosby decision is not the only example of Judge Shedd's tendency to accept magistrate recommendations with little or no comment on important matters. In South Carolina, all cases under Title VII of the Civil Rights Act of 1964 are automatically referred to magistrates for pretrial matters. In important employment discrimination cases, Judge Shedd has often adopted magistrates' recommendations in favor of summary judgement. And he has done so without comment in many instances where it appears to me that comment was warranted. In fact, Judge Shedd has done so in cases where a party has raised an objection to one of the magistrate's recommendations and he was required to conduct a de novo review. In a number of these cases, Judge Shedd's rulings do not address the objections at all. Instead, his decisions simply adopt the magistrate's recommendations and pay lip service to his obligation by including a statement that he has conducted the required de novo review. Given the concerns I have about this approach in the Crosby case, this practice deeply concerns me.

Mr. President, nothing is more important for a judge than a commitment to equal justice. A review of Judge Shedd's record also raises the question whether this ideal is being upheld.

In a number of civil rights cases, Judge Shedd appears to have intervened in a manner that has tilted toward defendants. He has granted summary judgement for defendants on grounds not even raised by the defendants. He has ordered a defendant to file a motion to dismiss a case and later granted the motion. And Judge Shedd even granted summary judgment against a petitioner even though it appears that the defendant never filed a motion for summary judgement. These decisions raise serious questions about whether plaintiffs are getting a fair hearing in Judge Shedd's courtroom.

I was particularly struck by the Judge's answer to a question from Senator Edwards in his Judiciary Committee hearing earlier this year. Senator Edwards asked Judge Shedd whether he had ever granted relief to a plaintiff in an employment discrimination case. Judge Shedd could not recall a single instance where a plaintiff alleging employment discrimination was granted relief in his courtroom. Judge Shedd's inability to recall such a case is actually not surprising as a review of his published opinions failed to reveal even one such instance. Eleven years on the bench and not one of his published opinions reflects a favorable ruling for an employee in a discrimination case.

Mr. President, I'm afraid Judge Shedd's record simply does not support his promotion to the 4th Circuit Court of Appeals.

Mr. KERRY. Mr. President, I rise today to voice my strong opposition to the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals. Although the President has pledged to nominate qualified individuals with outstanding judicial records to the Federal Court System, he has, time and time again, failed to make good on that pledge. Judge Shedd is no exception. During his tenure as a trial judge, Judge Shedd has exhibited extreme, even radical views on an array of important issues. Judge Shedd's record demonstrates that in cases involving civil rights, privacy, discrimination and federalism, he is willing to cross the boundaries of established case law and rule in a manner that is out of touch with mainstream thinking.

A few cases in particular merit the attention of this body. In a case demonstrating Judge Shedd's extreme stance on federalism, he struck down as unconstitutional the Driver's Privacy Protection Act, which we passed to ensure that states keep drivers' license information confidential. This legislation, designed as "antistalking" legislation, was drafted in part because antiabortion activists have used accessible drivers' license information to obtain the addresses of doctors who performed abortions in order to post that information on websites. Mr. President, this case was reversed unanimously by the Supreme Court, with Chief Justice Rehnquist authoring the opinion.

Judge Shedd also has a record of condoning serious civil liberties violations by law enforcement. In one particularly disturbing case, Judge Shedd dismissed a lawsuit brought against a corrections officer who had stripped an inmate naked and left him without bedding for 48 hours after the inmate confessed to not knowing the prison's rules concerning lights out. In dismissing the case, Judge Shedd merely stated that he did not think the inmate had been punished. In another instance, he imposed an inconsequential $250 fine in a case where a sheriff and a prosecutor secretly videotaped a jailhouse conversation between a defendant and his lawyer. Judge Shedd defended the penalty stating that he did not think the pair committed any civil rights violation. I am deeply troubled that we might appoint a judge who does not recognize the blatant civil rights violation in this circumstance.

Perhaps most troubling is Judge Shedd's overwhelming tendency to grant summary judgement against plaintiffs in race and gender employment discrimination cases, preventing the vast majority of such cases from going to trial. In a case involving sexual harassment in the workplace, Judge Shedd reversed the recommendation of a magistrate that the plaintiff be allowed to present her case to a jury, granting summary judgment for the employer even though Judge Shedd himself concluded that the supervisor's conduct "clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile work environment." He relied, therefore, on a tortured interpretation of both the facts and the law to rule against the plaintiff in that case. This is one of many instances that demonstrate a clear pattern in which Judge Shedd has prevented cases brought by people of color and women from ever reaching a jury.

We routinely put aside our partisan differences to send qualified men and women to the federal bench because it is in the best interests of our country to fill seats with those individuals who have pledged to interpret the law objectively and without bias, whether or not they happen to be liberal or conservative in temperament. We place a great deal of trust in these men and women, as their appointments are guaranteed for life. Unfortunately, based on the records and statements I have reviewed, I do not believe we can place our trust in Judge Shedd to protect the civil liberties Americans of all races and beliefs have fought so hard to win. It is because of this that I will vote against his nomination.

Mr. EDWARDS. Mr. President, every judicial nomination that comes before this body is critically important. However, I take a particular interest in appointments to the Fourth Circuit, which includes my home State of North Carolina. The Fourth Circuit needs qualified, fair-minded judges who will put aside their personal views and follow the law. After reviewing his record carefully, I have concluded that Judge Dennis Shedd is not such a judge.

While Judge Shedd's record provides numerous reasons to oppose his confirmation, I am most troubled by his poor record on civil rights, where he has demonstrated an alarming propensity for putting his personal views above the law. Judge Shedd has repeatedly overstepped the bounds of judicial restraint and engaged in judicial activism on behalf of defendants in discrimination cases.

I raised this concern with Judge Shedd earlier this year during his confirmation hearing before the Judiciary Committee. Judge Shedd could not point to one instance in his eleven years on the bench in which an individual alleging discrimination—based on race, sex, age or disability—has ever won a case in his court. In the same period, there have been over 20 verdicts in favor of plaintiffs in other Federal courts in the State. In written questions, I asked Judge Shedd to say whether a victim of employment discrimination had ever prevailed in his courtroom. He could name no such case.

On the other hand, there is considerable and disturbing evidence of Judge Shedd's conduct in civil rights cases to benefit the defendant. To name only one example: in a sexual harassment matter, Judge Shedd overruled a magistrate's ruling allowing a case to go to trial, even though the plaintiff had offered sworn evidence that her supervisor had commented on her breasts, asked her graphic sexual questions, bought her panty-less pantyhose, and frequently stood behind her, rubbed her shoulders while trying to look down her shirt, and so on.

Finally, in a major case involving the Federal Government's power to protect the privacy of individuals' personal records, Judge Shedd sided against individual rights, and was reversed by a unanimous Supreme Court. There is no other case since 1995 in which a lower court has limited Congress's power and the Supreme Court has reversed.

Federal judges have no responsibility more important than enforcing our laws equally. Because Judge Shedd has proven his willingness to put his personal views above the law, especially in civil rights cases, I must vote against his confirmation.

I ask unanimous consent that a letter I received from a group of 16 North Carolina law professors addressing these and several other of Judge Shedd's decisions be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JUNE 12, 2002.

Hon. JOHN R. EDWARDS,
U.S. Senate, Dirksen Office Building,
Washington, DC.

DEAR SENATOR EDWARDS: We are writing to you—as individual members of the faculties of the School of Law of the University of North Carolina, Duke Law School, and North Carolina Central University School of Law—concerned that the Senate Judiciary Committee may be poised to act without conducting a full investigation of President Bush's recent nominee to the United States Court of Appeals for the Fourth Circuit, United States District Judge Dennis W. Shedd. We suggest that to act precipitously on this important nomination would be a serious mistake.

As you know, the Fourth Circuit is one of the region's most influential governmental bodies; its impact on constitutional, statutory, and regulatory issues in the Southeast has no equal apart from the Supreme Court itself. Moreover, a wide range of responsible observers concur that during the past decade the Fourth Circuit has become the most activist federal court in the nation. In certain crucial areas, including federal judicial efforts to confine Congress in the exercise of its traditionally broad national powers, the Fourth Circuit has no peer. It has led the way in attempting to narrow the Congress's Commerce Clause powers, see, e.g., Condon v. Reno, 155 F.3d 453 (4th Cir. 1998), rev'd, 528 U.S. 141 (2000) (challenging Congress's authority under the Commerce Clause to enact the Driver's Privacy Protection Act); Brzonkala v. Virginia Polytechnic Inst., 169 F.3d 820 (4th Cir. 1999) (en banc), aff'd United States v. Morrison, 529 U.S. 598 (2000) (challenging Congress's authority under the Commerce Clause to enact the Violence Against Women Act), its Section 5 powers under the Fourteenth Amendment, see, e.g., Brzonkala, 169 F.3d 820 (4th Cir. 1999) (en banc) (challenging Congress's authority under Section 5), and in promulgating aggressive conceptions of the Tenth and Eleventh Amendments. See South Carolina State Ports Authority v. Federal Maritime Comm'n 243 F.3d 165 (4th Cir. 2001), aff'd 122 S. Ct. 1864 (2002) (invalidating the FMC's authority over state port entities, previously granted by Congress under the Shipping Act of 1984, 46 U.S.C. §§1701 et seq., on Eleventh Amendment grounds).

As a federal district judge during the past eleven years, Judge Shedd has been a sympathetic participant in this judicial campaign to disempower Congress. He authored the original decision in Condon v. Reno, 972 F. Supp. 977 (D. S.C. 1997), and struck down the Driver's Privacy Protection Act of 1994, 18

U.S.C. §§2721–25, a decision later overturned in a 9-to-0 decision of the Supreme Court authored by Chief Justice Rehnquist. Judge Shedd also acted to invalidate the application of the Family and Medical Leave Act to state agencies, holding that "Congress did not properly enact the FMLA under §5 of the fourteenth amendment, and therefore, has not abrogated [the State defendant's] eleventh amendment immunity from suit." Crosby v. South Carolina Dep't of Health & Environmental Control, C.A. No. 3–97–3588119BD, at 1 (D. S.C. Oct. 14, 1999).

Were Judge Shedd's highly protective views of state sovereignty, his skepticism about Congressional power, and his aggressive use of judicial authority the only issues presented by his nomination, they would suffice to require careful Senate consideration. However, we are concerned by three other features of his record: (1) an apparent skepticism of federal civil rights claims; (2) a marked sympathy for employers in employment disputes; and (3) an unusually vigorous use of Rule 56 of the Federal Rules (the summary judgment provision) and similar procedural provisions to wrest lawsuits from trial juries and end them by judicial fiat.

We are not prepared to say, at this point, that Judge Shedd has acted with bias in these areas, since so many of his decisions are unreported (and we have not been able to review the briefs in these cases) and since an unusual number of his reported decisions are merely brief orders that accept and adopt relatively summary reports from United States Magistrates. However, in some sixty-six cases that presently appear in the LEXIS online system, we note the following patterns. Judge Shedd appears never to have granted relief to a plaintiff in an employment discrimination case, although he has granted numerous summary judgment motions in favor of employers. See, e.g., Roberts v. Defender Services, Inc., C.A. No. 0:00–1536–19BC (D.S.C., Sept 27, 2001) (rejecting a female employee's sexual harassment and hostile work environment claims); Austin v. FN Manufacturing, Inc., C.A. No. 3:98–3605–19BC (D.S.C., March 23, 2000) (rejecting an African American employee's racial discrimination, hostile environment, and constructive discharge claims); Taylor v. Cummings Atlantic, Inc., 852 F. Supp. 1279 (D.S.C. 1994) (rejecting an older employee's age discrimination, fraud, and breach of contract claims); (Bailey v. South Carolina Dep't of Social Services, 851 F. Supp. 219 (D.S.C. 1993) (rejecting an African American employee's non-promotion claim, although backed by EEOC Determination of reasonable cause that plaintiff was not promoted because of his race); White v. Roche Biomedical Laboratories, Inc., 807 F. Supp. 1212 (D.S.C. 1992) (rejecting an employee's breach of contract and promissory estoppel claims).

In the Roberts case, for example, Judge Shedd granted summary judgment to an employer in a sexual harassment lawsuit, even after he noted that "the alleged conduct [of Ms. Robert's supervisor] clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment." Roberts, supra, at 2. Judge Shedd concluded, nonetheless, that plaintiff Rogers raised no genuine issue of fact about whether she herself "subjectively perceived the environment to be abusive," id., although it was undisputed that she had joined in making a formal complaint about her supervisor's abusive behavior to corporate headquarters, and then met with a corporate investigator to detail and protest the supervisor's sexually suggestive behavior.

We have also obtained a list of unpublished fifty-three federal race, gender, age, and disability cases in which Judge Shedd has dealt with cases on summary judgment. In most, he has granted defendants' motions and dismissed the cases, denying all relief to the plaintiffs. Since these cases are not reported, we have not yet been able to review them to discern whether they manifest bias, but the overall anti-plaintiff pattern is troubling.

The tendency by Judge Shedd to resolve cases on his own, short of trial, is also manifest in his use of Rule 56 summary judgment in other, non-employment contexts, see, e.g., Alston v. Ruston, C.A. No.: 9–99–244–19RB, 2000 U.S. Dist. LEXIS 11939 (D.S.C. March 9, 2000) (prisoner's Section 1983 and Eighth Amendment claim); Joye v. Richland County Sheriff's Dep't, 47 F. Supp. 2d 663 (D.S.C. 1999) (Section 1983 and Fourth Amendment, false arrest claim); Cianbro Corp. v. Jeffcoat & Martin, 804 F. Supp. 784 (D.S.C. 1992) (attorney malpractice action), and by the use of other procedural devices, such as Rule 12(b)(6) motions to dismiss, see, e.g., Gray v. Petoseed Co., 985 F. Supp. 625 (D.S.C. 1996) (fraud in sale of contaminated watermelon seeds), as well as by use of Rule 50 motions to grant judgment notwithstanding the verdict, see, e.g., Storms v. Goodyear Tire & Rubber Co., 775 F. Supp. 862 (D.S.C. 1991) (wrongful discharge and breach of implied contract); Wilds v. Slater, C.A. No. 3:97–1608–19BD, 2000 U.S. Dist. LEXIS 20771 (D.S.C. March 7, 2000) (National Environmental Policy Act action for failure to file environmental impact statement).

In Alston, for example, Judge Shedd granted summary judgment on a Section 1983 complaint after somehow concluding, as a matter of law, that a prison guard had not used excessive force—despite an affidavit and a well-pleaded complaint from the plaintiff alleging that the officer had sprayed him in the face with tear gas without justification, advanced toward him "swinging his fists and punching [plaintiff] in the mouth," and wielded a broomstick until other officers intervened. We do not, of course, know whether the plaintiff's version of these facts is correct or, instead, whether the correctional officer's version should be credited; we do believe it is impossible fairly to conclude that the conflicting evidence of record about what happened that evening raised no "genuine issue of material fact."

In another such case, Joye v. Richland Co. Sheriff's Dep't, Judge Shedd dismissed a Section 1983 claim brought by a person wrongfully arrested by sheriff's deputies under a bench warrant issued for his son. Despite the fact that the arrest warrant described a man aged 31, standing 5'11" (while the plaintiff was 61 years old and stood only 5'8"), despite plaintiff's allegations that the arresting officers "refused to inform him of the basis for his arrest or provide him with a copy of the warrant," despite the fact that "the warrant . . . listed the driver's license of [the proper suspect]" which "differ[ed] from plaintiff's driver's license number," Judge Shedd granted summary judgment on the grounds that the defendants had "a reasonable, good faith belief that they were arresting the correct person" He thereby rejected, as a matter of law, the contrary conclusion of a United States magistrate that the officers were not entitled to a "good faith" defense on these facts since "[a] simple check of the bench warrant should have revealed that Joye was not the person wanted." Joye, 47 F. Supp. 2d at 665–66.

Judge Shedd also appears to be willing to interject himself in unusual ways into ongoing judicial proceedings. In one case, Maytag Corp. v. Clarkson, 875 F. Supp. 324 (D.S.C. 1995), he went out of his way to draft and publish an opinion castigating a lawyer for making a closing argument urging the jury to decide a case on its notion of "what is right and . . . what is moral and . . . what is just." Judge Shedd had submitted the case to the jury on a special verdict—limited to the question whether the defendant was liable to the plaintiff under a written guarantee—and although plaintiff's attorneys made no objection to the defendant's closing argument (and although the jury subsequently returned a verdict for the plaintiff), Judge Shedd felt the need to publish an opinion declaring that the defendant's appeal to morality, decency, and justice—what the Court termed the sympathy of the jury—was inappropriate: "Therefore, while this matter is now closed, this Order should serve as a reminder to all counsel that arguments of the type addressed herein are improper and will not be tolerated in this Court." 875 F. Supp. at 330.

In yet another such example, Judge Shedd initiated, sua sponte, an inquiry into the finances of an unemployed party, living with her mother, who had been granted in forma pauperis status by another federal judge and whose case was already pending on appeal in the Fourth Circuit. Assaad-Faltas v. University of South Carolina, 971 F. Supp. 985 (D.S.C. 1997). Based on "the prolific litigiousness in which she has engaged," id. at 986—specifically citing her use of a telephone to make long-distance telephone calls to the Fourth Circuit and her use of her mother's automobile "to travel to the courthouse on a regular basis," as well as her practice of "flood[ing] the Court and opposing counsel with numerous legal filings, many of which contain multiple pages and/or exhibits"—Judge Shedd revoked her in forma pauperis status and recommended that the Fourth Circuit dismiss her pending appeal, concluding that these acts were "certainly indicative of the fact that she has financial resources available to her to fund this litigation." Id. at 988.

In our considered judgment, these cases suffice to raise red flags that should require the Senate Judiciary Committee to proceed only after the most careful review of Judge Shedd's full judicial record—most of which has only become available for consideration in the past few days. The Fourth Circuit does not, in our view, need another federal appellate judge who would constrain the authority of Congress in the 21st century by resort to outdated and reactionary views of federal power. It does not need a federal judge who would be hostile to African Americans, to women, to the aged, or to the disabled who bring serious claims of employment discrimination or other forms of discrimination prohibited by federal laws or the Constitution. It does not need a federal judge who would reflexively side with management against labor, with employers against employees. Nor does it need a federal judge who is dismissive of the precious right to trial by jury, cutting short legitimate factual disputes that, under the Seventh Amendment, properly belong to federal juries.

Sincerely,

John Charles Boger, Lissa L. Broome, Kenneth S. Broun, John O. Calmore, Charles E. Daye, Eugene Gressman, Ann Hubbard, Daniel H. Pollitt, Marilyn V. Yarbrough, Professors of Law, UNC-Chapel Hill, School of Law.

Christopher H. Schroeder, Jerome Culp, Professors of Law, Duke University, School of Law.

Renee F. Hill, David A. Green, Irving Joyner, Nichelle J. Perry, Fred J. Williams, Professors of Law, North Carolina Central, University School of Law.

One final note. The Fourth Circuit, as you know, presently is comprised of eleven judges, and there are four pending vacancies. Although North Carolina is the largest State within the Circuit, it has no current representation on the Circuit at all, and has had none since 1999, despite a federal statute that requires that "in each circuit, there shall be at least one circuit judge in regular active service appointed from the residents of each state in the circuit." 28 U.S.C. §44.

South Carolina, the state in which Judge Shedd currently sits, has three judges currently on the Fourth Circuit. Judge Shedd's elevation would constitute the fourth. We respect our sister state, of course, yet we do not understand why, with a population less than half of North Carolina's, it should receive its fourth active judge while North Carolina languishes without a single sitting representative, and with only two seats even authorized.

Mr. DASCHLE. Mr. President, the Senate has confirmed 99 judicial nominees during the 107th Congress—all of which have occurred since Democrats assumed the majority. Democrats have also confirmed more circuit court nominees than Republicans did any of their prior six years of control. Today we are considering the nomination of Judge Shedd for the Fourth Circuit.

There has been much discussion over Judge Shedd's nomination, and I understand the Judiciary Committee has received hundreds of letters from individuals and organizations expressing concern over elevating Judge Shedd. While his nomination was reported out of the committee last week, there was considerable debate and many members raised serious concerns. I am troubled by allegations that Judge Shedd has a pattern of injecting his personal opinions into the proceedings before him, including—ordering defendants to make motions for summary judgment, and deciding on issues before they are raised.

I am also concerned about allegations that individuals raising employment discrimination claims before him are unable to receive a fair and impartial forum. I understand that through questioning by the Judiciary Committee, it was uncovered that Judge Shedd could not think of a single plaintiff in a civil rights or employment discrimination case who had prevailed in his courtroom—in fact, Judge Shedd has never granted substantive relief to a plaintiff in an employment discrimination case.

I am also concerned about his extreme views of the constitutional allocation of powers between the States and the federal government—views that are not shared even by the current conservative Rehnquist Court. In a 1997 case challenging the constitutionality of the Driver's Privacy Protection Act (DPPA), Judge Shedd held that the federal government did not have the power to require states to protect the confidentiality of state driver's license records. In a 9–0 reversal of Judge Shedd's ruling, the Supreme Court made clear that he had gone too far. The Senate has a constitutional responsibility to evaluate the President's nominees, offer advice, and grant—or withhold—its consent. I take this responsibility very seriously.

Unfortunately, in Judge Shedd's case I believe enough concerns have been raised about his judicial temperament to lead me to the conclusion that he should not be elevated to the Fourth Circuit. So, on this vote I plan to vote against Judge Shedd's nomination.

Mr. LEAHY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. There are now 2 minutes equally divided prior to the vote.

Who yields time?

The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I rise today to express my strong support for the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. Judge Shedd is a man of great character who will make an outstanding addition to the Federal appellate bench. He possesses the highest sense of integrity, a thorough knowledge of the law, and a good judicial temperament.

I want to assure my colleagues that Judge Shedd is committed to upholding the rights of all people under the Constitution. This fine man is truly deserving of such an high honor, and he will serve the people of the Fourth Circuit with distinction.

Mr. President, I ask unanimous consent that letters of support for Judge Shedd be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

To: United States Senators.
From: Luonne Abram Rouse.
Re: Dennis Shedd.

Dennis Shedd is an outstanding American citizen, and a friend of high integrity and godliness. The United States of America will benefit greatly from his service in the 4th Circuit Court of Appeals.

The Honorable Senator Strom Thurmond of South Carolina introduced me to Dennis in 1983. Putting history behind, we came together in the 80s, while I served as president of a local NAACP chapter in South Carolina. We established a friendship and respectful sharing that has been mutually beneficial for our work in America and beyond. Since that time, I have found Dennis Shedd to be the type of person that I trust to weigh the issues with dignity and legal focus.

In 1982, Senator Thurmond was a guest in our home following a time when he and I had written communication concerning the Civil Rights Act. The Senator visited my home to personally thank me for the communication, and state that he had changed his mind and agreed to support the Civil Rights Act after dialogue with several African American leaders. During the same visit, he extended an invitation for me to be a guest chaplain at the United States Senate in Washington, DC. I responded with my presence in April of 1983, at which time I met Dennis Shedd.

Dennis and I have kept up with one another's growth and experiences. He has prayerfully supported my appointments in United Methodist Churches across racial lines in South Carolina, since 1986. The support he has shown for racial inclusiveness in churches, during a time in which leading sociologists claimed that there are no truly desegregated churches in South Carolina, has been encouraging to my ministry of intentionality and reconciliation in this period of church desegregation.

I am confident that persons will be able to communicate with this experienced Judge, and find him seeking to maintain peace with justice based soundly on the law. When this matter is concluded, I would like to have Hillary Shelton, another outstanding man and long time activist who has been an overnight guest in our home, to dinner and discover the real essence of Dennis Shedd as a judge of fairness and justice regarding issues of human rights.

Many people have sought to block Dennis Shedd's appointment to the 4th Circuit Court of Appeals, and some have led me to study his decisions closely. I respectfully ask those who would oppose him to consider that there is more to a decision than a final report reveals, and much more to the person having to issue the judgment regarding the same. I have known Dennis as a man of his word, who reaches decisions weighing the evidence with matters of law. I have been a long time advocate for women's rights and civil rights, and would never support someone whom I believed had personal issues outweighing legal judgment on matters concerning the same. Even is disagreement, his listening ear would grant the same respect offered to him by those with opposing views. And the respect he provides for one, I trust him to provide to others. As a political leader Senator Thurmond has been most respectful in communicating with me, and as a legal representative Dennis has been most receptive and respectful of my calls.

In conclusion, my wife and I have two daughters; our hopes and dreams for the future are in them. I believe Dennis will represent equality and justice for women and all ethnicities in America with devotion to oath he has taken. I do not believe that he will forsake the law with favoritism for economic giants or big business. I sincerely view Dennis as one who will grant persons of every socioeconomic level the same psycho-social respect within the law.

Therefore, I strongly favor the nomination of Dennis Shedd to the 4th Circuit Court of Appeals, because Dennis stands firm on his convictions, but is open to intelligent and informed opinions of law. He is open to change, but I do not expect him to change just for political correctness. He will, however, hear the ethical and moral points. I support him because of his listening ear and desire for justice.

I appreciate your prayerful action and reception of this letter.

Law Offices of Jack B. Swerling,
Columbia, SC, January 26, 2001.

Re the Honorable Dennis W. Shedd.

Hon. Ernest F. Hollings,
U.S. Senator,
Columbia, SC.

Dear Senator Hollings: I am writing you in support of the nomination of the Honorable Dennis W. Shedd to the Fourth Circuit Court of Appeals. I believe that you could not find from our great state a more able or deserving jurist to sit on the Fourth Circuit.

I have been in practice for almost 28 years and a significant part of my practice is dedicated to the representation of defendants in criminal cases in the District of South Carolina. Since Judge Shedd was appointed to serve as a District Judge, I have had the opportunity to appear before him on many occasions, in both hearings and in trials.

Judge Shedd presides over the proceedings before him in a fair and impartial manner. All litigants, whether they be private individuals, corporations, or governmental entities, enjoy the opportunity to be fully heard in the presentation of their case. I have always felt that while one side or another must ultimately prevail, each litigant as well as their counsel have been treated with the utmost respect and dignity in Judge Shedd's courtroom. He is known among the federal bar to be intellectually gifted. He has a complete command of not only the federal rules of evidence and procedure, but also the federal case law throughout the country. His orders and trial rulings are based upon a sound and insightful perspective of the applicable federal rules and law. In order to reach a just result in a recent case, Judge Shedd and his very able law clerks worked long into the night and started again early the next morning to study the transcripts and research all of the applicable federal law before ruling on my motion for a judgment of acquittal. His Order, with underlying factual and legal support, is a model for any jurist.

It has been an honor and a privilege to practice before the Judge over these years. He is a man of integrity with the highest ethical standards; a highly energetic and motivated jurist; and one with the demeanor and intellectual ability to serve with distinction on the Fourth Circuit just as he has served in our District over these past years. On behalf of this lawyer, I would urge you to support his nomination.

Very truly yours,

JACK B. SWERLING.

JAN S. STRIFLING,
ATTORNEY AT LAW, P.A.,
Columbia, SC, October 2, 2002.

Re Hon. Dennis W. Shedd, U.S. District Judge.

Hon. CHARLES SCHUMER,
U.S. Senator, Leo O'Brien Bldg.,
Albany, NY.

DEAR SENATOR SCHUMER: By way of introduction, I introduced myself to you in the Tetons last summer when you and your family were hiking in cascade canyon.

I am writing you in support of Judge Dennis Shedd's confirmation as Judge of the Fourth Circuit Court of Appeals. I practice criminal law and can understand that a great deal of the outcry against Judge Shedd comes from the results of the criminal cases. From my viewpoint, Judge Shedd makes decisions which follow the law notwithstanding their popularity.

I have practiced criminal law for over thirty years and have had a substantial number of cases before Judge Shedd since he began as a District Judge. He has always been courteous to me and my clients and cognizant of the rights of all parties.

I think that he has been a judge who has been fair to all litigants and that he would continue in that manner in the Circuit Court.

Thank you for your consideration.

Sincerely,

JAN S. STRIFLING.

THE "QUATTLEBAUM CASE": WHAT THE LAWYERS SAY

E. Bart Daniel, the criminal defense attorney who represented the lawyer who pled guilty and was sentenced to jail for perjury (letter to Senator Hatch dated November 18, 2002)

I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, and Assistant U.S. Attorney, a United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a "white collar" criminal defense practice. I have appeared many times in court before Judge Shedd and found him to be courteous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in United States v. John Earl Duncan. Mr. Duncan was a practicing attorney who was convicted of perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33,386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge Shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, Judge Shedd was courteous and patient and listened intently to the many people who spoke on our client's behalf including my co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or I can be of any further support, please do not hesitate to call.

Jack Swerling, the criminal defense attorney who represented the Deputy Solicitor who was tried for perjury before Judge Shedd (letter to Senator Hollings dated January 26, 2001)

I am writing you in support of the nomination of the Honorable Dennis W. Shedd to the Fourth Circuit Court of Appeals. I believe that you could not find from our great state a more able or deserving jurist to sit on the Fourth Circuit.

I have been in practice for almost 28 years and a significant part of my practice is dedicated to the representation of defendants in criminal cases in the District of South Carolina. Since Judge Shedd was appointed to serve as a District Judge, I have had the opportunity to appear before him on many occasions, in both hearings and trials.

Judge Shedd presides over the proceedings before him in a fair and impartial manner. All litigants, whether they be private individuals, corporations, or governmental entities, enjoy the opportunity to be fully heard in the presentation of their case. I have always felt that while one side or another must ultimately prevail, each litigant as well as their counsel have been treated with the utmost respect and dignity in Judge Shedd's courtroom. He is known among the federal bar to be intellectually gifted. He has a complete command of not only the federal rules of evidence and procedure, but also the federal case law throughout the country. His orders and trial rulings are based upon a sound and insightful perspective of the applicable federal rules and law.

It has been an honor and a privilege to practice before the Judge over these years. He is a man of integrity with the highest ethical standards; a highly energetic and motivated jurist; and one with the demeanor and intellectual ability to serve with distinction on the Fourth Circuit just as he has served over these past years. On behalf of this lawyer, I urge you to support his nomination.

Joseph M. McCullough, Jr., the criminal defense attorney who intervened on behalf of Quattlebaum in the federal prosecution to have the videotape suppressed at trial (letter to Senator Hollings dated January 29, 2001)

Having practiced law in South Carolina for more than 20 years, and as past President of the South Carolina Criminal Defense Lawyers Association, I have had occasion to be in Judge Shedd's courtroom frequently and have tried several cases before him. I have always been impressed with Judge Shedd's factual familiarity and legal preparation in every matter before him. I have found him to be extremely intelligent and a firm hand in the courtroom. I have always been impressed with his understanding of the law, and believe that he would be a strong addition to the Fourth Circuit Court of Appeals.

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, SC, November 18, 2002.

In re Dennis W. Shedd, Nominee to Fourth Circuit Court of Appeals.

Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I, therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

In response to your specific inquiries, I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant).

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to rescuse himself and he is very consistent about this.

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

In regard to the issue of granting summary judgment or otherwise dismissing cases short of trial, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial and a great number of those eventually settle before the trial can be conducted. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards.

Joseph F. Anderson, Jr.,
Chief United States District Judge.

The Senate,
State of Arkansas,
October 11, 2002.

Re confirmation for Federal Judge Dennis Shedd (South Carolina) to the US Court of Appeals.

Hon. Blanche Lincoln,
U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Senator Lincoln: I am writing this letter to provide my strongest possible recommendation for the Hon. Dennis Shedd, of Columbia, South Carolina, who has been nominated by President Bush to sit on the U.S. Court of Appeals in Richmond.

Yesterday, I read the story in the A Section of the Arkansas Democrat-Gazette regarding the Senate Judiciary Committee's decision to delay confirmation of Judge Shedd until after the recess, after which Senator Strom Thurmond (R–SC) will have retired from the Senate.

I understand that you are not a member of the Judiciary Committee. However, I am writing this letter as one of your loyal supporters and good friends, and as a good Democrat as well. I want you to know that I cannot think of many people who would make a better Appeals Court Judge than Dennis Shedd.

Dennis and I are good friends from the days when we both worked in Washington, he for Senator Thurmond and I for Senator Bumpers. In addition, he was my landlord for over four years at the townhouse where I lived. We have kept in touch over the years as we got both got married and built families. I have also visited Dennis and his wonderful wife, Elaine, in South Carolina during the occasions my family vacations there.

However, taking friendship and political philosophies aside, I can honestly say that he has one of the finest minds I have ever encountered, including President Clinton and many others with whom I have had the good fortune to become well acquainted. Furthermore, his sense of personal and professional integrity is unrivaled, as is his knowledge and understanding of the law. He was one of the lawyers involved in the dissolution of the Heritage USA Bankruptcy (Jim Baker), and he gave half of his legal fees to victims. On one visit to South Carolina, I had the opportunity to sit in on a high profile case, and was very impressed with the way he dispensed justice in that proceeding, and with the relationship he had with the then Democratic US Attorney's Office. He has a wonderful family and is someone I would say is a true patriot.

In short, I believe Dennis Shedd has proven to be a good and valued officer of the court, and would make an excellent Appeals Court Justice. I believe the problem with the confirmation has more to do with the politics of having been chief of staff to the Senate Judiciary Committee when President Reagan was in office, and several Democrats see an opportunity for partisan retribution for some of the judicial politics of that era. I want you to know that I saw Dennis Shedd almost every day during that period, and there is no one who would deny his professionalism in handling these matters. The politics of that era had more to do with who was in power than it did with the staff. The US Senate, including Democrats, should move his confirmation forward.

Dennis is a self-made person who came from a small South Carolina town and worked his way through law school while a member of Senator Thurmond's staff, and who did such a good job was ultimately promoted. You know that I am a good and loyal Democrat. However, the fact of his political affiliation should not prevent or detract from all of these qualifications, and I sincerely plead with you to bring this up in the Senate Democratic Caucus with a request that the Judiciary Committee honor its word to Senator Thurmond, and move Judge Shedd's nomination forward and out of the Senate.

I think this is one of only a handful of letters I have ever written you. Thank you for your time, and please forgive the length of this letter. However, I do hope you will take this request seriously, and pass it on to your colleagues.

Sincerely,

Kevin A. Smith,
State Senate.

Garry L. Wooten,
Attorney and Counselor at Law,
Columbia, SC, November 18, 2002.

Senator Ernest F. Hollings,
Russell Senate Office Building,
Washington, DC.

Dear Senator Hollings: I am writing to express my strong support for the confirmation of Dennis W. Shedd to the Fourth Circuit Court of Appeals.

I have practiced law for over twenty years in Columbia, South Carolina. I handle primarily personal injury and criminal cases. My practice is a Plaintiff's practice. I have been a member of the South Carolina Trial Lawyers Association since graduating from law school and appreciate your strong support for that organization.

I have appeared before Judge Shedd in a certain number of cases. Some cases have been won and some were lost. In one case, my client was African American. That case involved a lawsuit in which the Federal Government fought to deny my client life insurance benefits after the death of his wife. Judge Shedd ruled favorably and properly for my client on the law. My client received a verdict for the full amount of the benefits. During the trial, Judge Shedd was fair, extremely knowledgeable on the law, and showed absolute integrity.

I am confident that Judge Shedd will be fair to all and show complete integrity if confirmed for a position on the Fourth Circuit Court of Appeals.

With the kindest regards, I am.

Sincerely,

Garry L. Wooten.

Gregory P. Harris,
Attorney at Law,
Columbia, SC, November 18, 2002.

Hon. Ernest F. Hollings,
U.S. Senator, Senate Office Building, Washington, DC.

Dear Senator Hollings: This is the second letter that I have written to you in support of the confirmation of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I believe that it is necessary to write another letter in light of recent accusations that I have read concerning Judge Shedd fairness and temperament on the district court bench.

I was the Deputy Chief of the Criminal Division in the U.S. Attorney's Office when Judge Shedd took the bench in 1992. As a federal prosecutor, I tried three cases in front of Judge Shedd. He was tough, but fair. In 1993, I entered private practice specializing primarily in federal criminal defense. Since entering private practice, I have tried seven cases in Judge Shedd's court and appeared on other matters on numerous occasions. During each of these trials, Judge Shedd was similarly tough and fair. It has been my experience as a federal prosecutor and a private attorney that Judge Shedd feeds everyone out of the same spoon.

As to his temperament, on occasion when he and I have disagreed over the admittance of evidence, the admission of a statement, or any other matter of law, he has been professional, courteous, and usually right. Nevertheless, even after these disagreements, he has never left the court room at the end of the day without a smile and a kind word to the lawyers.

It seems to me that those leveling the accusations at Judge Shedd have never even seen him in court, much less appeared before him. Almost all of us who have, strongly support his confirmation to the Fourth Circuit. If have any questions, please do not hesitate to contact me regarding my professional and personal feelings about Judge Shedd.

Regards,

Gregory P. Harris.

Nathaniel Roberson,
Attorney at Law,
Columbia, SC, November 18, 2002.

Re nomination for the 4th Circuit Court of Appeals.

Senator Earnest F. Hollings,
Senator Orrin Hatch.

Gentlemen: This is on behalf of Dennis Shedd and his nomination for the 4th Circuit Court of Appeals.

I have tried many cases, argued motions, and have done may guilty pleas before Judge Shedd since he became a District Court Judge in South Carolina.

I have found him to be open and honest with litigant members of the bar and witnesses relevant to the issues before him. He has at all times demonstrated the kind of judicial temperament that has made him a credit to our judiciary.

He has been accused by groups and organizations of being biased either for against certain issues that has not endeared him for the reasons expressed by those organizations that oppose him.

My experience with Judge Shedd has been professional, judicial, and he has never blocked or interfered with my representation of clients and those issues that I was required to make on behalf of the people I represented. I urge you and your colleagues to vote in favor of Judge Shedd being elevated to the Fourth Circuit Court of Appeals.

Thanks for your consideration.

Sincerely,

Nathaniel Robertson.

Young and Sullivan, L.L.P.,
Attorneys and Counselors at Law,
Charleston, SC, November 18, 2002.

Re Judge Dennis W. Shedd, nomination, Fourth Circuit.

Senator Orrin Hatch,
Dirksen Senate Office Building,
Washington, DC.

Dear Senator Hatch: I have been in an eight week (8) long jury trial before Judge Dennis W. Shedd and many other jury trials, motion hearings, and sentencing hearings and appeals to the Fourth Circuit. I have appeared before Judge Shedd as much or more than any defense lawyer in South Carolina.

I am not a political crony of Judge Shedd, I am a trial lawyer. I was Chief Public Defender in Columbia, SC (1972–87) Adjunct Professor of Law, USC School of Law (1974–89), President SC Public Defenders Association (1972–88), Founder, SC Association of Criminal Defense Lawyers, Served by election ABA Criminal Justice Council, and was awarded the Bronze Star in Vietnam (1969–70).

Judge Shedd is a competent, fair, even-handed jurist and I urge your support for him to be a Judge on U.S. Court of Appeals—Fourth Circuit.

Tell any U.S. Senator opposed to Judge Shedd's nomination to call me, I am in my office.

Sincerely,

JOHN MCMAHON YOUNG,
Attorney At Law.

Mr. THURMOND. I thank the chair.

(Applause, Senators rising.)

The Senator from Utah.

Mr. HATCH. Mr. President, we are so proud of our senior Senator from South Carolina.

Mr. President, I rise today in support of the confirmation of Judge Dennis Shedd and to congratulate the President on getting his 100th judicial nominee confirmed. Yesterday, I made much more detailed remarks in Judge's Shedd's favor.

I am also glad for Senator STROM THURMOND. He is much loved in the Senate, he is much loved in South Carolina and throughout this country, and I know that he wanted to see his former Chief Counsel confirmed before the end of his long career in the Senate.

In the recent election, as far as I see it, the President took three issues to the American people: his Iraq policy, Homeland Security and his judicial nominees. The election showed that Americans trust this President including in his selection of judicial nominees.

The election indicated that voters rejected obstruction in the Senate, including on judicial nominees, and voters especially rejected the distortions of reputations that they read and heard about in hundreds of news stories, scores of editorials, and dozens of opeds . . . and that they saw on TV.

Voters sent us a clear message, it seems to me, that we should end the obstruction and maltreatment of judicial nominees. We need to evaluate judges or potential judges as unbiased umpires who call the balls and the strikes as they are, not as they alone see them and not as they want them to be. We must end the practice of projecting ideology to see if an umpire is pro-bat or pro-ball, pro-batter or pro-pitcher.

Our job is to determine the character and temperament of a nominee to the judiciary. Period. This is true of the trial bench, the appellate court, and the Supreme Court.

Again, I express my great satisfaction that the Judiciary Committee has favorably recommended the nomination of Judge Dennis Shedd of South Carolina for a vote of the full Senate.

When Judge Shedd was nominated to the federal trial bench, Chairman BIDEN had this to say to him: "I have worked with you for so long that I believe I am fully qualified to make an independent judgment about your working habits, your integrity, your honesty, and your temperament. On all these scores, I have found you to be beyond reproach."

This is high praise, indeed, and from a colleague from the other side of the aisle for whom we all have the greatest respect.

Judge Shedd has strong bipartisan support in his home state as well, and not only from Senators THURMOND and HOLLINGS. He is also strongly supported by Dick Harpootlian, South Carolina State Chairman of the Democratic Party, and himself a trial lawyer.

Dennis Shedd has served as a federal jurist for more than a decade following nearly twenty years of public service and legal practice. While serving the Judiciary Committee, Judge Shedd worked, among many other matters, on the extension of the Voting Rights Act, RICO reform, the Ethics in Post-Employment Act, and the 1984 and 1986 crime bills.

As Senator BIDEN put it: "His hard work and intelligence helped the Congress find areas of agreement and reach compromises."

Judge Shedd will add diversity to the Fourth Circuit Court of Appeals. The last five Fourth Circuit confirmations have all been Democrats. When Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit.

The American people should be grateful that President Bush has nominated Dennis Shedd to serve this country further. He has already served for nearly 25 years.

Judge Dennis Shedd has heard more than 5,000 civil cases, reviewed more than 1,400 reports and recommendations of magistrates, and has had before him nearly 1000 criminal defendants. He has been reversed fewer than 40 times, less than one percent.

In employment cases, he has only twice been reversed in his decisions. Remarkbly, in criminal cases, Judge Shedd has never been reversed on any ruling considered before or during trial, or on the taking of guilty pleas.

Now, detractors have made much of the fact that he has a relative few decisions that he has chosen to publish. But, in fact, he falls in the middle of the average for published opinions in the Fourth Circuit. One Carter appointee has published all of 7 cases, one Clinton appointee has published only 3, and another Carter appointee has published 51, only one more than Judge Shedd, despite being on the court for 10 years longer.

Notably, on cases involving the Voting Rights Acts, Judge Shedd has ruled for plaintiffs in each instance, an Act, I might add that he worked to extend in the Senate.

From his service in the Senate to his role on the South Carolina Advisory Committee of the United States Civil Rights Commission, Judge Shedd has been a leader on civil rights. He led efforts to appoint the first African American woman ever to serve as a magistrate judge in South Carolina and has sought the Selection Committee to conduct outreach to women and people of color in filling such positions. He pushed for an African American woman to be Chief of Pretrial Services. He has actively recruited persons of color to be his law clerks.

And because of Judge Shedd's work in an award-winning drug program that aims to reverse stereotypes among 4,000 to 5,000 school children, he was chosen as the United Way's School Volunteer of the Year.

This record stands in contrast to the distortions we have heard about Judge Shedd's sensitivity on civil rights.

The Judiciary Committee received a very touching letter from one of Judge Shedd's former law clerks, Thomas Jones and I placed in the RECORD yesterday.

Now this young man,—this young lawyer happens to be a person of color—an African American. He says:

> It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd . . . I trust the allegations are given the short shrift they are due.

I would like to read from a letter I received from Niger Innis who has inherited his father's mantle and is the national spokesman for the Congress of Racial Equality. We all know his father, of course, Roy Innis, who was a great leader of the civil rights movement in the 1960's together with Dr. King.

I received this letter even while I was on the floor of the Senate yesterday.

Mr. Innis writes:

> This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

He goes on:

> Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.
>
> Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee

> to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.
>
> Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. . .
>
> We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair smear against his name. Let Judge Shedd have his day on the Senate floor.

Another letter I received while I was on the floor yesterday came from Phyllis Berry Myers, President of the Centre for New Black Leadership; another great name in the African American community.

Ms. Myers writes:

> The Senate can restore itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

And at 2:32 pm yesterday, while I was on the floor, we also received a letter from the former Chairman of the NAACP of South Carolina. The Rev Dr. Luonne Abram Rouse writes:

> Dennis Shedd is an outstanding American citizen, and a friend of high integrity and godliness. The United States of America will benefit greatly from his service in the 4th Circuit Court of Appeals.
>
> The Honorable Senator Strom Thurmond of South Carolina introduced me to Dennis in 1983. Putting history behind, we came together in the 80s, while I served as president of a local NAACP chapter in South Carolina. We established a friendship and respectful sharing that has been mutually beneficial for our work in America and beyond. Since that time, I have found Dennis Shedd to be the type of person that I trust I trust to weigh the issues with dignity and legal focus. . .

Reverend Rouse wrote a remarkable letter and ends this way:

> In conclusion, my wife and I have two daughters; our hopes and dreams for the future are in time. I believe Dennis will represent equality and justice for women and all ethnicities in America with devotion to oath he has taken. I do not believe that he will forsake the law with favoritism for economic giants or big business. I sincerely view Dennis as one who will grant persons of every socioeconomic level the same psycho-social respect within the law.
>
> Therefore, I strongly favor the nomination of Dennis Shedd to the 4th Circuit Court of Appeals, because Dennis stands firm on his convictions, but is open to intelligent and informed opinions of law. He is open to change, but I do not expect him to change just for political correctness. He will, however, hear the ethical and moral points. I support him because of his listening ear and desire for justice.

But these are not unique letters. We have received letters from the people who know Judge Shedd. They are the ones that matter.

I want to take a moment to read a few excerpts from some of the letters we've received in support of Judge Shedd. Keep in mind that the letters are from lawyers who know Judge Shedd, who have practiced before him, and who are in the best position to assess his qualifications for the appellate bench.

The first letter is from J. Preston Strom, Jr. Mr. Strom writes:

> I write to support Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit. As a former United States Attorney for the District of South Carolina appointed by President Clinton, my office had daily dealings with Judge Shedd. Judge Shedd is a fair and efficient jurist who even-handedly applied substantive and procedural rules. On occasions when my office disagreed with Judge Shedd's rulings, I found that he always provided well-reasoned analyses for his decisions. Further, when the rules provided for discretion in sentencing for cooperation with federal agents in the prosecution of crime, Judge Shedd deliberated and provided substantial sentence reductions when warranted.
>
> Following my tenure as United States Attorney, I have practiced before Judge Shedd representing criminal defendants and civil plaintiffs. In my criminal defense practice, I have represented many African-Americans before Judge Shedd, and found Judge Shedd to be fair and consistent to each of my clients, regardless of race.
>
> As a member of the Board of Governors of the South Carolina Trial Lawyers Association and a member of the Association of Trial Lawyers of America, I appreciate a judge who pushes civil cases towards resolution and does not permit parties to engage in unwarranted delay tactics. Judge Shedd is such a judge.

Here is another letter. This one is from attorney Garry Wooten. He writes:

> I have practiced law for over twenty years in Columbia. I handle primarily personal injury and criminal cases . . .
>
> I have appeared before Judge Shedd in a certain number of cases. Some cases have been won and some were lost. In one case, my client was African-American. That case involved a lawsuit in which the Federal Government fought to deny my client life insurance benefits after the death of his wife. Judge Shedd ruled favorably and properly for my client on the law. My client received a verdict for the full amount of the benefits. During the trial, Judge Shedd was fair, extremely knowledgeable on the law, and showed absolute integrity.
>
> I am confident that Judge Shedd will be fair to all and show complete integrity if confirmed for a position on the Fourth Circuit Court of Appeals.

Another letter, this one from Jonathan Harvey, states:

> I am the current treasurer of the South Carolina Association of Criminal Defense Lawyers and a member of its board as well as past representative to its Board of Directors from the Fifth Judicial Circuit. . . . I have had many opportunities to appear in front of Judge Shedd. I have left each proceeding convinced that my clients irrespective of social status, creed, gender, or race were treated fairly and with a proper application of the law.
>
> I trust this letter will enable you to inform your colleagues that there exists a significant history of Judge Shedd exercising his discretion objectively and fairly toward those parties who have appeared before him.

In another letter, lawyer John Simmons writes:

> In all of my litigation before Judge Shedd, I have found him to be fair and impartial. He possesses the highest integrity and intellect and always treats the attorneys and litigants with the utmost respect.
>
> In one particular civil matter, I represented an individual non-party who was alleged to have donated blood contaminated with the HIV virus. Judge Shedd handled this sensitive and difficult matter with patience and care, protecting my client's identity while affording all litigants their adequate discovery rights. I was extremely impressed with the thoughtful diligence Judge Shedd pursued in ensuring my client's confidentiality while balancing the rights of the parties.

Finally, here is a letter from Howard Hammer. Mr. Hammer writes:

> I have been a practicing South Carolina attorney for over thirty (30) years. My practice primarily involves representation of plaintiffs in civil litigation, including representation of numerous individuals in employment disputes. . . .
>
> I have found Judge Shedd to be firm, just and deliberate in all my dealings with him. He is a man of highest integrity and I would respectfully urge your support of his confirmation.

I could go on and on reading testimonials from lawyers in South Carolina who have regularly appeared before Judge Shedd and who strongly support his confirmation on the Fourth Circuit. Yesterday I entered other letters into the record.

Mr. President, Dennis Shedd is well qualified to serve on the Fourth Circuit Court of Appeals. I think so and the American Bar Association, hardly a bastion of conservative politics, has said so as well. In supporting his confirmation I for one express my gratitude on behalf of the American people for an entire life in public service.

Mr. President, I ask unanimous consent that letters of support for the confirmation of Judge Shedd be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

> CONGRESS OF RACIAL EQUALITY,
> *New York, NY, November 18, 2002.*
>
> Hon. ORRIN HATCH,
> *U.S. Senate, U.S. Capitol,*
> *Washington, DC.*
>
> DEAR SENATOR HATCH: This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.
>
> Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.
>
> Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has

sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.

Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. His efforts have championed the efforts to recruit and elect the first African-American U.S. Magistrate Judge in the South Carolina District, Margaret Seymour. He has actively sought minority and female candidates for other Magistrate Judge positions, and has directed the Selection Commission in South Carolina to bear in mind diversity in the selection of candidates for these positions.

Judge Dennis Shedd's accomplishments and service have transcended bi-partisan support even from his home state Senators, notably, Senators Strom Thurmond and Senator Ernest Hollings who wholly support his nomination.

In the interest of fairness, balance we ask you to look past the unfounded partisan attacks of propaganda against Judge Shedd and fairly examine his work for yourselves. We strongly believe Judge Shedd's accomplishments and contributions to justice and civil rights speaks for itself.

We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair smear against his name. Let Judge Shedd have his day on the Senate floor.

Sincerely,

NIGER INNIS, *National Spokesman*.

CENTRE FOR NEW BLACK LEADERSHIP,
November 18, 2002.

Hon. ORRIN HATCH,
Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: The Centre for New Black Leadership (CNBL) believes the Senate's judicial nomination system is broken and needs repairing.

We have watched with great trepidation as the Senate's role of "advise and consent" for Presidential nominations, especially judicial nominations, has become increasingly, "search and destroy," "slander and defame." It is a wonder that reasonable, decent people agree to go through the confirmation process at all.

The confirmation process has become particularly brutal if the nominee is labeled "conservative." Traditional civil rights groups mass to castigate and intimidate, as they do now, attempting to thwart the confirmation of Judge Dennis W. Shedd to the U.S. Fourth Circuit Court of Appeals.

Once again, we are witnessing the new depth to which public discourse and debate has sunk when fabrications, statements taken out of context, misinformation and disinformation can pass as serious political deliberation and debate. The vitally needed discussion about continued civil rights progress in a 21st Century world gets lost in the cacophony. Our nation and true civil rights advocates are poorer because of this.

The Senate can restore to itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

Sincerely,

PHYLLIS BERRY MYERS,
President & CEO.

ROSENBERG PROUTT FUNK & GREENBERG, LLP,
Baltimore, MD, June 25, 2002.

Senator PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: My name is Thomas W. Jones, Jr. I am an African-American attorney currently practicing as a litigation associate in Baltimore, Maryland.

Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd ("Judge Shedd") on the U.S. District Court for the District of South Carolina. During my eighteen months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of Judge Shedd's jurisprudence or daily activities.

It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable Committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit.

Thank you for your attention regarding this matter.

Respectfully,

THOMAS W. JONES, JR.

E. BART DANIEL,
ATTORNEY AT LAW,
Charleston SC, November 18, 2002.

Hon. ORRIN HATCH,
104 Hart Office Building, Washington, DC.

Re Nomination of Dennis W. Shedd to Fourth Circuit Court of Appeals.

DEAR SENATOR HATCH: I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, and Assistant U.S. Attorney, United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a "white collar" criminal defense practice.I have appeared many times in court before Judge Shedd and found him to be courtcous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in *United States v. John Earl Duncan* (3:99-638-001). Dr. Duncan was a practicing attorney who was convicted for perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33.386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, judge Shedd was courtrous and patient and listened intently to the many people who spoke on our client's behalf including co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or if I can be of any further support, please do not hesitate to call.

Yours very truly,

E. BART DANIEL.

J. KERSHAW SPONG,
Columbia, SC, November 4, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: Please allow this letter to voice my strong support for the nomination of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. Your support for Judge Shedd's nomination is appreciated, and, as a fellow South Carolinian, I hope you will continue to support him throughout this process.

Having worked with Judge Shedd in the U.S. Senate, and as a practicing lawyer in South Carolina, I know him to be a person of the highest integrity, professional competence, and judicial temperament. As you may be aware, the ABA, which reviews the nominees, has given Judge Shedd a majority rating of "well qualified," its highest rating.

I am also concerned about the nominating process. I think many things have been unfairly said about Judge Shedd by outside special interest groups which have little basis in fact. It will become increasingly more difficult to get good and competent attorneys to step forward to serve in the judiciary if they have to go through this highly charged partisan atmosphere.

I hope for your continued support for this exceptional nominee and ask that you urge the Senate Judiciary Committee to bring this nomination to a vote before the end of Congress. After having to wait well over a year since his nomination, and more than several months since his hearing at the Committee, it is time for Judge Shedd to be confirmed to the Fourth Circuit.

Thank you for your consideration of my views.

Sincerely,

J. KERSHAW SPONG.

TOMPKINS AND MCMASTER, LLP,
Columbia, SC, October 31, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: I was extremely disappointed in your recent action denying Judge Dennis Shedd, nominee to the Fourth Circuit Court of Appeals, a vote on the Committee's October 8th markup. Despite your promises to Senator Strom Thurmond and other members of the Senate Judiciary Committee—and in contravention of Committee rules—you refused to schedule a vote to allow his nomination to proceed to the full Senate.

It would appear that you are bowing to the demands of outside interest groups who have unfairly characterized Judge Shedd's ruling on the district court. The facts are that he has been reversed in fewer than 1% of the more than 5,000 cases he has heard in his twelve years on the district court. After reviewing his record, the ABA rated Judge Shedd "well-qualified," its highest rating. You once referred to the ABA rating system as the "gold standard." In addition, Judge Shedd is well-represented by the members of the bench and bar in South Carolina, and has the bipartisan support of Senators Thurmond and Hollings—his home state senators.

The Senate Judiciary Committee has had nearly a year and a half to review Judge Shedd's record. I urge you to stop delaying a vote on his nomination. Judge Shedd, an exceptional nominee with the bipartisan support, deserves to be confirmed to the Fourth Circuit before the end of this Congress.

Thank you.

Yours very truly,

HENRY DARGAN MCMASTER.

STROM LAW FIRM L.L.C.,
Columbia, SC, November 18, 2002.

Hon. ERNEST F. HOLLINGS,
U.S. Senator-South Carolina,
Washington, DC.

Re confirmation of the Honorable Dennis Shedd to the United States Court of Appeals for the Fourth Circuit

DEAR SENATOR HOLLINGS: I write to support Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit. As a former United States Attorney for the District of South Carolina appointed by President Clinton, my office had daily dealings with Judge Shedd. Judge Shedd is a fair and efficient jurist who even-handedly applied substantive and procedural rules. On occasions when my office disagreed with Judge Shedd's rulings, I found that he always provided well-reasoned analysis for his decisions. Further, when the rules provided for discretion in sentencing for cooperation with federal agents in the prosecution of crime, Judge Shedd deliberated and provided substantial sentence reductions when warranted.

Following my tenure as United States Attorney, I have practiced before Judge Shedd representing criminal defendants and civil plaintiffs. In my criminal defense practice, I have represented many African-Americans before Judge Shedd, and found Judge Shedd to be fair and consistent to each of my clients, regardless of race.

As a member of the Board of Governors of the South Carolina Trial Lawyers Association and a member of the Association of Trial Lawyers of America, I appreciate a judge who pushes civil cases towards resolution and does not permit parties to engage in unwarranted delay tactics. Judge Shedd is such a judge.

From my many years of practice before Judge Shedd, I can say that one admirable characteristic stands above all. Diligence. Each time I have appeared before Judge Shedd, it is clear that Judge Shedd has examined the entire case file and performed the requisite research necessary to frame the issues. For attorneys who vigorously represent their clients at every stage of the criminal and civil processes, a hard working judge is much appreciated. It is Judge Shedd's diligence in examining each case on its facts and the supporting law that makes him an excellent candidate for appointment to the United States Court of Appeals for the Fourth Circuit.

If you or anyone on your staff has questions, please contact me.

With regards, I am

Very truly yours,

J. PRESTON STROM, JR.

LAW OFFICE OF JONATHAN HARVEY,
ATTORNEY AT LAW,
Columbia, SC, October 1, 2002.

Re Nomination of the Honorable Dennis Shedd.

Hon. ERNEST F. HOLLINGS,
U.S. Senator, U.S. Senate,
Washington, DC.

DEAR SENATOR HOLLINGS: I am taking the liberty of contacting your office on behalf of Judge Shedd.

I had heretofore been grateful for the bipartisan support of our senators and until recently thought that protocol would suffice to ensure his nomination.

However, recent developments concerning his nomination have compelled me to contact you to provide a recommendation based upon a hands on perspective.

I am writing to express my support for his nomination. I am the current treasurer of the South Carolina Association of Criminal Defense Lawyers and a member of its board as well as past representative to its Board of Directors from the Fifth Judicial Circuit. As I am sure you know, the Fifth Judicial Circuit encompasses Richland County and Columbia. My practice is focused in the Midlands. I have had many opportunities to appear in front of Judge Shedd. I have left each proceeding convinced that my clients irrespective of social status, creed, gender, or race were treated fairly and with a proper application of the law.

I trust this letter will enable you to inform your colleagues that there exists a significant history of Judge Shedd exercising his discretion objectively and fairly toward those parties who have appeared before him.

I am grateful and appreciative of the support you have shown for his nomination and hope that my comments and insight will prove to be beneficial on his behalf.

Our State is fortunate to have been able to count on you as a steward for its interests and I thank you for your tireless efforts on behalf of our Country and State.

Yours truly,

JONATHAN HARVEY.

SIMMONS & GRIFFIN, L.L.C.,
Columbia, SC, November 18, 2002.

Re Judge Dennis W. Shedd.

Hon. ORRIN HATCH,
U.S. Senate, Committee on Judiciary, Washington, DC.

DEAR SENATOR HATCH: I am a former United States Attorney who now practices law in Columbia, South Carolina. Prior to entering government service and private practice, I served as a law clerk on the Fourth Circuit Court of Appeals.

Over the past twelve years, I have had the opportunity to appear before Judge Dennis Shedd in criminal cases as both a prosecutor and defense attorney. In addition, I have handled numerous civil cases before Judge Shedd as a representative of the plaintiff and defense.

In all of my litigation before Judge Shedd, I have found him to be fair and impartial. He possesses the highest integrity and intellect and always treats the attorneys and litigants with the utmost respect.

In one particular civil matter, I represented an individual non-party who was alleged to have donated blood contaminated with the HIV virus. Judge Shedd handled this sensitive and difficult matter with patience and care, protecting my client's identity while affording all litigants their adequate discovery rights. I was extremely impressed with the thoughtful diligence Judge Shedd pursued in ensuring my client's confidentiality while balancing the rights of the parties.

I respectfully write in support of Judge Shedd's confirmation to the United States Court of Appeals for the Fourth Circuit.

Thank you for your consideration of this matter.

With kind regards, I remain,

Sincerely,

JOHN S. SIMMONS.

HAMMER HAMMER & POTTERFIELD,
Columbia, SC, November 18, 2002.

Hon. ERNEST HOLLINGS,
Russell Senate Office Buildings,
Washington, DC.

DEAR SENATOR HOLLINGS I am writing regarding consideration of United States District Judge Dennis Shedd for a position on the Fourth Circuit Court of Appeals. As you know, I have been a practicing South Carolina attorney for over thirty (30) years. My practice primarily involves representation of plaintiffs in civil litigation, including representation of numerous individuals in employment disputes.

I have known Judge Shedd for over twelve (12) years. I have found Judge Shedd to be firm, just and deliberate in all of my dealings with him. He is a man of highest integrity and I would respectfully urge your support of his confirmation.

With kind regards, I remain,

Very truly yours,

HOWARD HAMMER, P.A.,
HAMMER, HAMMER & POTTERFIELD.

The PRESIDING OFFICER. Is there any Senator requesting time?

The Senator from Vermont.

Mr. LEAHY. Mr. President, have the yeas and nays been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. Mr. President, I yield back the remainder of the time.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit? The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Alaska (Mr. MURKOWSKI) is necessarily absent.

The PRESIDING OFFICER (Mr. MILLER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 55, nays 44, as follows:

[Rollcall Vote No. 250 Ex.]

YEAS—55

Allard
Allen
Bennett
Bond
Brownback
Bunning
Burns
Byrd
Campbell
Chafee
Cochran
Collins
Craig
Crapo
DeWine
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Hatch
Helms
Hollings
Hutchinson
Hutchison
Inhofe
Inouye
Kyl
Lincoln
Lott
Lugar
McCain
McConnell
Miller
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Voinovich
Warner

NAYS—44

Akaka
Barkley
Baucus
Bayh
Biden
Bingaman
Boxer
Breaux
Cantwell
Carnahan
Carper
Cleland
Clinton
Conrad
Corzine
Daschle
Dayton
Dodd
Dorgan
Durbin
Edwards
Feingold
Feinstein
Harkin
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Mikulski
Murray
Nelson (FL)
Reed
Reid

Rockefeller Schumer Torricelli
Sarbanes Stabenow Wyden

NOT VOTING—1

Murkowski

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid on the table. The President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

ON 100 JUDICIAL CONFIRMATIONS BY THE DEMOCRATIC-LED SENATE

Mr. LEAHY. Mr. President, as the 107th Congress concludes, it is time to reflect on the important work we have performed for the American people. In the past few days, the full Senate voted on 20 of the nominees reported favorably by the Judiciary Committee in addition to the 80 judicial nominations previously confirmed. Since the change in majority 16 months ago, the Senate Judiciary Committee has voted on 102 of President George W. Bush's judicial nominees and has held hearings on 103 judicial nominations, some of whom have proven to be quite controversial and divisive. We voted on 102 of them, reported 100 of them favorably and this week the full Senate took the final step of confirming the last of these 100 nominees. This remarkable record compares most favorably to the 38 judicial confirmations averaged per year during the 6½ years when the Republican majority was in control of the Senate.

Last week, on the Senate floor, the Democratic-led Senate confirmed more judges in just 1 day than the Republican majority allowed to be confirmed in the entire 1996 session. In that year, the Republican majority allowed only 17 district court judges to be confirmed all year and would not confirm any circuit court nominees, not one. In contrast, last Thursday the Senate acted to confirm 17 district court nominations and, in addition, another circuit court nominee. In all, the Senate has confirmed 17 circuit court nominees and 83 district court nominees in just 16 months. That should put our historic demonstration of bipartisanship toward this President's judicial nominees in perspective.

The hard, thankless, but steady work of the Democratic members of the Judiciary Committee have served to reduce judicial vacancies substantially during these last 16 months. We inherited 110 vacancies. Today, after 100 district and circuit court confirmations, those vacancies number only 58 and that takes into account the additional 47 vacancies that have arisen since the shift in majority. Without those additional vacancies, we would have reduced our inherited judicial vacancies to 10.

When Senator HATCH was chairman of the committee and a Democratic President occupied the White House, Senator HATCH denied that even 100 vacancies was a vacancies crisis, according to a column he wrote for the September 5, 1997, edition of USA Today. When a Democrat was in the White House, Senator HATCH repeatedly stated that 67 vacancies was the equivalent of "full employment" in the Federal judiciary. As of today, there are only 58 district and circuit vacancies total. By Senator HATCH's standards, we have reached well beyond "full employment" on the Federal bench in just 16 months.

Since the summer of 2001, when they allowed the Judiciary Committee to reorganize following the change in majority, we have moved more quickly and more fairly. Democrats have worked hard to confirm on average six district and circuit court nominees per month. The Republican rate of confirmation was half that during their prior years of control of the Senate, 3.2 confirmed per month in the 104th Congress, 4.25 in the 105th, and 3.04 per month in the 106th Congress. We have moved nearly twice as fast as they did.

Partisans on the other side of aisle interested in trying to create campaign issues have proclaimed their disappointment that a few nominees have not yet received votes in committee, despite our votes on 102 judicial nominees and our having attained results in 16 months that they did not come close to in twice the time during their last 30 months in the majority. I am concerned that the tone and language of hurtful remarks against the Democrats have been destructive. In truth, only 11 of the remaining nominees who have not yet had hearings have home State consent and peer review ratings, and some of those peer review ratings have come in only in the last few weeks. We have thus given hearings to 90 percent of the nominees eligible for a hearing.

The vitriolic rhetoric regarding committee consideration of the most controversial and ideologically chosen judicial nominees is troubling to me as a Senator and as chairman of the Judiciary Committee. I have worked diligently to hold a record number of 26 hearings for 103 of this President's circuit and district court nominees in the past 16 months and to bring as many as we could to a vote, given all of the competing responsibilities of the committee and the Senate in these times of great challenges to our Nation. We have transcended the inaction of the prior 6½ years of Republican control. For example, during the 6½ years the Republicans chaired the Judiciary Committee, in 34 of those months there were no confirmation hearings for judicial nominations at all. In the past 16 months, the Senate Judiciary Committee has held 26 hearings for 103 judicial nominees, in addition to a second hearing for one of the more controversial nominees. I think Democrats deserve some credit for our diligence, fairness, and bipartisanship especially in contrast to the prior period of Republican control of the Senate.

In particular, we have held hearings for 20 circuit court nominees, confirmed 17 of them in this period, and reduced the circuit court vacancies from those we inherited. By contrast, circuit court vacancies more than doubled during Republican control, from 16 in January 1995 to 33 by the summer of 2001 when they allowed the Judiciary Committee to reorganize following the change in majority.

While the opposition party continues to inflame the public with skewed statistics, the reality is that we have approved far more judicial nominees for this President than past Senates did for other Presidents. This Democratic-led Senate has confirmed 100 district court and circuit court judges, including 17 circuit court nominees. In President George H.W. Bush's first 2 years in office, 71 judicial nominees were confirmed by the Democratic-led Senate. When a Republican majority was considering Senator Clinton's nominees in their first 2 years working together, 75 judicial nominees were confirmed. Even when a Republican majority was considering President Reagan's judicial nominations in his first 2 years, only 89 judicial nominees were confirmed. Thus, we have not only exceeded the confirmation achieved when the Senate and White House were divided by political party but the number of confirmations when Republicans controlled both branches. In less than 2 years, just 16 months, we have evaluated, held hearings for, reported out, and confirmed 100 judicial nominees of President George W. bush.

While Republicans continue to play base politics and inflame certain quarters of the public with their skewed statistics, the reality is that the Democratic-led Senate has acted far more fairly toward this President's judicial nominees than Republicans acted toward President Clinton's.

The raw numbers, not percentages, reveal the true workload of the Senate on nominations and everyone knows that. Anyone who pays attention to the Federal judiciary and who does not have a partisan agenda must know that. Democrats have moved more quickly in voting on judicial nominees of a President of a different party than in any time in recent history. This should be beyond dispute, but I believe that partisan advisers told this President and the Republicans that it is a great election issue for them to complain that not every nominee has been confirmed. We have given hearings to

103 of the 114 judicial nominees now eligible for a hearing 90 percent, as of today, for those focused on percentages. The remaining 16 without a hearing either lack home State consent or peer reviews or both. Many of those were nominated only recently and are being used by Republicans to skew the percentages further because they know that the ABA is taking about 60 days to submit ratings from the date of nomination and some would not receive ratings in time for hearings this session. The committee has voted on 102 of the 103 judicial nominees eligible for a vote, 99 percent. And with the vote on Judge Dennis Sheed, we have cleared the Senate calendar of all judicial nominations rather than adopt the recent Republican practice of holding nominees over without a final vote and forcing them to be renominated and have second hearings in a succeeding Congress.

I ask fair-minded people to contrast what we have achieved in the past 16 months with the most recent period of Republican control of the committee. In all of 2000 and the first several months of 2001 before the change in Senate majority, the Senate confirmed only 39 judicial nominees, including eight to the circuits. Even if you look at the last 30 months of Republican control, they confirmed only 72 judges. In much less time, we have confirmed 100.

If you consider the first 24-months of Republican control instead of their last 30 months we have accomplished far more: more hearings, 26 versus 18, far more judicial nominees, 103 versus 87, and had more confirmations, 100, including 17 to the circuit courts, versus 73 with 11 to the circuit courts. We have reached the 100 mark for committee votes in less than half the time it took Republicans to vote on 100 of President Clinton's judicial nominees. It took them 33 months to reach that mark, while we reached that mark in just 15 months.

With these confirmations, the Democratic-led Senate has addressed a number of long standing vacancies. For example, we held the first hearing for a nominee to the Fifth Circuit in 7 years and confirmed her, even though Republicans refused to allow hearings for 3 of President Clinton's nominees to this court. We held the first hearing for a nominee to the Tenth Circuit in 6 years, and confirmed 3 nominees to that circuit in less than 1 year, even though two of President Clinton's nominees to that circuit were never allowed hearings by Republicans. We confirmed the first nominee to the Sixth Circuit in almost 5 years and have now confirmed two judges to that court, even though three of President Clinton's nominees to that court were never allowed hearings or votes. We held the first hearing for a nominee to the fourth Circuit in 3 years, and confirmed the first African American appointed to that court in American history, even though that nominee and 6 other nominees of President Clinton to the Fourth Circuit, for a total of 7 in that circuit alone, never received hearings during Republican control of the Senate. Today, another of President Bush's nominees was confirmed to that circuit. These are just a few of the firsts we have achieved in just 16 months.

There were many other firsts in courts across the Nation. For example, we held hearings for and confirmed the first judges appointed to the Federal courts in the Western District of Pennsylvania in almost 7 years, even though several of President Clinton's nominees to the courts in that district were blocked by Republicans. They allowed none of President Clinton's nominees to be confirmed to that court during the entire period of Republican control. They also blocked the confirmation of a Pennsylvania nominee to the Third Circuit, among others. Democrats confirmed the first nominees to the Third Circuit and Ninth Circuit in 2 years, even though the last nominees to those seats never received hearings during Republican control of the Senate.

We have had hearings for a number of controversial judicial nominees and brought many of them to votes this year just as I said we would when I spoke to the Senate at the beginning of the year. Of course, it would have been irresponsible to ignore the number of vacancies we inherited and concentrate solely on the most controversial, time consuming nominees to the detriment of our Federal courts. The President has made a number of divisive choices for lifetime seats on the courts and they take time to bring to a hearing and a vote. None of his nominees, however, have waited as long for a hearing or a vote as some of President Clinton's judicial nominees, such as Judge Richard Paez who waited 1,500 days to be confirmed and 1,237 days to get a final vote by the Republican-controlled Senate Judiciary Committee or Judge Helene White whose nomination languished for more than 1,500 without ever getting a hearing or a committee vote.

As frustrated as Democrats were with the lengthy delays and obstruction of scores of judicial nominees in the prior 6½ years of Republican control, we never attacked the chairman of the committee in the manner as was done in recent weeks. Similarly, as disappointed as Democrats were with the refusal of Chairman HATCH to include Allen Snyder, Bonnie Campbell, Clarence Sundram, Fred Woocher, and other nominees on an agenda for a vote by the committee following their hearings, we never resorted to the tactics and tone used by Republican members of this committee in committee statements, in hallway discussions, in press conferences, or in Senate floor statements. As frustrated and disappointed as we were that the Republican majority refused to proceed with hearings or votes on scores of judicial nominees, we never sought to override Senator HATCH's judgments and authority as chairman of the committee.

The President and partisan Republicans have spared no efforts in making judicial nominations a political issue, without acknowledging the progress made in these past months when 102 of this President's judicial choices have been given committee votes. One indication of the fairness with which we have proceeded is my willingness to proceed on nominations that I do not support. We have perhaps moved too quickly on some, relaxing the standards for personal behavior and lifestyle for Republican nominees, being more expeditious and generous than Republicans were to our nominees, and trying to take some of them at their word that they will follow the law and the ethical rules for judges.

For example, as I noted on October 2, 2002, we confirmed a personal friend of the President's, Ron Clark, to an emergency vacancy in the United States District Court for the Eastern District of Texas. Clark's commission was not signed and issued promptly. We learned later that Clark was quoted as saying that he asked the White House, and the White House agreed, to delay signing his commission while he ran as a Republican for reelection to a seat in the Texas legislature so that he could help Republicans keep a majority in the Texas State House until the end of the session in mid-2003. The White House was apparently complicit in these unethical partisan actions by a person confirmed to a lifetime appointment to the Federal bench. Clark, who was confirmed to a seat on the Federal district court in Texas, was actively campaigning for election despite his confirmation.

These actions bring discredit to the court to which Judge Clark was nominated by the President and confirmed by the Senate, and calls into question Judge Clark's ability to put aside his partisan roots and be an impartial adjudicator of cases. Even in his answers under oath to this committee, he swore that if he were "confirmed" he would follow the ethnical rules. Canon 1 of the Code of Conduct for United States Judges explicitly provides that the code applies to "judges and nominees for judicial office" and Canon 7 provides quite clearly that partisan political activity is contrary to ethical rules. In his answers to me, the chairman of this committee, Clark promised "[s]hould I be confirmed as a judge, my role will be different than that of a legislator." As the Commentary to the Code of Conduct for United States Judges, (which applies to judges and nominees), states, "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges [which] depend in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law as well as the provisions of this Code." The code sets standards intended to help ensure that the public has access to Federal courts staffed with judges who not only appear to be fair but are actually so.

Yet he was flouting the standards set by the code and the promises he made to me personally and to the Senate Judiciary Committee and, by proxy, to the Senate as a whole. That the White House was prepared to go along with these shenanigans reveals quite clearly the political way they approach judicial nominations. Only after the New York Times reported these unseemly actions, did the President sign Judge Clark's appointment papers. As Judge Clark hoped, he "won" the election and so the Republican Governor of Texas may be able to name a Republican to replace him in the state legislature.

With a White House that is politicizing the Federal courts and making so many divisive nominations, especially to the circuit courts, to appease the far-right wing of the Republican party, it would be irresponsible for us to turn a blind eye to this and simply rubber-stamp such appointees to lifetime seats. Advice and consent does not mean giving the President carte blanche to pack the courts with ideologues from the right or left. The system of checks and balances in our Constitution does not give the power to make lifetime appointments to one person alone to pack the courts with judges whose views are outside of the mainstream and whose decisions would further divide our nation.

I have worked hard to bring to a vote the overwhelming majority of this President's judicial nominees, but we cannot afford to make errors in these lifetime appointments out of haste or sentimental considerations, however well intentioned. To help smooth the confirmation process, I have gone out of my way to encourage the White House to work in a bipartisan way with the Senate, like past Presidents, but, in all too many instances, they have chosen to bypass bipartisanship cooperation in favor of partisanship and a campaign issue. Arbitrary deadlines will not ensure that nominees will be fairminded judges who are not activists or ideologues. The American people have a right to expect the Federal courts to be fair forums and not bastions of favoritism on the right or the left. These are the only lifetime appointments in our whole government, and they matter a great deal to our future. I will continue to work hard to ensure the independence of our Federal judiciary.

TERRORISM RISK INSURANCE ACT OF 2002—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate the conference report to accompany H.R. 3210.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The report is printed in the House proceedings of the RECORD of November 13, 2002.)

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, pursuant to rule XXII the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

> CLOTURE MOTION
>
> We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the conference report to accompany H.R. 3210, the Terrorism Risk Protection Act.
>
> Christopher Dodd, Zell Miller, Joseph Lieberman, Harry Reid, Jack Reed, Jon Corzine, Debbie Stabenow, Hillary Rodham Clinton, Charles Schumer, Maria Cantwell, Paul Sarbanes, Byron L. Dorgan, Tom Carper, Jeff Bingaman, Tom Daschle, Barbara Boxer.

The PRESIDING OFFICER. There are 2 minutes of debate evenly divided before the vote. Who yields time?

Mr. SARBANES. Mr. President, I urge Members to vote in favor of invoking cloture. I am not quite sure why we are doing the cloture vote, but in any event, so we can get to the legislation and pass it—this is worthy legislation—I hope the Senate will first impose cloture, and then, under the unanimous consent agreement, we would go to a final vote on the legislation.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. GRAMM. Mr. President, much good work has gone into this bill. I am going to vote against cloture. I don't think the industry retention figures are high enough. I think the taxpayer is too exposed. I am afraid the secondary market will not develop under these circumstances, and, despite all our efforts, the bill still retains the provision that will produce punitive damage judgments against victims of terrorism. In my mind, that is licensing piracy on hospital ships and should not be allowed.

The PRESIDING OFFICER. Is all time yielded back?

All time is yielded back.

By unanimous consent, the mandatory quorum call under the rule is waived.

The question is, Is it the sense of the Senate that debate on the conference report accompanying H.R. 3210, the Terrorism Risk Protection Act, shall be brought to a close?

The yeas and nays are required under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Arkansas (Mr. HUTCHINSON) are necessarily absent.

The yeas and nays resulted—yeas 85, nays 12, as follows:

[Rollcall Vote No. 251 Leg.]

YEAS—85

Akaka
Allard
Allen
Barkley
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gregg
Hagel
Harkin
Hatch
Hollings
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Roberts
Rockefeller
Sarbanes
Schumer
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wyden

NAYS—12

Craig
Ensign
Enzi
Gramm
Grassley
Hutchison
Kyl
Nickles
Santorum
Sessions
Shelby
Thomas

NOT VOTING—3

Helms
Hutchinson
Murkowski

The PRESIDING OFFICER. On this vote, the ayes are 85, the nays are 12. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. HATCH. Mr. President, today I rise to speak on final passage of H.R. 3210, the conference report to the Terrorism Risk Insurance Act of 2002. Most of us agree that something needs to be done in this area. This legislation is important to our economy and the many jobs and construction projects that have been in limbo due to the uncertainty following the tragic events of September 11th. My constituents have come to me on multiple occasions, imploring that the Senate act on this issue. They are genuinely concerned about the negative impact lack of coverage has had on their businesses and their employees. Without insurance, our economic growth is in jeopardy, businesses will fail and jobs will be lost. For that reason, I will support final passage.

However, I am concerned that we have not addressed the issue in a prudent and responsible manner that provides the appropriate stability to our economy without exposing our taxpayers to an unreasonable financial burden. In this legislation, we have failed to provide elements that are necessary to the businesses that are themselves the victims of the terrorist attacks, those very same businesses that provide the thousands of jobs in this country that we are seeking to preserve. Moreover, I have concerns about implementing a program such as this without ensuring that the hardworking taxpayers in this county are not forced to pick up the tab for the overzealous and unrestrained trial bar. With the type of litigation that would likely result from massive losses, even just from one attack, it defies common sense that some would oppose implementing principles of litigation management to ensure that all victims get treated fairly and jury awards, based more on emotion rather than actual legal culpability, do not dry up the resources of defendant businesses, which in turn hurts victims, employees and taxpayers.

In a letter dated June 10, 2000, from the Treasury Department and signed by not only the Secretary of the Treasury, but the Director of the Office of Management and Budget, the Director of the National Economic Council and the Director of Economic Advisers really underscores the serious ramifications to our economy that have resulted from a lack of coverage for terrorist acts and supports Congressional action in this area. But it also emphasizes that we must do so in a responsible manner.

> One important issue for the availability of terrorism insurance is the risk of unfair or excessive litigation against American companies following an attack. Many for-profit and charitable companies have been unable to obtain affordable and adequate insurance, in part because of the risk that they will be unfairly sued for the acts of international terrorists . . . It makes *little economic sense* to pass a terrorism insurance bill that leaves our economy exposed to such *inappropriate and needless legal uncertainty*. [emphasis added]

In seeking to provide stability to our economy we must not act irresponsibly. The conference report on H.R. 3210, while providing a necessary backstop to our economy, includes some weaknesses that concern me. While I believe this measure is necessary and should be enacted as soon as possible, I sincerely hope this body will address my concerns in the next Congress.

Mr. GRASSLEY. Mr. President, I rise to express my concern about the conference report to H.R. 3210, the Terrorism Risk Insurance Act. When the Senate first considered this bill in June, I expressed the hope that Congress would send the President a bill that was fair and balanced with respect to basic liability protections for all victims of terrorism. However, I believe that the conference report before us fails to provide reasonable restrictions on lawsuit liability, and instead exposes the American taxpayer to potentially excessive costs of unmitigated litigation as a result of terrorist attacks beyond anyone's control. Consequently, I am reluctant to vote for final passage of this conference report.

I am glad that the final version of the terrorism reinsurance legislation is only a temporary fix. As a general matter, the Government should not be in the business of writing claims.

Some have implied that we wrongly predicted an insurance crisis following the events of September 11, 2001, which was the reason for this temporary backstop. The insurance companies have survived without government support thus far, and banks are still lending where there is uncovered risks. According to the Wall Street Journal, "the economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums." The article states that a short-term solution would be nice, but the bill is "a bonanza for the trial lawyers, an entitlement for insurers."

Again, I do not believe that this legislation contains adequate liability protections. While some restrictions were negotiated in conference, I don't believe that they go far enough. Basically, American companies that are themselves victims of terrorists acts should not be subject to predatory lawsuits or unfair and excessive punitive damages. If that happens, not only will Americans be the victims of another attack, but the taxpayers will be the victims of trial lawyers who will seek the deepest pocket and rush to the courthouse to sue anyone regardless of fault. There needs to be careful restrictions on lawsuit liability to protect taxpayer funds from being exposed to opportunistic, predatory assaults on the United States Treasury.

In fact, I agree with an editorial in the Washington Post: the other side of the aisle should be "embarrassed by their efforts to defend trial lawyers at the expense of the American economy." Rather, we should be working to enforce the long-standing Federal policies behind the Federal Tort Claims Act: namely, that lawyers should not be making handsome profits when they are paid from the U.S. Treasury. I agree with a statement made by House Judiciary Chairman SENSENBRENNER, that "especially today, in a time of war, excessive lawyer fees drawn from the U.S. Treasury should not be allowed to result in egregious war profiteering at the expense of victims, jobs and businesses."

Many say we can come back and revisit these provisions later. I say we get it right the first time we sign it into law.

I ask unanimous consent to print the Wall Street Journal article to which I referred in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, Nov. 6, 2002]

A Terrifying Insurance Deal

A BONANZA FOR THE TRIAL LAWYERS, AN ENTITLEMENT FOR INSURERS

After the elections the 107th Congress is threatening to return to pass some unfinished business, including a compromise on terrorism insurance. Having looked at the details of the insurance deal, we can only hope they'll all stay home.

The two parties have been battling for a year over this bill, especially the extent to which trial lawyers could profit from acts of terror. Republicans and some Democrats want to ban punitive damages against property owners. But Tom Daschle, carrying his usual two oceans of water for the plaintiff's bar, resisted any erosion in the right to sue the owner should a plane crash into his or her building.

And it looks like Mr. Daschle has prevailed. The compromise permits such suits, albeit before a single federal court as opposed to the more accommodating state courts. In other words, the White House appears to have caved, and after months of arguing the opposite now says terror insurance is about "jobs, not tort reform."

Well, we're not sure it's still about jobs either. The bill makes insurance companies liable for claims amounting to a certain percentage of their premiums, puts the government on the hook for 90% of losses over that deductible, and allows the government to recover some portion of its payment by levying a surcharge on all policy owners. The best news is that government help sunsets in 2005, or at least that's the promise.

Unfortunately, the bill ignores the crucial problem of risk. Risk-based premiums—which reward the careful and punish the careless—are a superb tool for reducing risk. Consider: There are lots of things property owners can do to reduce the damage from terrorism—retrofitting air-filtration systems to guard against biological agents, redesigning underground parking garages to prevent bomb attacks, fireproofing steel girders to minimize fire damage. And insurance companies can discipline them to take these measures by charging risk-based premiums.

If insurers were required to pay premiums to the government based on the premiums they receive, market incentives to reduce risk would improve markedly. If, on the other hand, terror insurance is essentially free, as it would be under the current bill, insurers have less incentive to charge the full cost of risk; instead they have every incentive to underprice it.

An alternative has been suggested by David Moss, an economist at Harvard Business School: Let the federal government pay 80% of losses from a terrorist attack, as long as insurers also pass along 80% of the premiums they collect. This way, says Mr. Moss, insurers would price risk near or at its full cost, exerting discipline against the careless, and prices would be set in the private market.

We mention Mr. Moss's idea because, despite heavy breathing by the insurance industry, it isn't at all clear that there's an immediate economic need for this legislation. It's true that right after 9/11 the property insurance market seized up. Insurers didn't know how to price for the risk of another attack, and so rent their garments that the economy would collapse without government reinsurance. We were also open to the idea, but it turns out they were wrong. The economy has continued to grow, albeit slowly, and some companies have started offering insurance again, albeit at very high premiums.

We aren't arguing that a federal backstop might not perk up business in the short term, or that some sort of insurance wouldn't be nice to have in place before another attack. But the assertion that billions of dollars of projects have been shelved and 300,000 jobs lost is bogus. Despite efforts to quantify a slowdown, including a survey by the Fed, evidence of suffering is scattered and anecdotal—and mostly confined to trophy properties.

The bigger point here is that any legislation is likely to be permanent, since no entitlement of this size has ever been allowed to ride quietly into the sunset. That argues for doing it right, and waiting until the next Congress if need be. Many Republicans are privately unhappy with the deal the White House has cut with Mr. Daschle. We hope they'll urge President Bush to insist on something better.

Mr. HARKIN. Mr. President, I am very pleased that this conference report includes bipartisan legislation that I authored with my colleague, Senator ALLEN of Virginia, which will make state sponsors of terrorism and their agents literally pay for the dastardly attacks they perpetrate on innocent Americans.

Last June, the Senate approved our amendment to the terrorism insurance bill on an 81 to 3 vote to mandate that at least $3.7 billion in blocked assets of foreign state sponsors of terrorism and their agents, at the current disposal of the U.S. Treasury Department, be used—first and foremost—to compensate American victims of their terrorist attacks. That lop-sided vote made it very clear that most Americans and their elected representatives understand the importance of making the rogue governments who sponsor international terrorism pay literally, instead of blithely dunning the American taxpayer to compensate the victims of their outrageous attacks or doing nothing.

Our global struggle against terrorism must be fought and won on multiple fronts. In so doing, we cannot forget that terrorist attacks are ultimately stories of human tragedy. The young woman from Waverly, IA—Kathryn Koob—seeking to build cross-cultural ties between the Iranian people and the American people only to be held captive for 444 days in the U.S. Embassy in Tehran. The teenage boy from LeClaire, Iowa—Taleb Subh—who was visiting family in Kuwait in 1990, and who was terrorized by Saddam Hussein and Iraqi troops in the early stages of the invasion of Kuwait. The U.S. aid worker from Virginia—Charles Hegna—who was tortured and killed in 1984 by Iranian-backed hijackers in order "to punish" the United States. These are only a few of the American families victimized by terrorist attacks abroad I have come to know. There is not a Senator in this body who cannot count additional American victims of state-sponsored terrorism among his or her constituents.

What do we say to these families, the wives, mothers and fathers, sons and daughters? More importantly, what can we do, as legislators and policymakers, to mitigate their suffering and to answer their cries for justice?

Those who sponsor as well as those who commit these inhumane acts must pay a price. That is why I sponsored the Terrorism Victim's Access to Compensation Act, whose key provisions are included in this conference agreement.

In 1996, the Congress passed an important law—the Anti-Terrorism and Effective Death Penalty Act—with bipartisan support and with the support of the U.S. State Department. That statute allows American victims of state-sponsored terrorism to seek redress and pursue justice in our Federal courts. A central purpose of that law is to make the international terrorists and their sponsors pay an immediate price for their attacks on innocent Americans abroad. For the first time starting in 1996, the money of foreign sponsors of terrorism and their agents that is frozen bank accounts in the United States and under the direct control of the U.S. Treasury was to have become available to compensate American victims of state-sponsored terrorism who bring lawsuits in federal court and win judgments on the merits against the perpetrators of such attacks.

The law enacted in 1996 only applies to seven foreign governments officially designated by the U.S. State Department as state sponsors of international terrorism. They are the governments of Iran, Iraq, Libya, Syria, Sudan, North Korea, and Cuba. It is these state sponsors of international terrorism, not the American taxpayer, who must be compelled first and foremost to compensate the American victims of their inhumane attacks.

The U.S. Treasury Department currently and lawfully controls at least $3.7 billion in blocked or frozen assets of these seven state sponsors of terrorism. But some officials of the U.S. Treasury and State Departments who think they know better, until now, have been flaunting the law, ignoring the clear intent of the Congress, and opposing the use of these blocked assets of Saddam Hussein, the ruling mullahs in Iran, and other state sponsors of terrorism to compensate American victims of terrorist attacks. In fact, in the on-going case involving the 53 Americans taken hostage in the U.S. Embassy in Iran in 1979 and held in captivity for 444 days and their families, U.S. Justice Department and State Department attorneys have intervened in federal court to have their lawsuit dismissed in its entirety, thus de facto siding with the Government of Iran.

Incredibly, since 1996 American victims of state-sponsored terrorism have been actively encouraged to seek redress and compensation in our federal courts. These long-suffering American families have complied with all requirements of existing U.S. law and many have actually won court-ordered judgments, only to be denied any compensation and what little justice they seek in a court of law. The opponents of this legislation apparently want American taxpayers to foot the bill for what could amount to hundreds of millions of dollars instead of making the terrorists and their sponsors pay.

With the passage of this new legislation, the Congress is requiring that this misguided policy be abandoned. Holding the blocked assets of state sponsors of terrorism in perpetuity might make sense in the pristine world of high diplomacy, but not in the real world after the September 11 terrorist attacks on America.

First, paying American victims of terrorism from the blocked and frozen assets of these rogue governments and their agents will really punish and impose a heavy cost on those aiding and abetting the terrorists. This tougher U.S. policy will provide a new, powerful disincentive for any foreign government to continue sponsoring terrorist attacks on Americans, while also discouraging any regimes tempted to get into the ugly business of sponsoring future terrorist attacks.

Second, making the state sponsors actually lose billions of dollars will more effectively deter future acts of terrorism than keeping their assets blocked or frozen in perpetuity in pursuit of the delusion that long-standing, undemocratic, brutish governments like those in Iran and Iraq can be moderated.

Third, American victims of state-sponsored terrorism and their families will finally be able to secure some measure of justice and compensation. Public condemnation by the U.S. Government of state-sponsored terrorism only goes so far. This new legislation enables American victims to fight back, to hold the terrorists who are responsible accountable to the rule of law, and to make the perpetrators and their sponsors pay a heavy price.

In his last days in office, former President Clinton signed a law endorsing a policy of paying American victims of terrorism from blocked assets, while simultaneously signing a waiver of the means to make this policy work.

The Bush administration has not changed this mistaken policy as yet. That is why Senator ALLEN joined me in pushing this bipartisan legislation to establish two new policy cornerstones for our Nation's struggle against international terrorism. First, the U.S. will first require that compensation be paid from the blocked and frozen assets of the state sponsors of terrorism in cases where American victims of terrorism secure a final judgment in our Federal courts and are awarded compensation. Second, the U.S. Government will provide a level playing field for all American victims of state-sponsored terrorism who are pursuing redress by providing equal access to our federal courts.

American victims of state-sponsored terrorism deserve and want to be compensated for their losses from those who perpetrated the attacks upon them, including our former hostages in Iran and their families. The Congress should clear the way for them to get some satisfaction of court-ordered judgments and, in so doing, help deter future acts of state-sponsored terrorism against innocent Americans.

Mr. KYL. Mr. President, I rise today to express my opposition to the conference report on H.R. 3210, the terrorism insurance bill.

I had hoped that Congress would approve legislation that encouraged building construction, gave business owners limited liability protection in the event of a terrorist attack, and protected taxpayers from exorbitant costs. These goals were all enunciated by President Bush when he pressed Congress to act on this issue after months of delay.

Unfortunately, the legislation in its current form fails to meet any of those objectives.

First, the conference report subjects victims of terrorism to potentially unlimited liability by placing no restrictions on court awards of punitive damages or non-economic damages. This has the potential of encouraging a slew of frivolous lawsuits against business owners whose business may be destroyed in terrorist attacks. Certainly no business that was located in the World Trade Center, for example, should be held at fault for the unforeseeable tragedy that took place on September 11.

As several of the President's economic advisors noted in a June 10, 2002 letter to Senate Minority Leader LOTT, "the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal wrongdoing." The letter goes on to say "the availability of punitive damages in terrorism cases would result in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers."

I strongly agree with that position and am troubled that the conferees did not take these concerns into account before bringing this legislation to the Senate floor.

Additionally, I am concerned that this legislation leaves taxpayers open to liability for terrorist attacks. One of the original goals of this bill was to allow the Secretary of the Treasury to sign off on out-of-court settlements to protect the taxpayers from exorbitant costs. Without such a provision, taxpayers, who are liable for as much as 90 percent of property and casualty costs after a terrorist attack, could be gouged by trial attorneys. That is primarily because insurers, with only a ten percent stake in the outcome of litigation, will favor faster, rather than fairer, settlements—at the taxpayers' expense.

Of additional concern, the low per-company deductibles will impede the development of a private reinsurance market and will increase the likelihood that this temporary federal program becomes permanent. Since the Federal Government limits each company's liability, rather than that of the entire industry, insurance companies have less incentive to spread their risk.

I am also troubled by certain provisions in Title II of this legislation covering victim compensation through seized assets from terrorists and terrorist-sponsoring states. As the conference report stands now, this provision would create a race to the courthouse benefiting a small group of Americans over a far larger group of victims just as deserving of compensation.

Economic sanctions against terrorist states have kept the economic activity of those states to a minimum. Yet this limited pool of frozen assets and diplomatic property would be exhausted quickly as large, and often uncontested, compensatory and punitive damage awards are satisfied, leaving most victims with nothing. For example, the special provisions for terrorism victims of Iran expands the number of judgment holders eligible for payment under the 2000 Act (to approximately eight), but metes out all of the approximately $30 million remaining in the fund to satisfy judgments in only two cases. And there are a number of ongoing lawsuits by terrorism victims and their families against Iran that will be foreclosed under this agreement.

This section would also disproportionately benefit trial lawyers, since plaintiff's lawyers whose fees are contingent upon satisfying their clients' judgments stand to gain the lion's share of the compensation, not the victims.

Overall, this legislation is far from what President Bush wanted. It is a major disappointment that literally benefits trial lawyers at the expense of the taxpayers.

I realize that many of my colleagues want to support this bill, despite its flaws. And I understand that. It is regrettable that special-interest groups exerted so much influence in the drafting of this legislation, leaving the President with a bill that amounts to little more than the best he could get from this Congress.

But as it stands today, I cannot ask Arizona taxpayers to absorb the potential losses they might incur because of the self-serving and unjustified lawsuits that are the all but inevitable outcome of this legislation.

Mr. HARKIN. Mr. President, I rise to address a portion of this conference agreement relating to enforcement of judgments obtained by victims of terrorism against state sponsors of terrorism. These provisions strike an important blow in our global struggle against terrorism.

The purpose of title II is to deal comprehensively with the problem of enforcement of judgments issued to victims of terrorism in any U.S. court by enabling them to satisfy such judgments from the frozen assets of terrorist parties. As the conference committee stated, this title establishes, once and for all, that such judgments are to be enforced against any assets available in the U.S., and that the executive branch has no statutory authority to defeat such enforcement under standard judicial processes, except as expressly provided in this act.

Title II expressly addresses three particular issues which have vexed victims of terrorism in this context. First, there has been a dispute over the availability of "agency and instrumentality" assets to satisfy judgments against a terrorist state itself. Let there be no doubt on this point. Title II operates to strip a terrorist state of its immunity from execution or attachment in aid of execution by making the blocked assets of that terrorist state, including the blocked assets of any of its agencies or instrumentalities, available for attachment and/or execution of a judgment issued against that terrorist state. Thus, for purposes of enforcing a judgment against a terrorist state, title II does not recognize any juridical distinction between a terrorist state and its agencies or instrumentalities.

Second, title II amends Section 2002 of the Justice for Victims of Terrorism Act of 2000 to address a miscarriage of justice in the drafting and implementation of that act. In that provision, Congress had directed that specified claimants against Iran receive payment in satisfaction of judgments from two specified accounts, namely Iran's Foreign Military Sales, "FMS", Trust Account and the proceeds of rental of certain Iranian government properties. Contrary to Congressional intent, the legislative language has been construed by the Departments of State and Treasury to exclude unspecified claimants and to allow the executive branch to bar enforcement of their awards against other blocked assets. As one United States District Court has noted, the result is a gross injustice that demands immediate correction.

To address this injustice, we are adding to the list of those to be compensated, all persons who meet two criteria—either, 1, they had a claim filed when Section 2002 was enacted and have already received a final judgment on that claim as of the date of enactment, or 2 were added to the list by the State Department Reauthorization Bill enacted last month. In accordance with amended Section 2002(b)(2)(B), each of these claimants are to be treated as if they were originally included in Section 2002, and are to be paid an amount determined by the Secretary of the Treasury to have been available for payment of their judgment on the date their judgment was issued. Once these amounts are paid, any remaining amounts in these accounts are to be paid to remaining claimants under the formula specified in amended Section 2002(d).

Moreover, to address this injustice, this amendment will treat all of these victims—those originally included in Section 2002 and those now being added—equally to the maximum extent possible. No priority is given to one group or the other. Those in each group which have filed timely lawsuits and received a final judgment by the enactment of this Act are to be paid within the strict deadlines set in the Act, i.e., within 60 days, without delay. Those not included within this time frame may pursue satisfaction from blocked assets. This will necessarily include some who, for whatever reason, have failed to obtain a judgment in their lawsuit by the date of enactment of this act.

Third, the term "blocked asset" has been broadly defined to include any asset of a terrorist party that has been seized or frozen by the United States in accordance with law. This definition includes any asset with respect to which financial transactions are prohibited or regulated by the U.S. Treasury under any blocking order under the Trading With the Enemy Act, the International Emergency Economic Powers Act, or any proclamation, order, regulation, or license. Moreover, by including the phrase "seized by the United States" in this section, it is our intent to include within the definition of "blocked asset" any asset of a terrorist party that is held by the United States. This is intended as an explicit waiver of any principle of law under which the United States might not be subject to service and enforcement of any judicial order or process relating to execution of judgments, or attachments in aid of such execution, in connection with terrorist party assets that happen to be held by the United States. In this respect, the United States is to be treated the same as any private party or bank which holds assets of a terrorist party, and such terrorist party assets held by the United States are not immunized from court procedures to execute against such assets. However, any assets as to which the United States claims ownership are not included in the definition of "blocked assets" and are not subject to execution or attachment under this provision.

Mr. ENZI. Mr. President, first of all, I want to thank all of the conferees for the long hours and late nights they here worked to complete this bill. I know this has been a difficult process and a long year.

Unfortunately, now I find myself in a very difficult position. I find myself forced to oppose this legislation even though it is a Presidential priority and even though I support the underlying goals.

It was a little over a year ago that Senators SARBANES, GRAMM, DODD, and I announced an agreement for terrorism risk insurance legislation. That agreement outlined the parameters that we thought were a reasonable response to disruptions occurring in the marketplace as a result of the lack of reinsurance. This agreement outlined very limited and specific liability protections that would protect both the taxpayer's pocketbook and businesses which may themselves be victims of terrorism from frivolous lawsuits after future terrorist attack.

These limited protections were: First, suits filed as a result of a terrorist attack would be consolidated into a Federal district court; second, punitive damages would not be allowed; and third, the Secretary of the Treasury was given the ability to agree to out-of-court settlements.

Now, in this new conference report, two out of these three protections have been eliminated. The new program in this conference report will allow frivolous lawsuits to be filed against businesses that may be victims of the terrorist act themselves. Think about a business located in the World Trade Center on 9/11. This business was destroyed and likely lost a number of its employees. The next thing that happens is while attempting to rebuild, the business gets slapped with a frivolous lawsuit by a greedy trial lawyer. It is ridiculous to believe that a business could have prevented an attack of this kind. Yet this legislation will subject them to the will of the trial bar.

This conference report keeps America's businesses and the taxpayer subject to punitive damages. I have a Statement of Administration Policy from the executive Office of the President's Office of Management and Budget. In the second paragraph of the letter dated June 13, 2002, it states "the Administration cannot support enactment of any terrorism insurance bill that leaves the Nation's economy and victims of terrorist acts subject to predatory lawsuits and punitive damages.'"

Also from the administration, I have a letter signed by Treasury Secretary O'Neill, OMB Director Daniels, Director of the National Economic Council Lindsey, and Director of the Council of Economic Advisors Glenn Hubbard dated June 10, 2002. This letter states "the victims of terrorism should not have to pay punitive damages. Punitive damages are designed to punish criminal or near-criminal worngdoing." It goes on the say "the availability of punitive damages in terrorism cases would in inequitable relief for injured parties, threaten bankruptcies for American companies and a loss of jobs for American workers." I could not agree more with the administration's position from just a few months ago that this legislation could lead to the bankruptcies of American companies who were victims of terrorist acts themselves.

In addition, this conference report does not include a provision which allows the Secretary of the treasury to agree to out-of-court settlements. This legislation has the American taxpayer pay potentially 90 percent of property and casualty costs after a terrorist attack. I can think of no other instance where the group liable for paying 90 percent of a lawsuit is unable to agree to an out-of-court settlement. If another catastrophic terrorist attack occurs, every trial lawyer in America will file a lawsuit because they know that the insurance company, which only pays 10 percent of the settlement, will agree immediately. The mansions of the trial lawyers will be built with the dollars of the American taxpayer.

I do not consider the inclusion of these protections to be extreme measures and I do not think that most of the members of this chamber believe them to be unreasonable. They are very simple and reasonable protections that basically say the trial bar should not take advantage of tragedies caused by terrorists.

The President invited Senate Republican conferees to the White House a few weeks ago where concerns were raised regarding the lack of these specific taxpayer protections. Unfortunately, these protections were not reintroduced into the legislation and now this conference report comes to the floor of the Senate without a single Senate Republican conferee's signature.

For these reasons, I am unable to support passage of this legislation. I support the program and understand the possible economic problems by not passing the legislation. I cannot in good faith subject the hard-working taxpayers of Wyoming to the potential losses they might incur because of the self-serving and unjustified lawsuits which may result.

However, even though I cannot support this bill because of the lack of taxpayer protections, I would like to commend those who have worked so diligently on the legislation for over a year now. Senator DODD, in particular, has given more time and effort to this project than probably anyone. He and his staff, Alex Sternhell, have remained committed to seeing the passage of this legislation and have done remarkable work to bring the issues that relate to the structure of the program to a compromise. I have to say that I agree with Senator DODD'S position on the structure of the program and always felt confident in the manner which he negotiated these provisions.

Mr. President, my position on this legislation has not changed since the very beginning. I believe we need a Federal backstop and I believe at one point we had a bill that did just that. I am sorry the trial bar was able to derail the bill for over a year now. I can only hope that the trial lawyers of America will stop to realize that subjecting Americans to lawsuits to line their pockets after the devastation of a terrorist attack is simply the wrong thing to do .

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, I am pleased to support this conference report to provide a federal backstop for terrorism insurance. I believe this bipartisan bill will boost our economy by providing extra protection against terrorist attacks for buildings and construction projects with resulting new jobs in Vermont and across the nation. I agree with President Bush that this legislation is essential for our future economic growth.

I worked with the distinguished Majority Leader, Senator DODD, Senator SARBANES, Senator SCHUMER and others to craft a balanced compromise in the conference report on legal procedures for civil actions involving acts of terrorism covered by the legislation. The conference report protects the rights of future terrorism victims and their families while providing federal court jurisdiction of civil actions related to acts of terrorism, consolidating of such cases on a pre-trial and trial basis, and excluding punitive damages from government-backed insurance coverage under the bill. These provisions do not limit the accountability of a private party for its actions in any way.

Further, the conference report, identical to the Senate-passed bill, fully protects federal taxpayers from paying for punitive damage awards. Under the conference report only corporate wrongdoers pay punitive damages, not U.S. taxpayers as some incorrectly claimed on the Senate floor during consideration of the Senate-passed bill.

The U.S. Chamber of Commerce has declared that the conference report "will improve the legal rights of plaintiffs and defendants and, importantly, will help American workers and the economy." I agree.

I thank the conferees for rejecting the special legal protections in the House-passed bill. The liability limits for future terrorist attacks in the House-passed bill were irresponsible because they restricted the legal rights of victims and their families and discouraged private industry from taking appropriate precautions to promote public safety. Restricting damages against a wrongdoer in terrorism-related civil actions involving personal injury or death, for example, could discourage corporations from taking the necessary precautions to prevent loss of life or limb in a future terrorist attack. There is no need to enact these special legal protections and take away the legal rights of victims of terrorism and their families.

For example, the House-passed bill would have permitted a security firm to be protected from punitive damages if the private firm hired incompetent employees or deliberately failed to check for weapons and a terrorist act resulted.

The threat of punitive damages is a major deterrent to wrongdoing. Eliminating punitive damages under the House-passed bill would have severely undercut this deterrent and permitted reckless or malicious defendants to find it more cost effective to continue their wanton conduct without the risk of paying punitive damages. Without the threat of punitive damages, callous corporations could have decided it is more cost-effective to cut corners that put American lives at risk. This approach failed to protect public safety, and the conferees rightly rejected it.

In addition, I thank the managers for including language in the conference report to help captive insurance companies participate in the federal backstop program. Many captives deal in property and casualty lines, but some do not. Senator JEFFORDS and I strongly support language in the conference report to allow those captives in property and casualty the option of participating in the program while not requiring other captives to start offering terrorism risk insurance.

The state of Vermont is the premier U.S. domicile for captive insurance companies. Vermont's captive owners represent a wide range of industries including multinational corporations, associations, banks, municipalities, transportation and airline companies, power producers, public housing authorities, higher education institutions, telecommunications suppliers, shipping companies, insurance companies and manufacturers, among others. Since 1981, Vermont has averaged approximately 25 captives licensed annually, and those numbers are on the rise. Vermont closed 2001 with 38 new captives, 37 pure and I sponsored, for a total of 527 at year-end. The first half of 2002 saw 26 new captives licensed in Vermont setting a record pace, according to the Vermont Department of Banking, Insurance and Health Care Administration.

At a time when the American people are looking for Congress to take measured actions to protect them from acts of terror and jump-start our economy, this conference report is a shining example of bipartisan progress. I applaud Senator DASCHLE, SENATOR DODD, Senator SARBANES, Senator SCHUMER and the other Senate and House conferees on their good work on this bipartisan conference report.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. DASCHLE. Mr. President, I have consulted with the chairman and the ranking member of the Appropriations Committee. As I think our colleagues know, the next order of business is a debate and then a vote on the continuing resolution. I am told they will need no more than 40 minutes. So Senators should be prepared to vote on final passage on the continuing resolution at about 9:10 to 9:15 p.m. Please return to the Chamber if you are not going to stay. That will be the final vote of the evening. We will vote at approximately 9:10 to 9:15 p.m., following this vote.

The PRESIDING OFFICER. Under the previous order, cloture having been invoked, the question is on agreeing to the conference report to accompany H.R. 3210.

Mr. DODD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. HUTCHINSON), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 86, nays 11, as follows:

[Rollcall Vote No. 252 Leg.]

YEAS—86

Akaka
Allard
Allen
Barkley
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carnahan
Carper
Chafee
Cleland
Clinton
Cochran
Collins
Conrad
Corzine
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Feingold
Feinstein
Fitzgerald
Frist
Graham

Gregg
Hagel
Harkin
Hatch
Hollings
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kerry
Kohl
Landrieu
Leahy
Levin
Lieberman
Lincoln
Lott
Lugar
McCain
Mikulski
Miller
Murray
Nelson (FL)
Nelson (NE)
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Schumer
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wyden

NAYS—11

Craig
Enzi
Gramm
Grassley
Hutchison
Kyl
McConnell
Nickles
Sessions
Shelby
Thomas

NOT VOTING—3

Helms
Hutchinson
Murkowski

The conference report was agreed to.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Georgia, Mr. CLELAND, be recognized for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

SERVICE IN THE SENATE

Mr. CLELAND. Mr. President, I rise today to reflect on a 6 year term in the Senate which has been simultaneously the most challenging, yet most rewarding, experience of my life. I have had the chance to realize a lifelong dream by following in the footsteps of one of my personal my heroes, Senator Richard Russell of Georgia. I have been able to represent the state I love in an institution I revere. And I have been able to add my voice to the others that have risen before me in this chamber, from William Fulbright to Harry Truman to John Kennedy to Everett Dirksen to so many other outstanding men and women of history.

In my Senate office, I have surrounded myself with small reminders of the men I most admire. I sit at Richard Russell's desk. On my walls, I have photographs of just two people. President Franklin Roosevelt and Prime Minister Winston Churchill. Theirs were no ordinary times, and we can safely say now, neither are ours. After the Pentagon was attacked on September 11th, I looked at FDR's picture and finally understood the gravity of his day of infamy, because this generation now had one of its own. I have used Churchill's and Roosevelt's examples of strength and courage to make it through every day in this town. Some days have been better than others, but every one has been a gift because this has been the life of my dreams.

When I came to the Senate, I came to do the best job I could for the people of Georgia and the people of the United States, particularly our men and women in uniform. I am proud of what we've accomplished since then. Today, over 60% of our service members are married, and their benefits have finally begun to reflect that fact in order to retain those talented professionals. We knew that the decision to stay in the military is made at the dinner table, not the conference table, so we've increased pay for service members by nearly 20% since I came to the Senate. We've modernized the G.I. bill so that service members can transfer their benefits to start a college fund for their children. We set a schedule to eliminate out of pocket housing expenses and we even added a measure to help families take their pets with them when serving in Hawaii. Keeping the family dog may not be the highest priority for some lawmakers, but it's the whole world to a child moving around the globe as their mother or father serves our country. The family matters to the military member, so the family has mattered to me in my time here.

Beyond these individual personnel matters, I became deeply concerned about the shrinking numbers of our U.S. military, and this year was able to raise the ceiling of our force strength. In our new war on what Sam Nunn calls "catastrophic terrorism," we must continue to go on the strategic offensive. Our military may be winning the battle, but we will lose the war if we continue to ignore the fact that our forces are critically over-deployed and being asked to do too much with too little. We are out of balance. Our commitments are far outpacing our troop levels, and the situation is only getting worse.

Since the end of Operation Desert Storm in 1991, the armed forces have downsized by more than half a million personnel, but our commitments have increased by nearly 300%, including new deployments to Afghanistan, Yemen, the Philippines, Georgia, and Pakistan. Today, a Desert Storm-size deployment to Iraq would require 86% of the Army's deployable end strength, including all stateside deployable personnel, all overseas-deployed personnel, and most forward-stationed personnel.

To make the war on terrorism possible, we have activated more than 80,000 guard and reserve troops and instituted stop-loss for certain specialties. This is no way to fight a war when our strategic national interests are at stake. The President has rightly told the country to be prepared for a long commitment. But the Pentagon has not requested an increase in end strength for services other than the Marines. Our military is on a collision course with reality of families they don't see, training they aren't receiving and divisions borrowing from each other to meet the bare minimum in staffing. We can prevent a loss tomorrow, but we have to act today by increasing our numbers, and I hope that we will.

Just as we must go on the strategic offensive overseas, we have to be on the strategic defensive here at home. The Senate has just passed the bill to create a new Department of Homeland Security, which was long overdue. For my own part, I am pleased to see passage of several measures I have worked on that I believe will significantly improve our sense of security here at home. The homeland security bill itself contains provisions to coordinate law enforcement and public health emergencies and to move the Federal Law Enforcement Training Center into the new department. The Port Security bill will help the ports of Brunswick and Savannah cut off options for terrorists who want to attack the U.S. on our own shores. The Bus Security bill will ensure that bus passengers are finally accorded some of the same security measures that the flying public receives.

I look ahead now, and see our nation facing perilous challenges. Iraq and Saddam Hussein are back on our radar screen. We are right to insist on disarmament, and I leave the Senate confident that my vote to give the President the authority to use force to that end was the right one. I also believe my vote to go after Osama bin Laden was the right one, but we have miles to go before we sleep on that front.

As all of these issues continue, I hope that the Senate and the country will continue to vigorously debate the proper course for our nation's foreign policy. A policy unchallenged is a policy unproven. Why would we wait to prove our theories to ourselves and our allies until our troops are in the field proving our policies for us?

When he was in Vietnam, Colin Powell swore to his men, as I swore to mine, that when we were the generals instead of the captains, when we were the senators instead of the sergeants, we would not send our boys into a fight willy-nilly. And we haven't. And we shouldn't. In retrospect it seems to me that the real failure of Congress in Vietnam was not so much passage of the open-ended Gulf of Tonkin resolution, but its subsequent failure to exercise its Constitutional responsibilities after the resolution passed.

Likewise, Congress' vote on the Iraq resolution provided a tangible, militarily achievable objective, but it did not discharge the Congress of all future responsibility with respect to our policy on Iraq. After the 1990–91 Gulf War, Powell put forth six questions which he believed must be addressed before future military interventions:

> Is the political objective important, clearly defined, and well understood?
>
> Have all non-violent means been tried and failed?
>
> Will military force achieve the objective?
>
> What will be the cost?
>
> Have the gains and risks been thoroughly analyzed?
>
> After the intervention, how will the situation likely evolve and what will the consequences be?

The first three questions have been addressed thus far, but when we turn to the final three of General Powell's questions, we see the need for some serious and sustained attention not only by the Administration, but by the Congress as well. What will be the cost, not only the cost of the immediate military operation, but also the costs of what could be a very long-term occupation and nation-building phase? What about the cost for our economy? The mere threat of war has sent oil prices upward and caused shudders on Wall Street. What will a full blown war do? Have the gains and risks been thoroughly analyzed? And after the intervention, how will the situation likely evolve and what will the consequences be?

Powell has said that the purpose of the American military is to prevent war. But if war cannot be prevented, we should go in, win and win quickly. I am grateful to have Colin Powell's voice in this debate today. And I am hopeful we will have his and others like his in the debates of tomorrow. I hope the members of the 108th Congress will ask these questions and these are the ones I will be asking from whatever vantage point I move to after January 2.

In his farewell speech to Congress, General Douglas McArthur said that old soldiers never die, they just fade away. This old soldier is not going to fade away, but I will take my battles to another front. The people of Georgia have given me a chance to live the life of my dreams here in the Senate, but now I may have the chance to live a life that exceeds my dreams, and I am grateful for that.

As much as Richard Russell achieved for Georgia and for America, he said his greatest regret in his life was that he never married. I am happy to say that this old soldier has learned a thing or two from Russell, and I will be married to my fiancee, Miss Nancy Ross, after I retire. There is life after the Senate, and it will be a wonderful life. FDR said that the purpose of politics is to generate hope, but for me, the purpose of life is to generate hope. I will continue to try to live up to FDR's example every day.

Before I leave, I want to thank several people. Senator ROBERT BYRD, for teaching me so much about this institution. Senators REID and DASCHLE for your constant help and support, as well as Senator ZELL MILLER. Senators JOHN MCCAIN, JOHN KERRY and CHUCK HAGEL, who reminded me that nothing is stronger than brotherhood, and some things are more important than politics. I thank my staff for letting me lean on them, and I thank the entire Senate family, from our Chaplain Lloyd Ogilvie to the reporters who cover the Senate, from the wonderful elevator operators to the staff in the Senate dining room and the barber shop and everyone in between—you've been my friends and my family and I will always remember your kindness. Finally, to my colleagues and the people of Georgia, a song from one of my favorite old westerns comes to mind. Happy trails to you, 'til we meet again. God bless you.

(Applause, Senators rising.)

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. REED). Without objection, it is so ordered.

Mr. REID. Mr. President, the two managers of this bill, the President pro tempore of the Senate and the soon to be President pro tempore of the Senate, are both here managing this bill. It is my understanding they are not going to take a long period of time. As soon as they finish, it is my understanding we would have final passage.

The majority leader has come upon the floor. Senator BYRD said he is ready to begin the debate.

MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2003

The PRESIDING OFFICER. The clerk will report the joint resolution.

The assistant legislative clerk read as follows:

> A joint resolution (H.J. Res. 124) making further continuing appropriations for the fiscal year 2003, and for other purposes.

The Senate proceeded to consider the joint resolution.

Mr. BYRD. Mr. President, I shall be brief and my colleague, Mr. STEVENS——

The PRESIDING OFFICER. The Senate will come to order. Please remove conversations from the floor.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair.

I do not intend to speak more than 15 minutes, if that much. And my colleague has indicated he will speak about the same amount of time. So I would say to Senators we ought to be voting within 30 minutes.

Last July, almost 4 months ago, the Senate Appropriations Committee completed action on all 13 of our appropriations bills, each on a bipartisan unanimous vote. These bills restored essential funding for programs that the administration proposed to cut.

We provided $1.1 billion more than the President requested for veterans medical care.

We restored the $8.6 billion cut proposed by the President in highway funding.

The President proposed only a 1-percent increase for education programs. He would turn the No Child Left Behind bill into another unfunded mandate. Our bill would have provided a 6-percent increase for education, including key funding to reduce class size.

We included sufficient funding to keep Amtrak operating.

We restored over $1 billion of cuts that the President proposed for State and local law enforcement programs.

We fully funded the President's proposed increases for homeland security programs, but we provided the funds through existing programs that our nation's fire and police organizations support.

We provided a significant increase for the Securities and Exchange Commission in order to investigate corporate fraud.

We provided $400 million for election reform.

Sadly, the President believes that these increases represent wasteful and unnecessary spending. He worked with the House Republican leadership to shut the appropriations process down. The House has not passed a regular appropriations bill in nearly 17 weeks. By contrast, the Senate Appropriations Committee reported all thirteen bills by July 25th, the earliest date that this was accomplished since 1988. However, without the House-passed bills, our process stalled.

The Senate Appropriations Committee, on a bipartisan basis, believes in making responsible choices. It believes in governing. The President, sadly, appears to believe more in rhetoric and political posturing.

This year, only two of the thirteen appropriations bills have been signed into law. The House has voted for and the President has supported a fifth continuing resolution that would extend appropriations for the domestic side of the government until January 11. This is the worst performance of the Congress in attending to one of its most basic responsibilities, the funding of the government, since 1976 when the beginning of the fiscal year was moved to October 1.

Why did the President precipitate this unprecedented failure? Despite the fact that Congress approved the President's 13 percent, $45 billion, increase for defense programs and his 25 percent, $5 billion, increase for homeland defense programs, the President believes that the 3.5 percent increase for domestic programs that the Senate Appropriations Committee approved, was excessive. The President proposed to virtually freeze domestic programs that were not for homeland defense. The Senate Appropriations Committee provided $13 billion more for domestic programs, barely enough to cover inflation.

The President has forced the entire domestic side of the government to operate on automatic pilot at fiscal year

2002 levels for over one quarter of the fiscal year. In a bit of pre-election posturing, the President's Press Secretary Ari Fleischer said on October 20th, "For the first time in probably a decade, Congress has left town before an election without going on a spending spree using taxpayers' money. There's a new sheriff in town, and he's dedicated to fiscal discipline. And Congress for the first time in a decade has listened to the new sheriff."

That new sheriff is shooting the country in the foot with his Administration's shortsighted political games. But, were the items that the Senate Appropriations Committee funded with the $13 billion increase a spending spree?

No.

With great fanfare, the President signed numerous authorization bills this year that authorize increase spending on important programs. Last January, he signed the No Child Left Behind Act in order to invest additional resources in important education programs for our children. Last May, he signed a border security bill to strengthen glaring weaknesses in our border security. Last July, he signed the Bioterrorism Preparedness Act authored by Senators KENNEDY and FRIST in order to provide critical resources to State and local governments to improve the capacity of hospitals, clinics and emergency medical personnel to respond to biological or chemical attacks. Last July, he signed the Sarbanes-Oxley Act to combat corporate fraud. In October, he signed the election reform bill in order to help State governments overhaul the nation's electoral system.

Yet, when it came time to actually fund these important initiatives, the President worked to postpone action on the FY 2003 spending bills. He worked with the House Republican leadership to force the funding of the entire domestic side of our government onto a continuing resolution. Instead of making careful choices, the President has forced the government to operate on automatic pilot, leaving the legislation that he signed with such fanfare, to operate without the increased resources authorized by those laws.

The Senate is now considering a fifth continuing resolution to extend funding for the eleven bills that fund domestic agencies through January 11, 2003. This puts the entire domestic side of the government, including homeland security programs, on automatic pilot at the levels approved for FY 2002.

You must watch what this President does, not what he says. What he has done, is to force the government to operate on automatic pilot. What he has said bears very little resemblance to what he has done.

The U.S. Senate is reputed to be the world's greatest deliberative body. In "Democracy in America," French visitor Alexis de Tocqueville described this body as an institution "composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose arguments would do honor to the most remarkable parliamentary debates of Europe."

That was the Senate of 1831—an institution that prided itself on its deliberate, careful, judicious debates; an institution that possessed, as once the Senate of ancient Rome possessed, a great firmness, anchored by oratory that was as brilliant as the immense gold eagle atop the dais of the old Senate Chamber. But the Senate that de Tocqueville watched in 1831, I am sad to say, is a far, far cry from the institution that the American people have observed over the past few months.

Instead, the American people have seen a body more concerned about politics than substance; more concerned about party than about the people; more concerned about the state of the midterm elections than the state of the union.

President Bush came to Washington in 2001 and promised to change the tone in Washington. Instead, the President has sent an unambiguous message to Congress on virtually every major policy issue. His message—my way, or the highway. No room for debate. No room for deliberation. The nation needs to pursue energy independence, but the President has said my way or the highway. Our elderly need a prescription drug benefit, the President has said my way or the highway. The Director of Homeland Security says our nation is facing an imminent risk of a terrorist attack, but when it comes to homeland security legislation, the President said my way or the highway.

Similarly, the Congress has been manacled by the President and the House Republican leadership in its efforts to fund the operations of government.

On September 17, I came to the floor and I warned Members that the White House was leading an effort to stall the appropriations process. At that time, the House had not taken up an appropriations bill for eight weeks. I complained that the Administration seemed to believe that the federal government is nothing more than a "Monopoly" board, with the President living on Park Place, while the rest of the country relegated to Mediterranean Avenue.

In those remarks, I noted that Lawrence Lindsay, the President's principal economic advisor, had estimated that the costs of the war in Iraq would be $100 to $200 billion but that spending at that level would have no impact on the economy. I stressed my concern that the White House is willing to put the entire domestic side of the government on automatic pilot in a long-term continuing resolution over their insistence that the $13 billion difference between the House topline for discretionary spending and the Senate topline is, in their view, excessive spending. I noted that the House Republican leadership, at the bidding of the White House, is willing to force all of the domestic agencies to operate at current rates over their objection to the Senate's wanting to provide a 3-percent increase for domestic health, education, environmental, law enforcement and other programs, barely enough to cover inflation.

On September 24, I came to the Senate floor and I warned Members about the dire consequences of forcing veterans health care programs, education programs, transportation programs to operate at last year's spending levels.

On October 2, I returned to the floor and I asked the White House why they had turned a deaf ear to the needs of the American people; and why the fundamental duties of the President and the Congress to make careful and responsible choices about how to spend the taxpayers' hard-earned dollars had been put on automatic pilot.

For months, the President called on Congress to send him the Defense Appropriations bill. The Congress fully cooperated with the President in this regard. Congress sent the President the Defense and Military Construction bills at levels $800 million above the original House bills.

There is no doubt that the Congress and the President can work together. When the President asked for the necessary Defense funding, the Congress cooperated. But it's a far different story when it comes to the domestic programs of the United States Government.

The rest of the appropriations bills remain on hold, stuck in the mud of election-year politics. The President has sent the message that he will be satisfied to put the entire domestic side of the government on automatic pilot. He has already signed four continuing resolutions that fund the government at the levels in last year's laws.

Many members of Congress, myself included, are proud to wear the label of "defense hawk." But, in this new age of terrorism, being a defense hawk must also mean being a "hawk" on domestic defense. It must mean defending and funding domestic initiatives that will make Americans safer and more secure in their own backyards just as vociferously as defending and funding the production of military aircraft, and missiles, and tanks.

The White House stall on the remaining appropriations bills means that one front of our two-front war on terrorism will be provided with funds to do battle, but the other front will be shortchanged. If we fail to pass the rest of our appropriations bills, all of our efforts here, on American soil, to make more secure our states, cities and neighborhoods, will be getting short shrift.

Many on the other side of the aisle have claimed that this fiscal train wreck is the result of the Senate's not passing a budget resolution. That may make for good campaign rhetoric, but every Senator knows that a budget resolution is not necessary to pass appropriations bills. Congress was able to pass appropriations bills for nearly 200 years without a budget resolution.

The Budget Act specifically provides authority for the House to move forward on the appropriations bills in the absence of a budget resolution. Sadly, the House Republilcan leadership, at the prodding of our "my-way-or-the-highway President", chose instead to shut the appropriations process down.

The President insisted on a topline of $749 billion for the thirteen discretionary bills and has not budged. He seems satisfied to put the government on automatic pilot. No choices. No judgment. No opportunity for the Congress to reflect the needs of the American people in its consideration of the thirteen bills. No, let's just put the government on automatic pilot. Government by formula, rather than government by choice.

According to news reports, the President considers himself to be an education President. He speaks before Veterans groups. He speaks about combating the war on terrorism by strengthening the FBI's investigative capabilities and shoring up security at the Nation's airports, ports, and borders. But talk is cheap. The necessary funding for these priority programs is not. Where is the White House cooperation when it comes to priority domestic funding, especially those relating to homeland security and the plight of our veterans and the state of our education programs? Remember, watch what he does, not what he says.

Mr. President, as the days and weeks slip by and the domestic programs of the Federal Government limp along on autopilot under the provisions of the continuing resolutions, the four-million Veterans who rely on the Veterans Administration for their health care are having to worry about whether that care will be available to them. Maybe they are not sleeping too well. While the weeks slip away, the 11,420 FBI agents who are supposed to be combating the war on terrorism are having to wonder whether they have the necessary resources to fight that war. Maybe we all ought not to sleep too well. While the weeks slip away, the government's effort to root out corporate fraud is being put on hold. Watch what they do, not what they say. While the weeks slip away, the President appears to be satisfied to forget his No Child Left Behind promise and turn the commitment to educating America's children into another unfunded mandate, another unfulfilled promise.

The President is quick to champion homeland security, but his budget priorities reflect a different agenda. The administration's adamant refusal to move off of the dime in these appropriations discussions could jeopardize homeland security, no matter when or how any new Department of Homeland Security is created.

Recently, former Senators Rudman and Hart released a report that concluded that the American transportation, water, food, power, communications, and banking systems remain easy targets for terrorist attacks. According to the report, "A year after 9/11, America remains dangerously unprepared to prevent and respond to a catastrophic terrorist attack on U.S. soil. In all likelihood, the next attack will result in even greater casualties and widespread disruption to our lives and economy."

The report highlighted the vulnerabilities created by: the minuscule fraction of trains, ships, trucks and containers that are searched for weapons of mass destruction; poor radio communications and equipment and training for police, fire and emergency medical personnel; inadequate coordination and focus on threats to food safety; lack of lab capacity to test for biological or chemical contaminants; and insufficient sharing of intelligence information with State and local governments on potential terrorist threats.

Not only has President Bush failed to lead the nation in addressing this vulnerability, he has, in fact, actively opposed efforts to provide the resources necessary to address these significant weaknesses. When it comes to homeland defense, the President talks a good game, but puts no points on the board for our needs. Under pressure from the White House, since September 11, 2001, critical funding to address the specific concerns identified in the Rudman/Hart report have been squeezed out of spending bills considered by the Congress.

The Congress has succeeded in approving $15 billion for homeland defense programs in December of 2001 and July of 2002, $5.3 billion above the President's request. However, on several occasions in November, December and July, the President threatened to veto legislation that would have provided nearly $24 billion more for critical homeland security programs, including $15 billion from the stimulus bill and $8.9 billion from Fiscal Year 2002 bills reported by the Senate Appropriations Committee.

In August of 2002, the President chose to terminate $2.5 billion of funding that Congress approved for homeland security programs in the Fiscal Year 2002 supplemental. He turned his back to funds that would have helped to save lives.

In October of 2002, the White House took credit for forcing the entire domestic side of the government to operate by automatic pilot under a continuing resolution of last year's funding levels. That means that agencies like the FBI, the Customs Service, the new Transportation Security Administration, the Coast Guard, FEMA and the Immigration and Naturalization Service, agencies that are critical participants in securing our homeland, have no new resources to address known homeland security vulnerabilities. This postponed over $5 billion of increases approved by the Senate Appropriations Committee for homeland security programs.

When the President called on Congress to send him the Defense bills, Congress responded. But, how about the other eleven bills? We hear no call from the President to send him the remaining bills. The silence is palpable.

Under the long term continuing resolution, the veterans health care system will be funded at a level that is $2.4 billion short of the level proposed in the Senate passed FY2003 VA-HUD bill. There are currently over 280,000 veterans on waiting lists for VA medical care. Under a long-term continuing resolution, the waiting lists will more than double. VA will schedule 2.5 million fewer outpatient clinic appointments for veterans, and 235,000 fewer veterans will be treated in VA hospitals.

Thousands of FEMA fire grants, grants to resolve the interoperable emergency communications equipment problem, grants to upgrade emergency operations centers, grants to upgrade search and rescue teams, grants for emergency responder training and grants to improve state and local planning would be funded under the Senate's appropriations bills. But the Administration insists on operating the domestic programs of the Federal Government under the autopilot provisions of the continuing resolution which are mindless, formulaic, and without any trace of human judgment.

Has the President asked the Congress to send him the VA/HUD Appropriations bill that funds these critical veterans and homeland defense programs? No.

Many of the requirements of the Transportation Security Act require large expenditures in the first quarter of Fiscal Year 2003. Local airports are required to purchase explosive detection equipment to keep bombs from being placed on our airliners. To do that, they need help. Our highway program is facing a $4.1 billion cut in spending that could reduce jobs by over 160,000. Could our economy use those jobs? Amtrak could go bankrupt, throwing 23,000 people out of work and eliminating train service to 1.7 million citizens per month. Merry Christmas Amtrak workers from the White House.

The Senate Transportation bill addresses these concerns. Has the President asked Congress to send him the Transportation bill to fund these programs? No.

Federal funds also are needed to hire new federal screeners and to make our nation's seaports more secure. But this cannot be accomplished under a continuing resolution. The INS is at a critical juncture in developing a comprehensive Entry/Exit system to protect our nation's borders. The Senate bill provides $362 million for this initiative. But the Administration's inflexibility means that this program is frozen under the provisions of a continuing resolution just like our progress on protecting our borders—frozen! The President signed an authorization bill to help root out corporate fraud, but the continuing resolution would deprive the Securities and Exchange Commission of $300 million contained in the Senate bill to investigate corporate fraud. Let the fraud flourish for just a little while longer. Has the President asked the Congress to send him the Commerce/Justice/State bill that funds those programs? No.

The Customs Service is scheduled to hire more than 620 agents and inspectors to serve at the nation's high-risk land and sea points of entry. The Senate provides the funding for the Customs Service. But, again, the Administration seems to be satisfied with government by autopilot. A continuing resolution does not fund new agents for our border. Has the President asked the Congress to send him the Treasury/General Government bill to fund that border security program? No.

Without additional funding for security at our nuclear facilities, the Department of Energy will have to lay off 240 security guards at nuclear facilities in Tennessee and Texas. These 240 guards are the first line of defense between our enemies and a significant portion of our nation's nuclear material. Has the President asked us to send him the Energy and Water bill? No.

By forcing the government to operate on autopilot, the Administration wants the nation to fight terrorism with a wink and a nod.

Last month, Congress passed landmark election reform legislation. $3.8 billion is authorized for grants to state and local governments to improve our election systems. Yet, there is no funding for this initiative under a continuing resolution. Has the President asked the Congress to send him legislation to actually fund these new election reform grants? No.

Last year, Congress passed the No Child Left Behind Act with bipartisan support. But, this law becomes nothing but an unfunded mandate on our local governments if the federal funding is not there for states to implement the new act. It takes money to reduce class size, to provide teacher training, to invest in new technology and to develop meaningful assessment tools. The No Child Left Behind Act requires States to ensure that all teachers teaching in core academic subjects are "highly qualified" by the end of the 2005-2006 school year. But, the President's budget included no new money for teacher training. The Senate bill would increase funding for Teacher Quality State Grants by $250 million, for a total of $3.1 billion. The President's budget would increase funds for education by just $367 million—less than a 1% increase. That level gets an "F" in my grade book. The bill passed by the Senate Appropriations Committee, meanwhile, would increase education funds by $3.2 billion, or 6.5%. Has the President asked Congress to send him the Labor/HHS/Education bill? No.

Here in the Senate, Senator STEVENS and I sat down and worked out a topline for discretionary spending that reflected our views of the level of spending that would be required to produce thirteen bipartisan, fiscally responsible bills. We then followed through and the Senate Appropriations Committee produced all thirteen bills by the end of July consistent with that allocation. All thirteen annual appropriations bills cleared the Senate Appropriations Committee with fifteen Democratic members and fourteen Republican members voting aye. There is nothing partisan about these Appropriations bills. I worked with my Republican colleagues, led by that very able Senior Senator from Alaska, TED STEVENS, to make sure that these bills represented a consensus of our members, both Democratic and Republican. There are no gimmicks. The bills have been available for all Members to see for over sixteen weeks. Yet, the lack of action in the House has shut down progress in the Senate as well.

Senators should know that frustration with the lack of progress on the FY 2003 appropriations bills is bipartisan and bicameral. In a recent, widely distributed memorandum to the Speaker of the House of Representatives, House Appropriations Committee Chairman BILL YOUNG said, "A long-term continuing resolution that funds government operations at FY 2002 levels would have disastrous impacts on the war on terror, homeland security, and other important government responsibilities. It would also be fiscally irresponsible."

All it would have taken to move the FY 2003 bills was some degree of cooperation between the House and Senate leadership, but the White House thwarted any chance of a compromise being reached. That's right. The White House—the Bush White House—the one that promised to change the tone in Washington, thwarted any chance of a compromise being reached. They did not want the work to be done. The White House spinners wanted to spin and weave their tangled web.

We ought to be more concerned about how our actions will affect the course of the country than we are about how our actions or inactions will affect the direction of our polls. We ought to be more concerned about the price the people will pay for our actions or inactions than we are about the price our parties will pay at the voting booth. We ought to be more concerned about raising public awareness than we are about raising campaign funding. We ought to be more concerned about doing our jobs than we are about keeping our jobs.

Now, because of the White House's unwillingness to put what is best for the American people ahead of what is best for our political parties, the Congress is forced to pass a continuing resolution to fund the operations of government until the 108th Congress. The Congress will forsake one of its most important functions—to ensure funding for the operations of the federal government—because is could not reason with this partisan, partisan White House.

Call me old-fashioned, but I remember a time when compromises were crafted by individuals who had differing views on an issue. But with this President, it is my way or the highway.

The Senate must not blindly follow, in the name of party unity or under the yoke of political pressure, a short-sighted path that ultimately undermines our Constitutional processes. He could not stay off of the campaign trail long enough to negotiate and help us pass these bills.

Why isn't the Administration up here working in a bipartisan and flexible fashion with the leadership of the House and Senate Appropriations Committees to facilitate the processing of the appropriations bills that fund domestic programs so that the necessary funding can be provided to the veterans, the FBI, the education programs, the homeland security programs at the Federal, State, and local levels?

Why the giant stall, the big freeze, the cold shoulder? This Administration is setting quite a track record. Unfortunately for the American people, it is not a record on which to look back with pride. It is a record that rejects reasonableness in favor of stubbornness. It is a record that rejects progress in favor of partisanship. It is a record that puts politics ahead of the American people.

I, for one, can not forget what is important to America. I recognize, as do many members of this body, the critical nature of these appropriations bills to the future progress and security of this nation. I recognize the importance of these appropriations bills to the farmers, to the teachers and their students, and to the veterans. I recognize the importance of these bills to future breakthroughs in medical research and cancer treatments. I recognize the importance of these bills to our nation's energy independence and to our transportation network.

I can only pray that the Creator will see fit to protect us from the plots of twisted souls who lurk in the shadows, and I can only hope that in January, either our shame or our fear or both will compel us to act.

I have very strong feelings of gratitude for my colleague, Senator STEVENS, the ranking member, who has worked so closely with me. And I am especially appreciative for all of the cooperation and bipartisanship that has been shown by the members of this committee.

We have a committee of 29 members—15 Democrats, 14 Republicans. On all of these measures, we have reported the bills on a bipartisan basis without any partisan differences within the committee.

So I have many reasons to thank the ranking member, Mr. TED STEVENS, former chairman of the committee. I want to take this opportunity to thank him, and to also thank the other members of the committee.

I also want to thank staff on both sides of the committee. We have excellent staff that works with the Members. And I can only express my very deepest appreciation to the staff and to the membership.

I urge the Members of the Senate to vote as they see fit on this continuing resolution. I shall support it, although I am not entirely pleased that we have been forced to engage in this exercise in passing continuing resolutions. But be that as it may, we do have to fund the operations of the Government. So I shall vote for the continuing resolution.

The House has not taken up an appropriations bill for 8 weeks. When I came to the floor on September 17 and warned Members that the White House was leading an effort to stall the appropriations process, that process has been stalled. We sent two appropriations bills to the President. That is it. Eleven appropriations bill out of the 13 have not be sent to the President's desk. This is because the House Republican leadership has put the brakes on and has simply refused to let the Appropriations Committee in the House move the bills forward. The leadership on the House side has simply refused to have that body act on the appropriations bills that had been reported by the Appropriations Committee in the House.

That is most unfortunate.

I yield the floor in the event that my distinguished counterpart, Mr. STEVENS, wishes to say whatever he wishes. He may have the floor.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank you. I thank the distinguished chairman of our committee.

The pendulum of politics is swinging. When we return in January, I will become, once again, the chairman of our committee, and I look forward to working with my great friend from West Virginia in the manner I have tried to work with him as he has been chairman.

During the recent days, I have had the privilege of meeting with the President of the United States and the Office of Management and Budget Director, and with Congressman BILL YOUNG. We discussed the process by which we might try to finish with the appropriations for fiscal year 2003 so that we might be ready to handle the 2004 requests when they come following the State of the Union message that the President will deliver to us on January 20.

I look forward to working with Senator BYRD in that regard. This continuing resolution is absolutely necessary to give us the opportunity to move forward, and sometime in the first week that we are back in January we can decide how quickly we want to finish this appropriations process.

For myself, I am sure Senator BYRD and I will do our best to work in the Senate's best interest and to see to it that we finish these bills so that we can turn to the new task of dealing with the new budget requests which this time will include a new Department of Homeland Security. It will be a most interesting transition. And it is going to be a difficult problem for us in reorganizing the appropriations process to handle this new Department—whether or not we will create a new subcommittee or divide the work of the existing subcommittees to handle the new Homeland Security Department, that will have to be determined in the future.

I will certainly consult with Senator BYRD on all of those details.

For now, I urge Members to approve this continuing resolution and to understand the process. This is something the Senate is compelled to do in order to take us into a new Congress so that we can finish the work on the fiscal year appropriations for 2003. I hope everyone will understand the process and will give us their understanding even further when they return in January.

If the Senator is willing to yield back his time, I will be glad to yield back. We have no request for time on this side.

Mr. BYRD. Mr. President, I also want to take this opportunity to thank Chairman BILL YOUNG, the chairman of the House Appropriations Committee. I enjoy working with Chairman YOUNG. He has always been very cooperative and very gracious. He is a very courteous Member of that body, and is always very kind and considerate of me as I have labored to act as the chairman of the Appropriations Committee in the Senate upon more than one occasion.

I also thank DAVE OBEY, the ranking member on the House Appropriations Committee. DAVE OBEY brings a great deal of experience and knowledge and is a very articulate and forceful member of the House Appropriations Committee.

I enjoy working with DAVE OBEY, as I enjoy working with BILL YOUNG.

It has been a pleasure to work with the other members of the House Appropriations Committee on both sides—Republicans and Democrats. They have always been very nice to me.

This year I will relinquish my responsibilities as chairman and will begin work with my former chairman, Mr. STEVENS, and the other members of the committee as we go forward into the new year.

I believe we will have difficult times ahead. But I have always been able to work with Senator STEVENS. He has always been very nice to me, and very considerate, as has been his staff.

While I hesitate to feel that we must probably look forward to a more difficult year in the future than we have in the past, I can only say that I hope Senator STEVENS and our colleagues on both sides of the aisle in that committee enjoy a wonderful Thanksgiving, a lovely Christmas, and a Happy New Year.

And may God look down upon us and help us in our struggles, as we will continue to do our best, with limited resources, in the forthcoming year.

Mr. President, I yield the floor.

The PRESIDING OFFICER. If all time has been yielded back, the clerk will read the joint resolution for the third time.

The joint resolution was read the third time.

The PRESIDING OFFICER. The joint resolution having been read the third time, the question is, Shall the joint resolution pass?

Mr. SHELBY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Missouri (Mrs. CARNAHAN), the Senator from Georgia (Mr. CLELAND), and the Senator from New York (Mr. SCHUMER) are necessarily absent.

Mr. NICKLES. I announce that the Senator from North Carolina (Mr. HELMS), the Senator from Arkansas (Mr. T. HUTCHINSON), and the Senator from Alaska (Mr. MURKOWSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 92, nays 2, as follows:

[Rollcall Vote No. 253]

YEAS—92

Akaka
Allard
Allen
Barkley
Baucus
Bayh
Bennett
Biden
Bingaman
Bond
Boxer
Breaux
Brownback
Bunning
Burns
Byrd
Campbell
Cantwell
Carper
Chafee
Clinton
Cochran
Collins
Conrad
Corzine
Craig
Crapo
Daschle
Dayton
DeWine
Dodd
Domenici
Dorgan
Durbin
Edwards
Ensign
Enzi
Feingold
Feinstein
Fitzgerald
Frist
Graham
Gramm
Grassley
Gregg
Hagel
Harkin
Hatch
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnson
Kennedy
Kohl
Kyl
Landrieu
Leahy
Levin
Lieberman
Lott
Lugar
McCain
McConnell
Mikulski
Miller
Murray
Nelson (NE)
Nelson (FL)
Nickles
Reed
Reid
Roberts
Rockefeller
Santorum
Sarbanes
Sessions
Shelby
Smith (NH)
Smith (OR)
Snowe
Specter
Stabenow
Stevens
Thomas
Thompson
Thurmond
Torricelli
Voinovich
Warner
Wyden

NAYS—2

Kerry
Lincoln

NOT VOTING—6

Carnahan
Cleland
Helms
Hutchinson
Murkowski
Schumer

The joint resolution (H.J. Res. 124) was passed.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I ask unanimous consent to proceed as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

TRIBUTE TO SENATOR PAUL WELLSTONE

Mr. SARBANES. Mr. President, I was unable to be on the floor the day that we paid tribute to our colleague, Senator Paul Wellstone. I would like to take just a few moments this evening.

Like my colleagues, I was deeply saddened over the tragic death in a plane crash of our colleague, Paul Wellstone, his wife Sheila, his daughter, several members of his staff, and the plane's pilots. His death is a grievous loss to those members of his family who survived, to the people of Minnesota, whom he served so faithfully and honorably, to his colleagues in the Senate, and to the Nation.

Paul Wellstone lived the American dream. His parents came to this country as immigrants. He excelled in school. He earned both his B.A. and his doctorate at the University of North Carolina at Chapel Hill. He went straight from the University of North Carolina to Carleton College in Northfield, MN, as a young professor, where he taught for more than two decades. Minnesota became home to him and his family.

In 1990, the people of his State sent him to the Senate; and in 1996, they voted to send him back for another term.

Paul Wellstone was a person of deeply held convictions, a dedicated fighter for working families. He fought with passion for his principles but was also deeply respectful of those who disagreed with him. He was profoundly committed to the democratic political institutions that he had studied in his youth, that he taught to so many students over the years, and that, by his own direct engagement in our Nation's politics, he brought to life.

We feel a great loss in the death of this courageous fighter for a just and decent America, and we will seek to honor his memory by carrying forward in the spirit in which he lived and gave his life.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REED. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SARBANES). Without objection, it is so ordered.

The Senator from Rhode Island is recognized.

Mr. REED. Mr. President, I ask unanimous consent to speak in morning business for up to 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REED. Mr. President, I too rise to pay tribute to Paul Wellstone and send condolences and prayers to the Wellstone family, to all of his hardworking and dedicated staff, and to the other families involved.

Paul Wellstone was a passionate, courageous, never wavering fighter for his ideals. He fought vigorously for what he believed in. He fought vigorously for Minnesotans, Americans, and people around the world. And he did so side by side with his wife Sheila, herself and eloquent and forceful advocate for domestic abuse victims and so many others.

He was committed to economic and social justice.

He was indignant about the lives faced by the poor, the downtrodden, the battered, and all the "little guys."

He envisioned a better world for everyone, and strove every day to help secure that better world. He was tireless, but never humorless, in this struggle.

He challenged Members of the Senate, the President, and all Americans to envision this better world and to join him in the struggle for that better world.

He fought for all of us, but most especially for our children, for battered women, for working families, for individuals with disabilities, for seniors, for family farmers, for veterans, for Native Americans, and for new immigrants.

He fought to improve education, health care, and the environment. He was a leading voice, a champion, a fighter for these and other important needs of our Nation.

As he said:

> If we don't fight hard enough for the things we stand for, at some point we have to recognize that we don't really stand for them.

His view of politics was insightful and straightforward, just like the way he lived his life. He said:

> Politics is what we create by what we do, what we hope for, and what we dare to imagine.

He believed with all of his heart and soul in the American promise of equal opportunity, that "every child in America should have the same opportunity to reach his or her full potential regardless of the color of skin, gender or the income level of the child's parents."

To make that happen, we need to provide every child with the same tools for success. I can still hear him say: "We cannot realize the goal of leaving no child behind on a tin cup budget." He would make this pitch during hearing held by the Health, Education, Labor, and Pensions Committee, on which I was honored to serve with him, on the Floor, education funding rallies, and anywhere and everywhere.

He believed that education funding should come before tax cuts for the wealthy. In the education reform law, that he voted against because he believed that it didn't provide enough resources and that the tests it demanded would be "educationally deadening," he worked to ensure the highest quality tests possible and to recruit and retain highly qualified teachers, among other important provisions.

He was also a leader in the fight for full funding of the Individuals with Disabilities Education Act. He also long worked to give welfare recipients the chance to get off the rolls and into good paying jobs by allowing them access to postsecondary education.

His legislative efforts to provide mental health parity were born in large part out of his brother Stephen's struggle with mental illness and his family's struggle with the problems of lack of insurance coverage of mental illness treatment.

In an editorial in the Saint Paul Pioneer Press, he said:

> Think of what fairness in treatment for mental illness would mean. Think of the lives saved, the suffering eased. Suicide is linked to untreated mental illness in 90 percent of cases. Americans with mental illness, who are homeless or warehoused in jails, would instead get the humane care they need. Workplace productivity would improve, with less absenteeism and a higher quality of work. Other medical costs would go down. There would be fewer broken families, broken lives and broken dreams.

Paul Wellstone could not have been more right. We must pass mental health parity in his name, and we must pass it as a first order of business in the next Congress of the United States.

He also championed improved health care for children and adolescents, particularly substance abuse and mental health treatment and suicide prevention, included in the Children's Health Act of 2000. He coauthored the law that provides funding for Parkinson's Disease research. He also worked for a real Patients' Bill of Rights and a prescription drug benefit for our seniors.

With his wife Sheila, he led the fight to end domestic violence. He worked for passage of the Violence Against Women Act in both 1994 and 2000, a landmark law that provides help, protection, and improved services to victims of domestic violence.

He long worked to address the needs of children who witness domestic violence. Children who live in homes where domestic violence occurs are at a higher risk of anxiety and depression, and exhibit more aggressive, antisocial, inhibited, and fearful behaviors than other children. They also are at risk for recreating the abusive relationships they have observed, and many, as a consequence, are juvenile offenders.

His legislation on this issue is pending in the Senate version of the Child Abuse Prevention and Treatment Act reauthorization bill.

He fought for passage of the Family and Medical Leave Act, and was working to expand it.

He was a leader in the fight to raise the minimum wage and to extend unemployment insurance.

He believed in equal pay, worker protections, and secure pensions.

He fought to ensure veterans get the benefits and support they deserve.

He worked for cleaner air and water, reduced greenhouse gas emissions, and renewable energy. He led the fight to stop the oil companies from drilling in the Arctic National Wildlife Refuge.

He once again spoke for people with no voice, by championing naturalization for Hmong citizens who aided the U.S. war efforts in Vietnam, as well as by joining me as a cosponsor of the Liberian Immigration Fairness Act.

Paul's efforts were not limited to improving the lives of Americans. As a member of the Foreign Relations Committee, he championed human rights around the globe. He worked with Senator BROWNBACK to enact legislation to address international trafficking in women and children for prostitution and forced labor.

He also coauthored the Torture Victim Protection Act to help rehabilitate tortured survivors in the U.S. and abroad.

And he was a leading advocate and voice for sensible multinational-international approach to foreign policy.

Paul Wellstone demanded bold action to right the wrongs of this world. He fought for many valiant causes, and in doing so, he improved millions of lives. However, his fight is not finished. There is still much to be done. It is a fight we all must continue.

As Paul Wellstone once said, after the 1994 election:

> We don't have time for despair. The fight doesn't change. It just gets harder. But it's the same fight.

In his spirit and the spirit that is the most noble part of this Nation, let us carry on this noble fight.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER (Mr. REED). There is nothing pending. The Senator can ask unanimous consent to speak as in morning business.

CONGRATULATING FORMER PRESIDENT JIMMY CARTER ON RECEIVING 2002 NOBEL PEACE PRIZE

Mr. DODD. Mr. President, I have had this Senate resolution cleared with the majority and the minority sides. It is a resolution commending former President Carter on his upcoming receipt of the Nobel Peace Prize.

I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 360 submitted earlier today by myself and others.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the resolution by title.

The legislative clerk read as follows:

> A resolution (S. Res. 360) congratulating former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize, and commending him for his lifetime dedication to peace.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DODD. Mr. President, I will take a minute or two to explain the purpose in offering this resolution. I think it is rather self-explanatory. I want to thank Senator DASCHLE and Senator LOTT, our respective leaders, along with both the Members of the minority and the majority, for their support of this resolution recognizing former President Jimmy Carter for many things, not the least of which is the recognition by the Nobel Committee in awarding him the Nobel Peace Prize.

Over the past 25 years, few have been as dedicated to improving our country and our world than Jimmy Carter. Throughout his life, former President Carter has tirelessly devoted himself to promoting human rights, relieving human suffering, and promoting peaceful resolutions to a wide array of international conflicts.

Jimmy Carter's herculean efforts for peace during his term as President culminated with the signing of the Camp David accords, and indeed, his leadership and determination played a vital role in helping to achieve what once was considered impossible peace between Israel and Egypt. Although his efforts and dedication to peace did not earn him a nomination for the 1978 Nobel Peace Prize, which was subsequently awarded to then President of Egypt Anwar Sadat and Israeli Prime Minister Menachem Begin, former President Carter's indispensable role in this lasting peace is and will always be a matter of historical record.

Although many public servants retire from the public eye after their terms are completed, since leaving public office, President Carter has used his status and abundant talents honorably and effectively for the benefit of humanity. In 1982, he founded the Carter Center, a highly-respected research organization that seeks to cultivate peace, democracy, and human rights, and helps fight famine and disease. In 1984, he began his affiliation with Habitat for Humanity by leading efforts to restore a residential building in New York, and his annual participation with Habitat ever since further demonstrates his strong commitment to all manners of public service and to the betterment of society. He has been an inspiration to all who want to find ways to serve this country and humanity generally.

In 1999, Jimmy Carter was awarded the Presidential Medal of Freedom, the highest award a United States civilian can receive. In 2002, at the invitation of Fidel Castro, he made a historic visit to Cuba in order to encourage the free exchange of ideas between Americans and Cubans. I believe his visit, the first by an American President since 1928, will help to encourage democracy and build bridges between our citizens and our nations.

Indeed, whether he is working to promote strategic arms reduction or helping resolve inner-city social problems, whether he is brokering a peace between warring factions in Ethiopia or promoting peace, democracy and human rights in countries such as North Korea, East Timor, and Haiti, whether he is negotiating a cease-fire in Bosnia or working to ensure free and fair elections in countries throughout the world, Jimmy Carter is one of the pre-eminent figures of the last 50 years and a wonderful embodiment of the best of American ideals.

Prior to this year, Jimmy Carter had been nominated 10 times for the Nobel Peace Prize. I am extremely pleased that in October of this year he finally received this well-deserved and long-overdue tribute to his lifelong efforts. There is nobody more deserving of this highest of honors. I salute the decision of the Nobel Committee.

I again express my gratitude to all of our colleagues in the closing hours of this 107th Congress. This resolution recognizes the contributions of Jimmy Carter, and I join with others in congratulating him on this well-deserved, long overdue honor of the Nobel Peace Prize. Our congratulations to his beloved wife Rosalynn and his family for all they have contributed to the well-being of our Nation and to the world in which we live.

I inquire of the Chair as to whether or not the fourth whereas clause on page 2 has been stricken?

The PRESIDING OFFICER. The Senator is correct.

Mr. DODD. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 360) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 360), with its preamble, reads as follows:

S. RES. 360

Whereas in 1978, President Carter personally negotiated with Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin to reach the Camp David Accords, the cornerstone of all subsequent peace efforts in the Middle East;

Whereas President Carter completed negotiations on the Strategic Arms Limitation Talks II (SALT II) and continued to make strategic arms control a focus of United States security policy;

Whereas President Carter emphasized the importance of human rights as a key element of United States foreign policy;

Whereas former President Carter and his wife Rosalynn established the Carter Center in 1982;

Whereas the Carter Center has taken an active and vital role in world affairs, always seeking to improve human rights, promote democracy, resolve conflicts, and enhance the lives of the people of the world;

Whereas former President Carter has made countless trips abroad to promote peace, democracy, and human rights, including visits to East Timor, North Korea, Cuba, Haiti, Nicaragua, and Mexico, among many others;

Whereas former President Carter has made the promotion of peace, democracy, and human rights his life's work: Now, therefore be it

Resolved, That the Senate recognizes and congratulates former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize and commends him for his tireless work for and dedication to peace.

Mr. DODD. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXPRESSING APPRECIATION TO THE PRESIDING OFFICER

Mr. REID. Mr. President, first, I express my appreciation to the Presiding Officer for being so patient these many hours until we arrived at this point. Thank you very much.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators allowed to speak therein for a period not to exceed beyond 5 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

TRIBUTES TO DEPARTING SENATORS

FRED THOMPSON

Mr. STEVENS. Mr. President, since 1994, Senator THOMPSON has represented the people of Tennessee in this body. During that time, I have been fortunate to call him both a colleague and a friend.

In the last 8 years, Senator THOMPSON has fought hard for issues that are vital to Tennessee. He has made sure that his State has the infrastructure it needs and the resources it deserves. He has protected Tennessee's farmers and its workers.

Three years ago Senator THOMPSON founded the Smoky Mountains National Park Congressional Caucus. My own State of Alaska has many national parks so I understand the challenges that Senator THOMPSON faced. His commitment to eliminating the National Parks Service backlog has been admirable.

Senator THOMPSON has also served the best interests of our Nation. Our work on the governmental affairs committee reflects his dedication. As chairman of that committee he has worked to make the government smaller, more efficient, and more accountable. It has been a pleasure to work with him as we worked to create the department of homeland security.

The Senate and the people of Tennessee will miss Senator THOMPSON'S commitment and dedication. I am grateful for his service and wish him future success.

PHIL GRAMM

Mr. President, for 24 years the people of Texas have had an impassioned advocate and dedicated public servant in PHIL GRAMM.

Over the course of his career, Senator GRAMM has established an impressive legislative legacy. He played a role in the fight to cut federal taxes, institute international free-trade incentives, reform the welfare system, set mandatory federal prison sentences for drug crimes, and support our armed forces. The Gramm-Leach Bliley Financial Services Modernization Act and the Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Control Act were ground-breaking legislative achievements. Through these and other efforts, Senator GRAMM has helped lay the foundation for a new era of national prosperity.

Senator GRAMM has been called a man of "frank opinions and unwavering convictions." Since he came to the Senate in 1984 I have been honored to call him my friend and colleague. We will miss his leadership and his voice in the Senate. I am grateful for his years of service and I wish him success in his future endeavors.

TIM HUTCHINSON

Mr. President, Senator HUTCHINSON has been a committed advocate for the people of Arkansas and an important voice in the Senate. His strong leadership led me to personnally support his candidacy and I will greatly miss his presence here in Washington.

I believe Senator HUTCHINSON leaves behind an important legacy. As a veteran of World War II, I am particularly grateful for Senator HUTCHINSON'S work on the Veterans' Affairs Committee. As chairman of the Veterans' Affairs Subcommittee on hospitals and Health Care, Senator HUTCHINSON really watched over the VA's 173 medical centers. Our Nations's Veterans gave so much to ensure our liberty and freedom. I thank Senator HUTCHINSON for making sure that we fulfill our promises to them and reward their service. It has been said that: "The final test of a leader is that he leaves behind in other people the convictions and the will to carry on."

We are thankful for Senator HUTCHINSON'S service and convictions. I wish him much success.

FRANK MURKOWSKI

Mr. President, Alaska's recent elections have changed our state's congressional delegation for the first time in 22 years. As my Senate colleague of 22 years prepares to be sworn in as Alaska's tenth governor, I recall the battles we have fought together on behalf of our state, and I welcome the opportunity to work with him on tomorrow's challenges.

Senator MURKOWSKI has established an impressive record of achievement during his time in the Senate. Since 1981, he has represented the citizens of Alaska and served the nation admirably.

Throughout his career, Senator MURKOWSKI has been a staunch defender of Alaska's miners, loggers, and fishermen. In 1995, he authored and helped pass through both Houses of Congress legislation that would have opened ANWR to oil and gas exploration. He has helped broker an agreement among major gas transmission companies that could result in the construction of the natural gas pipeline; that pipeline would bring valuable energy resources to the lower 48.

Senator MURKOWSKI was a driving force behind the passage of an omnibus parks bill that created or improved more than 100 natural parks, forests, preserves and historic sites nationwide. He fought to increase funding for Alaska's Medicare recipients. In 2001, he helped win passage of major education reform, bringing us closer to the nation's goal of providing every child with a quality education.

Senator MURKOWSKI's wife Nancy has been an integral part of this success.

When FRANK and Nancy first arrived in Washington, Nancy worked hard to balance their family life with their new Senate responsibilities.

In addition to being a committed partner, Nancy has been a devoted public servant. She has been active in our Alaska State Society and has traveled extensively with Frank. She has also been a leader in women's health issues. Through the private charity she runs with FRANK, Nancy has raised more than $2.3 million for breast and cervical cancer treatment. She cofounded the breast cancer detection center in Fairbanks. Annually she organizes and runs events at Waterfall, near Ketchikan and at Chilkoot Charlie's in Anchorage to raise funds for breast cancer clinics and mobile detection units for rural areas throughout Alaska. Our state is fortunate to have Nancy Murkowski as its next first lady.

Those of us in the Senate will miss the Murkowskis. We will miss FRANK's daily leadership on important issues and his commitment to public service. We take comfort in knowing that Alaska will have his proven leadership in the governor's office.

Alaska and the Nation face unique challenges and opportunities in the coming months and years. In the future, the vision and leadership Senator MURKOWSKI has demonstrated during his tenure in the Senate will enable Alaska to meet those challenges and leverage those opportunities.

Congressman YOUNG and I look forward to working with Governor Murkowski; we know he will support our work in the Nation's capital. We will work together in the future as we have in the past.

It has been an honor to serve with Senator MURKOWSKI. For 22 years we have worked closely on issues that are of vital importance to Alaska and the Nation. His career has been one of distinguished service. I look forward to working with my dear friend and colleague in the future.

ROBERT TORRICELLI

Mr. LEVIN. Mr. President, I will miss my friend and colleague ROBERT TORRICELLI, the senior Senator from the State of New Jersey when he leaves the Senate at the end of the 107th Congress.

BOB TORRICELLI first served from 1982–1996 in the U.S. House of Representatives. In 1996, he joined us in the U.S. Senate, and since getting here, has been a committed advocate for the people of New Jersey. He has worked tirelessly to protect New Jersey's natural resources, to improve air quality, and to protect drinking water. He has also worked hard to provide a comprehensive prescription drug benefit for seniors, and make college more affordable for parents and students alike.

I have worked with Senator TORRICELLI in his tireless and ongoing efforts to close the gun show loophole and to pass commonsense gun safety legislation. That is a battle that I want to assure him many of us that he leaves behind in the Senate will continue to wage.

BOB TORRICELLI served as an effective chairman of the Democratic Senatorial Campaign Committee and has earned a reputation as one of the most eloquent orators in the U.S. Senate. His books, "In Our Own Words: Extraordinary Speeches of the American Century" and "Quotations for Public Speakers: A Historical, Literary, and Political Anthology" have become valuable resources for all of his colleagues in public life.

I know my colleagues will join me in thanking Senator ROBERT TORRICELLI for his years of service in the Congress and wish him the best.

JESSE HELMS

Mr. President, I recognize the service of JESSE HELMS.

Before coming to the Senate, JESSE HELMS served his country in the U.S. Navy during World War II. He was a Senate staffer, broadcast executive, radio personality, and banking executive.

Senator HELMS, throughout his career, has been a tireless voice for his conservative beliefs. Whether one agrees with Senator HELMS' views or not, no one can deny the imprint he has made on the deliberations and actions of the United States Senate. JESSE HELMS has always had the knack for carefully crafting legislative language which would put his supporters and opponents clearly on the record on the most difficult issues of conscience.

In his capacity as chairman of the Senate Foreign Relations Committee JESSE HELMS was a powerful force in reorganizing the Department of State.

In the United States Senate we are called upon to work with colleagues of many differing points of view. While a fierce battler for his conservative convictions, JESSE HELMS was often willing to reach across party lines to work with Democrats on issues like adoption and increased funding for AIDS research.

While JESSE HELMS and I have frequently disagreed, I respect the straight forwardness which he brought to the public policy debate. And, JESSE HELMS was always a gracious gentleman. As this Congress comes to an end, I know that I am joined by my Senate colleagues in wishing JESSE HELMS and his wife, Dorothy, and their three children, the very best in the years ahead.

PHIL GRAMM

Mr. President, at the end of this session of Congress, Senator PHIL GRAMM, the senior Senator from Texas will leave the Senate. For 18 years, Senator GRAMM has been a leader among the Republicans and a strong voice in the Senate.

PHIL GRAMM is a hard worker and effective advocate. Before coming to the Senate, Senator GRAMM was an economics professor at Texas A&M University and member of the U.S. House of Representatives from 1978 until 1984. After being elected to the U.S. Senate in 1984, Senator GRAMM quickly became recognized as one of its most articulate members. As a member of the Banking, Housing, and Urban Affairs, the Finance Committee, and the Budget Committee, he has applied his boundless energies and extensive knowledge of the Senate rules and precedents to his efforts to reduce federal taxes.

While PHIL GRAMM and I disagree on many issues, I deeply respect his willingness to stand up and fight for his convictions and the good humor with which he approaches those battles. For example, on the issue of federal prisoner industries reform, Senator GRAMM and I have locked horns on several occasions, but he has always been a worthy and agreeable adversary.

I know my Senate colleagues will join me in wishing him every success as the vice chairman of UBS Warburg and in wishing our best to Wendy, his wife, and their two children.

FRED THOMPSON

Mr. President, I am pleased to join my colleagues in paying tribute to Senator FRED THOMPSON.

Senator THOMPSON joined the U.S. Senate in 1994 after a successful career in law and even some starring roles on the silver screen. But he was no stranger to this body, even then, having previously served as Minority Counsel to the Senate Watergate Committee in 1973 and 1974 at the age of 30. Once he joined as a Senator, he rolled up his sleeves and got to work on the Senate Governmental Affairs Committee seeking to make our government more sensible, more responsive, and more cost effective.

In 1997, he became the Chairman of the Committee and has served in that capacity during the 105th, 106th and 107th Congresses. Over the years, Senator THOMPSON helped oversee some dramatic investigations, including the campaign finance investigation in the 105th Congress and the Enron investigation this past year. He also worked on many less well known issues, including one close to my heart the effort to improve the way the Federal Government issues regulations.

For several Congresses, Senator THOMPSON and I teamed together on regulatory reform issues, including a major regulatory reform bill. This legislation would have required federal agencies to consider cost-benefit analysis when issuing major regulations and state publicly whether the agency found that the benefits of a regulation justified the costs. If they did not, then the agency would have to explain why it was issuing the regulation despite that finding. We also required federal agencies to conduct risk assessments where appropriate. We had a heck of a battle on that legislation, and in the end we failed to pass it. But the fight was worth it; I believe we were right; and it was great to have Senator THOMPSON fighting with me at my side to bring common sense to our regulatory process.

During his years at the Senate, Senator THOMPSON has made his mark as a legislator by supporting bipartisan efforts to enact reforms in the areas of campaign finance, sensible government regulation, and corporate accountability.

While he will no longer be "In the Line of Fire," Senator THOMPSON's legacy in the Senate will "Die Hard." I hope his future roles will be as lively as those he played here for the last eight years. It is a pleasure to join all of my colleagues today in honoring and thanking him for his years of public service to his country.

JESSE HELMS

Mr. SESSIONS. Mr. President, I rise today to pay tribute to a great American, a fellow Senator, a fellow conservative, and friend—Senator JESSE HELMS.

I speak today with mixed emotions. I am happy to see that after a long and distinguished career he will have more time to spend with his beloved wife of 60 years, Dot . . . as well as enjoying time with his children and grandchildren. But I also know that this kind of man is impossible to replace.

In the words of The Weekly Standard executive editor Fred Barnes:

> Helms is an ideologue, and his unflinching devotion to conservative principles has made him a powerful figure. He's oblivious to the buzz, the chatter, and gossip of the press, polls and the permanent establishment. He's totally inner directed. He cares little for details or process. But when something clashes with his conservative views . . . he steps up, no matter how unpopular that makes him. He wins some, loses some, but is always a player to be reckoned with, even when he's acting alone.

I recall one such occasion where Senator HELMS acted alone in his outspoken criticism of the United Nations. He refused to approve payment of U.N. dues until this lavish, bloated, and unwieldy bureaucracy was reformed. He was highly criticized by almost every member of the mainstream media, chastised by activists, and mocked by others. He knew there were great problems at the United Nations and would not give until it was improved and it should be told that, in the end, the United Nations gave in. Reforms that will make the United Nations a better, more honest and viable organization, were passed.

It seems to be one of the seldom mentioned side notes of Senator HELMS' career in public service he often wins even when he seems to have lost. For instance, even though he was unable to block the Chemical Weapons Convention, he did win 28 of the 33 concessions he sought.

Senator HELMS' legislative career will not only be remembered as that of a foreign policy figure though. I, for one, as an Eagle Scout, will always remember his fights to defend the independence of the Boy Scouts.

Some of the best insight into JESSE HELMS as a person comes from his domestic policy stands. One of the most telling stories of the real personality of JESSE HELMS and one of the most moving as well was shared by Senator NICKLES. In the midst of a debate on a 5-cent-per-gallon Federal gas tax hike, in which they were vastly outnumbered, they were seeking guidance. Senator HELMS suggested that they pray together, and he called the Reverend Billy Graham and asked that he pray with them for guidance.

That to me speaks volumes as to what truly guides Senator HELMS as a person. He was not using his faith for a photo op, a quick sound-bite, a political tag line, or other earthly gains. This was simply a man who instinctively turns to the God for guidance.

In the article I mentioned earlier, Fred Barnes concludes by asking if JESSE HELMS can be replaced. His conclusion is similar to mine. That is a task that is "probably more than can be hoped for". A person as unique as JESSE HELMS does not come along often. His presence will truly be missed both on and off the Senate Floor.

Senator HELMS is a provincial patriot. He has never been a part of the urbane crowd, the radical chic crowd. He knows it and they know it. It galled them that he could not be intimidated by an editorial in the New York Times or some such organization. He is a man of faith, a Baptist. He comes from the soil of North Carolina and is proud of it. He prefers the affection and commendation of those in his province over those in the great salons where the "masters of the universe" operate. In fact, he respects the people of his beloved state and deeply shares their values. That's what he fought for every day. The cynical, rootless left, the politically correct, those without principles, those who do not comprehend the greatness of America, were not for him.

Indeed, he saw them as the problem. And, at their core, these folks understood. They knew his disagreement with their actions was deep and honest. Try as they might, his opposition would not go away. Many hated him because of it.

But, JESSE HELMS does not hate. He absolutely does not. He only wants to do the right thing for America. Because he values America over politics, and because he is courageous in his stand for principle, he often could not be moved. The left has never understood this. Some thought he hated them personally. He does not. He loves them and he wants a better life for all Americans.

The truth is that Senator JESSE HELMS is a most kind and considerate person. His soft spoken ways are known by all. His modesty and an assuming manner are plain for all to see. His wonderful wife, Dot, shares those same qualities and is loved by all who know her.

He is a true Christian gentleman in the Southern style. Courtly, gracious, quick of wit and firm in friendships, he is a most remarkable person. Widely read, highly literate and a master of the language, few could turn a phrase better than JESSE. When he has been wrong or slow to understand, he has admitted it. His conversion to advocacy for a much stronger fight against AIDS in Africa is a very recent example.

Finally, the career of Senator HELMS cannot be discussed without remarking on the critical role he played in enabling the focus of democracy, free enterprise, and faith to triumph over the godless, totalitarian forces of communism. He was a constant cold warrior. He saw the evil in the evil empire, and his drive to overcome it never slacked. He was relentless, even when undergoing attacks from the so-called opinion leaders of America. It certainly was not those opinion leaders and pundits who won the war. They blew hot and cold mostly cold on American policies. But the people in the provinces knew, they knew there could be no compromise with communism, and fortunately those people had a strong, able and true voice in JESSE HELMS. He stayed the course, the Soviet Union collapsed. There were many close calls and many highlights in that Cold War. One of those critical moments came when Senator HELMS came to believe in Ronald Reagan's view of the role of the United States in this struggle. JESSE worked hard and produced a great victory in North Carolina that gave him the Republican nomination. Together they persevered and the evil empire collapsed and the victory was won.

Senator HELMS, you played a critical role in this struggle for freedom and you deserve great credit for your courage and constancy.

America and freedom are in your debt. We are much obliged for your service.

FRED THOMPSON

Mr. COCHRAN. Mr. President, the retirement of the distinguished Senator from Tennessee (Mr. THOMPSON) will leave a major void in the heart and soul of this body. Rarely have we seen the quality of the work product of a new Senator approach the level of excellence and importance as we have in the performance and contributions of FRED THOMPSON.

He has stood head and shoulders above the crowd, literally and figuratively. It was a rare and most enjoyable privilege for me to serve on the Governmental Affairs Committee when he was the chairman.

He assumed the awesome responsibility of leading the committee in its investigation of the election law abuses of the 1996 Presidential election. He was a superb chairman, fair to all, but thorough and diligent in his quest for the truth. He expended an enormous amount of time and energy in that undertaking, and he made every effort to keep to the subject and learn the facts. During it all, he endured criticism, skepticism and sometimes ostracism as he labored to discharge the duties of his chairmanship.

I have no greater respect for any Senator than I have for the Senator from Tennessee. He has served well and reflected great credit on the United States Senate and the State of Tennessee. We will miss him greatly.

BOB SMITH

Mr. President, I have enjoyed serving with BOB SMITH in the U.S. Senate. For the last 2 years, we have sat side by side in the Senate. He has occupied the desk that was used in the Senate by Daniel Webster, who was born in his State of New Hampshire, although he represented Massachusetts as a Senator.

During votes and deliberations of the Senate we have had opportunities to discuss a wide range of subjects from fishing in the deep south to experiences in the U.S. Navy, as well as the issues under consideration by the Senate.

I have grown to know and appreciate BOB SMITH. I like him, and I respect him. He is a person who has strongly held views, and he is not afraid to express then, and to fight for them.

He has been admired on both sides of the aisle for his efforts to protect the environment. He has been a dutiful and diligent Chairman of the Environment and Public Works Committee.

As a member of the Armed Services Committee, he has been an effective supporter of a strong national defense. His leadership has been deeply appreciated by me on the issue of missile defense. He worked effectively to help garner the votes to pass the National Missile Defense Act of 1999 which I authored. He was a cosponsor of that bill and a very enthusiastic proponent of its passage, and its implementation by the administration. We met regularly with Defense Department officials to urge cooperation in the effort to develop and deploy, as soon as possible, a system, or systems, to defend the citizens of our country against ballistic missile attack. He mastered the esoteric subject matter associated with this issue and was an important force in the shaping and carrying out of this new national policy.

I will miss BOB SMITH. I wish for him and his family much happiness in the years ahead.

PHIL GRAMM

Mrs. HUTCHISON. Mr. President, it is an honor to pay tribute today to my dear fried and colleague, the senior Senator from Texas, PHIL GRAMM. Perhaps more than anyone in the Senate, I will miss PHIL's leadership. In the Senate there are three kinds of relationships between Senators from the same State: One, they do not like each other. Two, a professional relationship: they get along OK, work hard together for their State, but are not really close. Three, they are good friends who have a great partnership for their State.

PHIL and I have No. 3. I recently noted that his retirement is like sending an older sibling off to college: Your best friend will not be upstairs anymore, and there is nobody to stick up for you when you get in a fight. But then again, you'll get the big room, and you will not have to share the spotlight anymore.

When I first came to the Senate after a special election, I walked into an office with no staff, but PHIL had sent his own staff to start answering the phones, and detailed one of his senior staff to help set up my office. That support was invaluable in those early days.

PHIL's story is one of those "only in America" success stories. Born at Ft. Benning, GA, the son of a soldier, his father died when PHIL was a young teenager. He and his two brothers were raised by their mother in a modest neighborhood in Columbus, Georgia.

His mother worked at two jobs to take care of the family, as a practical nurse and also in a cotton mill for $28 a week. PHIL has often said his mother had decided before he was born that he would go to college.

But after failing the 3rd, 7th and 9th grades, his mother recognized it was time for drastic action for her dream to be realized. She pooled the family's limited resources and sent PHIL off to the Georgia Military Academy near Atlanta. Mrs. Gramm knew PHIL had a good mind but needed encouragement and direction

His life has been a testament to his mother's sacrifice ever since. A PhD in Economics from the University of Georgia led him to another life-changing experience when he accepted a teaching position at Texas A&M. If the Georgia Military Academy gave him the academic foundation to achieve, Texas A&M nurtured his natural talent to teach and to entertain. He was a sensation at A&M. PHIL managed to make even the most complex economics courses exciting. It was also at A&M that PHIL met and married a fellow economics professor, Wendy, who has been a partner and inspiration to PHIL throughout his career.

While it is one thing to test your economic principles and convictions in the classroom, it is quite another to have the courage to place your views in front of the voters. After a losing campaign for the Senate in 1976, he ran for Congress 2 years later and won. His campaign theme—"common sense; uncommon courage"—described him perfectly. Particularly after he decided to switch parties, from Democrat to Republican. He resigned from his seat, to give his constituents a choice to vote on his switch. He won back his seat, becoming the only member of Congress in the 20th century to do this. And after serving three terms in the House, PHIL set his sights on the Senate again, and won this time in 1984.

He has one of the sharpest minds in Congress. His Southern drawl and easygoing nature may fool some, but we know behind that accent is a razor-sharp mind. PHIL has become one of the Senate's most important leaders. He has mastered the Senate, and is one of our body's intellectual and philosophical giants. He is a man of great character. He does not stand on ceremony; he stands on conviction. He is never been swayed by popular opinion, in fact, he has often stood his ground despite popular opinion. His tenacity and his passion are unrivaled. And even in his last days in the Senate, he's not taking a rest from the trenches, he has been leading the debate on the Department of Homeland Security, perhaps one of the most important decisions of our time. If there is a tough fight to be had, you can be sure PHIL GRAMM will lead the charge. If there is something difficult that needs to be done, you can be sure PHIL will find a way to do it.

Of course, in addition to his brilliant mind, PHIL will be remembered for his colorful sense of humor and witty anecdotes. For example, who could get away with saying things like: During GRAMM's bid for the Presidency, Larry King asked PHIL if he would ever run with a woman? "Sophia Loren is not a U.S. citizen," answered GRAMM. "People of New Hampshire talk funny and therefore they think I talk funny." On campaign reform. "Our problem is not bad money corrupting good men; our problem is bad men corrupting good money." "It's always dangerous to send your wife ahead in your place, because then no one cares if you show up."

While he will certainly be remembered for his originality and humor, he is second to none as an effective legislator. PHIL has always maintained his focus on fiscal responsibility, helping us get back to a balanced budget. He is the first person to actually do something to eliminate the national debt, so that our children and grandchildren will not be saddled with our bills. The Gramm-Rudman-Hollings Budget Act was a masterpiece. PHIL thought of it and engineered its passage, proving it is possible to be both smart and effective. As chairman of the Senate Banking Committee, PHIL crafted the Financial Services Modernization Act, one of the most important pieces of financial legislation in modern years.

When you are in a fight for survival, the most important decision you make is who you want in the foxhole with you. When I have ever had a tough fight, PHIL was my first call. For two reasons: I want him on my side, and I sure do not want him on the other side. I can say without reservation that PHIL GRAMM is truly irreplaceable. What I admire most about him is his courage. PHIL and Wendy have been good friends to Ray and me. We are friends in the Senate, and friends at home. PHIL, I will miss you. I wish you well and look forward to having you as a constituent.

CHAPLAIN OGILVIE ON HIS SERVICE TO THE UNITED STATES SENATE

Mr. THURMOND. Mr. President, I rise today to pay tribute to my good friend, Dr. Lloyd John Ogilvie, for his 8 years of service as the U.S. Senate Chaplain.

Dr. Lloyd John Ogilvie was born in Kenosha, WI, and graduated from the Garrett Theological Seminary and the University of Edinburgh, Scotland. After serving at churches in Illinois and Pennsylvania, he was a pastor of the First Presbyterian Church in Hollywood, CA, for over 20 years. Since 1995, Chaplain Ogilvie has served as the 61st Chaplain of the Senate.

This great Nation was founded on faith in God and has been supported throughout its history by the faith and prayers of its citizens. Chaplain Ogilvie has taken part in this great tradition by his undying devotion to the Senate. Over the past 8 years, Chaplain Ogilvie has provided the Senate family with kind words and open arms. From his weekly prayer groups to his moving opening prayers, Chaplain Ogilvie has been a consistent source of inspiration and strength for the Senate family.

As our Nation faced the horrific attacks on September 11, 2001, Chaplain Ogilvie helped our Senate leaders come together to help heal a wounded Nation. Today, as we continue to face possible attacks on our land, Chaplain Ogilvie provides us with the strength to continue working to uphold the ideals of this great Nation. On a more personal level, I thank Chaplain Ogilvie for the support he offered my staff and I when we lost our beloved Holly Richardson. His comforting sentiments and lending ear certainly offered us hope and a renewal of our faith. We are all thankful for his tremendous service, and he will be greatly missed by all those in the Senate.

On behalf of myself, my colleagues, and our Nation, I express my sincere gratitude to Dr. Lloyd John Ogilvie for his service to the Senate. I wish his wife Mary Jane the best for a speedy return to good health, and the best of luck to his children and grandchildren. I thank Dr. Ogilvie for all his good works and for bringing the word of the Lord to so many people.

TRIBUTE TO DR. GERALYN M. JACOBS

Mr. DASCHLE. Mr. President, I would like to take this opportunity to recognize Dr. Geralyn M. Jacobs of Vermillion, SD who has been named the South Dakota Professor of the Year by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education. This award is given to professors who demonstrate a high level of dedication to teaching and a commitment to students, and who use innovative instructional methods. Dr. Jacobs' dedication to early childhood education and academic accomplishments make her an outstanding recipient of this award.

Since 1995, Dr. Jacobs has been a professor at the University of South Dakota. In addition to her teaching responsibilities as an Associate Professor of Early Childhood Education in the School of Education, she serves as President of the South Dakota Association for the Education of Young Children and is active in several professional, campus and community organizations. She co-produced a CD ROM, "Inclusion: Celebrating Children's Successes," that provides resources for teachers working with children with special needs and she often leads workshops and classes for teachers in South Dakota. Dr. Jacobs brings 16 years of experience working with school-age children to her college classrooms.

Through her tireless efforts at the University of South Dakota and in many area communities, Dr. Jacobs has an invaluable impact on many teachers and their students. Recent brain research has shown us that early childhood educators can have a tremendous impact on the development of young minds, and I would like to thank Geralyn Jacobs for her contributions to South Dakota schools and congratulate her on this well-earned recognition.

TRIBUTE TO THURSTON ERIC WOMBLE

Mr. LOTT. Mr. President, I take this opportunity to recognize and say farewell to an outstanding staff member and friend, Eric Womble. For the past 7 years, Eric has served as my national security adviser and military legislative assistant, and as one of my most able counselors. As Eric moves on to new challenges in the private sector, it is my privilege to commend him for his service.

The son of Thurston and Olive Womble, Eric was born at Bethesda Naval Hospital in Maryland and was raised in Mobile, AL. He received his undergraduate degree in 1979 from the United States Naval Academy and was designated a Naval Flight Officer in 1980. Before retiring from the United States Navy in 1997, he served in many assignments, including: Patrol Squadron Twenty-Four, VP-24; the Joint Chiefs of Staff Intern Program in Washington, D.C.; the Program Resource Appraisal Division in the Office of the Chief of Naval Operations, OP-81; Flag Secretary to Commander Seventh Fleet in Yokosuka, Japan; Fleet Replacement Instructor in Patrol Squadron Thirty, VP-30; Operations Officer in Patrol Squadron Forty-Nine, VP-49; Executive Assistant to the Chief of Naval Research; and in the Department of Defense's Congressional Fellows Program.

During his military career, Eric was awarded the Legion of Merit, Meritorious Services Medal with a gold star, Navy Commendation Medal with three gold stars, Joint Service Achievement Medal, and Meritorious Unit Commendation with bronze star. He also earned an MBA from Marymount University of Virginia and served as a White House Social Aid for President Ronald Reagan.

When Eric came to work for me seven years ago, I assigned him the task of helping me implement an innovative plan to create new jobs in Mississippi by growing the research and technology base at our universities and in our industrial community. Eric's efforts helped Mississippi universities and businesses grow their research and technology programs by approximately 200 percent from 1996 to 2002. This growth in research and technology was a major factor in attracting several Fortune 500 companies, including Nissan Motor Company, Lockheed Martin Corporation, The Boeing Company and Alliant TechSystems. Mississippi also has become home to several new military commands including Special Boat Unit Twenty-Two, the Navy's Southeast Region Human Resource Office, and the Air National Guard's first C-17 squadron. This prescription for growth, which Eric helped me pursue for seven years, also helped several existing entities in Mississippi, including Northrop Grumman Ship Systems, Raytheon Aerospace Company, and the Meteorology and Oceanography command to prosper and create more jobs.

When our military was suffering from extremely low retention and recruiting in the mid-1990's, Eric helped me craft legislation that helped reverse these troubling trends. During his tenure on my staff, the Congress passed the largest pay raise for our military men and women since 1981, repealed the REDUX retirement system, reset the future pay raise formula to Employment Compensation Index plus one-half percent, implemented dual compensation exemption for military officers, reset the pay caps for our Flag and General officers, created the TRICARE For Life military health care system, and targeted millions of dollars in pay raises to our mid-career enlisted military personnel and officers. Eric also assisted me in improving the quality of medical care to our military veterans by helping me craft legislation to establish a Medicare Subvention Demonstration program and a prescription drug program.

During the Clinton administration, Eric was instrumental in my efforts to bolster our Nation's armed forces by getting $48 billion in additional funds for our military through supplemental and congressionally added funds. He also helped me gain $823 million in military construction funding from 1996 to 2003 to revitalize Mississippi's most critical military bases.

In particular, I should note that Eric's naval experience was significant in helping me bolster the naval shipbuilding industry on the Mississippi Gulf Coast. He was instrumental in bringing together the Navy, the Office of Secretary of Defense, industry, and the Congress to ensure a robust naval shipbuilding program. His work was reflected in the development of the LHD, LHA(R), LPD-17, DD(X), DDG-51, and the Littoral Combat Ship programs.

I know that the citizens of Mississippi benefited from Eric's relentless pursuit of military and economic development projects that will impact the State for years to come. The country, too, should be proud to have had such a champion of strong military ideals fighting to preserve our nation's military power and to properly support our men and women in uniform. As a result of his outstanding performance, Eric was recently awarded the Mississippi Distinguished Civilian Service Medal and the Department of the Navy's Superior Public Service Award.

As Eric moves onto a new and exciting position as Vice President for Programs at Northrop Grumman Corporation, I wish him, his wife Wendy, and their children, Melissa and Matthew, every success. Eric has served our country for more than 27 years, and as he embarks upon his new journey, I wish to take this opportunity to thank him for his service and to wish him nothing but the best in his new career.

TRIBUTE TO JOSEPH VINCENT TREBAT

Mr. REID. Mr. President, the adjournment of the 107th Congress means we shall soon be bidding goodbye to the year 2002. The weeks ahead will be filled with reviews of the headlines and history of 2002. Unfortunately, 2002 marks the passing of an even greater number of individuals who made up what some refer to as the "Greatest Generation." The men and women who sacrificed much and rose to meet the awesome challenges confronting our great nation in the aftermath of World War II are dying off in greater numbers each year.

Today, I wish to recognize the life of one such individual who embodied the self sacrifice, uniquely American optimism, and genuine goodness of this generation—Joseph Vincent Trebat of Mount Prospect, IL. Joseph Trebat passed on to eternal life on August 14th but left behind a legion of family and friends whose lives have been infinitely enriched because of his life.

Joseph Trebat, "Dad" to his six children, "Papa" to his twenty-one grandchildren and two great grandchildren and "Joe" to his beautiful bride of 66 years, Lauretta, will be sorely missed. It is often said of men like Joe that he lived a good life. For Joe, however, it is more important to add that his was a life well led.

Joe's life was truly an American life. The son of Slovak immigrants, Joe grew up in Chicago and was by all accounts a self-made man. He worked his way through college and spent 50 years at the same company. He brought the same dedication to his family. His priorities never changed—work hard, enjoy life and provide a better future for his wife and children. The lives led by his six children: Mary Ann, Tom, Patty, Dottie, Joe and Kathy, evidence Joe's greatest success in life. To meet Lauretta, or "Stella" as Joe lovingly referred to her, is to understand what it means to be in the company of a kind and happy person. Joe may have been born Slovak but his marriage to Lauretta demonstrated he was blessed with the luck of the Irish.

Joe's naturally twinkling eyes could bring cheer to anyone. Those who enjoyed his company, whether joining Joe on the back porch of his house on Wa Pella, playing golf in one of the Trebat Golf Opens or cheering on his beloved Notre Dame, knew they could count on no shortage of laughter and fun. With its number one fan rooting for them from heaven it is no wonder that Notre Dame is experiencing such a winning football season in 2002.

Joe was a gentle giant who will be missed by all. A man for others who's strong faith and love of family was always steadfast and never wavering. When we talk of the "Greatest Generation" it is men like Joe who come to mind. While he will always be missed, he will forever be a model for future generations.

WE NEED A PLAN TO STOP AIDS

Mr. LEAHY. Mr. President, several months ago the Appropriations Committee reported out the fiscal year 2003 Foreign Operations Appropriations bill, and the Senate passed the Homeland Security Supplemental Conference Report.

Those two bills contain a total of $950 million for international programs to combat AIDS, including $300 million for the Global Fund to Fight AIDS, TB and Malaria. We provided $250 million for the Global Fund last year, although $50 million has not yet been disbursed.

That sounds like a lot of money. It is far more than what we were spending on international AIDS programs just two or three years ago. But think about it another way. The amount we expect to provide in 2002 and 2003 to combat AIDS, which threatens the lives of each of the world's 6 billion people—is less than what my own State of Vermont, with a population of only 600,000 people, will spend on health care during that same period.

So while the United States is doing more than ever to combat AIDS, and we can point to successes in several countries—Uganda, Thailand and Brazil, for example, the reality is that the AIDS pandemic is out of control.

It is spreading faster, not slower. 40 million people are infected. Almost nobody is receiving treatment. 25 million people have died from AIDS-related causes, and at the current rate that number is expected to exceed 65 million by the year 2020.

By any measure, AIDS is a plague of biblical proportions. Over 6 centuries ago, the Bubonic Plague started at a small trading post in the Crimea and quickly spread from port to port. By the time it ran its course, a third of Europe was dead.

It is still remembered as the worst epidemic in the history of the world. No longer. AIDS is making the Bubonic Plague look like a mild case of the flu.

The reality is that despite everything we have done and are doing, we are failing miserably to control this pandemic. Until we develop a strategy that matches the challenge, and until we start thinking in terms of billions, not millions, of dollars, we will continue to fail.

The alternative is unthinkable, but it is by no means impossible—100 million deaths. 200 million. 400 million. This virus spreads exponentially, and so does the cost of controlling it.

When I think about AIDS, I think back to 1990, when Ryan White was alive, and Magic Johnson didn't know he was HIV positive. Even though hundreds of thousands of Americans had already died of the disease, we had gone a decade with two Presidents who refused even to speak the word "AIDS" in public.

In the spring of 1990, we learned that in some African villages, one of every 10 people was infected.

That year, my wife Marcelle and I traveled to Kenya, Uganda and South Africa to see the impact of AIDS first hand. During one visit to Kampala, we met people infected with HIV who were teaching others to protect themselves from the virus.

Those brave people were HIV-positive and knew their time was short. Yet they devoted the time they had left to helping others to live.

When I came home, I gave a speech and said that if we failed to act, by the year 2000 ten million people would die of AIDS.

I was wrong. The number of people who died from this disease during the next 10 years was not 10 million, it was 22 million, and now it is 25 million.

Imagine waking up tomorrow morning and learning that every single man, woman, and child—every single person—in Miami, Minneapolis, Atlanta, Denver, Boston, Seattle, Washington, D.C., New York City, Los Angeles, Chicago, Houston, Philadelphia, San Diego, Detroit, and Dallas combined had a virus for which there was no cure.

That is the reality in Africa today. Every hour, AIDS buries another 250 Africans.

Within the next decade, at the current rate, more than 40 million children in Africa will lose one or both parents to AIDS.

Many of these children will end up on the streets, turning to crime, drugs or prostitution, driving the rates of HIV even higher, perpetuating this vicious cycle.

Progress that has taken decades to achieve is being wiped out. In many African communities, AIDS is doubling infant mortality, tripling child mortality, and slashing life expectancy by as much as a third or a half.

We have always known that improving public health makes it easier to meet other needs—whether it is better education, stronger economies, or more stable societies. The converse is also true. AIDS will defeat these efforts for social and economic development in Africa unless we defeat AIDS first.

This is an enormous challenge for Africa, but it is an even greater challenge for the world.

Every day, another 12,000 people are infected, and millions more continue to suffer needlessly.

In the Caribbean, AIDS is now the leading cause of death among people between the ages of 15 and 44.

In Eastern Europe and Central Asia, the number of new infections has risen faster than anywhere.

In India, the infection rate is skyrocketing. In China, only 4 percent of the Chinese population knows how AIDS is transmitted, and according to public health experts it is spreading far faster than the government has acknowledged.

It is a grim picture, but there is a great deal we can do. We do not have a cure for AIDS and there is no vaccine in sight, but we know how to protect ourselves from the HIV virus. We can provide basic care to the sick, and mobilize communities to support the growing number of AIDS orphans.

We know how, for pennies a day, to treat the half of all AIDS patients who will otherwise die from the pneumonia, tuberculosis, or meningitis that prey upon weak immune systems. We have to get these drugs, as well as retroviral drugs which have been available in wealthy countries for years, to people in poor countries who need them.

We know how to reduce the transmission of AIDS from mothers to children.

We know all these things, but even so, we are failing. The disease is spreading out of control. What we lack, even after all these years, is a global plan.

This administration, like the one before it and the one before that, has no plan for how to mount a global campaign to effectively combat the most deadly virus the world has ever faced. There is no strategy for dealing with 40 million AIDS orphans, no strategy for getting treatment to the 40 million people infected today, or the 50 million who will be infected in another 3 years, no strategy for expanding education and prevention programs on the scale that is called for.

It is not enough to point to a few success stories, as important as they are. We have to look at the big picture. Despite everything we have done and are doing, we have failed miserably. This deadly pandemic is out of control, and the amount of money being spent is a pittance of what is needed.

If we are going to conquer—or at least control—this disease, we need to think differently about it. It sounds cliche and it has probably been said many times before, but we need the health equivalent of the Manhattan Project, or putting a man on the moon. We need to increase our investment not linearly, but exponentially. Where we are spending millions, we need to spend billions.

According to public health experts, the world must increase funding on AIDS by at least a factor of five to at least $10 billion per year.

And $10 billion is a lot of money, but put it in perspective: It is about the same amount as the U.S. Government spends each year on office supplies. It is less than 1 percent of our Federal budget.

Unless we start treating AIDS as a global health catastrophe, not just someone else's problem, we will face a far worse, and far more costly, crisis in the future.

How do we begin?

The Global Fund to Fight AIDS, TB and Malaria is the funding mechanism the world has created, with strong support from the United States. It is not a substitute for other effective international health programs, like those run by USAID, but we know that USAID cannot do this alone. We need a multilateral approach, and the Global Fund is that approach.

Congress has appropriated $250 million for the Fund so far. Some have argued that we should wait to see how the Fund performs, before we do more. I understand that caution. We have seen how other global funds failed to meet expectations. It would make sense to wait, if we were not talking about the worst health crisis in human history.

We simply cannot wait to see if the Global Fund is going to succeed, because we cannot afford to let it fail. We must do whatever is necessary to make sure it does not fail. That means spending a lot more than $250 million. The Administration needs to approach the Global Fund as it has al-Qaida failure is not an option.

That said, money is not the only issue. The Fund must not allow itself to be turned into a tool controlled by the governments of AIDS-affected countries. Unless there are reasonable checks and balances on the proposed and actual uses of these funds, there will be a high risk that the fund will turn into a major source of patronage and income-supplementation for the elites.

To assure this, nongovernmental organizations and other civil society groups must have a strong and clear voice in the global governance, national oversight, and local implementation of Fund-sponsored activities. To date, this has been respected more in rhetoric than in reality, and many local groups have been deeply disappointed with the nearly total government control of access to Fund resources and even the proposal process in many countries.

The Fund would probably respond that this is being addressed, but the message I am hearing from the field is that this is a closed and tightly controlled resource pool in most places. To its credit, the Bush administration has been one of the strongest supporters of a larger role and voice for NGOs, and some of the developing country governments represented on the fund's Board have been the most resistant.

The fund is one important vehicle for getting critical programs going in highly affected countries, but we should not confuse this with a comprehensive global approach. There are still critical needs for direct bilateral assistance, particularly when that assistance is often channeled, as it is with USAID funds, to service NGOs, as well as an overall coordination and policy role for UNAIDS, and a technical role for the World Health Organization. Responding to AIDS and the Global Fund are not fully synonymous.

The world faces immense challenges from global warming, to the threat of nuclear, chemical and biological weapons, to poverty on a vast scale. We cannot ignore any of these challenges, because they all bear on the security of future generations of Americans.

But when those same future generations look back at this time and place, I believe they will judge us, more than anything, on how we responded to AIDS. It is the most urgent, the most compelling, moral issue of our time.

I urge the President, who has shown real leadership in focusing our country and the world on combating terrorism, to think differently about AIDS. It cannot be just another problem we deal with in the normal course of business. As serious a threat as international terrorism is and we are spending many billions of dollars to protect ourselves from terrorists, measured by the number of victims it pales compared to AIDS.

The administration needs to get serious. Earlier this year, the White House opposed efforts by the Congress, including by some Republicans, to provide $500 million in emergency funding to combat AIDS. Because of the White House's objection, Senator DURBIN's amendment was defeated.

Subsequently, the President refused to designate $200 million for HIV/AIDS, in the Homeland Security Supplemental, including $100 million for the Global Fund, as an emergency. As a result, those funds are not available.

If AIDS is not an emergency, nothing is. Over two decades have passed since AIDS was first identified, yet we still do not have a plan. A hundred million dollars here or there isn't a strategy. Even $10 billion isn't a strategy. The Administration needs to spell out in clear terms a plan for dealing with each component of the AIDS crisis care for orphans, treatment for the infected, and prevention. It needs to do this on a country scale and a global scale, and it needs to commit our share of the funds to implement it.

It won't be cheap. The Manhattan Project wasn't cheap either, but that is what we need. It will cost far, far more if we waste another ten years.

The Congress has showed over and over that it is ready. The administration needs to lead.

THE SMALL BUSINESS DROUGHT RELIEF ACT

Mr. KERRY. Mr. President, as the Senate and the House prepare to bring the 107th session to a close, we leave some important small business legislation unfinished. Regrettably, that includes passage of the Small Business Drought Relief Act because of serial holds from Republicans since August 1—3 and a half months. This emergency legislation passed our committee with unanimous support, and yet Senators with no jurisdiction in small business, instigated by an administration that claims to support small business, obstructed passage.

The committee reached out to those Senate members and their staffs time and again, and there was no cooperation. Sixteen Governors—Governor Hodges of South Carolina, Governor Easley of North Carolina, Governor Barnes of Georgia, Governor Foster of Louisiana, Governor Musgrove of Mississippi, Governor Perry of Texas, Governor Wise of West Virginia, Governor Patton of Kentucky, Governor Glendening of Maryland, Governor Holden of Missouri, Governor Keating of Oklahoma, Governor Sundquist of Tennessee, Governor Warner of Virginia, Governor Siegelman of Alabama, Governor Huckabee of Arkansas, and Governor Guinn of Nevada—reached out to the Congress asking for us to pass this bill, and they got no cooperation. The committee was ultimately able to overcome tremendous differences between CBO's cost estimate and OMB's cost estimate to reach agreement with the Office of Management and Budget on passing this emergency legislation last week, but not even that moved the Republican leadership to cooperate.

So we go home tonight, and our small businesses—main street America—needlessly struggle to make ends meet, keep their doors open and employees on the payroll, because of partisan politics.

For those who don't remember, this is emergency legislation to help small non-farm-related businesses across this Nation that are in dire straits because of drought conditions in their State. Just like the farmers and ranchers, the owners of rafting businesses, marinas, and bait and tackle shops lose a lot of business because of drought.

Right now these small businesses can't get help through the SBA's disaster loan program because of something taxpayers hate about government—bureaucracy. SBA denies these businesses access to disaster loans because its lawyers say drought is not a sudden event and therefore it is not a disaster by definition. Contrary to the Agency's position that drought is not a disaster, as of July 16, 2002, the day we introduced this bill, the SBA had in effect drought disaster declarations in 36 States. Unfortunately, the assistance was limited to farm-related small businesses.

The 36 States include: Arizona, California, Colorado, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

The situation has only gotten worse judging by SBA's own numbers. Since the bill was introduced, the SBA has declared disasters in two more States and the District of Columbia. Instead of rising to the occasion and using their statutory authority to help the small businesses in these areas, they continue to deny them access to disaster loans, hiding behind a legal opinion—a legal opinion that they will not provide to the committee.

To make sure the facts of this legislation are accurate, let the record show that this bill does not expand the SBA disaster loan program. SBA already has this authority, and this bill simply restates and clarifies that authority to ensure that the law is applied fairly. Let the record show that SBA, contrary to its claims, has the expertise to determine when a drought is a disaster. First, the SBA already declares drought disasters and does so mainly by working with the U.S. Secretary of Agriculture. Second, in addition to working with the Secretary of Agriculture, there are existing SBA guidelines for declaring disasters, and those guidelines apply to drought too. For example, the Governor of a State can request a declaration from the Administrator of the SBA after certifying that more than five small businesses have suffered economic injury because of a disaster. Last, let the record show that this legislation is modest in cost. CBO estimated that this bill would cost $5 million per year for 5 years, far less than OMB's estimate of approximately $100 million per year. And last week, as I referenced earlier, we were able to reach an agreement with OMB that capped the cost at $9 million for fiscal year 2003, enough to cover the cost of the bill as passed by the committee and the Bond/Enzi/Burns/Crapo amendment. Unfortunately, even OMB's concurrence and the support of many Senators and Governors did not persuade the remaining Senator blocking passage of the bill to put aside his differences for the sake of small businesses and permit it to pass.

I thank the many supporters of this bill. My 22 colleagues who are cosponsors—Senators BOND, HOLLINGS, LANDRIEU, BAUCUS, BINGAMAN, DASCHLE, JOHNSON, EDWARDS, CARNAHAN CLELAND, ENZI, LIEBERMAN, HARKIN, ENSIGN, REID, HELMS, ALLEN, BENNETT, TORRICELLI, LEVIN, CRAPO and THURMOND. All the Governors who put small businesses first and politics last. Mr. Donald Wilhite, director of the National Drought Mitigation Center at the University of Nebraska in Lincoln, for all his assistance to my staff in understanding the scope of drought in this country and for writing in support of the legislation. National

Small Business United, for always being there to stand up for small businesses. The many small business owners and small business advocates, such as Wildlife Action, in South Carolina, who took the time to write me regarding the drought and their problems with the SBA. And last, but certainly not least, from my home State, I thank Bob Durand of the Massachusetts Emergency Management Association for his help and support. We will take this fight up again in the next Congress.

Mr. President, I ask unanimous consent that several letters of support and my remarks be included in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SOUTHERN GOVERNORS' ASSOCIATION,
Washington, DC, August 19, 2002.

Hon. JOHN KERRY,
U.S. Senate, Russell Senate Office Building,
Washington, DC.

DEAR SENATOR KERRY: We are deeply concerned that small businesses in states experiencing drought are being devastated by drought conditions that are expected to continue through the end of the summer. We urge you to support legislation that would allow small businesses to protect themselves against the detrimental effects of drought.

Much like other natural disasters, the effects of drought on local economies can be crippling. Farmers and farm-related businesses can turn in times of drought to the U.S. Department of Agriculture. However, non-farm small businesses have nowhere to go, not even the Small Business Administration (SBA), because their disaster loans are not made available for damage due to drought.

To remedy this omission, Sen. John Kerry (D-Mass.) introduced the Small Business Drought Relief Act (S. 2734) on July 16, 2002, to make SBA disaster loans available to those small businesses debilitated by prolonged drought conditions. This bill was passed by the Senate Small Business Committee just eight days later. Also, the companion legislation (H.R. 5197) was introduced by Rep. Jim DeMint (R-S.C.) on July 24, 2002. Both bills are gaining bipartisan support, and we hope you will cosponsor this important legislation and push for its rapid enactment in the 107th Congress.

As 11 southern states are presently experiencing moderate to exceptional drought conditions this summer, we cannot afford to wait to act. We urge you to cosponsor the Small Business Drought Relief Act and push for its consideration as soon as possible.

Sincerely,

Governors Don Siegelman of Alabama, Mike Huckabee of Arkansas, Roy E. Barnes of Georgia, Paul E. Patton of Kentucky, M.J. "Mike" Foster, Jr. of Louisiana, Parris N. Glendening of Maryland, Ronnie Musgrove of Mississippi, Bob Holden of Missouri, Michael F. Easley of North Carolina, Frank Keating of Oklahoma, Jim Hodges of South Carolina, Don Sundquist of Tennessee, Rick Perry of Texas, Mark Warner of Virginia, Bob Wise of West Virginia.

OFFICE OF THE GOVERNOR,
STATE OF SOUTH CAROLINA,
Columbia, SC, July 9, 2002.

Hon. JOHN KERRY,
U.S. Senate, Russell Building,
Washington, DC.

DEAR SENATOR KERRY: The State of South Carolina is in its fifth year of drought status, the worst in over fifty years. Some parts of the state are in extreme drought status and the rest is in severe drought status.

99% of our streams are flowing at less than 10% of their average flow for this time of year. 60% of those same streams are running at lowest flow on record for this date. The levels of South Carolina's lakes have dropped anywhere from five feet to twenty feet. Some lakes have experienced a drop in water level so significant that tourist and recreational use has diminished.

State and national climatologists are not hopeful that we will receive any significant rainfall in the near future. To end our current drought, we would need an extended period of average to above average rainfall.

Droughts, particularly prolonged ones such as we are experiencing now, have extensive economic effects. For farmers who experience the economic effects of such a drought, assistance is available through the USDA. For small businesses, assistance is available only for agriculture related small businesses, i.e. feed and seed stores. For businesses that are based on tourism around Lakes and Rivers, there is currently no assistance available.

We have reports of lake and river tourism dependent businesses experiencing 17% to 80% declines in revenue. The average decline in revenue is probably near 50% across the board.

My staff has contacted Small Business Administration and they are not authorized to offer assistance to these businesses because a drought is not defined as a sudden occurrence. Nonetheless, a drought is an ongoing natural disaster that is causing great economic damage to these small business owners.

I am requesting that you assist us in this situation by proposing that the Small Business and Entrepreneurship Committee take action to at least temporarily amend the SBA authorizing language and allow them to offer assistance to small businesses affected by prolonged drought. This would allow Governors to ask SBA for an administrative declaration of economic injury because of drought. The low interest loans SBA can offer these businesses would allow many of them to weather the drought and remain in business for the long run.

My staff has also been in contact with Senator Hollings' legislative staff. I hope together, we can find an expedient solution to the plight of these small business owners. Short of finding a way to control the weather, this may be our only option to help their dire situation.

Sincerely,

JIM HODGES,
Governor.

DISASTER RELIEF

Mrs. CLINTON. Mr. President, I would like to express my disappointment at the delay in providing crop disaster relief to farmers across the country. Mother Nature has not been kind this year, dealing farmers weather that has devastated their crops and threatened the survival of family farms.

In New York State crop damage has not come solely from drought. Unseasonably high temperatures in the spring followed by frost and hailstorms have devastated specialty crops such as apples, peaches, pears, grapes, strawberries, stone fruits, onions, and cherries.

The unfortunate result of this disastrous weather is that a large percentage of these fruit farmers are bordering on financial ruin. I have met with the farmers and growers of New York, and their stories are heartbreaking as they talk about bankruptcy and selling off their family's farm. Crop disaster relief is truly needed to keep these farms going as well as the rural economies that they support.

In order to provide this much needed assistance, I have worked with my colleagues to pass legislation that would provide financial relief to farmers who have suffered losses due to natural disaster aid. I cosponsored S. 2800, a bill that would provide emergency disaster assistance to agricultural producers. I cosponsored the crop disaster amendment to the Interior appropriations that passed with 79 votes. And I support Senator BAUCUS today in his continued efforts on behalf of this Nation's farmers and our rural communities.

This year has been a true disaster for so many farmers. On behalf of farmers and growers from the State of New York, I will continue to support crop disaster relief, particularly for specialty crop producers. I urge my colleagues to support these efforts to provide assistance.

Mr. ENZI. Mr. President, I have heard my colleagues on the Senate floor today talking about drought and the desperate need for drought assistance. Throughout this session, I have been a fervent advocate of drought assistance for producers in Wyoming. I am speaking today because the need for assistance persists.

Today's discussion has focused on farmers. They need help. Farmers missed out on the emergency livestock programs provided by the administration. Even with crop insurance, farmers are facing serious difficulties.

As this drought has continued for multiple years, crop insurance premiums have increased each time a producer is forced to take a loss. Yield averages, the basis for insurance payments, have been dropping with dismal production each year. Crop yields are so low this year that market prices are actually higher. The farm bill counter cyclical payments that were designed to support prices when markets fell below a certain level have been thwarted by these higher prices. These higher prices are meaningless when the quantities have been so drastically reduced. Therefore, this protection has been rendered useless.

Farmers clearly need help, but I also think it is important to remember that our ranchers aren't safe yet either. Mr. President, I ask unanimous consent to have printed in the Record a letter from Bob and Nancy Tarver. They are a ranching family from near my home of Gillette, WY.

There being no objection, the material was ordered to be printed in the Record, as follows;

Tarver Heart X Ranch,
Gillette, WY, September 30, 2002.
Congresswoman Barbara Cubin,
U.S. Capitol, Washington, DC.

Hon. Rep. Cubin: Thank you for the opportunity to share the impact of the past three years of drought to our livestock business in Northeastern Wyoming. The Heart X Ranch consists of my husband, Bob, and two sons, Robert and James. I believe we comprise a true family farm/ranch that is so often referenced as to what congress wishes to save. Our income is derived totally from agriculture and we provide the labor and management for our ranch operation. Bob and I have been in agriculture all of our lives. I was raised on a ranch in Southeastern Montana and Bob is a Wyoming native whose roots are Wyoming ranching. Our oldest son, Robert, is married and his wife, Michelle teaches at Little Powder School. Michelle's teaching has not only contributed to their family living but also the benefits of health insurance for their family. They have two sons, Tayler 6 years and Wyatt 3 years old. James is engaged to be married.

My husband and I had a dream when we married to buy a ranch. We have managed to buy a small place and lease the majority of acres that we operate on. Along with our sons we run cow-calf and a yearling operation. We are ultra conservative and run our outfit as economically as possible. . . as our fleet of 1978 ranch pickups exemplify.

The cost of drought to a ranching operation is staggering. Explanation and computations of drought cost are detailed in Attachment A. Summarizing the examples of additional cost for this year is as follows:

Hay: $120.00 per cow; Cake: $21.00 per cow; Lick & Liquid feed: $29.40 per cow; Heifer calf-feed lot: $18.75 per cow; Pounds & dollars lost due to drought: $185.00 per cow; $374.15.

The additional expenses that I have covered are the reality of drought.

This is our third year of drought. The above are additional cost for this year alone!

I am most grateful for the Feed Program—$23 per head, Livestock Compensation Program—$18 per head, and the Nap program—$1.00 per acre (depends on% loss, and if acres are eligible) it is very evident from these numbers to see the critical need for these programs and also the Disaster Program for Livestock Assistance and Crop Disaster. Drought is a natural disaster and the economic consequences are devastating to agriculture. The necessity to have the Disaster Programs for 2001 and 2002 are vital to save the drought areas of American ranching and farming.

I believe with my whole heart and soul that to keep America strong we need our farms and ranches providing the American consumers the safest and best products in the world.

It is very humbling to share this information. However, I am very proud to be a rancher and I am overwhelmed by not only the financial devastation but also the mental pressures of trying to save a viable family ranching operation from the ravages of an unforgiving drought.

The drought in Wyoming has been compared to the 1930's. It is heartbreaking to think that in America, commonly thought of as the land of opportunity, the only ones that will be left following the drought are the very wealthy and the hobby rancher.

Thank you for your dedicated and persistent efforts to help us in agriculture to survive the drought.

Sincerely,

Nancy Tarver.

Schedule A.—Additional Cost of Drought 2002

1. We normally produce 1200–2000 ton of hay per year. 2000, 2001, and 2002 we produced only 150 ton per year. We have been faced with purchasing hay because of very little hay produced. Hay prices have jumped because of the far-reaching drought conditions. The demand exceeds the supply. Cow alfalfa hay prices (depending on your location/freight) have ranged from $110 to $130 per ton for cow grass alfalfa hay. The cost for our operation to replace the hay we did not grow because of the drought is $80.00 per ton. [Using purchased hay costing $115 per ton-$35 (cost to put up your own hay) = $80 dollars per ton].

The drought mandates we feed hay for at least 5 months (150 days @ 20 pounds per day = 1½ ton per cow X $80 dollars per ton =$120.00 per cow.

2. Additional cattle cake is needed because of loss of natural grazing vegetation. Cattle cake is fed along with the hay to balance the nutritional needs of cattle. Because of the drought twice the amount of pounds of cake per cow are fed to meet the nutritional needs. We need wheat mids cake (14 %protein) normal ration 2 pounds. The increase in cake cost is 14 cents a day. The additional expense for cake for 150 days is $21.00 per head.

3. To enhance the limited natural vegetation supplemental feeds (lick tubs or liquid feed) were used for 7 months this year. The additional expense was 14 cents per day per cow—210 dayX.14 cents =$29.40 per cow.

4. Additional Pasture & freight we have not found additional pasture. The cost of moving is substantial: a. $8.00 per head to freight about anywhere; b. $18.00–$25.00 per head to pasture cow calf pairs.

5. We pasture our heifer calves until they are yearlings, keeping some as replacements for our herd and selling the remainder as bred heifers and open yearlings. This year because of the drought the heifers calves will be sent a feed yard for the winter months. The cost to feed the calves a growth ration only is $1.00 per day. If we had the feed we would do this cheaper at home. The additional cost to us will be at least 25 cents per day. 25 cents X 150 =$37.50 per heifer calf. For loss computation I have used 50% heifer calves in a herd so this loss would be $18.75 for calculation purposes.

6. Less pounds have caused loss of income: We had to sell steer calves and the small heifer calves starting August 15, normally we sell calves the end of October. Our steer calves in August weighted an average of 420 pounds compared to 600 pounds last October. A 180-pound per steer calf loss is devastating. Unfortunately there was a 20% drop in calf prices, which compounded the pound loss. Steer calf income took a 31% drop in 2002 for our ranch operation—$420 dollars compared to $605 dollars the previous year. $185 per cow loss in steer calf dollars produced.

7. Liquidation of the cowherd. Foundation stock cow sales are giving up a lifetime commitment and are so very costly. Herd genetics are a ranchers pride and also our profit. It takes years to build a quality herd of cattle that does well in our area and on our range. We would find buying back quality cows that fit our ranching operation near impossible and certainly cost prohibitive. The dollar value of this cannot be measured.

Mr. ENZI. Mr. President, I won't read the entire letter, but I would like to highlight a few points that Bob and Nancy make. They are very thankful for the assistance given through the Livestock Feed Assistance Program and the Livestock Compensation Program. These programs together provide about $41 of assistance per cow. With this assistance, they have purchased additional feed to supply their needs for the winter. The Tarvers point out in their letter, however, that they have lost about $374 per cow in 2002 due to drought. This loss has occurred primarily through reduced forage growth in pastures, increased hay costs and lower cattle weights. The drought assistance provided so far has been short term. If we are going to save our family ranchers, we must do more.

The Senate has consistently supported providing real relief to our producers. In September we voted on an emergency agricultural amendment I cosponsored. That amendment would have provided almost $6 billion on both farmers and livestock producers endangered by the drought across America. After it was passed 79–16, the amendment was stalled along with the Interior Appropriations bill. This was not the first time the Senate has shown strong support for disaster relief only to have it snatched away. Senator Baucus and I successfully added an agricultural disaster assistance package to the farm bill with a steady 69–30 vote. The assistance package was removed from the conference report by the House.

We are not following through on our promises. The time has come to fulfill our words with action. If we have missed our final opportunity in this Congress, I urge my colleagues to pass emergency agricultural assistance as a top priority when we begin the 108th session. Thank you.

HELMS-LEAHY SMALL WEBCASTER SETTLEMENT ACT OF 2002

Mr. HELMS. Mr. President, last week, I introduced the Small Webcaster Settlement Act of 2002, along with the chairman of the Senate Judiciary Committee, Senator Leahy. Having now been passed by both Houses of Congress, this bill is expected soon to be signed by the President.

The Helms-Leahy bill is the result of a sustained and arduous negotiating process involving numerous stakeholders. Its enactment enables small Internet radio services and the recording industry, if they both choose, to settle their longstanding disputes regarding the amount of royalties webcasters must pay in order to perform sound recordings over the Internet.

This consensus legislation will bring much-needed stability to the emerging webcasting industry by permitting small commercial webcasters to establish with final certainty their financial obligations, thereby enabling entrepreneurs to secure additional venture capital and to avoid bankruptcy in many cases.

Moreover, as enacted, this bill will ensure that privately negotiated settlements will not be enacted into positive law, thereby negatively impacting, either directly or indirectly, any industry or entity that does not or cannot yet settle their liabilities for these royalties.

Finally, this bill will require artists to be paid directly their congressionally mandated share of performance royalties, so that there will no longer be any risk that record companies with disproportionate bargaining leverage will, by contract, squeeze recording artists out of their fair share.

The Digital Millenium Copyright Act, DMCA, required, for the first time, users of music recordings to pay performance royalties to owners of copyrights in sound recordings. The creation of this new performance royalty represented a dramatic reversal of decades of U.S. public policy.

Prior precedent had established that performances of sound recordings on traditional broadcast radio were not deemed to result in liability for performance royalties to sound recording copyright owners because it was those very same performances that introduced songs to the listening public, thereby promoting sales of sound recordings and generating revenue for copyright owners and recording artists.

Notwithstanding this longstanding precedent, the DMCA required Internet radio services to pay sound recording performance royalties and determined that the royalties should be set by a panel or arbitrators, known as the Copyright Arbitration Royalty Panel or CARP.

Unfortunately, the arbitration process has become too lengthy, too technical, and too expensive for many stakeholders. As a result, thousands of small commercial webcasters, broadcasters, noncommercial webcasters, college radio stations and hobbyists have been effectively denied the opportunity to participate in the arbitration proceedings in any meaningful way. Perhaps it was because these smaller interests were not adequately represented in the CARP proceeding that the resultant royalty was so high and the rate structure so inflexible that the majority of small webcasters feared that it would lead to their demise? As the distinguished chairman of the Senate Judiciary Committee stated at a May 2002 hearing on this subject, Congress did not intend to bankrupt small webcasters when it created this new royalty.

It would be a mistake for someone to construe the Helms-Leahy bill as a criticism of the arbitrators decision. Rather, I consider this legislation to be an indictment of the process, with unintended consequences flowing from the framework that Congress set forth in the DMCA.

It is impossible for arbitrators to appreciate the full implications of their determinations if significant industry participants cannot afford to appear before them or if those with disproportionate control over the outcome refuse to deal in good faith. I understand that Senator LEAHY intends to pursue comprehensive CARP reform in the Judiciary Committee next Congress. Though I will no longer be serving in the U.S. Senate next year, I hope that the chairman and ranking members of both Judiciary Committees will follow through on this commitment, working constructively to quickly remedy the concerns expressed about the current CARP process.

There was not time to fully reform CARP this fall but I considered it essential that Congress move swiftly to ensure that small webcasters not be bankrupted by unfair arbitration outcomes. An equally important goal was to ensure that settlement agreements negotiated by recording companies and small webcasters facing bankruptcy not unfairly impact non-participating third parties—such as larger webcasters and broadcasters, or even the recording companies. Moreover, I consider it critically important to underline that nothing in this bill should be construed as affecting the outcome of any pending litigation.

I commend Chairman SENSENBRENNER for focusing attention on this issue and commencing the process that ultimately led to the passage of this critically-needed legislation. I respect that there was a difference of opinion on the precedential value of H.R. 5469, as originally passed by the House. Nevertheless, beyond dispute is the fact that numerous stakeholders had expressed serious reservations that the original House-passed bill could unintentionally and negatively influence future rate setting proceedings.

The Helms-Leahy bill removes that concern, helps ensure that small webcasters will not be forced into bankruptcy, provides non-commercial webcasters with additional flexibility, and accomplishes several other goals on which the stakeholders and the Judiciary Committee leadership could agree.

The deductibility provision contained in section 5(b) of the bill is one that was viewed as important to several parties. The final provision is intended to encourage competition among agents designated to distribute royalties. While I ultimately agreed to this provision, I wish to make it clear that I would consider it unconscionable if the provision were used to justify higher royalty rates for users of sound recordings.

The ability to deduct these fees is premised on a balance of interests, owners of sound recordings should not be prejudiced by a process that precludes effective legal representation, designated agents should be incentivized to quickly and fairly conclude settlement agreements rather than engage in protracted and expensive legal and arbitration proceedings, and music services and other users of sound recordings should pay a fairly negotiated fee that is not impacted by the costs of litigation, arbitration, and legal expenses incurred by the designated agents.

Users already bear their own litigation, expert fee and legal representation costs for participating in the CARP process and the resources of the Copyright Office are taxed when fair settlements are not reached among the parties.

In my view, the public interest would not be well served if the deductibility provision were interpreted in a manner that had the effect of diluting the payout to copyright owners, reducing the incentives for negotiating settlements, and/or increasing the fees paid by consumers for the use of sound recordings. To avoid these clearly undesirable and unintended outcomes, I believe it would be unwise to take these costs into account in any arbitration or other proceeding to set royalty fees.

I expect this to be the final piece of legislation I author in my career as a United States Senator. I particularly wish to thank Senators LEAHY and HATCH and their superb staffs for their expertise and assistance in ensuring the quick approval of the U.S. Senate. Additionally, I want to recognize the substantial contributions of the Senate and House leadership as well as the leaders of the House Judiciary Committee, for their continued assistance and cooperation as we worked through these difficult issues over the past several weeks.

Finally, I also wish to thank David Whitney, Joe Lanier, Wayne Boyles and David Crotts of my staff, the leaders of the affected industry and artist organizations who assisted me so greatly in negotiating this compromise legislation and a young lady entrepreneur of whom I am extremely proud, Deb Proctor of WCPE-FM in Raleigh, NC who first brought this issue to my attention.

PERFORMANCE GOALS FOR THE MEDICAL DEVICE USER FEE AND MODERNIZATION ACT OF 2002

Mr. KENNEDY. Mr. President, on October 17, 2002, the Senate passed the

Medical Device User Fee and Modernization Act of 2002, "MDUFMA". Included in Title I of this bill is the authorization of medical device user fees.

Performance goals, existing outside of the statute, accompany the authorization of medical device user fees. These goals represent a realistic projection of what the Food and Drug Administration's Center for Devices and Radiological Health and Center for Biologics Evaluation and Research can accomplish with industry cooperation. The Secretary of Health and Human Services forwarded these goals to the chairmen of the Committee on Energy and Commerce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate, in a document entitled "MDUFMA PERFORMANCE GOALS AND PROCEDURES." According to Section 101 of Title I of MDUFMA, "the fees authorized by this title will be dedicated to meeting the goals set forth in the CONGRESSIONAL RECORD."

Today I am submitting for the RECORD this document, which was forwarded to the Committee on Health, Education, Labor and Pensions on November 14, 2002, as well as the letter from Secretary Thompson that accompanied the transmittal of this document.

I ask unanimous consent to print those items.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MDUFMA PERFORMANCE GOALS AND PROCEDURES

The performance goals and procedures of the FDA Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER), as agreed to under the medical device user fee program in the Medical Device User Fee and Modernization Act of 2002, are summarized as follows:

I. REVIEW PERFORMANCE GOALS—FISCAL YEAR 2003 THROUGH 2007

All references to "days" mean "FDA days."

A. ORIGINAL PREMARKET APPROVAL (PMA), PANEL-PMATRACK SUPPLEMENT, AND PREMARKET REPORT SUBMISSIONS

1. The following cycle goals apply to: 75% of submission received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action major deficiency letters will issue within 150 days.

(b) All other first action letters (approval, approvable, approvable pending good manufacturing practices (GMP) inspection, not approvable, or denial) will issue within 180 days.

(c) Second or later action major deficiency letters will issue within 120 days.

(d) Amendments containing a complete response to major deficiency or not approvable letters will be acted on within 180 days.

2. Decision Goals:

(a) 80% of submissions received in fiscal year 2006 will have an FDA decision in 320 days.

(b) 90% of submissions received in fiscal year 2007 will have an FDA decision in 320 days.

3. Subject to the following paragraph, 50% of submissions received in fiscal year 2007 will have an FDA decision in 180 days.

This goal will be re-evaluated following the end of fiscal year 2005. FDA will hold a public meeting to consult with its stakeholders and to determine whether this goal is appropriate for implementation in fiscal year 2007. If FDA determines that the goal is not appropriate, prior to August 1, 2006, the Secretary will send a letter to the Committee on Health, Education, Labor and pensions of the Senate and to the Energy and Commerce Committee, Subcommittee on Health of the House of Representatives stating that the goal will not be implemented and the rationale for its removal.

4. 90% of amendments containing a complete response to an approvable letter received in fiscal years 2003 through 2007 will be acted on within 30 days.

B. EXPEDITED ORIGINAL PMA SUBMISSIONS

1. The following goals apply to PMA submissions where:

(a) FDA has granted the application expedited status;

(b) The applicant has requested and attended a pre-filing review meeting with FDA;

(c) The applicant's manufacturing facilities are prepared for inspection upon submission of the application; and

(d) The application is substantively complete, as defined at the pre-filing review meeting.

2. The following cycle goals apply to: 70% of submissions received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action major deficiency letters will issue within 120 days.

(b) All other first action letters (approval, approvable, approvable pending GMP inspection, not approvable, or denial) will issue within 170 days.

(c) Second or later action major deficiency letters will issue within 100 days.

(d) Amendments containing a complete response to major deficiency or not approvable letters will be acted on within 170 days.

3. Decision Goals:

(a) 70% of submissions received in fiscal year 2005 will have an FDA decision in 300 days.

(b) 80% of submissions received in fiscal year 2006 will have an FDA decision in 300 days.

(c) 90% of submissions received in fiscal year 2007 will have an FDA decision in 300 days.

4. 90% of amendments containing a complete response to an approvable letter received in fiscal years 2003 through 2007 will be acted on within 30 days.

C 180-DAY PMA SUPPLEMENT SUBMISSIONS

1. The following goals apply to: 80% of submissions in fiscal year 2005; 85% of submissions in fiscal year 2006; 90% of submissions in fiscal year 2007.

(a) First action not approvable letters will issue within 120 days.

(b) All other first action letters (approval, approvable, approvable pending GMP inspection, not approvable or denial) will issue within 180 days.

(c) Amendments containing a complete response to a not approvable letter will be acted on within 160 days.

2. Decision Goals:

(a) 80% of submissions received in fiscal year 2005 will have an FDA decision in 180 days.

(b) 80% of submissions received in fiscal year 2006 will have an FDA decision in 180 days.

(c) 90% of submissions received in fiscal year 2007 will have an FDA decision in 180 days.

3. Current performance for real-time review PMA supplement submissions will be maintained.

D. 510(K) SUBMISSIONS

1. The following goals apply to: 70% of submissions received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

(a) First action additional information letters will issue within 75 days.

(b) Subsequent action letters will issue within 60 days.

2. Decision Goals:

(a) 75% of submissions received in fiscal years 2005 and 2006 will have an FDA decision in 90 days.

3. Subject to the following paragraph, 80% of submissions received in fiscal year 2007 will have an FDA decision in 90 days.

This goal will be re-evaluated following the end of fiscal year 2005. FDA will hold a public meeting to consult with its stakeholders and to determine whether this goal is appropriate for implementation in fiscal year 2007. If FDA determines that the goal is not appropriate, prior to August 1, 2006, the Secretary will send a letter to the Committee on Health, Education, Labor and Pensions of the Senate and to the Energy and Commerce Committee, Subcommittee on Health of the House of Representatives stating that the goal will not be implemented and the rationale for its removal, and that the goal for fiscal year 2006 will be implemented for fiscal year 2007.

E. ORIGINAL BIOLOGICS LICENSING APPLICATIONS (BLAS)

The following goals apply to: 75% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

1. Review and act on standard original BLA submissions within 10 months of receipt.

2. Review and act on priority original BLA submissions within 6 months of receipt.

F. BLA EFFICACY SUPPLEMENTS

The following goals apply to: 75% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

1. Review and act on standard BLA efficacy supplement submissions within 10 months of receipt.

2. Review and act on priority BLA efficacy supplement submissions within 6 months of receipt.

G. ORIGINAL BLA AND BLA EFFICACY SUPPLEMENT RESUBMISSIONS

The following goals apply to: 75% of submissions received in fiscal year 2005; 80% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

1. Review and act on Class 1 original BLA and BLA efficacy supplement resubmissions within 2 months of receipt.

2. Review and act on Class 2 original BLA and BLA efficacy supplement resubmissions within 6 months of receipt.

H. BLA MANUFACTURING SUPPLEMENTS REQUIRING PRIOR APPROVAL

The following goal applies to: 75% of submissions received in fiscal year 2006; 90% of submissions received in fiscal year 2007.

Review and act on BLA manufacturing supplements requiring prior approval within 4 months of receipt.

I. ADDITIONAL EFFORTS RELATED TO PERFORMANCE GOALS

The Agency and the regulated industry agree that the use of both informal and formal meetings (e.g., determination and agreement meetings, informal pre-investigational device exemption (IDE) meetings, pre-PMA meetings, pre-PMA filing meetings) by both parties is critical to ensure high application quality such that the above performance goals can be achieved.

J. MAINTENANCE OF CURRENT PERFORMANCE

It is the intent of the Agency that in review areas where specific performance goals have not been identified, current performance will be maintained.

K. APPLICATION OF USER FEE REVENUES

The Agency intends to apply significant user fee revenues to support reviewer training and hiring and/or outside contracting to achieve the identified performance goals in a responsible and efficient manner.

L. MODULAR PMA REVIEW PROGRAM

The Agency intends to issue guidance regarding the implementation of new section 515(c)(3) of the Federal Food, Drug, and Cosmetic Act. It is the intent of the Agency that once this program is implemented, the Agency will work with its stakeholders to develop appropriate performance goals for this program. Until such time, the Agency intends to review and close complete modules that are submitted well in advance of the PMA submission as expeditiously as possible.

M. "FOLLOW-ON" LICENSED DEVICES

The Center for Biologics Evaluation and Research will, if feasible, identify a category of "follow-on" licensed devices and collect information to determine whether alternative performance goals for such a category are appropriate.

N. BUNDLING POLICY

The Agency will, in consultation with its stakeholders, consider the issue of bundling for products with multiple related submissions. After such consultation, the Agency will either issue guidance on bundling or publish a notice explaining why it has determined that bundling is inappropriate.

O. ELECTRONIC REVIEW OF APPLICATIONS

The Agency will continue its efforts toward development of electronic receipt and review of applications, as expeditiously as possible, acknowledging that insufficient funding is included in the user fee program for this effort.

P. PREAPPROVAL INSPECTIONS

The Agency will plan to improve the scheduling and timeliness of preapproval inspections. The Agency will monitor the progress of these efforts and provide such information in the annual performance report.

II. ANNUAL STAKEHOLDER MEETING

Beginning in fiscal year 2004, FDA will hold annual public meetings to review and evaluate the implementation of this program in consultation with its stakeholders.

III. DEFINITIONS AND EXPLANATION OF TERMS

A. For original PMA submissions, Panel-Track PMA supplement submissions, expedited original PMA submissions, 180-day supplement submissions, and premarket report submissions, issuance of one of the following letters is considered to be an FDA decision:

1. approval
2. approvable
3. approvable pending GMP inspection
4. not approvable
5. denial

B. For 510(k) submissions, issuance of one of the following letters is considered to be an FDA decision:

1. substantially equivalent (SE)
2. not substantially equivalent (NSE)

C. Submission of an unsolicited major amendment to an original PMA submission, Panel-Track PMA supplement submission, expedited original PMA submission, 180-day supplement submission, or premarket report submission extends the FDA decision goal date by the number of days equal to 75% of the difference between the filing date and the date of receipt of the amendment. The submission of the unsolicited major amendment is also considered an action that satisfies the first or later action goal, as applicable.

D. For BLA (original, efficacy supplement, or manufacturing supplement) submissions, the term "review and act on" is understood to mean the issuance of a complete action letter after the complete review of a filed complete application. The action letter, if it is not an approval, will set forth in detail the specific deficiencies and, where appropriate, the actions necessary to place the application in condition for approval.

E. For original BLA and BLA efficacy supplement resubmissions:

1. Class 1 resubmitted applications are applications resubmitted after a complete response letter that include the following items only (or combinations of these items):

(a) Final printed labeling

(b) Draft labeling

(c) Safety updates submitted in the same format, including tabulations, as the original safety submission with new data and changes highlighted (except when large amounts of new information including important new adverse experiences not previously reported with the product are presented in the resubmission)

(d) Stability updates to support provisional or final dating periods

(e) Commitments to perform Phase 4 studies, including proposals for such studies

(f) Assay validation data

(g) Final release testing on the last 1–2 lots used to support approval

(h) A minor reanalysis of data previously submitted to the application (determined by the agency as fitting the Class 1 category)

(i) Other minor clarifying information (determined by the Agency as fitting the Class 1 category)

(j) Other specific items may be added later as the Agency gains experience with the scheme and will be communicated via guidance documents to industry.

2. Class 2 resubmissions are resubmissions that include any other items, including any item that would require presentation to an advisory committee.

THE SECRETARY OF HEALTH AND
HUMAN SERVICES,
Washington, DC, November 14, 2002.

Hon. EDWARD KENNEDY,
U.S. Senate,
Washington, DC.

DEAR MR. CHAIRMAN. As you are aware, the Medical Device User Fee and Modernization Act of 2002 was signed by the President on October 26, 2002. Under Title I, the additional revenues generated from fees paid by the medical device industry will be used to expedite the medical device review process, in accordance with performance goals that were developed by the Food and Drug Administration (FDA) in consultation with the industry.

FDA has worked with various stakeholders, including representatives from consumer, patient, and health provider groups, and the medical device industry to develop legislation and goals that would enhance the success of the device review program. Title I of the Medical Device User Fee and Modernization Act of 2002 reflects the fee mechanisms and other improvements developed in these discussions. The performance goals referenced in Section 101 are specified in the enclosure to this letter, entitled "Performance Goals and Procedures." I believe they represent a realistic projection of what FDA can accomplish with industry cooperation and the additional resources identified in the bill.

This letter and the enclosed goals document pertain only to title I (Fees Related to Medical Devices) of Public Law 107–250, Medical Device User Fee and Modernization Act of 2002. OMB has advised that there is no objection to the presentation of these views from the standpoint of the Administration's program. We appreciate the support of you and your staffs, the assistance of other Members of the Committee, and that of the Appropriations Committees, in the authorization of this vital program.

Sincerely,

TOMMY G. THOMPSON.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 6, 2001in Madison, WI. Two men were arrested on the University of Wisconsin campus for attempting to strangle a gay man. The attackers were part of a visiting group on campus to talk about homosexuality. The attackers approached the victim, told him that it was his time to go to hell, then began choking him.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ELECTRIC ASSISTED LOW-SPEED BICYCLES

Mr. JEFFORDS. Mr. President, I am very pleased that H.R. 727 will soon be on its way to the President for signature.

This bill, which passed the other body by a 401 to 1 margin on March 6, 2002, will help promote the use of electric-assisted low-speed bicycles and will help seniors participate in cycling related activities. For many of our seniors, long-distance bicycle rides or participation in bicycle clubs in areas with extensive hills, can present an unfair challenge.

Simply put, this bill will allow seniors to more fully participate in these events while, at the same time, providing solid exercise for them. I believe that in states, such as my home state of Vermont, our senior citizens may derive benefits from using these low-speed pedal-assisted electric bicycles for help getting up our steep terrain.

Not only will these bikes improve mobility options for seniors, they will also help to reduce congestion on our roads and air pollution when used for commuting purposes. Since these bikes produce no noise or exhaust because they are powered by small batteries rather than gasoline powered engines, they provide an environmentally friendly transportation option to our citizens and should be treated as bicycles and not as motor vehicles.

H.R. 727 states that these low-speed pedal-assisted electric bikes, as defined in very detailed Consumer Product Safety Commission, CPSC, rules—found at 16 CFR 1512—shall be considered bikes and not motor vehicles.

These detailed existing safety standards for bicycles should be applied in every state, as in current law, and as would be required under the bill for these low-speed pedal-assisted electric bikes. The existing safety rules are based on extensive experience and tests done on material strength, stem and fork torque resistance, pedal design and the like and should apply throughout the nation. The existing rules, referenced in H.R. 727, set the requirements for such things as: handlebar stem insertions; pedal construction; chain guards; handlebar stem tests; stem-to-fork clamp tests; bicycle design; handlebar strength; front hub retention; attachment hardware; hand levers for brakes; reflectors; pedal reflectors; seat size; maximum seat height; and the like.

To assure the safety of these bicycles, the bill provides for federal preemption of State law or requirements—as provided in section 1(d) of the bill—regarding those detailed CPSC safety rules. The CPSC would have the authority to issue additional federal rules regarding the construction and physical properties of these low-speed bicycles to ensure safety.

Obviously, local regulation of where these low-power bicycles can be ridden, such as not on sidewalks if that is the state or local rule, or not on high-speed thruways, or whether helmets are required, would still be a local matter. Local or state governments would continue to regulate the use of these and other bikes, who could ride the bikes, and where they could be ridden, but they could not alter the safety rules for the construction of the bikes, or the metals or materials to be used for that construction, which would be in the hands of the CPSC.

H.R. 727 also specifies a 20 mph limit on speed, on a flat surface, for these electric assisted bikes. The bikes covered by this bill look similar to "regular" low-weight bicycles and will have similar speeds but require less human leg power and stamina.

It is important to note that this bill does not relate to other devices such as the Segway human transporter which does not meet any of the detailed requirements for a bicycle set forth in the CPSC rules.

I am aware of companies researching such electric bicycle product advancements, such as Wavecrest right here in Northern Virginia, and am excited about the prospects for the future.

I appreciate the strong efforts in the other body of Mr. CLIFF STEARNS, Mr. BILLY TAUZIN, Mr. HOWARD BERMAN, Mr. EARL BLUMENAUER, Mrs. LOIS CAPPS, Mr. DENNIS MOORE, Mr. MICHAEL OXLEY, Mr. CHARLES PICKERING, Mr. JAMES OBERSTAR and many others. In the Senate, I appreciate efforts of Chairman HOLLINGS, ranking member Senator MCCAIN and Senator BURNS, all of the Commerce Committee, in getting this bill to the Senate floor where it passed without opposition.

As I work on the massive reauthorization of our surface transportation program next year, I intend to work to fund additional bicycle paths and enhance existing paths as use of these paths increases over time.

THE FAILURE TO PASS AN ENERGY BILL

Mr. ROCKEFELLER. Mr. President, it is with a tremendous amount of frustration and disappointment that I come before the Senate to discuss the failure of efforts in the 107th Congress to craft an energy bill. I have been a long-time advocate of a comprehensive national policy that would address the national and economic security aspects of this country's growing demand for energy, as well as the importance of protecting our environment.

I was very proud of the work the Senate had done this year to produce this legislation. Under the leadership of Majority Leader TOM DASCHLE and Senate Energy and Natural Resources Chairman JEFF BINGAMAN, the Senate did what many in Washington thought impossible—we produced balanced and responsible energy legislation combining increased domestic production of conventional fuels, expanded use of alternative and renewable energy sources, and energy conservation and efficiency programs. Unfortunately, in our rush to complete work on a number of pending matters, many Senators chose to not proceed with Conference negotiations, acquiescing in what I would characterize as a strategy to scuttle this worthwhile bill.

Perhaps the thought was that a better bill—or at least one that better met a different set of priorities—could be crafted next year. Candidly, I doubt it. I believe the demise of the Energy bill this year is unfortunate for West Virginia, and for the entire nation. During a nearly year-long debate on the complex components of the energy bill, my position as a senior Majority member of the Senate Finance Committee allowed me to influence the legislation so that its end results would be good for consumers, workers, and industries in my state of West Virginia. I am concerned that a new set of circumstances confronting the 108th Congress will result in a bill that does not serve my state nearly as well.

While the need to grapple with energy issues will not go away, no matter what other factors are to be considered, Congress will be forced to act in a vastly changed budgetary climate. The growing deficit, additional proposed tax cuts, and the need to fund both a war on terrorism and a possible war with Iraq, will inhibit the ability of Congress to make any significant outlays to improve our energy situation.

The 2002 energy bill was a bipartisan effort. Perhaps most significantly for West Virginia, there was general agreement among Senate conferees that the final bill should include meaningful Clean Coal incentives. I worked very hard to see that the Senate-passed bill included incentives for the installation of Clean Coal technologies on smaller existing coal-burning facilities, such as we have in West Virginia. The version passed by the House would have bypassed existing facilities altogether—putting thousands of West Virginia jobs at risk and jeopardizing the health of all West Virginians downwind of these plants. As a member of the House-Senate Conference Committee reconciling the two versions of the energy bill, I was able to ensure that the final legislation included incentives for existing facilities. If the energy bill is considered again in the 108th Congress, I will likely again be a conferee, but my ability to apply pressure to benefit the people and environment of our state will be lessened.

I also worked closely with a number of colleagues from both parties to see that the bill included incentives to capture coal mine methane, a deadly hazard in coal mines, and a potent greenhouse gas when vented to protect the lives of miners. I was proud to join with members from both sides of the aisle to extend credits for the production of oil and natural gas from non-conventional sources. Without this credit, the natural gas industry in the entire Appalachian Basin would likely cease to exist. Likewise, I was pleased to join in a bipartisan effort to promote the use of alternative fuels and alternative fuel vehicles. Similarly, I joined colleagues from across the political spectrum to further research and development and create tax incentives for the production of electricity from renewable sources, and to increase energy efficiency in homes, commercial buildings, and appliances.

In fact, what most frustrates me is that this product of so much bipartisan cooperation is dead because of what may have been a cynical calculation to reconsider later a few issues with which there will never be truly bipartisan agreement.

If the next Congress does revisit the issue of a national energy policy, I am certain that those in charge will put much-needed emphasis on domestic production. At the same time, I have serious doubts that the incoming congressional majorities will toil quite as hard to balance that priority with the equally necessary issue of protecting the environment. In the same vein, while I suspect that there will be new efforts to exploit the Arctic National Wildlife Refuge and on our other public lands, regardless of the minimal amounts of mineral resources that may be recoverable, I am not confident that a new bill's authors will show the same zeal to expand our domestic energy production from clean and abundant renewable resources.

This has been a hard fight, and while not perfect, the legislation we were so close to producing would have been the truly comprehensive and balanced energy policy that I have been calling for since I came to Congress eighteen years ago. Since then, I have continuously urged my colleagues in the Congress, as well as both Republican and Democratic presidential administrations, to work together on a responsible energy policy for this country. The 107th Congress was prepared to deliver a balanced, comprehensive energy plan for the President's signature. Now, for a number of reasons the energy bill is dead, putting the American economy and the American environment at risk. I find this frustrating, short-sighted, and extremely unfortunate.

U.S. LEADERSHIP IN AEROSPACE—TODAY AND TOMORROW

Mr. AKAKA. Mr. President, I rise to discuss a core factor in America's leadership and strength in the new century: aerospace. The aerospace industry dominates the telecommunication and transportation world, while military aerospace expertise has defended the Nation and served as the eyes and ears of our forces overseas.

Congress established an Aerospace Commission last year to study the state of the American aerospace industry in the global economy and national security and to assess the importance of the domestic aerospace industry for the future security of the Nation. It is appropriate that the Aerospace Commission released its report on the future of the aerospace industry this Monday during the final debate on homeland security, an area only beginning to appreciate what aerospace can offer.

The Aerospace Commission reviewed the range of military, civil, and commercial aspects of aviation and space and studied the key components of the aerospace community—government, industry, labor, and academia. The Commission benefited from the broad range of expertise and experience among its Commissioners, including former Astronaut Buzz Aldrin, former Defense Under Secretary John Hamre, and Director of the Hayden Planetarium Dr. Neil Tyson.

The Commission offered several recommendations to correct the weakening of the aerospace sector. Each recommendation addressed a different critical factor that is showing signs of fatigue. I would like to discuss the Commission's recommendations relating to the aerospace workforce and education.

The aerospace industry, like many of our high-tech sectors, has a workforce crisis. According to the Commission report, our Nation has lost over 600,000 scientific and technical aerospace jobs in the past 13 years. These job losses, first due to reduced spending in defense, then due to acquisitions and mergers of aerospace companies, and later to foreign competition in the commercial aerospace market, represent a significant loss of skill and expertise. Many of the talented people who remain are approaching retirement. How will industry and the Government restore the aerospace workforce and make aerospace a field that attracts new and qualified talent?

Unfortunately, even the Aerospace Commission could not arrive at any short-term solutions to this problem. The solution will only come from the Government's and the private sector's long-term attention and commitment. The Commission stressed that a long-term solution must begin with improved math and science education across the entire education range, from kindergarten to graduate school. Many of the Commission's recommendations in this regard mirror my own work on science and math education and the federal workforce. The Commission found that scholarship and internship programs to encourage more students to study and work in math, science, and engineering are vital if the aerospace community is to have a pool of scientifically and technologically trained applicants.

The Commission stressed that Congress needs to renew its focus on national aerospace needs and priorities. Indeed, some of the Commission's recommendations are unconventional and will require the Senate's attention and deliberation to determine if they are the best solution. The Commission's nine recommendations were:

Given the real and evolving challenges that confront our Nation, Government must commit to increased and sustained investment and must facilitate private investment in the national aerospace sector. The Commission recommends that the United States pioneer new frontiers in aerospace technology, commerce, and exploration.

The Commission concludes that superior mobility afforded by air transportation is a huge national asset and competitive advantage for the United States. The Commission recommends transforming the U.S. air transportation system as a national priority. Specifically, the Commission recommends rapid deployment of a new, highly automated air traffic management system that is robust enough to efficiently, safely, and securely accommodate an evolving variety and growing number of aerospace vehicles and civil and military operations.

The Commission concludes that the Nation will have to be a space-faring nation in order to be the global leader in the 21st century and that America must exploit and explore space to assure national security, economic benefit, and scientific discovery. The Commission recommends that the United States create a space imperative and a partnership between NASA, DOD, and industry to develop aerospace technologies, especially in the areas of propulsion and power.

The Commission concludes that aerospace capabilities and the supporting defense industrial base are fundamental to U.S. economic and national security. The Commission recommends that the Nation adopt a policy that invigorates and sustains the aerospace industrial base. Specifically, the Commission recommends new procurement policies to include prototyping and spiral development to allow the continuous exercise of design and production skills; removing barriers to defense procurement of commercial products and services; and stable funding for core capabilities.

The Commission concludes that the Government needs to create an environment that fosters innovation in the U.S. aerospace industry. The Commission recommends that the Federal Government establish a national aerospace policy and promote aerospace by creating a Government-wide management structure. This would include a White House policy coordinating council, and aerospace management office in OMB, and a joint committee in Congress.

The Commission concludes that U.S. aerospace companies must have access to global consumers, suppliers, and partners in order to achieve economies of scale in production needed to integrate that technology into their products and services. The Commission recommends that U.S. and multilateral regulations and policies be reformed to enable the movement of products and capital across international borders on a fully competitive basis, and establish a level playing field for U.S. industry in the global market place. This would include substantial overhaul of U.S. export control regulation and efforts by the U.S. Government to neutralize foreign government market intervention in areas such as subsidies, tax policy, export financing and standards.

The Commission recommends a new business model for the aerospace sector, designed to promote a healthy and growing U.S. aerospace industry. This model is driven by increased and sustained Government investment and the adoption of innovative Government and industry policies that stimulate the flow of capital into new and established public and private companies.

The Commission recommends the Nation immediately reverse the decline in, and promote the growth of, a scientifically and technologically trained U.S. aerospace workforce. This would include efforts by the administration and Congress to create an interagency task force that develops a national strategy on the aerospace workforce to attract public attention to the importance and opportunities within the aerospace industry; establish lifelong learning as key elements of education reform; and make long-term investment in education and training with major emphasis in math and science.

The Commission concludes that Government policies must be proactive and sustain public investments in long-term research and RDT&E infrastructure to get new breakthroughs in aerospace capabilities. The Commission recommends that the Federal Government significantly increase its investment in basic aerospace research, which enhances U.S. national security, enables breakthrough capabilities, and fosters an efficient, secure, and safe aerospace transportation system.

I was one of the first members of the House Space Caucus and understand the importance aerospace plays in our economy, security, and education. The Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services, which I chair, released a report last year detailing how Federal civilian agencies use data collected by satellites and planes to carry out their missions. My own State of Hawaii is at the forefront of using aerospace technology and research to help Hawaii's fragile ecosystem and agriculture.

I hope that my colleagues will take note of the information and recommendations in the Aerospace Commission report so that we can work together to sustain and strengthen our aerospace community. To quote the report, "It is imperative that the U.S. aerospace industry remains healthy to preserve the balance of our leadership today and ensure our continued leadership tomorrow."

INDIAN PROBATE REFORM ACT OF 2002

Mr. INOUYE. Mr. President, I ask unanimous consent that the Congressional Budget Office letter to accompany S. 1340, which was reported out today and a letter from the Department of the Interior, be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, DC, November 4, 2002.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.,

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1340, the Indian Probate Reform Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs), who can be reached at 226–2860, and Cecil McPherson (for the impact on the private sector), who can be reached at 226–2940.

Sincerely,
BARRY B. ANDERSON
(For Dan L. Crippen, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1340—Indian Probate Reform Act of 2002

S. 1340 would amend laws that govern how an individual's interest in Indian allotments (certain parcels of land that are owned by individuals or groups of individuals) is transferred upon the death of the owner. Based on information for the Bureau of Indian Affairs (BIA), CBO estimates that implementing S. 1340 would cost about $1 million in fiscal year 2003, assuming the availability of appropriated funds, to train BIA estate planning assistants and to notify individual allotment interest owners and Indian tribes of the changes in this law. CBO estimates that enacting S. 1340 would not affect direct spending or revenues.

S. 1340 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

S. 1340 would impose new private-sector mandates, but CBO estimates that the total direct costs of those mandates would not exceed the annual threshold established in UMRA ($115 million in 2002, adjusted annually for inflation) for any of the first five years that the mandates are in effect.

By placing new eligibility and distribution requirements on the inheritance of interests in Indian trust and restricted lands, S. 1340 would impose new private-sector mandates on those persons who might otherwise inherit such interests under current law. The loss of inheritance (or a portion of an inheritance) would impose direct costs on people who would otherwise receive an interest in such property. CBO expects that the mandates would affect only a limited number of such people in the near term. At the earliest, mandates in the bill would take effect only upon the death of an owner of land interests. Further, the mandates would only apply to interest in trust or restricted land of someone who died without a will. Although requirements in the bill would affect some heirs, many such cases would involve only a small fractional interest in land. Thus, CBO estimates that the costs of private-sector mandates in the bill would not exceed the annual threshold established in UMRA in any of the first five years that the mandates are in effect.

The CBO staff contacts for this estimate are Lanette J. Walker (for federal costs), and Cecil McPherson (for the impact on the private sector). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY,
Washington, DC, June 24, 2002.

Hon. DANIEL K. INOUYE,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This letter sets forth the views of the Administration on S. 1340, a bill to amend the Indian Land Consolidation Act of 2000 to provide for probate reform with respect to trust or restricted lands. We support the bill.

S. 1340 will provide the American Indian people who own trust and restricted assets with one uniform probate intestate code that can be applied throughout Indian country. The legislation is clearly the product of a lot of hard work by Departmental employees and members of your staff in order to achieve the common goal of reforming the Department's Indian probate program.

During tribal consolidations held in July and August 2000 on the proposed probate regulations, many Tribes recommended and supported a uniform probate intestate code. At the present time, federal statutes provide that the law of the state where the land is located be applied in the distribution of the estate. See 25 U.S.C. §348. As a result of intertribal marriage, it is not uncommon that an Indian decedent owns lands on reservations in several states. The effect of applying up to 33 different state laws to the restricted and trust lands of a decedent results in disparate and unfair treatment of the distribution of the entire estate to the same heirs.

For example, in Nebraska a surviving spouse is entitled to receive the first $50,000 of the estate. Thereafter, the law provides that the surviving spouse receive ½ and children get ½ of the remainder of the estate. Minnesota law provides that a surviving spouse's share is the first $150,000 plus ½ of the balance of the intestate estate if all of the heirs are also heirs of the surviving spouse. In contrast, Wisconsin law provides that a surviving spouse receive 100 percent of the estate unless one or more children are not the children of the surviving spouse, then the surviving spouse receives only ½. New Mexico law differs from the previous examples in that a surviving spouse gets all the community property, then ¼ of the estate if there are descendants of the decedent.

Another area of concern is the inheritance rights of adopted children and the inconsistencies in state laws. Minnesota law provides that an adopted child may inherit from his/her natural parents, while Montana law provides that an adopted child may only inherit from the adopted parents.

The enactment of a uniform intestate code for trust and restricted estates is of great benefit to both the heirs and the Department. The benefit to the heirs is that the same law will be applied to all the trust and restricted estate of the decedent no matter where the real property is located. A uniform intestate probate code will provide for the division of shares of the entire estate and will be the same throughout the United States. The heirs may disclaim their interests or otherwise agree to a settlement to distribute the estate if the children want to give a larger share to their surviving parent. The federal government's cost to update and maintain land records will be reduced. The Department will be able to decide cases and issue orders in a more timely manner. A new body of federal law will be created and decisions will be more consistent across the Nation, resulting in fewer appeals. The necessity of thoroughly researching state laws will no longer exist, it will take less time to issue an order determining heirs. Finally, a uniform intestate code may encourage Indian tribes to adopt their own inheritance codes. The uniform intestate code will serve as a model for Tribes to develop their own tribal probate codes.

The proposed uniform intestate succession facilitates the consolidation of interests to remain in trust or restricted status and complements the provision of Indian Land Consolidation Act to minimize further fractionation of Individual Indian interests in trust and restricted lands. For estate planning purposes, one uniform intestate code will provide a foundation to encourage the execution of wills for disposition of trust or restricted assets. For example, the proposed section for pretermitted spouses and children will necessitate specific estate planning if the decedent marries after the execution of a will but intends to leave nothing to a new spouse. S. 1340 at §232(d). Similarly, if the testator divorces after executing a will and has left property to the former spouse, the devise is revoked by law unless the will provides otherwise. S. 1340 at §232(e)(2).

State probate laws are often amended and likewise affect long term estate planning. A change in state law may also necessitate the execution of a new will. Thus, frequent amendments of state laws frustrate the purposes of promoting estate planning among Indian landowners. There will obviously need to be considerable community education on the new sections of the proposed uniform intestate law that will require more comprehensive estate planning.

We recommend that Senate Bill 1340 include a provision that excepts the application of the uniform intestate code to the Five Civilized Tribes of Oklahoma until such time as the Five Nations bill is enacted. The Five Civilized Tribes are subject to the state district courts of Oklahoma and Oklahoma probate law is applied to determine intestate succession. Thus, the removal of the exception should be reflected in S. 2880, the Five Nations legislation.

We would like to suggest amendments to portions of existing federal statutes relevant to inheritance prior to the passage of S. 1340. The amendments are:

25 U.S.C. §348—After the second "Provided," strike the words, "That the law of descent in force in the State or Territory where such lands are situate shall apply thereto after patents therefor have been executed and delivered, except by the" and insert "the Indian Land Consolidation Act, as amended, shall apply where such trust or restricted assets are located". See S. 1340 at §234(c).

25 U.S.C. §372—Insert before the word "hearing" in the words "upon notice and hearing", the words "opportunity for a". Insert the words "probate the decedent's trust estate, and pay valid creditor's claims out of funds in such estate or funds that may accrue up to the date of death of the decedent" after the word "decedent,". Insert "Provided, That in the payment of claims, 31 U.S.C. §3713(a)(1)(b) shall not apply." after "section 373 of this title."

25 U.S.C. §373—Insert "Provided also, that the Secretary shall pay valid creditor's claims out of funds in such estate or funds that may accrue up to the date of death of the decedent except that 31 U.S.C. §3713(a)(1)(b) shall not apply:" after the words "or use it for their benefit:"

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

NEAL A. MCCALEB,
Assistant Secretary for Indian Affairs.

RECOGNITION OF DOLORES GARCIA

Mr. BINGAMAN. Mr. President, it is rare for me to make a statement for the RECORD in honor of a retiring staff member, but this is a rare staff member—one who by any measure would be deserving of the Senate's time and of space in the CONGRESSIONAL RECORD. I am speaking of Dolores Garcia, whose service in the Senate started the same day as my own, January 3, 1983. Dolores and I had worked together prior to that when I was Attorney General of New Mexico, and she had been with the Attorney General's staff long before I came to that office.

My staff and I, as well as countless New Mexicans, feel fortunate to know and work with Dolores. Diligent, competent, with a benevolent nature and a strong work ethic, Dolores embodies the best of human traits. In her work as the coordinator for service academy nominations, she has started many young leaders on their way to success. She helps keep my Santa Fe office running smoothly, attends the needs of local and legislative officials, helps manage my office budget, and coordinates my state schedule. No matter how busy she might be, she always has time and a kind word for those who turn to her for help.

Dolores is a great friend to my staff and me. We hold her in the highest esteem. Another long-time staff member commented that he thought his best hope of getting into Heaven is on her coattails. I feel the same, Mr. President, and would feel fortunate to have her vouch for me.

A SPECIAL ADOPTION MONTH

Mr. CRAIG. Mr. President, November is a special month to the adoption community, because it is National Adoption Month. In my state of Idaho, this particular November is a very special month because it is when one of our newest citizens—Tilly McKeown—came home.

Tilly is one of hundreds of children from Cambodian orphanages who are the focus of a special humanitarian initiative by the United States Immigration and Naturalization Service and the State Department. Adoptions from Cambodia were halted late last year because of serious concerns about the process in that country, and the initiative has been working since then to investigate and clear these adoptions on a case by case basis.

We all want the adoption system to be ethical, transparent, and efficient. To achieve those goals in international adoptions, the United States signed the Hague Convention on Intercountry Adoption, a landmark international treaty setting standards for adoption that will protect the interests of children and families everywhere in the world. The Senate ratified the treaty, and Congress passed legislation to implement it.

We expect our federal agencies involved in international adoption to work toward these goals with all sending countries, whether they have signed the treaty or not. These are important policy goals for our government, but what is more important, they will help bring waiting children everywhere together with the families who will love them forever.

They also will help prevent situations like the Cambodian dilemma from ever happening again. Before last December, our country had never placed a moratorium on adoptions out of a foreign country, and I think it is safe to say that anyone who knows anything about the Cambodian moratorium hopes our country never takes such an action again. In fact, some of us in Congress have worked on legislation to that end.

This surely must be the hope of every family whose adoption was caught in the moratorium. Mr. President, the anguish these families have endured is indescribable. I do not think a day has passed when they have not pressed the Cambodian and American governments for a resolution to enable them to bring their children home to the United States. They know all too well what an enormous impact government policies can have on human lives and futures.

I hope that some day, Tilly's parents will tell her the true story of how hard they worked, every day, to bring her home how sad they were every time the answer was "not yet," how they traveled all the way to Cambodia just to see and hold her, and how overjoyed they were when they finally got the call to bring their daughter home.

And when they tell her that story, I hope they also share with her the fact that there were people across the nation and around the world who also cared, and worried about her, and were trying to help her and her family. In the United States Senate, the House of Representatives, the Department of State, the Immigration and Naturalization Service, and our embassies, people knew about Tilly and were working to remove the obstacles that kept this family apart, while still carrying out the requirements of the law. The White House played a critical role, providing extraordinary leadership and resources to resolve this complicated situation. The commitment this Administration has made to all of these families and their children is truly remarkable and should be commended. The humanitarian initiative has made tremendous progress, and none of this could have happened without the dedicated efforts of all these individuals, working together.

I realize the resolution of the Cambodian adoption crisis cannot come fast enough for the families involved, and some will never accept or forgive the decision that was made last December, or the amount of time that has passed. To them, I pledge to see this initiative through and work for reforms so that no other families are put in this predicament again. To the many government officials who are working in the field or in Washington, D.C. on this initiative, I encourage you to persevere in this very important effort; you are making a lasting difference in the lives of these families and their children.

And to Tilly, a very happy welcome to Idaho—at last.

SPINA BIFIDA

Mr. COCHRAN. Mr. President, I am pleased today to pay tribute to the more than 70,000 Americans and their family members who are currently affected by Spina Bifida, the Nation's most common permanently disabling birth defect. I also want to compliment the Spina Bifida Association of America, an organization that was founded in 1973 to address the needs of the individuals and families affected by Spina Bifida and which is currently the only national organization dedicated solely to advocating on behalf of the Spina Bifida community.

Spina Bifida is a neural tube defect that occurs when the central nervous system does not properly close during the early stages of pregnancy. Spina Bifida affects more than 4,000 pregnancies each year, but with proper medical care, people who suffer from Spina Bifida can lead full and productive lives. Today, approximately 90 percent of all babies diagnosed with this birth defect live into adulthood, approximately 80 percent have normal IQs, and approximately 75 percent participate in sports and other recreational activities. However, they must learn how to move using braces, crutches or wheelchairs, and how to function independently. The challenge now is to ensure that these individuals have the highest quality of life possible and to prevent future cases of Spina Bifida.

Congress has done much to deal with the challenges posed by Spina Bifida including providing funding to establish a National Spina Bifida Program at the Centers for Disease Control and Prevention. I was pleased the Senate recently adopted the "Birth Defects and Developmental Disabilities Prevention Act of 2002," which takes important steps to improve the quality of life for individuals and families affected by Spina Bifida.

I also want to thank the Spina Bifida Association of Mississippi for all it has done for the families in our State who are affected by this condition. Specifically, I commend Susan Branson, the president of the Spina Bifida Association of Mississippi, for her dedication and commitment to helping families like her own who each day face the joys and challenges of having a child with Spina Bifida. In October, which was designated as National Spinal Bifida Awareness Month, Susan and her husband, Alan, and their 4-year-old daughter, Abigail, visited Washington and met with me. The Bransons live in Jackson, Mississippi, and in addition to Abigail they have four other children. We talked about their family's experience with having a child with Spina Bifida. When Abigail was born they were told that she would never be able to walk. Today, due to her and her parents' vigilance, advocacy, and commitment, Abigail can now walk with the aid of braces and a walker.

The Spina Bifida community and our nation have made great progress over the past three decades. Much work still needs to be done, but I am confident this organization and its chapters are up to the challenge.

CONGRESSMAN JOSEPH R. SKEEN

Mr. BINGAMAN. Mr. President, when this session of Congress ends, one member of New Mexico's congressional delegation will be retiring, and I rise to acknowledge his departure from public life and to express appreciation for his loyal service to our state and this nation.

JOE SKEEN has been involved in Republican politics in New Mexico for more than forty years, most of them as an elected official. He was in the State Senate for ten years, and while his two campaigns for governor in the 1970's were unsuccessful, he is one of the very few in the history of our country elected to the Congress as a write-in candidate. That occurred in 1980, and he has served his district in the House of Representatives for eleven terms, longer than any New Mexico House Member.

It cannot be said that JOE and I agree on even every fourth issue that comes down the pike, but we have worked well together on so much that matters to New Mexico. I have never doubted for a moment his devotion to what he thinks is right, nor have I doubted his ability to get the job done.

New Mexico is a small town in many ways, and while JOE and I were acquainted before either of us came to Washington, it was when I came here that we really got to know one another. I consider him, and his wife, Mary, to be friends, and am honored that they think the same of me.

They raise sheep on their ranch in Lincoln County, and I know JOE will be glad to get back home after having distinguished himself in the Congress, and representing his District so well.

We'll miss him.

THE REAL INTERSTATE DRIVER EQUITY ACT

Mr. TORRICELLI. Mr. President, the coming days will be historic for a large number of small businesses that make up the luxury ground transportation industry. After much hard work from several members of the New Jersey Delegation and hundreds of constituents in New Jersey and around the country, the President will sign H.R. 2546, The Real Interstate Driver Equity Act. This Act will bring tremendous relief to those operators of the luxury ground transportation industry conducting interstate business.

Four years ago, two of my constituents Don Kensey of Au Premiere Limousine of Bellmawr, and James Moseley of James Limousine of Cherry Hill, approached my good friend Congressman Rob Andrews concerning the problem limousine operators in New Jersey were having with local jurisdictions in other States seizing and fining properly authorized vehicles upon picking up their clients to return them to New Jersey. Joining with many other limousine businesses in New Jersey and the National Limousine Association, our constituents organized a national grassroots campaign in the 106th Congress to educate the House and Senate. Today, the Congress is aware of the hardships faced by these small business owners across the country.

Because such a substantial portion of their service does not occur in a single State, limousine and other prearranged ground transportation service providers are frequently assessed registration and licensing fees by these other States. Enforcement of these requirements, which includes vehicle impoundment and heavy fines, has caused tremendous hardship to drivers and owners of these businesses, over 80% of which are one-to-three car operators grossing less than $500,000 a year. I would note that these problems are especially hard on small businesses in New Jersey, which borders on two States with large cities and airports.

Indeed, I was shocked to hear that in one particularly egregious instance, the CEO of McGraw Hill Publishing was forced out of his limousine, which was seized in another State and told to find another way home. That was when Senator CORZINE and myself, along with Congressman ANDREWS decided to take action.

The Real Interstate Driver Equity Act simply prohibits States other than a home licensing State from enacting or enforcing a law requiring a fee or some other payment requirement on vehicles that provide prearranged transportation service. States and localities can no longer restrict limousine or sedan services if the service is registered with the Department of Transportation as an interstate carrier; the company meets all of the requirements of the State in which it is domiciled or do business; and the limousine or sedan service is engaged in providing pre-arranged transportation from one state to another, including round trips.

This Congress, through the hard work of our constituents, has finally remedied this inequity in our interstate commerce law.

There were several other members who were instrumental in passing this legislation. I would like to thank Congressmen ROY BLUNT and ROB ANDREWS, who took the lead on H.R. 2546 in the House of Representatives and helped ensure its passage last year. In April of this year, with the assistance of my colleagues Senator HOLLINGS and Senator MCCAIN, the Commerce, Science and Transportation Committee passed H.R. 2546 unanimously. I am also most grateful to Senator REID, Senator BOND, and Senator CORZINE for their able assistance in passing this important small business legislation.

USE OF CUSTOMS FEES

Mr. DORGAN. Mr. President, there is an important provision in the Homeland Security Act of 2002 (H.R. 5710), that, if misinterpreted, could limit the ability of the U.S. Customs Service to effectively protect our borders.

Section 413 of this bill appropriately seeks to ensure that user fees that are currently used exclusively by the Customs Service for the purposes set out in 19 U.S.C. 58(c) will continue to be used for that sole purpose. These fees are paid by commercial vessels, aircraft, railroads and passengers that enter the U.S. This money is used to ensure that there will be Customs personnel available to clear these arriving goods and passengers efficiently when they arrive.

I am concerned that the wording of section 413 could be misconstrued since it merely states that these fees must be directed to the commercial operations of the Customs Service. I want to clarify that the intent of this provision is that these fees continue to be used for the purposes for which they were originally intended as set out in 19 U.S.C. 58(c). Additionally, I have consulted with Senator BAUCUS and Senator LIEBERMAN and they both agree with this view.

The work done by Customs inspectors at our ports of entry is critically important to our country's security and economic health. More than 1,100 Customs inspector positions, as well as overtime pay for Custom's employees, are currently funded out of the fees referred to in section 413. It is imperative that these fees continue to be used as intended. This statement serves as clarification that this is the purpose of section 413 of the Homeland Security bill being considered by the Senate.

BROWNFIELDS REVITALIZATION

Mr. BAUCUS. Mr. President, I rise today to highlight an issue of great importance to the people of my State and to people across this country.

Over the past several years, I worked closely with a number of my Senate colleagues to pass the Brownfields Revitalization and Environmental Restoration Act. Signed into law by the President last year, this act is an innovative piece of legislation that will promote and accelerate the cleanup of hundreds of brownfield sites around the country.

The Brownfields Revitalization and Environmental Restoration Act passed with strong bipartisan support in both the House and the Senate. It will help states and local communities clean up the country's estimated 1,000,000 brownfield sites. These sites blight our communities, threaten public health and safety, and drain local tax bases.

I am proud of this legislation. It devotes desperately needed resources to address the environmental and economic challenges posed by brownfields.

Still, I remain convinced that there is much left to do. With an estimated 1,000,000 brownfield sites across this nation and new sites being discovered each day, the very best efforts of our government will be insufficient to tackle this growing concern in any reasonable period of time.

For that reason, I have begun exploring legislative options to encourage additional private capital investment in the remediation and redevelopment of our nation's brownfield sites. Such a solution would complement the Brownfields Revitalization and Environmental Restoration Act and could help us make great strides toward creating jobs and cleaning up the environment in communities across the country.

Over 60 percent of the institutional capital in the United States is held for investment by tax-exempt entities such as pension funds and university endowments. Given the risks associated with acquiring and cleaning up contaminated sites, it is no surprise that private investors are reluctant to invest large amounts of capital in brownfields cleanup and revitalization. Tax exempt entities are often prevented from engaging in brownfield cleanups because of the unrelated business taxable income, UBTI, provisions in the code.

The UBTI provisions of the tax code play an important role in ensuring that entities do not use their tax-exempt status to gain a competitive advantage in the marketplace over taxed entities. It is clear, however, that the free market is not moving to remediate and redevelop many of these sites, certainly not at a rate that will solve this problem during our lifetimes. It is my belief that without some additional stimulus, many of these sites will remain unattractive as business investments and will continue to languish and blight our communities.

If we were to allow tax-exempt entities to invest in the remediation and redevelopment of these sites without incurring UBTI, we may be able to create a powerful engine to help revitalize our Nation's brownfield sites. It also seems possible that we could accomplish these goals in this slowed economic climate with a solution that neither materially impacts revenues nor requires significant costs for administration.

In the coming months, it is my intent to explore legislative options to encourage the investment of additional private capital into the cleanup and redevelopment of our Nation's brownfield sites. It is my intention and desire to work on this matter in a bipartisan fashion with my good friend and colleague, the senior Senator from Iowa.

Mr. GRASSLEY. Mr. President, let me thank the good Senator from Montana and take a moment to echo his remarks. I strongly supported the Brownfield Revitalization Act and applaud the strides that it is making toward remediating brownfield sites across our Nation.

In Iowa, as in many other States, we are challenged with our share of brownfields in places like Des Moines, Cedar Rapids and Sioux City. The cleanup and redevelopment of brownfield sites can help reduce health risks, protect the environment, revitalize surrounding communities, preserve open space and create jobs by reintroducing properties into the stream of commerce that have languished for years.

Philosophically, I support efforts to encourage private markets to help solve problems such as those presented by our Nation's brownfield sites. Given the size and scope of the brownfield problem in this country, I believe it behooves us to look for additional, innovative and low-cost solutions to help encourage investment in the remediation and redevelopment of these sites.

I understand that current law may discourage tax-exempt investors from contributing capital to the remediation and revitalization of brownfield sites. Let me say to my good friend and colleague from Montana that I will gladly work with him to explore legislative options to help bring additional private capital to bear on solving our Nation's brownfield problem.

Mr. BAUCUS. Mr. President, I thank my good friend from Iowa. As we have worked together as chairmen and as ranking members of the Senate Finance Committee, I have always found him to approach issues in a fair and even-handed manner. Let me express my sincere appreciation to him for the many bipartisan efforts that we have worked on together, particularly the Brownfields Revitalization and Environmental Restoration Act that passed 99–0 in the Senate. I look forward to working with him on this and many other issues in the months and years to come.

CHIEF JUDGE LAWRENCE BASKIR

Mr. LEAHY. Mr. President, the United States Court of Federal Claims is the only federal court where the President may appoint and dismiss the chief judge. Although this power has been available since the Court of Federal Claims was established in 1982, President George W. Bush is the first President to use this power to remove a sitting judge. That is a regrettable decision because of the integrity and outstanding judicial record of the former incumbent, Chief Judge Lawrence Baskir. His absence is already being felt in the slower pace of important procedural reforms that Chief Judge Baskir had launched to improve the fairness and efficiency of the Court of Federal Claims.

Former Chief Judge Baskir was appointed in July, 2000 by President Clinton after the retirement of the previous incumbent chief judge, who had been appointed by President Regan. In his short, two-year tenure, Chief Judge Baskir had accomplished much in boosting public awareness of and respect for the work of this important, but little-known federal court.

The Court hears cases brought against the federal government by American citizens. It is especially important that litigants can rely on its objectivity and integrity. Some may say that because its original complement of judges was appointed by President Reagan and George Bush, Sr., its work had more of a political cast to it. Chief Judge Baskir worked hard to correct that impression, and he was scrupulous in every way in seeking to avoid even the appearance of any political involvement.

Among the ways he sought to reinforce the integrity of the Court was to ensure that incoming cases, some of which were highly charged with politics, were assigned automatically, "off the wheel," and not directed to any particular, pre-determined judge. Just prior to his removal from the bench, the Court's new procedural rules took effect, rules for which he had pressed for two years. The rules, which are critical for the administration of justice and are the procedures for litigating cases in the Court, had not been revised in 10 years. Because Court rules define the parties' rights and obligations, they can give unfair advantage to one side or another. Their content is always contentious, and previous efforts to revise them had collapsed in deadlock. Chief Judge Baskir guided the revisions through with great success.

He reorganized the Clerk's Office, putting an end to delays in document handling, and instituted a "same day" rule for recording court filings. He brought the Court's electronic data systems into the 21st Century and created both internal and external web pages. He converted the main courtroom into a state of the art electronic courtroom, where attorneys can connect their own computers to the Court system, and have access to their own records and data and exhibits.

He also helped modernize the Court's alternative dispute settlement resolution, or ADR procedures. Resolving legal disputes through ADR can be a useful alternative to long litigation in certain circumstances. ADR is an important procedural option at the Court of Federal Claims, where citizens, often with very limited resources, are suing the federal government with its unlimited resources. ADR can serve in such instances to help level the playing field.

For example, he instituted a pilot ADR process in which incoming cases are assigned to an ADR judge at the same time they are assigned to a trial judge. This program is unique in the federal system, and has been chosen by the Federal Judicial Center as a model to examine and analyze for possible application in other federal courts.

Chief Judge Baskir made sure that ordinary citizens got fair treatment when they sued the federal government. Knowing of the large number of pro se plaintiffs, or people representing themselves, going up against the Justice Department, including parents with heartbreaking cases involving young children, he revised the system of handling these cases, and in the process referred more than 700 pro se plaintiffs to attorneys participating in the Court's vaccine program. Believing in the duty of members of the legal profession to contribute a portion of their time without charge for the good of the public, he also helped launch a pro bono program within the Court for both judges and legal clerks, and among the attorneys who are members of the Court's bar.

Many of these accomplishments would be impressive for a chief judicial administrative official whose tenure lasted a full term. This record is all the more impressive for having been achieved by a Chief Judge whose term lasted a mere 22 months. He achieved much because he brought an extensive legal and administrative background to the position, including service as Acting General Counsel of the U.S. Army, as staff director and chief counsel of a major U.S. Senate subcommittee, and as director and chief administrative officer of a major Presidential program under President Ford.

I commend Chief Judge Baskir on all that he accomplished as Chief Judge of the U.S. Court of Federal Claims. I thank him for his service to our Nation.

WHY SLOVENIA SHOULD BE INVITED TO JOIN NATO

Mr. HARKIN. Mr. President, the expansion of NATO is a forgone conclusion. Formal invitations are expected at the Prague Summit next week for three to nine new member countries to join. In fact, NATO enlargement represents a logical extension of the first serious American intervention in European geopolitics; namely, the famous Fourteen Points of President Woodrow Wilson, which provided substantial assistance and encouragement to the nations of Central Europe in their long-deferred aspirations to gain political independence and international recognition. History has shown that the substantial disengagement of America from European politics between World War I and World War II, especially in Central Europe, left many newly independent nations in that region vulnerable to Russian and German hegemony.

As my colleagues know, NATO was originally created to confront the threat of Soviet expansion and to counterbalance the Warsaw Pact. Accordingly, when the cold war ended NATO's continued existence was questioned because it had fulfilled its original purpose. Rather than disband, however, NATO's 16 member countries, led by the United States, have sought to redefine the organization to meet the needs and challenges of a new era. NATO member states more recently have taken on new tasks, such as intervening and bringing to an end warfare in the Balkans. Since the September 11 attacks, NATO has also joined the battlefront in the struggle against terrorism. Through it all, NATO has looked to uphold the goals and principles it was conceived to defend: democracy, security cooperation, stability, and peaceful problem-solving throughout Europe and North America.

Critics of NATO expansion commonly cite article 5 of the NATO charter which declares an attack on any one member is an attack on all and obligates the signatories to assist the victim, as an unwise commitment with great potential to entwine the U.S. in foreign military conflicts in which U.S. security and vital national interests are not at stake. I joined those who were concerned, in the immediate aftermath of the cold war, that seeking NATO membership would require cash-strapped emerging democracies in Southern and Eastern Europe to spend too much of their national budgets on increased defense spending at the expense of meeting pressing shortfalls in education, health care, and other basic social needs.

Nevertheless, NATO enlargement is and has been the policy of our last three Presidents—Republicans and Democrats alike—and seems to have solid bipartisan support in the Congress. In Warsaw last year, President Bush expressed his proenlargement views saying, "all of Europe's new democracies, from the Baltic to the Black Sea and all that lie between, should have the same chance for security and freedom, and the same chance to join the institutions of Europe, as Europe's old democracies." At the upcoming NATO Summit in Prague, this alliance will once again invite more countries to join NATO, and I believe strongly that the Republic of Slovenia should be at the top of the list for multiple reasons.

First, since Slovenia declared its independence in June 1991, the Slovenian people have made great strides towards becoming a stable parliamentary democracy. The Government of Slovenia is a tolerant one, granting its citizens complete religious freedom and many of the same civil liberties that we enjoy. It also respects the human rights of its citizens and an independent judiciary reinforces respect for the rule of law. An ombudsman deals with human rights problems, including citizenship cases. Minorities generally are treated fairly in practice as well as in law.

Second, with a rich industrial history, a traditional openness to the world, and sound macroeconomic policies, Slovenia is among the most successful countries in transitioning from socialism to a market economy. It boasts a stable growth in GDP, which now exceeds the equivalent of $16,000 in purchasing power parity relative to this small country's per gross domestic product. Slovenia also ranks among the countries with the lowest degree of investor risk. The level of privatization achieved and many other measures have improved the competitiveness of the Slovene economy and the profitability of companies doing business with the European Union. Among the more than 144,000 registered companies in Slovenia, the greatest number are engaged in trade and commerce, followed by industry, services, real estate, construction, transport and communications. Following independence, small business flowered and now more than 90 percent of Slovenia's companies are classified as small business enterprises.

Third, Slovenia offers the alliance a new partner to help stabilize and pacify the historically and currently unstable "powder-keg" region of the Balkans as well as Western and Central Europe. NATO operations in the Balkans have already proven the value of temporary bases, land, air and sea; transhipment facilities, transit concessions, airspace, road, and rail links, sea transport; access to national strategic intelligence, joint exercises in specific conditions, linguistic and other forms of civilian-military cooperation and medical services and Slovenia in NATO will help greatly in this regard. Slovenia also assumed many of these responsibilities already when NATO went to war with Serbia. Looking ahead, Slovenia's inclusion will further strengthen NATO's southern flank by bridging current NATO territory from Italy to Hungary and eventually perhaps its extension to Romania and Bulgaria.

Fourth, Slovenian and U.S. Armed Forces have been developing ever-closer working ties through collaborative database and curricula development activities. Although this collaboration has not occurred under NATO auspices, it has helped lay a solid foundation for Slovenia becoming a full-fledged NATO member. For instance, after the September 11 attacks on America, the Government of Slovenia promptly offered intelligence aid to the U.S. in various forms and joined the antiterrorist coalition with full public consensus. Shortly thereafter, the National Assembly of Slovenia adopted the Declaration on the Joint Fight against Terrorism. Since then, the U.S. has deepened our involvement with Slovenia on other fronts as well. For example, the U.S. this fiscal year contributed an additional $14 million to the Slovenian-led, International Trust for De-mining and Mine Victims Assistance, ITF, which has become the premier demining program in southern Europe.

Fifth, the Slovenian armed forces have made significant strides in modernizing and reforming their operations and equipment. The Government of Slovenia recently adopted a policy to transform the military from the present conscript army towards fully-professional armed forces. This fundamental change should accelerate the establishment of the main reaction forces of the brigade-size needed in order to be totally interchangeable and compatible with NATO tactics, logistics and equipment. A large part of the 10th Battalion of this force is currently deployed under the NATO flag in Bosnia, Herzegovina, and Kosovo. Furthermore, Slovenia has invested greatly in the education and training of its military officers and troops, so that today there are about the same percentage of English-speaking troops in the Slovenian Army as one would find in current NATO member's armed forces. In fact, many top officers, more than 200, have trained in the American military education institutes. According to both domestic and foreign estimates, the Slovenian Government has allocated $320 million for implementing these basic defense reforms. In 1996, the National Assembly of Slovenia enacted a law mandating that all military purchases and acquisitions be in accordance with NATO standards for interoperability. In short, the Government of Slovenia has already done much of what is required and remains very committed to achieving 100 percent NATO compatibility and fielding well-trained, effective armed forces.

Parenthetically, let me also say at this point that I don't think requiring 2 percent of GDP in defense spending is necessarily a good indicator of maximizing the contribution of so-called mini-member states in NATO. Some NATO member countries actually count military pensions toward fulfilling this requirement, but how do such military expenditures actually contribute to the deterrence and effectiveness of NATO armed forces? To me, it would make more sense to identify specialized roles for the armed forces of mini-member states to optimize their respective contributions to the overall increased strength and versatility of NATO.

Finally, Slovenia's sociopolitical development already mirrors West European standards. Not surprisingly therefore, political debate in Slovenia now centers on health care, environment, education, social welfare, and budget discipline. Since Slovenia's population is demographically old, the pensioners issue is now hotly discussed. While there is political consensus about the necessity for pension reform, sharp differences persist about the role the state ought to play in the new system and whether or not the system should be privatized. Their great national debate is quite akin to the current prescription drug and Medicare debate in the U.S.

Clearly, Slovenia has made great strides in constructing a thriving democratic government, ready to meet the challenges and demands of the 21st century. It is very impressive that the Slovenian people and their duly elected government have accomplished all this in a mere 12 years. The values and principles upon which their nation has been founded are many of the same values and principles that we have come to cherish in our own Government and to champion throughout the world. We should embrace our Slovenian brothers and sisters and invite them into the NATO fold this November.

NATIONAL SCIENCE FOUNDATION DOUBLING ACT

Mr. ROCKEFELLER. Mr. President, I am delighted that Congress passed the National Science Foundation Doubling Act last week. I have been working for quite some time to increase basic research funding at the National Science Foundation. Passing this bill at such a critical time for our economy is extremely important, since investing in science and technology is one of the best ways to ensure long-term growth.

I am particularly pleased at the inclusion of two programs I authored, the Math and Science Partnership Program and the Robert Noyce Scholarship Program, that I separately proposed in freestanding legislation. Each program is an investment designed to strengthen and improve math and science education at elementary and secondary schools.

The Math and Science Partnership Program has strong bipartisan support, and President Bush requested and received funding in last year's appropriation bill to jump start this important program. The Math and Science Partnership program's inclusion in the reauthorization bill is important to provide both policy guidance and a long-term commitment to the program. This legislation provides increasing funding for math and science partnerships for five years, with a specific recommendation of $900 million for the first 3 years.

These grants will be awarded to universities, businesses, and State agencies to coordinate activities in math and science education for elementary and secondary school students. For example, funding could be given to a university which is working with a local business to offer workshops to kindergarten through 12th grade teachers, giving them new ideas for teaching science and math classes. Since introducing this initiative, I have visited many West Virginia classrooms, and teachers are excited about the potential for this program. Teachers are eager to partner with engineers and scientists from business and academia to engage students in high quality science and math programs.

The Robert Noyce Scholarship Program will similarly take a big step toward improving math and science education in schools. By awarding college scholarships in exchange for a promise from leading college students to teach in disadvantaged elementary and secondary schools, this program is intended to attract the most motivated students into the teaching profession. This NSF bill provides funding for the Noyce program for 5 years, with a recommendation of $60 million for the first 3 years.

Together, the Math and Science Partnership Program and the Noyce Scholarship Program will help the country in many ways. Promoting math and science education for our children is the most important investment we can make for the future of science and technology in the United States. I truly appreciate the bipartisan support for these incentives. I particularly want to acknowledge the extraordinary leadership of House Science Committee Chairman SHERWOOD BOEHLERT, who introduced the companion bill in the House and has been an ally for many years on science and education issues.

In addition to bolstering elementary and secondary math and science education, this bill also strives to stimulate scientific research throughout the country with the Experimental Program to Stimulate Competitive Research, EPSCoR. This program targets States, like West Virginia, that have historically had low amounts of science and technology research, and uses a State's own science and technology resources to promote economic development.

Under EPSCoR, disadvantaged states still must develop competitive proposals that pass peer review standards at NSF, but states do get assistance to become competitive and develop their research capacity. It is essential to encourage many states to invest in research. For many years, I have worked closely with the West Virginia EPSCoR program, and I am proud of its work. I know that this program has helped to leverage research and investment in our State. It has also helped to promote partnerships within our state universities and colleges, which is vital.

With this NSF bill, EPSCoR is a declared priority for NSF. Helping West Virginia and other states become competitive in first class research helps the individual States and our country as a whole.

Overall, the most important part of this legislation is the plan to double the NSF budget over the next 5 years, with the increases in the fourth and fifth year contingent on NSF meeting performance measures. This increase in funding will increase the length and amount of all research grants funded through NSF, giving researchers a better opportunity to conduct more in-depth studies and concentrate on discovery rather than grant proposals.

These types of grants are essential to technological and scientific advancements, which are the engines for long-term economic prosperity. Indeed, realizing the vital role that NSF plays in the economy's long-term health, some have called for a tripling of the NSF budget. Many of the discoveries currently occurring in other fields, including health care, are linked to the basic research in math, computing, and science that is supported by the NSF. By seeking to increase the agency's budget, the Congress has helped to ensure that the United States remains the world's leader in science and technology research and development.

Once again, I am proud that Congress has passed this valuable, bipartisan legislation, and I look forward to its approval by President Bush.

THE SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002

Mr. BAUCUS. As I promised when I spoke yesterday during floor action on the Social Security Protection Act of 2002—H.R. 4070, as amended—I am now submitting an unofficial cost estimate from the nonpartisan Congressional Budget Office for that bill.

I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PRELIMINARY CBO ESTIMATE OF THE BUDGETARY EFFECTS OF H.R. 4070, THE SOCIAL SECURITY PROTECTION ACT OF 2002

[* * * Preliminary and Unofficial * * * (Tentative conference)]

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	5-yr. 2003–07	10-yr. 2003–12
DIRECT SPENDING AND REVENUES												
Title I. Protection of beneficiaries												
Authority to reissue benefits misused by certain organizations serving as representative payees:												
Social Security benefits (off-budget)	1	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	1	1
Supplemental Security Income benefits	1	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	1	1
Title II. Program protections												
Authority to impose civil monetary penaties: Revenues	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Denial of Title II benefits to fugitive felons and persons fleeing prosecution:												
Social Security benefits (off-budget)	−2	−28	−42	−53	−57	−59	−62	−64	−66	−68	−182	−501
Medicare	....	−7	−12	−17	−21	−24	−25	−26	−28	−29	−57	−189
Title III. Attorney fee payment system improvements												
$75 cap (indexed) on attorney assessments in Title III: Proprietary receipts (off-budget)[a]	5	23	24	25	27	28	30	32	31	33	104	258
Title IV. Miscellaneous and technical amendments												
Application of waiver authority to demonstration projects initiated before sunset date: Social security benefits (off-budget)	....	....	....	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Funding of $1-for-$2 demonstratioon projects: Social Security benefits (off-budget)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Treatment of 'individual work plans' as qualifying plans for purposes of Work Opportunity Credit: Revenues[a]	−1	−1	....	....	....	....	....	....	....	....	−2	−2
Limited exemption to duration-of-marriage requirement for survivor benefits where deceased worker had been barred from divorcing institutionalized spouse: Social Security benefits (off-budget)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Permission for Kentucky to operate divided retirement systems:												
Social Security revenues (off-budget)	1	1	2	2	2	3	3	4	4	5	8	27
Other revenues (on-budget)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Social Security benefits (off-budget)	....	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	1	....	1
60-month employment requirement for exemption from Government Pension Offset: Social Security benefits (off-budget)	0	0	−1	−2	−4	−8	−15	−26	−49	−80	−7	−185
Total, direct spending and revenues (effect on deficit)	5	−13	−33	−49	−57	−66	−75	−88	−116	−147	−147	−639
On-budget	2	−6	−12	−17	−21	−24	−25	−26	−28	−29	−64	−186
Off-budget	3	−7	−21	−32	−36	−42	−50	−62	−88	−118	−93	−453

PRELIMINARY CBO ESTIMATE OF THE BUDGETARY EFFECTS OF H.R. 4070, THE SOCIAL SECURITY PROTECTION ACT OF 2002—Continued

[* * * Preliminary and Unofficial * * * (Tentative conference)]

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	5-yr. 2003–07	10-yr. 2003–12
SPENDING SUBJECT TO APPROPRIATION												
Limitation on administrative expenses, Social Security Authorization	8	6	4	4	4	4	5	5	5	6	27	51

Assumed enactment date: December 2002. Based on draft language dated November 18, 2002 (1:45 p.m.). Estimates are subject to further review by CBO and JCT.

* = Less than $500,000.

[a] Under current law, the Social Security Administration approves and pays attorney fees to successful Title II claimants and retains 6.3 percent to cover its processing costs. CBO expects receipts from that fee (which are recorded as negative outlays) to climb gradually from $30 million in 2002 to $55 million in 2012. Thus, a reduction in those receipts is depicted as a positive outlay.

[b] Estimate provided by Joint Committee on Taxation.

AN EMBARRASSING COP-OUT

Mr. KERRY. Mr. President, the Senate should be embarrassed at what we are about to do. It is amazing to me, with the country facing so many important challenges, and a slow economy to boot, that the Senate would consider adjourning for the year without passing the spending bills to fund the Government for the next 11 months. We are putting off until January decisions that should have been made months ago—and as a result, many Government agencies at the Federal, State, and local levels will not see the additional money they have been promised until next spring. That is halfway through the fiscal year.

Let's be clear about what is happening. The Federal Government will spend nearly $2 trillion this year. Yet we have not passed the appropriations bills because the administration objects to $9 billion in spending. We are about to pass a continuing resolution that runs through mid-January because the President objects to $9 billion—less than one-half of 1 percent of Federal spending. And his own party supports much of that spending.

I ask my Republican friends, do they think it will be much easier next year to push through significant spending cuts? Of course not. When offered the opportunity to vote no on spending bills, my Republican friends generally don't. We as Democrats must begin to blow a hole in this ridiculous myth that somehow Republicans don't like spending. They like spending just fine. They may claim to be for smaller government and lower spending, yet Republicans in the Senate have supported appropriations bills more than 85 percent of the time since they first took control in 1995. More and more, the differences between the parties are not over major spending decisions, because almost everyone here votes for all the spending.

The main difference between the parties is that Democrats want to pay for the spending, while Republicans are content to borrow from our children to pay for it. Today's GOP believes in the "free lunch" that we were all taught didn't exist. Future generations will suffer as a result.

What does a long-term CR actually mean for the American people? To start, a long-term CR would undermine the war on terror by denying nearly $40 billion in additional homeland security funds requested by the President. It would delay billions of dollars in planned increases to ramp up the Coast Guard and the Customs Service, hire hundreds of Border Patrol agents, bolster State and local antiterrorism programs, and step up other domestic security programs. The 11,000 FBI agents who are supposed to be combating the war on terrorism will have to wonder whether they have the necessary resources to fight that war. Many of the requirements of the Transportation Security Act require large expenditures, such as explosive detection equipment at airports—but the money won't be there. The Customs Service will have to defer the scheduled hiring of more than 600 agents and inspectors to serve at the Nation's high-risk land and sea points of entry. The President's budget promised $3.5 billion in new money to "first responders," but those essential funds for emergency workers have not been approved. Thousands of emergency grants for fire departments, communications equipment, emergency operations centers, you name it—these items cannot be funded at fiscal year 2002 levels.

Or take education. The National Conference of State Legislatures has announced that States face a cumulative $58 billion budget deficit. Many States are already cutting public education funding, and many others are poised to do so—making inaction by the Federal Government extremely costly to our kids. Passing a long-term CR will delay increases in funding for critically important education programs such as the title I program and the Individuals with Disabilities Education Act, making it difficult for school districts to plan their budgets for the upcoming school year. The President's budget promised $3.5 billion in new money to "first responders," but that money for emergency workers hasn't been approved.

Here is what's fascinating. Not a single Republican Senator up for election said they were for less education spending. They all talked about education as a top priority and voiced their support for the No Child Left Behind Act we passed last year. But who are they kidding? Public schools trying to implement the changes required by the law need more funding. For the GOP to support the law that authorizes the spending, but then object to the spending itself, is the height of hypocrisy.

Or take veterans programs, or Federal research spending. If a long-term CR is approved, it would shortchange veterans by funding Veterans Administration medical care at $2.5 billion less than what is needed to meet their needs. The 4-million veterans who rely on the VA for their health care will have to worry if that care will be available to them. And the Director of the National Institutes of Health has said that he might have to scale back bioterrorism research grants.

Now, we aren't living in a vacuum here. Like many others, I would like to find ways to slow the growth in Federal spending, and I have several ideas for doing so. But this year, the differences are so small relative to the budget that inaction is simply unacceptable.

And here is what's worse. The Republicans, who exhort us to be mindful of how we are spending "the people's money" now that deficits have returned—these are the same Republicans who voted for $500 billion in additional deficit-blowing tax cuts in the House, and would have voted for just as much in the Senate if given the chance. This President, who claims to be fiscally responsible and urges us to watch how we spend, sent up a budget this year with nearly $600 billion in new tax cuts for the well-off and increases in spending of 20 percent since he took office. And we are forced into a budget impasse over $9 billion.

Let me be clear: When we increase the deficit and add to the debt to pay for new tax cuts or new spending, it is no longer "the people's money." It is our kids' money, and for that reason we should be far more responsible with our fiscal policy than we have been the last 2 years.

Congress has been abdicating its responsibilities by failing to do something about the economy before we leave. There are many good stimulus ideas out there—some of which are affordable, while others could be paid for by scaling back tax cuts scheduled for 2004 or 2006. But as things stand today, the Senate is unlikely to consider any real stimulus until after the State of the Union Address next year which means Congress won't act before February or March, which means that relief won't be in place before next summer. That is inexcusable. The American people shouldn't have to wait 8 months for us to act.

Simply put, to delay action on the budget when the difference is $9 billion out of $2 trillion, and when Republicans have voted for more than $500 billion in additional tax cuts, is an insult. We can do better, and we must.

OMB PROPOSED REVISIONS TO A-76 REGULATIONS

Mr. AKAKA. Mr. President, I rise today to express my concern over the administration's proposed changes to the A-76 process, and its impact on the Federal workforce and accountability in contracting decisions. The OMB draft rules issued last week raise serious questions over the transparency of Federal procurement policies and their effect on Federal workers. True competition must be fair to Federal employees, be cost-effective, and promote financial transparency and public accountability.

The proposed regulations to A-76 do not represent fair competition. The regulations would place Federal workers at a severe disadvantage by implementing a competition process where Federal jobs may be eliminated at any time, even before a competition is completed. The process would place greater emphasis on a contractor's past performance but would fail to account for the past performance of in-house employees.

The OMB proposal could threaten cost-effective procurement policies. Under the draft rules, subjective notions of "best value" would replace objective cost-savings in driving decisions for whether Federal work would be performed in-house or by the private sector. Government procurement should be based on sound analysis giving the greatest weight to cost savings. Decisions to contract out Federal jobs, which are based on projections and expectations of performance, risk squandering limited public resources on contractor promises to deliver more work than is needed, at a higher cost to the public.

We must ensure that any changes to A-76 are fair. The OMB proposal would require agencies to complete competitions within a 12-month timeframe. If a Federal agency was unable to finish a competition in this time, OMB could simply out-source Federal jobs to a contractor without competition. Moreover, the draft regulations would support the administration's arbitrary targets for contracting out Federal jobs, which I oppose because these targets artificially impose goals for contracting out. The proposal would also expand the types of Federal jobs that would be subject to public-private competitions, such as supervisory positions.

According to OMB's Office of Federal Procurement Policy, the majority of public-private competitions under the proposed rules would be based on the current lowest cost standard. There would be a pilot project to test the "best value" standard on information technology jobs. However, the use of the "best value" standard approach is controversial and subjective. I would hope that this would be limited to a genuine pilot project and would allow for a careful, objective review of the results.

There are important steps we can take now to improve financial transparency and accountability in Federal contracting while strengthening fairness in public-private competitions. In June of this year, I was pleased to work with Senator KENNEDY to improve financial transparency and cost-savings in contracting policies at the Department of Defense. Our amendment to the DoD authorization bill failed by only one vote. Our amendment would have required cost savings before decisions were made to contract out Government functions. It would have improved financial transparency by establishing measures for the true cost and size of the DoD contractor workforce. Our proposal would have promoted equity in public-private competitions by ensuring that Federal employees had the opportunity to compete for existing and new DoD work and that DoD competed an equitable number of contractor and civilian jobs.

As chairman of the Senate Government Affairs Federal Services Subcommittee and Armed Services Readiness Subcommittee, I look forward to ensuring that Federal contracting policies are conducted in a manner that achieves the best return on the dollar and is fair to our Federal workforce. It is my intention to work with my colleagues in the 108th Congress to pursue these goals.

CREDIT CARD ARMIES—FIREARMS AND TRAINING FOR TERROR IN THE UNITED STATES

Mr. LEVIN. Mr. President, I want to bring the attention of my colleagues to a report released in October by the Violence Policy Center, VPC, entitled Credit Card Armies—Firearms and Training for Terror in the United States. This report analyzes the ease with which members of terrorist organizations and criminals gain access to powerful firearms and ammunition. According to the VPC report, terrorist groups with little more than a credit card and a driver's license, can easily obtain military grade firepower, including 50 caliber sniper rifles, assault weapons, and extraordinarily powerful ammunition.

In response to the terrorist attacks of September 11, 2001, the Federal Bureau of Investigation searched the National Instant Criminal Background Check System for information on individuals detained. However, according to a New York Times article, the Department of Justice ordered the FBI to stop using NICS records for investigating suspected terrorists even after the FBI found that at least two individuals detained in relation to the terrorist investigation had been cleared to buy firearms. Further evidence gathered by the Bureau of Alcohol, Tobacco, and Firearms and reported by the New York Times determined that 34 firearms used in crimes had at some point been purchased by an individual on the same list of people detained after 9/11.

The VPC report provides several examples of terrorist groups, from al-Qaida to the Irish Republican Army, using our loopholes in our gun laws to purchase 50 caliber sniper rifles and other military style firearms. We need to pass the Schumer-Kennedy Use NICS in Terrorist Investigations Act and also Senator REED's "Gun Show Background Check Act. These bills would assist law enforcement in identifying prohibited gun buyers and recognizing patterns of illegal purchases and misuse.

In January 2001, regulations issued by the Department of Justice directed the FBI to retain NICS information for a 90-day period. This 90-day period allows local law enforcement and the FBI to check NICS for illegal gun sales to criminals, terrorists and other prohibited buyers, identify purchasers using fake identification, and screen for gun dealers misusing the system. However, in June 2001, the Attorney General proposed reducing the length of time that law enforcement agencies can retain NICS data to 24 hours. This is simply an insufficient amount of time for law enforcement to review the NICS database.

The Attorney General's action concerns me greatly. I was pleased to cosponsor the Use NICS in Terrorist Investigations Act introduced by Senators KENNEDY and SCHUMER. This legislation would codify the 90-day period for law enforcement to retain and review NICS data. The need for this legislation was highlighted late last year when the Attorney General denied the Federal Bureau of Investigation access to the NICS database to review for gun sales to individuals they had detained in response to the September 11th terrorist attacks and refused to take a position on an amendment which would authorize that access.

Senator REED's Gun Show Background Check Act, which is supported by the International Association of Chiefs of Police, would extend the Brady Bill background check requirement to all sellers of firearms at gun shows. I cosponsored it because it is vital that we do all we can to prevent guns from getting into the hands of criminals and terrorists.

I urge my colleagues to consider these important pieces of gun safety legislation not only to protect our children from gun accidents and criminal use, but also to limit easy access to dangerous weapons by people who would seek to threaten our Nation's security.

TRIBUTE TO COMMANDER JEFFERY FREEMAN

Mr. COCHRAN. Mr. President, I am pleased to congratulate Commander Jeffery Freeman upon the completion of his career of service in the United States Navy. Throughout his 21 year military career, Commander Freeman served with distinction and dedication.

Continuing a family tradition of Naval Service since World War I, Jeff received his commission from the U.S. Naval Academy in 1981 and went on to earn his Naval Flight Officer Wings. Jeff served in four maritime patrol squadrons as a Patrol Plan Tactical Coordinator, Mission Commander, and ultimately as Officer-in-Charge, flying over 3,500 hours in the P–3 Orion aircraft, deploying to remote locations around world, and flying hundreds of hours tracking Soviet and other foreign submarines. Jeff served as a legislative fellow in my office, and he has served in the Navy Appropriations Liaison Office providing support to both the U.S. Senate and U.S. House of Representatives.

His family and his fellow shipmates can be proud of his distinguished service. Commander Freeman, his wife Annemarie of Biloxi, and their four children, have made many sacrifices during his Naval career, and we appreciate their contribution of conscientious service to our country. As he departs the Pentagon to start his second career, I call upon my colleagues to wish Jeff and his family every success, and the traditional Navy "fair winds and following seas."

VETERANS' BENEFITS ACT OF 2002, S. 2237

Mr. DAYTON. Mr. President, I rise today to applaud the Senate's action last night when it passed S. 2237, the Veterans' Benefits Act of 2002. This important legislation will make much-needed improvements to veterans' disability compensation payments, Medal of Honor pensions, housing benefits, claims adjudications, and education benefits through increased funding for State Approving Agencies. I strongly urge the President to sign this bill into law as quickly as possible.

I am pleased this bill also includes an important provision that will expand the civil protections provided to members of the National Guard under the Soldiers' and Sailors' Civil Relief Act of 1940. I worked closely on this provision with its sponsor, Senator Paul Wellstone. My late friend and colleague from the State of Minnesota was an outspoken advocate on behalf of America's veterans throughout his service in the Senate. The Wellstone-Dayton provision in this bill will better protect members of the National Guard in Minnesota and around the country. The provision specifies that National Guard members mobilized for more than 30 days by a state at the request of the Federal Government to respond to a national emergency be allowed protections under the Soldiers' and Sailors' Civil Relief Act during their duty.

The Soldiers' and Sailors' Civil Relief Act allows America's military personnel to have their legal rights secured until they can return from the military to defend themselves. It covers such issues as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, and income tax payments. One of the most widely known benefits under the act, for example, is the ability to reduce consumer debt and mortgage interest rates to six percent under certain circumstances. The original Soldiers' and Sailors' Civil Relief Act was actually passed during World War I. The statute was reenacted during World War II, then later modified during Operation Desert Storm. However, until now the Act's coverage has not included the National Guard as comprehensively as their active duty and reservist counterparts. I believe this is wrong.

Following the terrorist attacks against the United States on September 11, 2001, members of the Minnesota National Guard were activated by our State at the request of the President to provide security at several major airports. As the duration of these activations grew to several months, I began to hear from these brave men and women about the stress and financial burdens that accompanied their service. Senator Wellstone and I were shocked to learn that, although the Soldiers' and Sailors' Civil Relief Act exists to ease many of these same burdens for active-duty service members and reservists, members of the National Guard were not similarly covered for these types of activations, because this service was deemed to be State, rather than Federal, service. This discovery led to the Wellstone-Dayton provision.

Anyone who visited our Nation's airports after September 11 will not soon forget the contributions of countless members of the National Guard who, at the request of the President, contributed to a sense of greater security and peace of mind for air travelers by providing airport security. The men and women who provided these security efforts did so with courage and selflessness.

In light of September 11, it seems apparent that the National Guard has, and ought to have, a clear role in protecting Americans from outside threats. Further, when the President requests the men and women of the National Guard take on these new missions which help to protect Americans from terrorism, their civil interests should be protected under the Soldiers' and Sailors' Civil Relief Act. Accordingly, I am happy that this will be properly ensured with the Senate's passage of S. 2237 last night.

CRITICAL INFRASTRUCTURE INFORMATION SHARING

Mr. BENNETT. Mr. President, for several years, I have been actively working to protect our Nation's critical infrastructure and promote information sharing between the government and the private sector. From my experience with Y2K, I recognized that our Nation's critical infrastructure was vulnerable and that the private sector and the government needed to cooperate. Last year I introduced S. 1456, the Critical Infrastructure Information Security Act of 2001, which sought to bolster critical infrastructure security by fostering and encouraging critical infrastructure information sharing. Both the Senate Government Affairs Committee and the Senate Energy and Natural Resource Committee held hearings on this issue. Once legislation creating the Department of Homeland Security was introduced in the Senate, I worked to ensure that some of the protections found in S. 1456, specifically protection from public disclosure pursuant to the Freedom of Information Act (FOIA), were addressed and considered in the proposed legislation.

The need for congressional attention on this issue stems from the growth of new technology and the increased reliance on computer networks created new vulnerabilities. For the past two decades, once physically distinct operations, controls and procedures have been tightly integrated with information technology. Pipelines can be controlled remotely. A vulnerability in a telecommunication systems can impact the functioning of the Department of Defense and the financial services sector. Sectors are more interconnected and more interdependent.

Eighty-five percent of the United States' critical infrastructures, the essential services that if disrupted or destroyed would impact our economic or national security such as financial services, telecommunications, transportation, energy, and emergency services, are still owned and operated by the private sector. Osama bin Laden has called on his supporters to attack the pillars of the U.S. economy the private sector.

If the private sector and the Federal Government are increasingly interconnected and are targets for those who wish us ill, it makes sense for both targets to share information with each other. We have to think differently about national security, as well as who is responsible for it. In the past, the defense of the Nation was about geography and an effective military command-and-control structure. Now prevention and protection must shift to partnerships that span private and government interests.

Yet the private sector has no access to government information about possible threats, much of which is often classified. The Federal Government, with its unique information and analytical capabilities, lacks specific information from the private sector on attacks. Both parties have a blind spot and only see parts of the problem. Government and industry would benefit from cooperating in response to threats, vulnerabilities, and actual attacks by sharing information and analysis. If the Department of Homeland Security is tasked to match threats with vulnerabilities, the private sector must be a willing partner.

Although the Senate bipartisan FOIA agreement that I negotiated is not included in the current homeland security bill, I am pleased that the final version includes a number of provisions that will foster critical infrastructure information sharing. As the government and the private sector cooperate and begin to exchange information, we will be in a better position to prevent, respond to and recover from future attacks to our country.

NOMINATION OF MICHAEL McCONNELL

Mr. HARKIN. Mr. President, I wish to express my concerns regarding the confirmation of Michael W. McConnell to serve on the United States 10th Circuit Court of Appeals.

Of President George W. Bush's judicial nominees, Michael W. McConnell is the most hard-line, impassioned, and consistent public foe of a woman's right to choose yet to come before the Senate. His legal views and philosophy are far outside the American mainstream.

This nomination passed out of the Judiciary Committee on November 14, and came before the full Senate on November 15. Given the lack of time to review Professor McConnell's record, an absence of recorded votes in opposition to this nominee should not be taken as a vote of confidence from all Senators.

McConnell is a long-time anti-choice scholar and activist whose views on the constitutional right to privacy leave little doubt about how he would rule in cases involving the right to choose. He believes that Roe v. Wade was wrongly decided and that significant restrictions on abortion are appropriate, even while Roe stands. He has joined conservative political activists in calling for a constitutional amendment to ban all abortions, possibly even in cases of rape and incest.

This issue of abortion is one in which thoughtful people of good conscience may disagree. However, it is my belief that Michael McConnell's core personal beliefs on the immorality of abortion and the moral status of the embryo, articulated repeatedly in numerous forums including law reviews, op-eds, and legal [or court] briefs, will make it difficult if not impossible for him to consider impartially the cases that would come before him as a judge.

McConnell's view of the Freedom of Access to Clinic Entrances Act also illustrates his inability to be impartial. Not only has he contended that the law is unconstitutional, but his view of the FACE Act is so colored by his opposition to the right to choose that he has expressed his admiration for a judge who blatantly ignored the law in acquitting defendants who broke the law.

Anti-choice legislatures have demonstrated great creativity in creating innovative barriers to a woman's right to choose. The constitutionality of these new barriers is frequently determined by the circuit courts, and is rarely reviewed by the Supreme Court.

It is my hope that the administration will begin to reach across the aisle to identify moderate, consensus nominees. The alternative will be an ongoing crisis in the judiciary. It is also my hope that Professor McConnell is not a harbinger of what is to come when Supreme Court vacancies occur.

ADDITIONAL STATEMENTS

CONGRATULATIONS TO BOB AND MARY JEAN FREESE

• Mr. BAUCUS. Mr. President, I rise to extend my congratulations to Bob and Mary Jean Freese on their 50 years of marriage. During that half century, their loving relationship has not only helped them raise five children, but has served them well in raising two additional generations, with seven grandchildren and one great-grand child.

Bob and Mary Jean were united at Salem Lutheran Church in Spokane, Washington on December 6, 1952. Throughout their lives together they have demonstrated a commitment to public service, and instilled a similar public service ethic in their families.

Bob is the son of a Marine Corps Officer and served honorably in the United States Air Force for ten years, and later was a plant engineer with Continental Baking Company. Mary Jean was a long time employee in the Spokane County Auditor's office.

While Bob and Mary Jean reside in Spokane, Washington, their daughter-in-law Maria Freese has provided dedicated service to the people of Montana, first as a member of my Senate staff and later as Tax Counsel with the Senate Finance Committee. Their son Terry recently retired from 25 years of service with Congressman Norm Dicks and as a Presidential appointee at the Department of Energy, their daughter Robin works with the state of Washington, their son Russell served with the U.S. Air Force, their daughter Peggy has worked with Spokane Community College. And their youngest son, Tom, has served the public in a number of positions in the automotive industry.

In their retirement, Bob and Mary Jean continue to help others by combining their interest in motorcycles with safety promoting community service at highway rest stops. Mary Jean is also an officer with the Spokane Genealogical Society and is always willing to help people seeking out their roots.

I hope that Bob and Mary Jean will continue to enjoy many more years of happiness together.•

ON THE RETIREMENT OF RIVERSIDE COUNTY SUPERVISOR TOM MULLEN

• Mrs. BOXER. Mr. President, I rise to reflect on the distinguished career of Riverside County Supervisor Tom Mullen, who will retire on December 13, 2002. Supervisor Mullen's passion for good government and good planning has set a standard for his county and for California.

Before his tenure as Supervisor, Tom Mullen worked in the field of law enforcement, serving 11 years with the Riverside Police Department and the Riverside County Sheriff's Department. He also served as an aide to former California State Senator Robert Presley, Director of Intergovernmental Affairs for the Riverside County Transportation Commission, and Director for External Program Development for the University of California, Riverside's College of Engineering and Center for Environmental Research and Technology.

As Supervisor of Riverside County's Fifth District, Mullen helped develop programs for young people, improve education, improve infrastructure, reduce traffic congestion and make the streets safer by adding more police officers to the beat. In recent years, his focus has been on creating as transportation, habitat and housing blueprint for Riverside County, a plan that will guide the rapid development expected to occur in the coming years. Because of his diligent work and vision, Riverside County's plan has won state and national praise and will give the County a firm guide for the future.

During his career in public service, Supervisor Mullen has served with many different organizations and received many awards for his leadership and vision. He served as Chairman of the Board of Supervisors, the Riverside County Transportation Commission, the March Joint Powers Authority

(MJPA) and currently serves as Co-Chairman of the County Child Protective Services Committee. Among Mullen's accolades, he received the Riverside Community College Alumnus of the Year Award in 2000, the Management Leader of the Year Award from UCR's A. Gary Anderson School of Management in 1998 and the good Government Award from the Riverside County Chapter of the Building Industry Association in 1997.

It is clear that Supervisor Mullen has made a tremendous impact on the County and on the lives of the people of Riverside. With good economic sense and organization, Tom Mullen has been able to lead one of the nation's fastest growing areas. I commend him and extend my best wishes to the Supervisor, his wife, Kathy Tappan, and his family on this occasion and in the future.•

COMMEMORATING THE 50TH ANNIVERSARY OF THE PADUCAH GASEOUS DIFFUSION PLANT

• Mr. BUNNING. Mr. President, on October 24, 2002, the Paducah Gaseous Diffusion Plant in Paducah, KY commemorated and celebrated its 50th anniversary. In 1952, the Paducah Plant began the process of enriching uranium to help build and maintain our national security against our adversaries throughout the Cold War era, and to this day the 1,500 workers there continue their work to help ensure a safer world by dismantling nuclear agents from Russia's stockpile of weapons from its gladly-gone-days as the Union of Soviet Socialist Republics.

Throughout these past 50 years, the Federal Government did not always shoot straight with the Paducah Plant workers. Much of the time the workers were exposed to harsh and deadly chemical and industrial agents. Many became sick and many died while the Federal Government looked the other way. But throughout these times these workers forged ahead, and they continue to do so today. Now knowing the dangers of then and even the risks that go along with their jobs today, these dedicated workers still roll up their sleeves and get the job done, without complaint and with no questions asked. They are selfless and humble. The history of the Paducah Plant and its workers, and what they have and continue to do to ensure a more peaceful world, has and will continue to be an inspiration to us all.

The Paducah Plant is tucked away in God's country in southwest Kentucky between the Ohio River and rolling prairies and farmland. The Paducah community and those in the surrounding area have been bedrock in their support of this plant and its workers, and they are owed a great deal of gratitude as well on this 50th anniversary. They have always been there with support and prayer for these plant workers and their family members during the toughest and roughest of times.

While the Federal Government and others turned away and failed to live up to their responsibilities to the Paducah Plant workers—neighbors, friends and family members were always there to comfort them and each other. This is a spirit which humbles us all. May God bless all those associated with this plant and its mission. We owe all of them more than we will ever realize.•

MR. STEPHEN ROGERS

• Mr. SCHUMER. Mr. President, it is with a heavy heart and great sadness that I bring news of the death of Stephen Rogers, a former publisher and long time President of the Syracuse Post-Standard. Mr. Rogers was a Central New York institution, a man who actively played a role in the newspaper's operation up until the day he died at ninety years old.

Although not originally from Central New York, he became one of the area's most influential figures, both because of his pen and community activism. Rogers was famous among local politicians for never shying away from asking tough questions, prompting a close friend to call him Socrates with a press card. Everyone from the Governor on down knew that an editorial board meeting at the Post-Standard was no walk in the park, as Rogers would force all who came to Syracuse to vigorously defend their policy choices. It is testament to Rogers' character and to how much he respected his craft, however, that no one ever doubted that the meetings would be enlightening and evenhanded. Indeed, journalism was part of the very marrow of Rogers' bones and a beloved profession: he once wryly told a group of college students, "Believe me, it's more fun that working for a living."

Rogers' love of fishing was perhaps the only activity that could match his commitment to his trade. New York State's beautiful lakes quickly helped bond him to the area when he first arrived in 1955, and he showed his love for the area by giving back to the community in so many ways. As Chairman of the Metropolitan Development Association, he was a staunch advocate and promoter of economic development in Central New York. Although he was criticized by some for overstepping the limits of objectivity required by his day job, Rogers felt that he could not in good conscience earn a living in community without giving back. It's not surprising that he could also count his leadership of the state publishers' association, the water board, and the United Way, as well as time spent on the boards of the YMCA, the former Crouse-Irving Memorial Hospital, Le Moyne College, the Red Cross and the symphony as other significant volunteer accomplishments.

If there is one thing to say about Stephen Rogers, it is that he was the epitome of good citizenship. His dedication to his craft, community activism, and unceasing work ethic meant that he stood out as a leader in Central New York up until his final days. He will be sorely missed by us all.•

TRIBUTE TO CENTURY CONSTRUCTION

• Mr. BUNNING. Mr. President, I rise today to pay tribute to Century Construction in Erlanger, KY. Last Friday, Sandy Taylor, Assistant Administrator for the Occupational Safety and Health Administration's, OSHA, 5th region in Chicago, presented Mike Mangeot, President and CEO of Century Construction, with a Voluntary Protection Program, VPP, award for Century's exemplary record of safety in the workplace.

OSHAs Voluntary Protection Programs are designed to recognize and promote effective safety and health management. In the programs, management, labor and OSHA work together to establish a cooperative relationship aimed at improving safety standards in the workplace. VPP participants are a select group of facilities, which have designed and implemented outstanding health and safety programs. Kevin Still, Century's Vice President for Administration and Safety Director in charge of Century's safety programs, deserves special recognition for the part he has played in creating a safe working environment for Century's employees. Kevin has been an integral part of Century's success.

There are over 6 million work places in the United States. Of these, only 900 have received VPP awards. Out of the nearly 750,000 construction contractors in this country, only three have won a VPP award for safety. Century is the first ever mobile site participant to win this award. By working with employees from both top-to-bottom and bottom-to-top, Century has demonstrated how far communication and teamwork can take an organization.

The men and women of Century Construction deserve our admiration and respect for their hard work and determination. I am proud to know that such companies are operating within Kentucky.•

RECOGNIZING PUBLIC SERVICE OF ANN JORGENSEN

• Mr. GRASSLEY. Mr. President, I want to take this opportunity to recognize and express appreciation for the contributions to public service made by Ann Jorgensen, who is finishing her term as board member to the Farm Credit Administration.

A production agriculture and hog farmer from my home State of Iowa, Ms. Jorgensen moved to Washington in 1997 to serve on the Presidentially appointed, Senate-confirmed, three-member board of the Farm Credit Administration, FCA. FCA is an independent U.S. Government agency responsible for regulating and examining the entities of the Farm Credit System. The Farm Credit System is a nationwide financial cooperative that lends to agriculture and rural America.

Members of the FCA board also serve as Directors for the Farm Credit System Insurance Corporation, FCSIC, to which Ms. Jorgensen was elected as the first woman chair in January 2000. FCSIC is an independent U.S. Government corporation responsible for ensuring the timely payment of principal and interest on insured notes, bonds, debentures, and other obligations issued on behalf of Farm Credit System banks. Ms. Jorgensen's leadership was instrumental in keeping the insurance fund at or near the statutory 2 percent capitalization level.

During Ms. Jorgensen's 5-year tenure at the Farm Credit Administration, many changes took place in the Farm Credit System influenced by the FCA board. Through the board approval of restructuring applications, the number of Farm Credit System associations consolidated from 250 to 103, thus creating greater efficiencies, better customer service, and cost savings to associations. The board also amended participation regulations allowing for the purchase of a 100-percent interest in participations and eliminating the territorial consent requirement. With these and other changes, the Farm Credit System today is well capitalized and profitable with a high asset quality.

Prior to her appointment to the FCA board, she served on a number of governing boards for the State of Iowa, including 6 years as a member of the Board of Regents. The Board of Regents is responsible for the State's three universities, including the University of Iowa Hospital, a world-renowned teaching hospital, and its affiliated clinics. She also served on the board of the Iowa Department of Economic Development and chaired the Iowa Rural Development Council. Among many other boards and committees, she has also served on the Agriculture Product Advisory Board, the Interstate Agricultural Grain Marketing Commission, the National Pork Producers Council Environmental Committee, the European Trade Task Force Legislative Study Committee; the Iowa Public Broadcasting Network Board of Directors and Foundation Board.

She was named to the Farm Foundation's Bennett Agricultural Round Table in June 2000. This provides a forum for discussion and dialogue among agricultural, agribusiness, government, academic, and interest group leaders on issues of importance to agriculture and rural America. Alpha Zeta, the national honorary agricultural fraternity, named her to its Centennial Honor Roll in 1997. She has also been inducted into the Iowa Volunteer Hall of Fame, and along with her husband, has previously been recognized by Farm Futures magazine as owner of one of the Top 10 Best Managed Farms.

I thank her for her numerous contributions to our farmers as well as rural America, and I extend my very best wishes for her continued success.●

TRIBUTE TO LT. COL. THOMAS J. STAPLETON

● Mr. BOND. Mr. President, it is with great pleasure that I rise today to pay special tribute to an outstanding soldier who has distinguished himself in his service to the United States Senate and the Nation as a United States Army Fellow. Lt. Col. Thomas Stapleton's fellowship officially ends upon the adjournment of this session and before he leaves, I wish to extend my most sincere thanks and appreciation for his exemplary service to myself, the citizens of Missouri and our great nation.

Lt. Col. Stapleton is a seasoned military leader with over 17 years of tactical, budget and acquisition experience that have been a tremendous contribution to my office. Lt. Colonel Stapleton served his nation in Operation Just Cause and Operation Desert Shield/Desert Storm from 1989–1991. He is a Distinguished Military Graduate from Canisius College, Buffalo, New York, holds a Master of Business Administration from Rochester Institute of Technology and attended Georgetown University's Government Affairs Institute.

Throughout his career, Lt. Colonel Stapleton's level of commitment and service have been evident in his various decorations and awards including the Bronze Star which he was awarded for exceptional service in Operation Desert Storm. Lt. Colonel Stapleton has proven his abilities and has consistently performed above and beyond the call of duty.

During his tour as a military fellow, Tom fulfilled crucial functions and carried out critical assignments within my office. His budgetary experience as an Army comptroller served him well in resolving numerous defense appropriations issues. His tactical experience was an invaluable resource as evidenced by the many dependable information briefs I received after the devastating attacks of 9–11. These attributes further served Tom as he traveled the roads of Missouri on my behalf meeting with veterans, military service-members and constituents at various installations, veteran's facilities and town hall meetings. In addition, I relied heavily on Lt. Colonel Stapleton's strong volley and solid serve in crushing two of my distinguished colleagues, Senator STEVENS and Senator WARNER, on the tennis court.

Lt. Colonel Stapleton is not just a soldier but a devoted husband and committed father of three children. Whether he was coaching soccer with his son, enjoying family vacations or throwing a birthday party for his children, Tom consistently made time for his family throughout his very demanding tour as a fellow. Anyone familiar with Lt. Colonel Stapleton's numerous achievements, awards and much deserved commendations knows that Tom's top priority is to be a dedicated family man. Tom embodies the values that we as Americans all hold dear. His commitment to family and country set the standard for a professional soldier and solid role model.

The Military Congressional Fellows programs affords members of Congress with a critical military perspective coupled with invaluable service and professionalism. The tremendous reputation and success of this program are a direct reflection of Fellows like Lt. Colonel Stapleton. Tom has distinguished himself as a member of my staff and my defense team. On behalf of the citizens of Missouri and a grateful Nation, we wish Lt. Col. Thomas Stapleton, his wife Anne, and three children Toni, Carly and Jack the best as he continues his distinguished career.●

TRIBUTE TO NANCY KRAFT

● Mr. BAUCUS. Mr. President, I rise today to ask my colleagues to join me in paying tribute to a dedicated member of the Montana Department of Fish, Wildlife and Parks, FWP, as she concludes 32 years of service to her State and Nation. We are proud that this native Montanan spent her entire working life dedicated to serving Montana's State's citizens and visitors.

Mrs. Nancy Kraft deserves this honor. We owe her our gratitude for her contributions to the conservation of Montana's wildlife and natural resources, as well as her efforts to preserve the outdoor heritage that makes the Treasure State's way of life unique.

Nancy's personal and professional career accomplishments truly reflect the character of life under the big sky. Her loyal service over three decades—spent in our capital city of Helena—are a testament to all those who value wildlife and open spaces. I would like to take a moment to reflect upon Nancy's career as she embarks on a new phase of life beyond government service.

Born in Helena, Nancy attended primary school locally and began work at the then Department of Fish and Game in 1970 as a temporary employee in the General Licensing section handling delinquent accounts. Skilled in pursuing overdue collections she soon designed a system that over the years returned more than $300,000 to the people of Montana.

Nancy progressed through several positions of increasing responsibility, while continuing to make sure licensing operations were closely related to the needs and interests of Montana's recreating public. In 1985 she was selected as the FWP General License Section Supervisor. Her capable leadership led to substantive changes in regulations and license fees during the time that outdoor recreation became a major economic influence in Montana.

Because of her in-depth knowledge and ability to bring diverse interests together, Nancy was assigned to a team of FWP experts charged with the task of designing a system to automate the licensing processes. Recognizing that the transition to computers from a paper process was a major undertaking, she worked tirelessly to ensure the myriad regulations, drawing systems, fee schedules, and calendar requirements were accurately reflected in the system design.

In her final assignment Nancy was selected to be the Licensing Bureau Chief with responsibility for the collection of fees exceeding $30 million annually. Shortly after FWP celebrated its 100th anniversary, Nancy and her team embarked on one of the biggest challenges in state government—providing ongoing services with no down time while changing systems affecting over 400,000 customers.

Over the past 2 years Nancy helped lead the transition to the new Automated Licensing System. Within eight months of implementation, the system processed over one million license sales with error rates below 1 percent, and produced a steady increase in customer satisfaction. This shining example of perseverance and poise under pressure is a reflection of the quiet competence that Nancy Kraft brings to her workplace every day for the people of Montana.

Nancy's contributions to the State's highly complex and important licensing functions cannot be overstated. Her staff's accurate forecasting and collection of millions of dollars each year allow FWP to perform its primary mission while preparing for future uses of Montana's special natural resources. Such achievements are a clear testament to how she has, for more than 30 years, enhanced the fishing, hunting, and parks experience held in such high esteem by the people of Montana and our many visitors.

As a well known and highly regarded member of the Helena community, Nancy's ability and knowledge, her willingness to find solutions, and her congenial way of dealing with people from all walks of life will be most difficult to replace.

It is a great honor for me to present the credentials of Nancy Kraft to the Senate today. All of her actions reflect a devoted public servant with a sense of purpose.

As Nancy departs from public service I ask my colleagues to join with me in delivering this tribute to Nancy for her outstanding career and service to the State of Montana and the Nation, and our best wishes for a productive and rewarding retirement.•

RECOGNITION OF OUTSTANDING PROFESSORS MR. JAMES ADAMS AND DR. DENNIS C. JACOBS

• Mr. BAYH. Mr. President, I rise today to congratulate fellow Hoosiers Mr. James Adams and Dr. Dennis C. Jacobs on their recent selection as Professors of the Year. It is a major accomplishment as only four awards are given out nationally, one for each classification of institution. Mr. Adams was recognized as Outstanding Baccalaureate College Professor of the Year and Dr. Jacobs was recognized as Outstanding Research and Doctoral University Professor of the Year.

I am particularly proud, Mr. President, because Mr. Adams and Dr. Jacobs are two of four national Professors of the Year, and my home state of Indiana is the home for both. Both Mr. Adams and Dr. Jacobs represent the very best in higher education and Hoosier values.

Mr. James Adams is a professor of art at Manchester College in North Manchester, Indiana. During 42 years at Manchester, Mr. Adams has taught in the Art, English, Music, and Spanish departments, driven by his interest in new technologies, integrating service with learning, and interdisciplinary approaches to subjects. He has truly set an example to the rest of the teaching community.

In addition, Mr. Adams has been an exchange professor to Germany and Spain, and was instrumental in creating study-abroad programs on his campus. His international interest has also led him to supervise an Indiana University summer program in England, serve as faculty-in-residence for DePauw University in Spain, and he has conducted at least 20 student tours to Mayan sites.

Mr. James Adams' hobbies have also brought him success. He is a practicing painter and photographer who has exhibited throughout the United States and in England, Mexico, and Spain. A contributor to his community, Mr. Adams is a frequent lecturer at the Fort Wayne Museum of Art, and he also does pro bono work with the local Department of Motor Vehicles office, serving as a translator for Latino residents new to the area.

Mr. Adams earned undergraduate degrees at George Washington University and the Concoran School of Art, with a double major in Art and Modern Languages. He holds a Master of Fine Arts at the Instituo Allende, which is affiliated with the University of Guanajuato, Mexico, and he spent three years at the Ruskin School of Art at Oxford University.

Dr. Dennis C. Jacobs is a professor of chemistry at the University of Notre Dame in South Bend, Indiana. At Notre Dame, he has won several teaching awards and the Presidential Award for dedicated service to the University. His contribution to the learning community is evident.

In 1999, the Carnegie Foundation for the Advancement of Teaching named him a Carnegie Scholar largely for completely redesigning an important introductory chemistry class. The redesign led to greater student success and engagement, and the course is considered a leading example of the trend toward peer-led curricula. This is a remarkable accomplishment.

Dr. Jacobs has also combined chemistry and service learning, creating a course in which students and community partners evaluate lead contamination in area homes. He is also a Fellow with the Center for Social Concerns, focusing on other methods of integrating community service into the curriculum.

His work has earned him great respect in his community. One of his colleagues has described him as "the kind of teacher who never stops growing, thinking, and changing."

Dennis Jacobs earned undergraduate degrees at the University of California at Irvine in physics and chemistry and a Ph.D. in physical chemistry at Stanford University.

NATIONAL WINNERS

Outstanding Baccalaureate Colleges: James Adams, Professor, Art, Manchester College, North Manchester, IN

Outstanding Community Colleges: Alicia Juarrero, Professor, Philosophy, Prince George's Community College, Largo, MD

Outstanding Doctor and Research Universities: Dennis Jacobs, Professor, Chemistry, University of Notre Dame, Notre Dame, IN

Outstanding Master's Universities and Colleges: Francisco Jimenez, Director of Ethnic Studies Program and Fay Boyle, Professor in the department of Modern Languages and Literatures, Santa Clara University, Santa Clara, CA

STATE WINNERS

Alabama: Natalie Davis, Professor, Political Science, Birmingham-Southern College

Alaska: Steven Johnson, Assistant Professor and Director of Debate, University of Alaska Anchorage

Arizona: Christopher Impey, Professor, Astronomy, University of Arizona

Arkansas: Gay Stewart, Associate Professor, Physics, University of Arkansas

California: Cecilia Conrad, Associate Professor, Economics, Pamona College

Colorado: Aaron Byerley, Professor, Aeronautical Engineering, United States Air Forces Academy

Connecticut: Bruce Saulnier, Associate Professor, Computer Information Systems

District of Columbia: James A. Miller, Professor, English and American Studies, The George Washington University

Florida: Llewellyn M. Ehrhart, Professor, Biology, University of Central Florida

Georgia: Evelyn Dandy, Professor and Director of Pathways, Education, University of Central Florida

Idaho: Todd Shallat, Professor, History, Boise State University

Illinois: Nancy Beck Young, Associate Professor, History, McKendree College

Indiana: Leah H. Jamieson, Professor and Co-director of EPICS Program, Purdue University

Iowa: Herman Blake, Professor, Educational Leadership and Policy Studies, Iowa State University

Kansas: Peer Moore-Jansen, Associate Professor, Anthropology, Wichita State University

Kentucky: John J. Furlong, Professor, Philosophy, Transylvania University

Louisiana: Kay C. Dee, Assistant Professor, Biomedical Engineering, Tulane University

Maine: Keith W. Hutchinson, Professor, Biochemistry, University of Maine

Maryland: Spencer Benson, Associate Professor, University of Maryland College Park

Massachusetts: Judith Miller, Professor, Biology and Biotechnology, Worcester Polytechnic Institute

Michigan: Mark Francek, Professor, Central Michigan University

Minnesota: Robin Hasslen, Professor, Child and Family Studies, St. Cloud State University

Mississippi: Robert McElvaine, Professor, Arts and Letters, Millsaps College

Missouri: Anthony Vazzana, Assistant Professor, Mathematics, Truman State University

Montana: Esther L. England, Professor, Music, The University of Montana-Missoula

Nebraska: James H. Wiest, Professor, Sociology, Hastings College

New Hampshire: Davina M. Brown, Professor, Psychology, Franklin Pierce College

New Jersey: Thomas Heed, Associate Professor of Accounting, New Mexico State University

New York: George J. Searles, Professor, Humanities, Mohawk Valley Community College

North Carolina: Richard A. Huber, Associate Professor, Curricular Studies, The University of North Carolina at Wilmington

North Dakota: Lorraine Willoughby, Associate Professor, Minot State University

Ohio: Dorothy Salem, Professor, History, Cuyahoga Community College

Oklahoma: Christopher Oehrlein, Professor, Mathematics, Oklahoma City Community College

Oregon: Nicole Aas-Rouxparis, Professor, French, Lewis and Clark

Pennsylvania: Roseanne Hofmann, Professor, Mathematics, Montgomery County Community College

South Carolina: Fred C. James, Professor, Biology, Presbyterian College

Tennessee: Donald Potter Jr., Professor, Geology, University of the South

Utah: Jan Sojka, Professor, Physics, Utah State University

Vermont: Andrie Kusserow, Assistant Professor, Sociology/Anthropology, Saint Michael's College

Washington: Suzanne Wilson Barnett, Professor, History, University of Puget Sound

West Virginia: Elizabeth Fones-Wolf, Associate Professor, History, West Virginia University

Wisconsin: Cecelia Zorn, Professor, Nursing, University of Wisconsin-Bau Claire

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TRIBUTE TO ERV NEFF, PRESIDENT, MINNESOTA STATE RETIREE COUNCIL, AFL–CIO

• Mr. DAYTON. Mr. President, I rise to honor Erv Neff, a longtime friend and current President of the Minnesota State Retiree Council, AFL–CIO. On December 4, Erv will step down as the President of the Retiree Council after six years of dedicated service. Under Erv's leadership, the Minnesota State Retiree Council, AFL–CIO, has grown from 19 affiliated organizations in 1996 to 115 affiliated organizations today. Erv established the goal to expand the membership and the mission of the Retiree Council, and he succeeded admirably.

Erv has a lifetime of distinguished accomplishments. They include his stewardship of the Twin Cities Musicians Union and his service as an invaluable advisor to dozens of prominent public officials. His legacy will be enhanced by his post-retirement activities. Many people view retirement as an opportunity to relax after a lifetime of hard work and personal and professional accomplishments. Not Erv Neff. Erv recognized the potential positive contributions Minnesota retirees could make toward improving the quality of life in our state. He joined the AFL–CIO Retiree Council and was quickly elected to leadership positions within the organization. Since his election as President of the Council in 1996, Erv has demonstrated that the Council could play an active role in promoting legislative initiatives that would benefit senior citizens and working men and women. He led the Council's efforts to pass improved prescription drug benefits for senior citizens at the state and national levels. He arranged for prominent speakers to appear at monthly Council meetings to educate members on a wide variety of issues. By demonstrating the ability of the Council to play an effective role in improving the lives of senior citizens, Erv was able to build the Council into one of the most vigorous advocacy organizations in Minnesota.

I hope that Erv will look back with deserved pride on his service to working men and women and senior citizens. He has accomplished much throughout his life, and thousands of Minnesotans owe him their gratitude.

I wish Erv and his wife, Betsy, the very best this life has to offer.•

POLITICAL REFORM IN EGYPT

• Mr. BUNNING. Mr. President, I rise today to address an important area for American foreign policy: much needed political reform in Egypt.

In the past, Egypt has proven to be a helpful ally. Egypt showed courage in becoming the first Arab nation to sign a peace treaty with Israel after the Camp David talks in 1978. Egypt fought with the broad international coalition we led as part of the Gulf War in 1990–91. And I believe that at times Egypt has helped to provide a moderate and thoughtful voice to discussions with more radical Arab states about Middle East and international issues. In fact, Egypt was banned from the Arab League for a number of years for some of its stands, and President Sadat was assassinated for his role in the Camp David talks.

However, I am very concerned about political repression in Egypt and the effect that this could have on the direction that nation takes in the future and on the larger issue of Middle East peace.

We have seen in recent years how political and economic repression in many Arab states have fueled the fires of Islamic radicalism. Arab communities that have little or no hope of economic progress, and where views are stifled by autocratic authorities, have proven to be fertile ground for radicals like Osama bin Laden and others who play to their fears, and use their anger and frustration as weapons. We know that radical Islamic fundamentalism and terrorism thrive in nations struggling with oppression and poverty. I think there is a clear link between the motives we have seen of those individuals involved in the September 11 attacks, the bombing of the Khobar towers and other terrorist acts with the repressive environments in their home nations.

Now I am afraid that the lack of political and legal reform in Egypt has become a growing problem, and this could further add to other mounting obstacles we now see in the Arab world.

Consequently, the Egyptian government needs to seriously address democratic and institutional reform and it needs to do so quickly.

Since holding out an olive branch to Israel at Camp David, Egypt has received a great deal of American economic and military assistance. While many roads and infrastructure projects have been built over the years, now is the time to press Egypt to embrace and enact political reforms. This will have a positive impact on both Egyptian civil society and the economy.

For instance, as a Washington Post editorial recently pointed, Egypt needs to develop a responsible media that objectively reports news and information instead of government-backed anti-American and anti-Semitic propaganda that does nothing but fuel tensions throughout the region.

Also, Egypt needs to do a better job of strengthening the rule of law. This is fundamental not only to the development of a market economy, but to more robust social expression. I believe it would be in Egypt's best interest to immediately release Saad Eddin Ibrahim, a dual American-Egyptian citizen who is in prison for the "crime" of advocating political reforms.

So far we have not debated in the Senate on the Foreign Operations appropriations bill for the 2003 fiscal year. And it now looks like we may not even have the opportunity to address it at all before the end of this Congress.

But, let me serve notice to my colleagues that when the Senate takes up the Foreign Operations bill next year that I plan to bring up the issue of political reform in Egypt and ask that we take a closer look at U.S. aid to that nation.

In fact, I have already drafted an amendment that would modify current law to expand the understanding that in providing assistance, the United States expects both economic and political reform be undertaken in Egypt.

I very much look forward to this debate.●

RETIREMENT OF CECIL WILLIAMS—AGRICULTURAL COUNCIL OF ARKANSAS

Mrs. LINCOLN. Mr. President, I rise today to pay tribute to the long and great career of Cecil Williams, who spent a life's work fighting on behalf of farmers and the farming way of life in my home State of Arkansas.

Cecil is retiring, after leading the Agricultural Council of Arkansas for 37 years. He joined the organization in 1965 and set to work immediately doing everything he could to make a better world for the thousands of farm families that have made their livelihoods out of the fertile soil of Arkansas. Since then, he has played a central role in many, many achievements: passage of important check-off programs for the cotton, rice, soybean, and corn industries; creation of the Producers Steering Committee within the National Cotton Council; the implementation of better insurance protection for Arkansas farmers, just to name a few.

Over the years, he has seen many things come and go—economic crises, overwhelming floods and endless droughts, farm bill after farm bill, and, yes, he has seen many politicians come and go, too.

He has also seen a lot of changes and a lot of problems that won't seem to go away: higher farm costs against ever lower commodity prices, urban and suburban sprawl that increasingly compete for land resources, a slow but continual rise in the average age of farmers.

Through it all, Cecil Williams has fought, tooth and nail, for Arkansas's farmers. He has fought with grit and determination, with passion and loyalty. He has fought with heart and with every bead of sweat he could give. He is a company man who has endured almost as long as the company. And through the years, he has quietly but surely built a career that stands as an inspiration for all of us who believe in production agriculture. I suppose he is not old enough to be the father of Arkansas agriculture, but he certainly has been its guardian. And he has served it well.

I have known Cecil for many years, first as the daughter of a rice farmer in the Arkansas Delta, and for the past 10 years as a Senator and congresswoman. Through two farm bills and through countless attacks on the foundation of America's farm policy, I have relied on Cecil's counsel and wisdom. His advice has always been sound, always deeply rooted in a respect and admiration for the people we both serve. He has never let us down.

And, now, on his retirement, it is my fervent hope that we who inherit his years of dedication and service will preserve and perpetuate his example, that we do not let him down.

TRIBUTE TO DR. MARY JANE BRANNON

● Mr. SESSIONS. Mr. President, Mary Jane Crump Brannon graduated from Huntingdon College in 1937 with majors in biology and English, and a minor in French. She received her Master of Arts degree from the University of Alabama in 1938 in Parasitology. She did further graduate work at the University of Chicago and the University of Illinois. She completed her Ph.D. in Parasitology at Tulane University in 1943. She was the mother of six children, and taught biology at her alma mater for forty years.

She began teaching at Huntingdon in 1956, and taught full-time until 1986, and part-time for ten more years. During much of this time and during the time I was a student at Huntingdon, she was head of the Biology Department. After her retirement she ran an Elderhostel program for Huntingdon College and the Alabama Shakespeare Festival.

Those are the facts about Dr. Brannon and her career, but they do not begin to hint at the many lives she touched while teaching at Huntingdon. She was a great teacher, brilliant scientist, and incredibly committed to the betterment of her students.

Every student who studied advanced biology at Huntingdon during those 40 years knew Dr. Brannon, and she knew them and took an interest in them. They overlooked her difficulty with names—"Please answer question number seven Joe-Charlie-Sally-whatever your name is, child.."—because they knew she *cared* about them, and because she really wanted them to learn biology. She was very demanding of her students, but none were afraid of her; they knew she would do her best to teach them.

Pre-med students all looked to her for advice in getting into medical school. One student wanted to go to Tulane Medical School, but could not afford it. Dr. Brannon and the Chairman of the Tulane Admissions Committee were friends, and she called him. After their conversation Tulane offered that student a full tuition scholarship. Scholarships to medical school were even rarer then than they are now!

It would be difficult to count the number of students she helped get into graduate or professional school, but in 1983 she had taught 56 Doctors of Medicine or Osteopathy, seven dentists, and dozens of biologists. In 1983 alone, eleven Huntingdon graduates were admitted to medical school, out of a graduating class of less than 200! Many of these owed their acceptance into medical, dental, or graduate school to her advice, or to having her "pull strings" with directors of admission. Huntingdon's 89% acceptance rate to medical school was in large part due to her teaching and leadership.

Dr. Brannon followed the lives of her former students closely, and every year she contacted them in person or by mail. They all looked forward to the "Biology Christmas Letter" to find out what their college friends were doing currently. She served as a hub for information about classmates and the college. Dr. Brannon, by her loyalty to Huntingdon College caused her students to recognize the uniqueness of the school, and to be loyal also. When I attended Huntingdon College, everyone knew there was no more talented, hardworking or loyal student than those in the biology department. They were a special group. They reflected her values.

Students went to Dr. Brannon with their personal problems, too. One student, who now has a Ph.D. in chemistry, tells of going to Dr. Brannon for advice about her boyfriend, who had proposed. "I remember seeking her advice, which was practical, insightful, and blunt, when a guy asked me to marry him my last year at Huntingdon. She told me if I were going to get a Ph.D., that particular guy would not be a good match intellectually, etc. She told me there would be plenty of guys who would want to marry me later on after I received my Ph.D. She encouraged me to get my education first, which was a bold statement from a teacher to a female student in the 1970s."

She was always arranging field trips for her students to take—trips to research labs, to the medical and dental schools, or to wilderness areas of Alabama. She planned and coordinated an annual trip to Panama City, Florida, right after the end of the school year so that students could gather biological specimens. It was also so they could have a little fun, but she was their chaperone, and nobody dared misbehave! She always gave a nighttime lecture and demonstration on bioluminescence, showing us the "things in the Gulf that glow in the dark."

Every semester, for every class that she taught, Dr. Brannon invited the entire class over to her home for dinner. She did this for more than 30 years, each semester. It was a personal way of telling us that she cared about us and wanted to share her home and talents with us.

She was a superb teacher. She taught students about biology, but perhaps more importantly she taught them about living and loving. Because of the real interest she had in each student, she was a powerful influence for good in each one's life.

Teachers are very important people. Many have touched my life in significant ways. Those special teachers who have a real passion for truth and excellence, and who care deeply about their subjects and their students are the ones who change lives—and change them for the better. Dr. Mary Jane Brannon was one of those. She saw the world clearly, spoke quickly and frankly (when one speaks the truth there is less need to hesitate), and strongly desired that her students live lives dedicated to excellence. Those who studied under her could not be unaffected. Indeed, she inspired students who were not her students. She was more than a teacher, she was a force for learning and right living.

Her former students remember her with gratitude, admiration and love.●

IN HONOR OF NATIONAL BIBLE WEEK

● Mr. SANTORUM. Mr. President, I rise today to join the National Bible Association in celebrating one of the most important pieces of literature in human history: the Bible. As Senate co-chair of National Bible Week 2002, it is my honor to participate in a nationwide recognition of the Bible's importance in our daily lives. From November 24 through December 1, communities and churches across America will take part in this tradition by reading and reflecting on the Bible's teachings and how they can help us to lead better lives.

This week of Biblical awareness is something that those whose faiths are based in Judeo-Christian belief can appreciate. But National Bible Week is also an opportunity for Americans of all religious backgrounds to experience the benefits of Bible study. Just as America's students read the Constitution of the United States and examine the laws that govern our social behavior, so should everyone read the Bible and consider the traditions and lessons that have come to govern our moral behavior. The ethical guidelines that the Bible provides for us have, in large part, built the moral basis of the Western world and its governments. Furthermore, the notions of right and wrong, of good and bad, and the principles we teach our children are illustrated by the Bible's stories. Through this book, God's word gives us a complete set of simple rules to follow to lead a virtuous life.

National Bible Week encourages the country to make time, over the course of 8 days, for returning to the source of their religious beliefs. In this way, a nationwide look at the Bible serves to bring people of different sects and schools together. It allows us to recognize the common text we all share, regardless of denomination or church, and lays down a standard of conduct and piety that applies to everyone without discrimination.

As a practicing Catholic, I carry God's word in my heart every day and, for me, the Bible is a source of strength and comfort. In my own behavior, with my family, and in my work, I rely on God's message to guide me. It is my hope that those who may have put the Bible aside will open themselves up to National Bible Week as a chance to reread such an important text, for believers and nonbelievers alike.

National Bible Week 2002 will be inaugurated in New York with a kickoff luncheon to raise funds for the National Bible Association, an organization dedicated to promoting daily Bible reading. I congratulate this group's efforts to encourage better Biblical understanding and to draw people of faith towards common ground for a clearer, more universal understanding of the Bible's lessons and God's word.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations which referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT DOCUMENTING THE STATE OF SMALL BUSINESS AT THE END OF THE TWENTIETH CENTURY—PM 121

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Small Business and Entrepreneurship:

To the Congress of the United States:

This report documents the state of small business at the end of the 20th century. Small businesses have always been the backbone of our economy. The perennially account for most innovation and job creation. Small businesses have sustained the economy when it is robust and growing as well as in weaker times when small businesses have put the economy back on the track to long-term growth.

We must work together to give small businesses an environment in which they can thrive. Small businesses are disproportionately affected by Government regulations and paperwork, and I am committed to reducing this burden. We should regulate only where there is a real need, fully justified through rigorous cost-benefit analysis and clear legal authority. And when Government must regulate, it must adopt commonsense approaches. Regulations work best when agencies anticipate and analyze the effects of their proposals on small firms. Rules need to reflect the ability of small businesses to comply.

Another barrier to unleashing the full potential of small business is our tax code. I am committed to reducing taxes for all Americans—especially small businesses. We must eliminate permanently the estate tax, which so often has spelled the death of the business and the jobs of its employees after the death of its founder. Our tax code should encourage investment in small businesses, and particularly in new and growing businesses. Because the innovations that drive tomorrow's economy come from entrepreneurial small businesses today, we must help them enter the marketplace, not impede them before they get there. Above all, small businesses need a tax code that is understandable and stable. Fairness, simplicity, transparency, and accountability should be our goals, and I am committed to this end.

Small business embodies so much of what America is all about. Self-reliance, hard work, innovation, the courage to take risks for future growth: these are values that have served our Nation well since its very beginning. They are values to be passed on from generation to generation. We must ensure that our small businesses continue to thrive and prosper, not just for their own sakes, but for all of us.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 19, 2002.*

REPORT ENTITLED ANNUAL REPORT OF THE RAILROAD RETIREMENT BOARD FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2001—PM 122

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Health, Education, Labor, and Pensions:

To The Congress of the United States:

I transmit herewith the Annual Report of the Railroad Retirement Board presented for forwarding to you for the fiscal year ended September 30, 2001, pursuant to the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 19, 2002.*

MESSAGES FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Mr. Rota, one of its clerks, announced that the Clerk of the House of Representatives be directed to request the Senate to return the official papers on the bill (S. 1843) to extend certain hydro-electric licenses in the State of Alaska.

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2621. An act to amend title 18, United States Code, with respect to consumer product protection.

H.R. 3758. An act for the relief of So Hyun Jun.

H.R. 3988. An act to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

H.R. 4546. An act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 4628. An act to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 4727. An act to reauthorize the national dam safety program, and for other purposes.

H.R. 5590. An act to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations.

H.R. 5708. An act to reduce preexisting PAYGO balances, and for other purposes.

H.R. 5716. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

The enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

ENROLLED BILL PRESENTED

S. 1214. An act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–9643. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Flue-Cured Tobacco Advisory Committee Amendment of Regulation" [Doc. No. TB–02–14](RIN0581–AC11) received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9644. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Amendment to the Beef Promotion and Research Rules Regulations" [Doc. No. LS–99–20] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9645. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus" [Doc. No. FV02–905–4 IFR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9646. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Kiwi Fruit Grown in California; Increased Assessment Rate" [Doc No. FV02–920–4–FR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9647. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate" [Doc. No. FV02–906–1 IFR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9648. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Oranges, Grapefruit, Tangerines; and Tangelos Grown in Florida; Removing Dancy and Robinson Tangerine Varieties From the Rules and Regulations" [Doc. No. FV02–905–3 FIR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9649. A communication from the Administrator, Tobacco Programs, Agriculture Marketing Program, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Irish Potatoes Imported into the United States; Modification of Handling and Import Regulations" [FV00–945–2 FR] received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9650. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Canadian Border Ports; Blaine and Lynden, WA" [Doc. No. 02–064–1] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9651. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Mediterranean Fruit Fly; Removal of Quarantined Areas" [Doc. No. 01–093–3] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9652. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Gypsy Moth Generally Infested Areas" [Doc. No. 02–053–2] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9653. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Low Pathogenic Avian Influenza; Payment of Indemnity" [Doc. No. 02–048–1] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9654. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Change in Disease Status of Israel Because of BSE" [Doc. No. 02–072–2] received on November 12, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9655. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Clopyralid; Pesticide Tolerance Technical Correction" received on October 28, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC–9656. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Thiamenthoxam; Pesticide Tolerance" received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9657. A communication from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Difluenzuron; Pesticide Tolerance Correction" received on November 7, 2002; to the Committee on Agriculture, Nutrition, and Forestry.

EC-9658. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled "Evidence for Accrued Benefits" (RIN2900-AH42) received on November 7, 2002; to the Committee on Veterans' Affairs.

EC-9659. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled "Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease" received on November 13, 2002; to the Committee on Veterans' Affairs.

EC-9660. A communication from the Acting Director, Office of Regulatory Law, Veterans Benefits Administration, Department of Veterans' Affairs, transmitting, pursuant to law, the report of a rule entitled "Civilian Health and Medical Program of the Department of Veterans' Affairs" received on November 13, 2002; to the Committee on Veterans' Affairs.

EC-9661. A communication from the Under Secretary for Health, Department of Veterans' Affairs, transmitting, a report entitled "New Initiatives: Meeting Veterans' Needs" from the Virginia Office of Research and Development; to the Committee on Veterans' Affairs.

EC-9662. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Texas Regulatory Program" (TX-048-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9663. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Utah Regulatory Program" (UT-041-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9664. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Kentucky Regulatory Program" (KY-238-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9665. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Pennsylvania Regulatory Program" (PA-136-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9666. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Wyoming Regulatory Program" (WY-029-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9667. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Iowa Regulatory Program" (IA-011-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9668. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Louisiana Regulatory Program" (LA-022-FOR) received on November 7, 2002; to the Committee on Energy and Natural Resources.

EC-9669. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Kentucky Regulatory Program" (KY-237-FOR) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC-9670. A communication from the Assistant General Counsel for Regulatory Law, Office of Energy Efficiency and Renewable Energy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Departmental Energy and Utilities Management" (DOE O 430.2A) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC-9671. A communication from the Assistant General Counsel for Regulatory Law, Office of Security, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Eligibility for Security Police Officer Positions in the Personal Security Assurance Program" (RIN1992-AA30) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC-9672. A communication from the Assistant General Counsel for Regulatory Law, Office of Security, Department of Energy, transmitting, pursuant to law, the report of a rule entitled "Security Conditions" (DOE N 473.8) received on November 14, 2002; to the Committee on Energy and Natural Resources.

EC-9673. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Augusta S.P. A. Model A109E Helicopters" [Doc. No. 2002-SW-42]((RIN2120-AA64)(2002-0473)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9674. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Bell Helicopters Textron Canada Limited Model 407 Helicopters Docket No. 2002-SW-38" ((RIN2120-AA64)(2002-0474)); to the Committee on Commerce, Science, and Transportation.

EC-9675. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (24) Admt. No. 3029 ((2120-AA65)(2002-0059)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9676. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Eurocopter France Model AS332C, L, L1 helicopters Docket No. 2002-SW-36" ((RIN2120-AA64)(2002-0472)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9677. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Rockwell Collins, Inc. FMC-4200, FMC-5000 and FMC-6000 Flight Management Computers Docket No. 2000-CE-13" ((RIN2120-AA64)(2002-0471)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9678. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 737 Series Airplanes Docket No. 2001-NM-251" ((RIN2120-AA64)(2002-0470)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9679. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Sikorsky Aircraft Corporation Model S-76A, S-76B and S-76C helicopters; Docket No. 2001-SW-59" ((RIN2120-AA64)(2002-0447)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9680. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pilatus Aircraft Ltd. Model PC-6 Airplanes; Docket No. 2002-CE-08" ((RIN2120-AA64)(2002-0448)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9681. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: British Aerospace Jetstream Model 3201 Airplanes; Docket No. 2002-CE-25" ((RIN2120-AA64)(2002-0449)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9682. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Raytheon Aircraft Company Beech Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, P35, S35, V35, V35A and V35B Airplanes Docket No. 93-CE-37" ((RIN2120-AA64)(2002-0450)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9683. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Agusta S.p.A model A109E Helicopters Docket No. 2002-SW-06" ((RIN2120-AA64)(2002-0451)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC-9684. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Bombardier-Rotax GmbH Type 912F, 912S, and 914F Series Reciprocating Engines Docket No. 2002-NE-33" ((2120-AA64)(2002-0452)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9685. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Britax Sell GmbH & Co. OHG Water Boilers, Coffee Makers, and Beverage Makers Docket No. 2000–NE–58" ((RIN2120–AA64)(2002–0453)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9686. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas, model DC–9–81 (MD–81), DC–9–82(MD–82), DC–9–83(MD–83), DC–9–87(MD–87) and MD–88 Airplanes Docket No. 2002–NM–216" ((RIN2120–AA64)(2002–0454)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9687. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pratt and Whitney PW 4000 Series Turbofan Engines Docket No. 2000–NE–47" ((RIN2120–AA64)(2002–0458)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9688. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas, model DC–9–10, 20, 30, 40 and 50 Series Airplanes Docket No. 2000–NM–57" ((RIN2120–AA64)(2002–0455)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9689. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Raytheon Aircraft Company Beech models 35, 35R, A35 and B35 Airplanes; Docket No. 2000–CE–44" ((RIN2120–AA64)(2002–0456)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9690. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: McDonnell Douglas. Model 757–2—, 200CB, and 300 Series Airplanes; Docket No. 2000–NM–392" ((RIN2120–AA64)(2002–0457)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9691. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pratt & Whitney JT8D–200 series Turbofan Engines Docket No. 2002–NE–11" ((RIN2120–AA64)(2002–0459)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9692. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments 29 Amendments No. (3027)" ((RIN2120–AA65)(2002–0055)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9693. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: EXTRA Flugzeugbau GmbH Model EA–300S Airplanes; Docket No. 99–CE–85" ((RIN2120–AA64)(2002–0460)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9694. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 767 series Airplanes Docket No. 2002–NM–250" ((RIN2120–AA64)(2002–0461)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9695. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pilatus Aircraft Ltd. Model PC–6 Airplanes Correction Docket No. 2002–CE–08" ((RIN2120–AA64)(2002–0462)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9696. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Admt. Class D Airspace; Huntington, WV Docket No. 02–AEA–06" ((RIN2120–AA66)(200–0172)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9697. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amdt. of Class D Airspace; Titusville, FL Docket No. 02–ASO–18" ((RIN2120–AA66)(2002–0173)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9698. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments (44) Amdt. No. 3028" ((RIN2120–AA65)(2002–0056)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9699. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "IFR Altitudes; Miscellaneous Amendments 3 Amdt. No. 438 Docket No. 30336" ((RIN2120–AA63)(2002–0009)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9700. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amdt. to Gordon, NE Class E Airspace Area Docket No. 02–ACE–9" ((RIN2120–AA66)(2002–0175)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9701. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E5 Airspace; Spurce Pine, NC Docket No. 02–ASO–14" ((RIN2120–AA66)(2002–0176)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9702. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pilatus Britten-Norman Limited BN-2, BN2B, BN2T and BN2A MK.III Series Aiplanes Docket No. 2002–CE–21" ((RIN2120–AA64)(2002–0464)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9703. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Stemme GmbH & Co. KG Model S10–VT Sailplanes Docket No. 2002" ((RIN2120–AA64)(2002–0463)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9704. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Pilatus Aircraft Ltd. Model PC–& Airplanes Docket No. 2002–CE–28" ((RIN2120–AA64)(2002–0465)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9705. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: MORAVAN a.s. Models Z–143L and Z–242L Airplanes Docket No. 99–CE–71" received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9706. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedure; Miscellaneous Amendments (18) Admt. No. 3030" ((RIN2120–AA65)(2002–0058)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9707. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing model 737–100, 200, 200C–300, 400 and 500 Series Airplanes Docket No.; 2002–NM–214" ((RIN2120–AA64)(2002–0469)); to the Committee on Commerce, Science, and Transportation.

EC–9708. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Hartzell Propeller Inc. Model HD–E6C–3 Propellers Docket No. 2001–NE–43" ((RIN2120–AA64)(2002–0467)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9709. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class E5 Airspace; Franklin, NC Correction Docket No. 02–ASO–10" ((RIN2120–AA66)(2002–0177)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9710. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Honeywell International, Inc. (formerly AlliedSignal, Inc. and textron Lycoming) LF507 and ALF502R Series Turbofan Engines Docket No. 2002–Ne–21" ((RIN2120–AA64)(2002–0468)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9711. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety/Security Zone Regulations; (Including 2 regulations) [CGD07–02–132][COTP San Juan 02–133]" ((RIN2115–AA97)(2002–0202)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9712. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations (Including 2 Regulations) [CGD08–02–025] [CGD08–02–036]" ((RIN2115–AE47)(2002–0094)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9713. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Special Anchorage Area/Anchorage Grounds Regulations: Frenchman Bay, Bar Harbor, ME (CGD01–02–027)" ((RIN2115–AA98)(2002–0002)) received on November 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9714. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations: Shrewbury River, NJ (CGDO1–02–122)" ((RIN2115–AE47)(2002–0095)) received on November 12, 2000; to the Committee on Commerce, Science, and Transportation.

EC–9715. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety/Security Zone Regulations; Captain of the Port Detroit Zone, Selfridge Army National Guard Base, Lake St. Clair (CGD09–02–523)" ((RIN2115–AA97)(2002–0199)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9716. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Safety/Security Zone Regulations; Oahu, Maui, Hawaii and Kauaii, HI (CGD14–02–001)" ((RIN2115–AA97)(2002–0200)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9717. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations: Danvers River, MA (CGD01–02–118)" ((RIN2115–AE47)(2002–0091)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9718. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations; Connecticut River, CT (CGD01–02–100)" ((RIN215–AE47)(2002–0093)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9719. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations: Illinois Waterway, Joliet, IL (CGD08–02–024)" ((RIN2115–AE47)(2002–0092)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9720. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations; (Including 3 regulations) [01–02–117] [01–02–123] [07–02–125]" ((RIN2115–AE47)(2002–0090)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9721. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Drawbridge Regulations: Dorchester Bay (CGD01–02–101)" ((RIN2115–AE47)(2002–0089)) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9722. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Gulfstream, Model G–V Series Airplanes; Docket No. 2002–NM–255 [10–16/10–24]" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9723. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: REVO, Incorporated Models Lake LA–4, LA–4A, LA–4P, LA4–200 and Lake Model 250 Airplanes; Docket No. 2002–CE–40" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9724. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Agusta SpA Model A119 Helicopter; Docket No. 2002–SW–46" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9725. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Rockwell Collins, Inc. AFD 3010 Adaptive Flight Display Units; Docket No. 2002–CE–39" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9726. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Cirrus Design Corporation Model SR20 and SR22 Airplanes; Docket No. 2002–CE–41" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9727. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; MD Helicopter, Inc Model MD900 Helicopters; Docket No. 2001–SW–25" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9728. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Bombardier-Rotax Type 912 F, 912 S and 914 F Series Reciprocating Engines; Docket No. 2002–NE–17" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9729. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures: Miscellaneous Amendments (106); Amdt. No. 3025" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9730. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Class D Airspace; Henderson Airport: Las Vegas, NV; Docket No. 02–AWP–4" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9731. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Morganton, NC: Docket No. 02–ASO–17" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9732. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace; Matawan, NJ; Docket No. 02–AEA–16" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9733. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Highlands, NC; Docket No. 02–ASO–12" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9734. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace, Asheville, NC; Docket No. 02–ASO–11" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9735. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Marion, NC; Docket No. 02–ASO–13" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9736. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Andrews-Murphys, NC; Docket No. 02–ASO–16" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9737. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Sylva, NC; Docket No. 02–ASO–15" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9738. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Franklin, NC; Docket No. 02–ASO–10" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9739. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E5 Airspace; Prestonburg, KY; Docket No. 02–ASO–09" (RIN2120–AA66) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. LEAHY, from the Committee on the Judiciary:

Report to accompany S. 2480, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from state laws prohibiting the carrying of concealed handguns. (Rept. No. 107–345).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, without amendment:

S. 2065: A bill to provide for the implementation of air quality programs developed pursuant to an Intergovernmental Agreement between the Southern Ute Indian Tribes and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes. (Rept. No. 107–346).

By Mr. JEFFORDS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 556: A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes. (Rept. No. 107–347).

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 2946: A bill to reauthorize the Federal Trade Commission for fiscal years 2003, 2004, and 2005, and for other purposes. (Rept. No. 107–348).

By Mr. LIEBERMAN, from the Committee on Governmental Affairs, without amendment:

S. 3070: A bill to authorize appropriations for the Merit Systems Protection Board and the Office of Special Counsel, and for other purposes. (Rept. No. 107–349).

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

S. 1340: A bill to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

By Mr. LIEBERMAN, from the Committee on Governmental Affairs, without amendment:

S. 1822: A bill to amend title 5, United States Code, to allow certain catchup contributions to the Thrift Savings Plan to be made by participants age 50 or over.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. LEVIN from the Committee on Armed Services:

Arthur James Collingsworth, of California, to be a Member of the National Security Education Board for a term of four years.

Air Force nominations beginning Brigadier General Richard C. Collins and ending Colonel Bradley C. Young, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Air Force nomination of Maj. Gen. Arthur J. Lichte.

Army nomination of Colonel Terry W. Saltsman.

Army nomination of Col. Michael H. Sumrall.

Army nominations beginning Brigadier General Daniel D. Densford and ending Colonel Merrel W. Yocum, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Navy nomination of Rear Adm. Stanley R. Szemborski.

Mr. LEVIN. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered:

Air Force nominations beginning Branford J. Mcallister and ending Alice Smart, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Navy nominations beginning Rowland E Mccoy and ending Alan K Wilmot, which nominations were received by the Senate and appeared in the Congressional Record on October 16, 2002.

Air Force nomination of David G. Smith.

Navy nominations beginning Rodney D Abbott and ending Bernerd C Zwahlen, which nominations were received by the Senate and appeared in the Congressional Record on October 17, 2002.

Army nominations beginning Tom R. Mackenzie and ending Terrence D. Wright, which nominations were received by the Senate and appeared in the Congressional Record on November 12, 2002.

Army nominations beginning Stephen M. Ackman and ending Joseph M. Zima, which nominations were received by the Senate and appeared in the Congressional Record on November 12, 2002.

Navy nomination of Phillip K. Pall.

Navy nomination of Stephanie L. O'Neal.

Navy nomination of Thomas P. Rosdahl.

Army nominations beginning William C. Cannon and ending Charles F. Maguire III, which nominations were received by the Senate and appeared in the Congressional Record on November 14, 2002.

Navy nominations beginning Robert D. Beal and ending Steven J. Zaccari, which nominations were received by the Senate and appeared in the Congressional Record on November 14, 2002.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

NOMINATIONS DISCHARGED

The Committee on Health, Education, Labor, and Pensions was discharged of the following nominations on November 19, 2002:

Federal Mine Safety and Health Review Commission Michael F. Duffy, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2006.

NATIONAL INSTITUTE FOR LITERACY

Mark G. Yudof, of Minnesota, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD

Carmel Borders, of Kentucky, to be a Member of the National Institute for Literacy Advisory Board for a term of three years.

William T. Hiller, of Ohio, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Robin Morris, of Georgia, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Jean Osborn, of Illinois, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

NATIONAL MUSEUM SERVICES BOARD

Margaret Scarlett, of Wyoming, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

David Donath, of Vermont, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

The Committee on Governmental Affairs was discharged of the following nominations on November 19, 2002:

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Alejandro Modesto Sanchez, of Florida, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2006.

Andrew Saul, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2004.

Gordon Whiting, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2006.

The Committee on Veterans Affairs was discharged of the following nomination on November 19, 2002:

DEPARTMENT OF VETERANS AFFAIRS

William H. Campbell, of Maryland, to be an Assistant Secretary of Veterans Affairs (Management).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. KYL:

S. 3. A bill to repeal the sunset of the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and for other purposes; to the Committee on Finance.

By Mr. GRAMM:

S. 4. A bill to amend the Internal Revenue Code of 1986 to treat earnings on contributions to tax-deferred savings accounts as gain from the sale or exchange of a capital asset; to the Committee on Finance.

By Mr. GRAMM (for himself and Mr. HAGEL):

S. 5. A bill to strengthen and permanently preserve social security through the power of investment and compound interest without benefit reductions or tax increases, and for other purposes; to the Committee on Finance.

By Mr. DURBIN:

S. 3173. A bill to amend title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employees, and for other purposes; to the Committee on Governmental Affairs.

By Mr. GRASSLEY (for himself, Mr. LEAHY, Mr. FEINGOLD, and Ms. LANDRIEU):

S. 3174. A bill to permanently reenact chapter 12 of title 11, United States Code, and for other purposes; to the Committee on the Judiciary.

By Mr. SANTORUM:

S. 3175. A bill to amend the Internal Revenue Code of 1986 to reduce the tax on beer to its pre-1991 level; to the Committee on Finance.

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 3176. A bill to amend the Internal Revenue Code of 1986 to allow employers in renewal communities to qualify for the renewal community employment credit by employing residents of certain other renewal communities; to the Committee on Finance.

By Mr. HOLLINGS:

S. 3177. A bill to authorize appropriations for the programs of the Department of Commerce's National Institute of Standards and Technology, to amend the National Institute of Standards and Technology Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN:

S. 3178. A bill to amend the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986 to require warning labels for tobacco products; to the Committee on Commerce, Science, and Transportation.

By Mr. DURBIN:

S. 3179. A bill to amend the Public Health Service Act to provide health care coverage for qualified caregivers; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HOLLINGS (for himself, Mr. SCHUMER, and Mrs. CLINTON):

S. Res. 359. A resolution recognizing the importance and accomplishments of the Thurgood Marshall Scholarship Fund; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DODD (for himself, Mrs. FEINSTEIN, Mr. MILLER, Mr. CLELAND, Mr. DASCHLE, Mr. REID, Mrs. CLINTON, and Mr. AKAKA):

S. Res. 360. A resolution congratulating former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize, and commending him for his lifetime of dedication to peace; considered and agreed to.

By Mr. BINGAMAN (for himself and Mr. MURKOWSKI):

S. Con. Res. 159. A concurrent resolution to correct the enrollment of S. 1843; considered and agreed to.

ADDITIONAL COSPONSORS

S. 145

At the request of Mr. THURMOND, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 145, a bill to amend title 10, United States Code, to increase to parity with other surviving spouses the basic annuity that is provided under the uniformed services Survivor Benefit Plan for surviving spouses who are at least 62 years of age, and for other purposes.

S. 776

At the request of Mr. BINGAMAN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 776, a bill to amend title XIX of the Social Security Act to increase the floor for treatment as an extremely low DSH State to 3 percent in fiscal year 2002.

S. 917

At the request of Ms. COLLINS, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 917, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 1203

At the request of Mr. SCHUMER, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1203, a bill to amend title 38, United States Code, to provide housing loan benefits for the purchase of residential cooperative apartment units.

S. 1221

At the request of Mr. SPECTER, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1221, a bill to amend title 38, United States Code, to establish an additional basis for establishing the inability of veterans to defray expenses of necessary medical care, and for other purposes.

S. 1375

At the request of Mr. DORGAN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1375, a bill to amend the Internal Revenue Code of 1986 to allow tax-free distributions from individual retirement accounts for charitable purposes.

S. 1506

At the request of Mr. DAYTON, his name was added as a cosponsor of S. 1506, a bill to amend title 10, United States Code, to repeal the requirement for reduction of SBP survivor annuities by dependency and indemnity compensation.

S. 1860

At the request of Mr. DORGAN, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1860, a bill to reward the hard work and risk of individuals who choose to live in and help preserve America's small, rural towns, and for other purposes.

S. 2562

At the request of Mr. REID, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 2562, a bill to expand research regarding inflammatory bowel disease, and for other purposes.

S. 2933

At the request of Mr. BREAUX, the names of the Senator from Iowa (Mr. HARKIN), the Senator from Georgia (Mr. MILLER), and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 2933, a bill to promote elder justice, and for other purposes.

S. 3004

At the request of Mr. HELMS, the name of the Senator from South Carolina (Mr. THURMOND) was added as a cosponsor of S. 3004, a bill to eliminate the Federal quota and price support programs for certain tobacco, to compensate quota owners and holders for the loss of tobacco quota asset value, to establish a tobacco community reinvestment program, and for other purposes.

S. 3074

At the request of Mr. BIDEN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 3074, a bill to provide bankruptcy judgeships.

S. 3094

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 3094, a bill to amend the Farm Security and Rural Investment Act of 2002 to clarify the rates applicable to marketing assistance loans and loan deficiency payments for other oilseeds, dry peas, lentils, and small chickpeas.

S. 3114

At the request of Ms. SNOWE, her name was added as a cosponsor of S. 3114, a bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S. 3125

At the request of Mr. BROWNBACK, the name of the Senator from Arkansas (Mr. HUTCHINSON) was added as a cosponsor of S. 3125, a bill to designate "God Bless America" as the national song of the United States.

S. 3125

At the request of Mr. NELSON of Florida, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 3125, supra.

S. RES. 339

At the request of Mrs. MURRAY, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. Res. 339, a resolution designating November 2002, as "National Runaway Prevention Month."

S. CON. RES. 3

At the request of Mr. FEINGOLD, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. Con. Res. 3, a concurrent resolution expressing the sense of Congress that a commemorative postage stamp should be issued in honor of the U.S.S. *Wisconsin* and all those who served aboard her.

S. CON. RES. 157

At the request of Mrs. LINCOLN, the name of the Senator from Georgia (Mr. MILLER) was added as a cosponsor of S. Con. Res. 157, a concurrent resolution expressing the sense of Congress that United States Diplomatic missions should provide the full and complete protection of the United States to certain citizens of the United States living abroad.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. KYL:

S. 3. A bill to repeal the sunset of the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, and for other purposes; to the Committee on Finance.

Mr. KYL. Mr. President, Investors are the backbone of the U.S. economic system. They provide the capital that entrepreneurs use to start and grow businesses. Investors invest in everything from corporations like General Electric to the local Mom and Pop convenience store. These are the businesses that employ our American workers and compete against other businesses throughout the United States and the world. It is investor capital that fuels the most dynamic workings of our economy.

Too often, our Federal Government has taken the American investor for granted. Even worse, our Federal Government has singled him out for adverse treatment by placing significant impediments in his path.

Congress needs to refocus our government's attention on helping our investors as well as making our U.S. businesses more attractive entities in which to invest.

Today, I am introducing legislation, the "Contract with Investors," which incorporates a number of proposals to foster a better investment environment.

In order to satisfy an arcane Senate budget rule, the 2001 tax-relief law's provisions will expire in 2011. Making this bipartisan tax relief permanent will eliminate a large source of investor uncertainty that currently exists in the marketplace. Businesses are having a hard time planning with the Tax Code potentially reverting back to old tax laws. Businesses, and the investors who own them, need certainty and a stable environment in which to prosper. Making last year's tax provisions permanent will go a long way towards providing that certainty.

The second thing my bill does is accelerate last year's marginal income tax rate reductions. Instead of reducing the tax brackets in 2004 and 2006, as currently scheduled, my bill will move the 2004 rate reductions up to 2003 and the 2006 rate reductions up to 2004. Marginal tax-rate reductions benefit all income tax-paying Americans. Many investors invest in businesses that are sole proprietorships, i.e. nonincorporated business entities. Owners of these businesses pay the highest individual marginal income tax rate; under my bill the highest rate they would pay in 2004 and beyond would be 35 percent, the same rate as corporations.

The third provision would accelerate the repeal of the estate, or more accurately "death", tax. A December 1998 report by the Joint Economic Committee concluded that the existence of the death tax during the last century has reduced the stock of investors' capital in the economy by nearly half a trillion dollars. The Joint Committee estimates that, by repealing the death tax and putting those resources to better use, as many as 240,000 jobs could be created over seven years, and Americans would have an additional $24.4 billion in disposable personal income.

Last year, Dr. Wilbur Steger, President of Consad Research Corporation and a professor at Carnegie Mellon University testified before the Senate Finance Committee that an immediate death-tax repeal would provide a $40 billion automatic stimulus to the economy. This is based on estimates of the amount of net unrealized capital gains that would be unlocked by such a repeal. Many Americans choose to hold onto their assets until death in order to obtain for their heirs a "step-up" in basis. Eliminating the death tax and a limited step-up in basis will provide an incentive for Americans to sell assets before death, hence the term "unlocking."

Under current law, the death tax will go down to zero in 2010 but reappear thereafter, at potent 2001 levels, thus adding significant complexity to future death-tax planning, increasing costs that are a drag on productivity, and retreating from a principled rejection of a frankly immoral tax. This is unsatisfactory. Until the death tax is repealed, family businesses, farms and ranches must still pay for expensive life-insurance policies, death-tax planners, and tax attorneys. These expenses total more than $12 billion a year, according to Consad Research Corporation. A more efficient utilization of these resources would result in an immediate stimulus for the economy. More workers will be hired, more capital assets purchased and more productive goods made if we accelerate the elimination of the death tax and make it permanent. In short, Congress should hurry up and bury the death tax for all time to enable family businesses, farms, and ranches to begin investing those billions of wasted resources in the economy, creating jobs and expanding services, providing a powerful stimulus for their long-term survival. My bill would permanently repeal the death tax in 2005, thus allowing all Americans 2 years to plan for a future in which the federal government no longer taxes the death of its citizens.

The fourth provision in my Contract with Investors addresses the taxation of capital gains. My bill would reduce it to 10 percent. The capital-gains tax is a form of double-taxation that penalizes risk-taking and entrepreneurship. As many economists, including Federal Reserve Chairman Alan Greenspan, note, the capital-gains tax should not exist. Short of eliminating this tax, Congress must enact a large, and permanent, reduction in the capital-gains tax rate in order to stimulate new investment and more productive use of resources for both the short-term and the long-term health of our economy.

According to a recent study by the American Council for Capital Formation, American taxpayers face capital-gain tax rates that are 35 percent higher than those paid by the average investor in other countries. In addition, the United States is one of a small number of countries that requires a holding period for an investment to qualify for a lower capital-gain treatment.

In the last decade, individual capital-gains rate reductions and shortening of the holding period has boosted U.S. economic growth. Reducing the cost of capital will promote the promote the type of productive business investment that fosters growth in output and high-paying jobs. Lowering rates will aid entrepreneurs in their effort to promote technological advances in products and services that people want and need.

And let's not forget about our national savings. Reducing capital-gains taxes means fewer taxes on Americans who choose to save for their future. What our economy needs is to remove impediments for savings and capital formation. When Americans choose to save for their retirement security and other financial goals, they are investing in the United States. We need to make that choice more attractive so that Americans choose to invest more in the United States. Reducing the capital-gains taxes will help achieve this goal.

My bill will also modernize the capital-loss provisions by increasing the amount of capital loss an individual may deduct against ordinary income to $10,000 from the current-law $3,000, and indexing it for future inflation. This $3,000 limit was arbitrarily set over 25 years ago and would have grown to $10,000 had it been indexed when it was enacted. Due to this lack of indexation, many investors are forced to hold on to unproductive investments. Updating this $3,000 limit will permit investors to sell these unproductive assets and invest the proceeds in more productive assets.

Next, my bill will provide additional incentives for Americans to increase the amounts and periods of time in which they invest for their retirement security. Increasing the annual, maximum IRA contribution from $3,000 to $5,000 and the annual, maximum 401(k) plan contribution from $11,000 to $15,000 would enable American workers to save more for their future by investing in businesses. Increasing from 70.5 to 75 the age at which those tax-deferred retirement-savings accounts must begin making minimum required annual withdrawals will allow American seniors who are approaching this arbitrary age to choose whether to maintain their investments. They will not longer be forced to divest.

The next provision in my bill would eliminate the double taxation of corporate profits. Currently, businesses pay income taxes on their profits. Their investors are forced to pay a second income tax on the amounts that corporations distribute to them in the form of dividends. The national Center for Policy Analysis has calculated that the combined tax rate on corporate profits is approximately 60 percent.

My bill would remedy this problem by exempting from income tax the dividends received by individuals from publicly traded C corporations. Eliminating this taxation will produce higher returns on dividend-yielding equity investments. Companies will have an incentive to make money and give it to the investor/shareholders in order to increase the value of the stock. Investors and businesses will benefit from this proposal.

Finally, I have included five provisions under Sense of the Senate language. I believe that the Senate must act on these issues and I stand ready and willing to assist my fellow Senators in solving these problems.

First, Congress should pass legislation to safeguard American workers' pension and retirement accounts. This year, the Finance Committee unanimously passed out of committee such a bill. The Senate and the House of Representatives should act quickly to pass similar legislation as soon as possible.

Second, Congress should modernize this country's international tax provisions in order to permit U.S. companies to better compete internationally. Our Tax Code's provisions, particularly the international tax, are placing our U.S. companies and the investors who own them at a distinct competitive disadvantage. Congress must modernize these provisions and move towards ending the current practice of taxing profits earned outside our country's boundaries.

Third, Congress must take the trouble to purge redundant, outdated, and unscientific regulatory burdens on investors and U.S. companies. Congress is quick to pass onerous new laws but slow to repeal them. This is an abdication of our responsibilities as legislators. Before placing new burdens on investors and businesses, Congress should be required to perform a cost-benefit analysis as well as instituting performance criteria to monitor and evaluate these new burdens on U.S. businesses and investors.

Fourth, Congress should enact meaningful tort reform as soon as possible.

Finally, Congress should enact meaningful tax reform that simplifies the Federal Tax Code and reduces the cost-recovery periods that businesses are forced to use to recover the costs of capital.

Now is the time for bold action. A "Contract with Investors" is long overdue. I have laid out my principles. I look forward to future hearings and discussions with my colleagues. It's time to get working.

By Mr. GRAMM (for himself and Mr. HAGEL):

S. 5. A bill to strengthen and permanently preserve social security through the power of investment and compound interest without benefit reductions or tax increases, and for other purposes; to the Committee on Finance.

Mr. HAGEL. Mr. President, I rise today to join the senior Senator from Texas in introducing the Social Security Preservation Act. He has worked a decade on this proposal, and I want to ensure that, as he leaves this distinguished body in a few short weeks, his time and effort will not have been wasted, for the stakes are far too high.

Everyone knows that America's demographics are rapidly changing. In just nine short years, in 2011, the first of my generation of baby boomers will retire. In the 20 years thereafter, the number of Americans aged 65 and older will grow four times as fast as the number of working Americans. Under the current system, where no real investments are ever made and current benefits are paid entirely by taxing current workers, how do we expect to pay for this shift in demographics? In 2015, Social Security will be distributing more in benefits than it collects in payroll taxes, and by 2038, the system will be completely bankrupt. Congress will be forced to either raise taxes on the next generation of workers by nearly 40 percent or cut the benefits of retirees by nearly 30 percent. If we continue to defer the difficult decisions on how we fix the system, that will be the position we will find ourselves in. If we begin now, however, we can stabilize and enhance the system before it is scheduled to go broke. But we must start now.

In his message to Congress on Social Security in 1935, Franklin Delano Roosevelt called for a Social Security system of "voluntary contributory annuities by which individual initiative can increase the annual amounts received in old age." This bill embraces that vision, and will strengthen and permanently preserve Social Security by actually making investments. All workers will have the option of investing a portion of their wages into accounts that earn a higher rate of return. Upon retirement, these investing workers would use the money in their accounts to purchase an annuity to pay benefits promised under the current system plus a bonus for participating in the new system. They could keep any excess. All workers, both those who invest and those who choose to remain in the current system, would be guaranteed every dollar of their currently promised benefit. No worker would ever experience a cut in benefits or a hike in taxes at any time. And when fully implemented, these changes to Social Security will yield benefits over two times those currently provided to an average worker. And the system's coming insolvency in 2038 would be reversed.

It is time for our Nation to confront Social Security's impending financial crisis. For too long, we have ignored our nation's changing demographics which will result in a crushing burden being placed on our Social Security and Medicare systems if we don't deal with this challenge now. It will demand either higher taxes or reduced benefits later if we continue to defer our responsibilities. For too long, we have feared open and informative debate about reforming the Social Security system, believing that the American people are unwilling to consider the realities that we face. Politicians have been afraid of the political risks in honestly dealing with Social Security. The Congress and the President must face up to their responsibilities in dealing with this challenge. I will reintroduce this legislation to reform the Social Security system at the beginning of the next Congress and look forward to working with my colleagues and President Bush in this effort.

By Mr. DURBIN:

S. 3173. A bill to amend title 5, United States Code, to establish a national health program administered by the Office of Personnel Management to offer Federal employee health benefits plans to individuals who are not Federal employees, and for other purposes; to the Committee on Governmental Affairs.

Mr. DURBIN. Mr. President, today I am introducing legislation to make available to all Americans the same range of private health insurance plans available to Members of Congress and other Federal employees through the Federal Employees Health Benefits Program, FEHBP.

Too many Americans do not have real insurance options. Many individuals lack insurance because no insurer is willing to cover them at a reasonable price. Others work for employers who do not provide health insurance or offer only one insurance provider. This legislation addresses these issues by giving individuals and businesses access to the group purchasing power of FEHBP and the wide range of health plans in that program.

The OPTION Act, Offering People True Insurance Options Nationwide, would expand insurance options by allowing individuals to enroll in private health insurance plans nearly identical to the plans available to federal employees. Though the OPTION program would be separate from the Federal employees program, it would be modeled after FEHBP and would draw from FEHBP's strengths: plan choice, group purchasing savings, comprehensive benefits, and open enrollment periods.

Under this legislation, all FEHBP health plans would be required to offer an OPTION health plan to non-Federal employees with the same range of benefits they offer Federal employees through FEHBP.

OPTION enrollees would be placed in a separate risk pool to prevent any adverse effect on current FEHBP employees, annuitants, and their families. The OPTION Act would not result in any changes to the premiums or benefits of today's FEHBP health plans.

OPTION health plans would not be allowed to impose any preexisting condition exclusions on new OPTION enrollees who have at least one year of health insurance coverage immediately prior to enrollment in an OPTION plan. To prevent people from waiting until they are sick to enroll, health plans would be allowed to exclude coverage for preexisting conditions for up to one year for people without coverage immediately prior to enrollment.

One of the few differences from FEHBP is that OPTION plans would be allowed to vary premiums by age so that younger enrollees would be more likely to enroll. OPTION plans also would be required to offer rebates or lower premiums to encourage and reward longevity of health coverage. These provisions would act as an incentive for people to sign up when they are young and to maintain continuous coverage.

Along with making FEHBP available in the individual market, the OPTION program will allow businesses to tap into the type of group buying power in the federal employees program if they voluntarily choose to participate. To be eligible, a business would have to be willing to pay at least a minimum percentage of premiums, varying from 40 percent to 60 percent depending on the size of the business. Employers would also be offered an incentive to begin enrolling their employees by allowing them to pay as little as 20 percent of the premium for the first year. This innovative employer option would encourage employer health coverage rather than shifting coverage away from the private sector. I want to emphasize that employer participation would be entirely voluntary.

Under the OPTION Act, premiums would not be government-subsidized. Instead, enrollees and those employers who choose to participate would be responsible for the cost of the premiums.

The OPTION program would be administered by the Office of Personnel Management, OPM, which administers the FEHBP program, and would generally follow the rules for FEHBP. OPM has developed considerable expertise in negotiating and working with health plans and has shown that it can run a health program well at a minimal cost. We can build on OPM's expertise to extend the same health insurance options to all Americans.

Finally, once it is up and running, this program would pay for itself. Administrative costs would be covered from a portion of the OPTION premiums. Those who benefit from the program would pay for its overhead costs.

This legislation could open the door for many Americans to obtain good health insurance coverage. Health insurance premiums in today's market can be especially high, both for individuals and for small businesses buying insurance on their own. This legislation will reduce the cost of insurance, and as a result will help to reduce the number of uninsured Americans. It will also expand insurance options. I encourage my colleagues to support this very important legislation.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3173

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Offering People True Insurance Options Nationwide Act of 2002".

SEC. 2. OPTION HEALTH INSURANCE.

Subpart G of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 90A—HEALTH INSURANCE FOR NON-FEDERAL EMPLOYEES

"Sec.
"9051. Definitions.
"9052. Health insurance for non-Federal employees.
"9053. Contract requirement.
"9054. Eligibility.
"9055. Alternative conditions to Federal employee plans.
"9056. Coordination with social security benefits.
"9057. Non-Federal employer participation.

"§ 9051. Definitions

"In this chapter—

"(1) the terms defined under section 8901 shall have the meanings given such terms under that section; and

"(2) the term 'Office' means the Office of Personnel Management.

"§ 9052. Health insurance for non-Federal employees

"(a) The Office of Personnel Management shall administer a health insurance program for non-Federal employees in accordance with this chapter.

"(b) Except as provided under this chapter, the Office shall prescribe regulations to apply the provisions of chapter 89 to the greatest extent practicable to eligible individuals covered under this chapter.

"(c) In no event shall the enactment of this chapter result in—

"(1) any increase in the level of individual or Government contributions required under chapter 89, including copayments or deductibles;

"(2) any decrease in the types of benefits offered under chapter 89; or

"(3) any other change that would adversely affect the coverage afforded under chapter 89 to employees and annuitants and members of family under that chapter.

"(d) The Office shall develop methods to facilitate enrollment under this chapter, including the use of the Internet.

"(e) The Office may enter into contracts for the performance of appropriate administrative functions under this chapter.

"§ 9053. Contract requirement

"(a) Each contract entered into under section 8902 shall require a carrier to offer to eligible individuals under this chapter, throughout each term for which the contract remains effective, the same benefits (subject to the same maximums, limitations, exclusions, and other similar terms or conditions) as would be offered under such contract or applicable health benefits plan to employees, annuitants, and members of family.

"(b)(1) The Office may waive the requirements of this section, if the Office determines, based on a petition submitted by a carrier that—

"(A) the carrier is unable to offer the applicable health benefits plan because of a limitation in the capacity of the plan to deliver services or assure financial solvency;

"(B) the applicable health benefits plan is not sponsored by a carrier licensed under applicable State law; or

"(C) bona fide enrollment restrictions make the application of this chapter inappropriate, including restrictions common to plans which are limited to individuals having a past or current employment relationship with a particular agency or other authority of the Government.

"(2) The Office may require a petition under this subsection to include—

"(A) a description of the efforts the carrier proposes to take in order to offer the applicable health benefits plan under this chapter; and

“(B) the proposed date for offering such a health benefits plan.

“(3) A waiver under this subsection may be for any period determined by the Office. The Office may grant subsequent waivers under this section.

“§9054. Eligibility

“An individual shall be eligible to enroll in a plan under this chapter, unless the individual is enrolled or eligible to enroll in a plan under chapter 89.

“§9055. Alternative conditions to Federal employee plans

“(a) For purposes of enrollment in a health benefits plan under this chapter, an individual who had coverage under a health insurance plan and is not a qualified beneficiary as defined under section 4980B(g)(1) of the Internal Revenue Code of 1986 shall be treated in a similar manner as an individual who begins employment as an employee under chapter 89.

“(b) In the administration of this chapter, covered individuals under this chapter shall be in a risk pool separate from covered individuals under chapter 89.

“(c)(1) Each contract under this chapter may include a preexisting condition exclusion as defined under section 9801(b)(1) of the Internal Revenue Code of 1986.

“(2)(A) The preexisting condition exclusion under this subsection shall provide for coverage of a preexisting condition to begin not more than 1 year after the date of coverage of an individual under a health benefits plan, reduced by 1 month for each month that individual was covered under a health insurance plan immediately preceding the date the individual submitted an application for coverage under this chapter.

“(B) For purposes of this paragraph, a lapse in coverage of not more than 63 days immediately preceding the date of the submission of an application for coverage shall not be considered a lapse in continuous coverage.

“(d)(1) Rates charged and premiums paid for a health benefits plan under this chapter—

“(A) may be adjusted and differ from such rates charged and premiums paid for the same health benefits plan offered under chapter 89;

“(B) shall be negotiated in the same manner as negotiated under chapter 89; and

“(C) shall be adjusted to cover the administrative costs of this chapter.

“(2) In determining rates and premiums under this chapter—

“(A) the age of covered individuals may be considered; and

“(B) rebates or lower rates and premiums shall be set to encourage longevity of coverage.

“(e) No Government contribution shall be made for any covered individual under this chapter.

“(f) If an individual who is enrolled in a health benefits plan under this chapter terminates the enrollment, the individual shall not be eligible for reenrollment until the first open enrollment period following 6 months after the date of such termination.

“§9056. Coordination with social security benefits

“Benefits under this chapter shall, with respect to an individual who is entitled to benefits under part A of title XVIII of the Social Security Act, be offered (for use in coordination with those social security benefits) to the same extent and in the same manner as if coverage were under chapter 89.

“§9057. Non-Federal employer participation

“(a) In this section the term—

“(1) ‘employee’, notwithstanding section 9051, means an employee of a non-Federal employer;

“(2) ‘non-Federal employer’ means an employer that is not the Federal Government; and

“(3) ‘total premium amount’ means the total premiums for individual coverage for the health benefits plan under which the employee is enrolled, regardless of whether the employee is enrolled as an individual or for self and family.

“(b)(1) The Office shall prescribe regulations under which non-Federal employers may participate under this chapter, including—

“(A) the offering of health benefits plans under this chapter to employees through participating non-Federal employers; and

“(B) a requirement for participating non-Federal employer contributions to the payment of premiums for employees who enroll in a health benefits plan under this chapter.

“(2) A participating non-Federal employer shall pay an employer contribution for the premiums of an employee or other applicable covered individual as follows:

“(A) A non-Federal employer that employs not more than 2 employees shall not be required to pay an employer contribution.

“(B) A non-Federal employer that employs more than 2 and not more than 25 employees shall pay not less than 40 percent of the total premium amount.

“(C) A non-Federal employer that employs more than 25 and not more than 50 employees shall pay not less than 50 percent of the total premium amount.

“(D) A non-Federal employer that employs more than 50 employees shall pay not less than 60 percent of the total premium amount.

“(3) Notwithstanding paragraph (2) (B), (C), or (D), a non-Federal employer that employs more than 2 employees shall pay not less than 20 percent of the total premium amount with respect to the first year in which that employer participates under this chapter.

“(c)(1) A participating non-Federal employer shall ensure that each eligible full-time employee may enroll in a plan under this chapter.

“(2)(A) A participating non-Federal employer may not offer a health insurance plan to employees (other than a health benefits plan under this chapter) unless such health insurance plan is offered continuously on and after the date of enactment of this chapter.

“(B) If a participating non-Federal employer offers coverage under this chapter and under another plan as provided under subparagraph (A), the non-Federal employer—

“(i) shall treat all employees in the same manner with respect to such offerings; and

“(ii) may not use financial incentives or disincentives to encourage an employee or class of employees to enroll in the health insurance plan not offered under this chapter.”.

SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CONTRACT REQUIREMENT UNDER CHAPTER 89.—Section 8902 of title 5, United States Code, is amended by adding after subsection (o) the following:

“(p) Each contract under this chapter shall include a provision that the carrier shall offer any health benefits plan as required under chapter 90A.”.

(b) TABLE OF CHAPTERS.—The table of chapters for part III of title 5, United States Code, is amended by inserting after the item relating to chapter 90 the following:

“90A. Health Insurance for Non-Federal Employees .... 9051”.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of enactment of this Act and shall apply to contracts that take effect with respect to calendar year 2003 and each calendar year thereafter.

By Ms. LANDRIEU (for herself and Mr. BREAUX):

S. 3176. A bill to amend the Internal Revenue Code of 1986 to allow employers in renewal communities to qualify for the renewal community employment credit by employing residents of certain other renewal communities; to the Committee on Finance.

Ms. LANDRIEU. Mr. President, today I am introducing a modification of legislation I introduced earlier in the 107th Congress relating to the Renewal Community program. The Renewal Community program has been tremendously valuable in promoting job growth and economic development in the poorest areas of the country.

There are 40 urban and rural renewal community areas designated under the Community Renewal Tax Relief Act of 2000. The poverty rate in renewal communities is at least 20 percent, and the unemployment rate is one-and-a-half times the national level. The households in the renewal communities have incomes that are 80 percent below the median income of households in their local jurisdictions. Four areas of Louisiana received renewal community designations.

Businesses in a renewal community can receive a variety of tax benefits for hiring residents of the same renewal community. These tax benefits include A $1,500 Federal credit for hiring workers from the renewal community, as well as a $2,400 work opportunity credit for hiring employees from groups with traditionally high unemployment rates. There is one important qualification in the program that poses a peculiar problem in Louisiana, as well as a few other parts of the country: a business can only take advantage of these credits if it hires residents from the same renewal community that the business is in.

Why is this a problem for Louisiana? Because, some of our renewal communities border each other. Under the rules of the program, the business cannot receive the credit for hiring a resident of a different renewal community. In Louisiana, the closest available job for someone might be at a business two or three miles away, but if that business is not in the same renewal community as the worker, the business cannot get the tax credit.

A good example of what I am talking about is in the northern part of Louisiana, home of the North Louisiana Renewal Community and the Ouachita Renewal Community. The city of Monroe is located at the heart of the

Ouachita Renewal Community and it serves as the economic hub for Northeast Louisiana. All around Monroe and the Ouachita Renewal Community there are parishes which fall in the North Louisiana Renewal Community, Morehouse Parish to the north, Richland Parish to the east, Caldwell Parish to the south, and Lincoln Parish to the west. People from these parishes will naturally look in Monroe for jobs. But under the rule, businesses in Monroe cannot take advantage of the tax credits even if they hire wokers from only a short distance away.

My legislation, the Renewal Community Tax Benefit Improvement Act of 2002, will allow the employers in one renewal community to hire employees from an adjacent or nearby renewal community area and still receive the tax benefits granted through the act. The bill I am introducing today is a slightly more narrow version of my earlier bill to bring needed flexibility to the renewal community program. I am pleased that my colleague from Louisiana, Senator BREAUX, is an original cosponsor of this bill.

This legislation is a small change that will make a big difference to the people of Louisiana. I urge my colleagues to support this bill.

By Mr. HOLLINGS:

S. 3177. A bill to authorize appropriations for the programs of the Department of Commerce's National Institute of Standards and Technology, to amend the National Institute of Standards and Technology Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, today I am pleased to introduce the National Institutes of Standards and Technology, NIST, Authorization Act. The bill is a routine authorization of appropriations for NIST. It includes some provisions to change the Institute's Advanced Technology Program that were the subject of hearings in the Commerce Committee earlier this year. In addition, the bill includes several technical changes to the NIST Act which the agency has requested.

NIST is really a hidden treasure. Twice in the past five years, NIST Scientists have shared in the Physics Nobel Prize. Whether they are investigating the collapse of the World Trade Center, making small manufacturers better, sponsoring innovative research, or improving timekeeping, the people of this little-noticed agency continue to do amazing work, and I commend them.

Nonetheless, we continue to be embroiled in an annual tug-of-war on funding for the Advanced Technology Program, known as ATP. I am encouraged that Secretary Evans and Deputy Secretary Bodman want to stabilize this program. I am introducing this bill to help them in that cause by including several of the Department's suggestions to improve the ATP.

The benefits of the ATP are well-documented. The program has been studied thoroughly from individual case studies, to comprehensive examinations like the 2001 study by the National Academy of Sciences' National Research Council. The results are clear. ATP is stimulating collaboration, accelerating the development of high-risk technologies, and paying off for the nation.

The Commerce Department has proposed several changes to the ATP. The bill includes provisions to allow universities to lead ATP projects and to have interest in the intellectual property developed under those projects, as well as provisions to further clarify that projects are to remove scientific and technical barriers and to evaluate ATP's review process.

In addition, the bill would clarify that the program should operate free of political influence by ensuring that final project decisions are made by career NIST officials, as they have been since the program's inception.

However, the Administration's proposal for recoupment of up to 5 times the original amount of funding is not acceptable and is not included. The record on recoupment was made at our hearing in April of this year. It is an approach which the program has tried and failed. More importantly, recoupment discourages companies from participating in the program, imposing overwhelming accounting burdens that companies may be unable to fulfill.

In the end, the bill hopes to build on ATP's tremendous successes. Since its inception in 1989 this industry-led, competitive, and cost-shared program has helped the U.S. develop the next generation of breakthrough technologies in advance of its foreign competitors.

The Commerce Committee heard testimony from Scott Donnelly of GE. His company, with ATP funding, developed a new method to produce the X-ray panels that are the heart of a new digital mammography system. This system is giving women and their doctors access to better, cheaper digital mammograms.

A March 1999 study found that future returns from just three of the completed ATP projects, improving automobile manufacturing processes, reducing the cost of blood and immune cell production, and using a new material for prosthesis devices, would pay for all projects funded to date by the ATP.

The bill also provides full funding for the Manufacturing Extension Partnership, MEP, Centers which the Administration has proposed to cut. Ironically, these MEP Centers help fulfill one of the top priorities stated in the Administration's budget: "revitalize the economy and create jobs." MEP helps small manufacturers stay competitive and, in 2000, helped these businesses attain $2.3 billion in increased or retained sales, save costs of $480 million, and create or retain more than 25,000 jobs.

While the time remaining in this session is short, I want to introduce this NIST Authorization bill to stimulate the productive dialog that we have had with interested members and the Administration on the programs of NIST. I look forward to continuing this work during the 108th Congress.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 359—RECOGNIZING THE IMPORTANCE AND ACCOMPLISHMENTS OF THE THURGOOD MARSHALL SCHOLARSHIP FUND

Mr. HOLLINGS (for himself, Mr. SCHUMER, and Mrs. CLINTON) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 359

Whereas in 1987, the Thurgood Marshall Scholarship Fund was founded, under the leadership of Dr. N. Joyce Payne, in conjunction with its founding corporate sponsors, Miller Brewing Corporation and the National Basketball Association;

Whereas since its inception, the Thurgood Marshall Scholarship Fund has provided more than $20,000,000 in scholarships and programmatic support to students attending the 45 historically Black public colleges and universities (including 5 historically Black law schools) that make up the fund's membership;

Whereas the Thurgood Marshall Scholarship Fund is the only national organization to provide merit scholarships and programmatic and capacity-building support to 45 historically Black public colleges and universities;

Whereas the Thurgood Marshall Scholarship Fund was created to bridge the technological, financial, and programmatic gaps between historically Black public and private colleges and universities;

Whereas the 45 member institutions of the Thurgood Marshall Scholarship Fund are a critical source of public higher education for African Americans, with more than 215,000 students at the institutions;

Whereas more than 77 percent of all students enrolled in historically Black colleges and universities attend member institutions of the Thurgood Marshall Scholarship Fund;

Whereas the legacy and commitment to education of the Thurgood Marshall Scholarship Fund centers on a foundation of preparing a new generation of leaders;

Whereas the Thurgood Marshall Scholarship Fund continues to provide students quality academic instruction in a positive learning environment while promoting equal opportunity in higher education; and

Whereas October 2002 marks the 15th anniversary of the Thurgood Marshall Scholarship Fund: Now, therefore, be it

Resolved, That the Senate—

(1) fully supports the goals and ideals of the Thurgood Marshall Scholarship Fund; and

(2) salutes and acknowledges the Thurgood Marshall Scholarship Fund and its vigorous and persistent efforts in support of equal opportunity in higher education.

SENATE RESOLUTION 360—CONGRATULATING FORMER PRESIDENT JIMMY CARTER FOR BEING AWARDED THE 2002 NOBEL PEACE PRIZE, AND COMMENDING HIM FOR HIS LIFETIME OF DEDICATION TO PEACE

Mr. DODD (for himself, Mrs. FEINSTEIN, Mr. MILLER, Mr. CLELAND, Mr. DASCHLE, Mr. REID, Mrs. CLINTON, and Mr. AKAKA) submitted the following resolution; which was considered and agreed to:

S. RES. 360

Whereas in 1978, President Carter personally negotiated with Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin to reach the Camp David Accords, the cornerstone of all subsequent peace efforts in the Middle East;

Whereas President Carter completed negotiations on the Strategic Arms Limitation Talks II (SALT II) and continued to make strategic arms control a focus of United States security policy;

Whereas President Carter emphasized the importance of human rights as a key element of United States foreign policy;

Whereas former President Carter and his wife Rosalynn established the Carter Center in 1982;

Whereas the Carter Center has taken an active and vital role in world affairs, always seeking to improve human rights, promote democracy, resolve conflicts, and enhance the lives of the people of the world;

Whereas former President Carter has made countless trips abroad to promote peace, democracy, and human rights, including visits to East Timor, North Korea, Cuba, Haiti, Nicaragua, and Mexico, among many others; and

Whereas former President Carter has made the promotion of peace, democracy, and human rights his life's work: Now, therefore be it

Resolved, That the Senate recognizes and congratulates former President Jimmy Carter for being awarded the 2002 Nobel Peace Prize and commends him for his tireless work for and dedication to peace.

SENATE CONCURRENT RESOLUTION 159—TO CORRECT THE ENROLLMENT OF S. 1843

Mr. BINGAMAN (for himself and Mr. MURKOWSKI) submitted the following concurrent resolution, which was considered and agreed to:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 1843) To extend certain hydro-electric licenses in the State of Alaska the Secretary of the Senate is hereby authorized and directed, in the enrollment of the said bill, to make the following corrections, namely:

In subsection (c), delete "3 consecutive 2-year time periods." and insert "one 2-year time period.".

AMENDMENTS SUBMITTED & PROPOSED

SA 4970. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 695, to establish the Oil Region National Heritage Area.

SA 4971. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 941, to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes.

SA 4972. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 1894, to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes.

SA 4973. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 980, an act to establish the Moccasin Bend National Archeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Military Park.

SA 4974. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 37, to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails.

SA 4975. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 198, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

SA 4976. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2670, to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems.

SA 4977. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2222, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

SA 4978. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

TEXT OF AMENDMENTS

SA 4970. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 695, to establish the Oil Region National Heritage Area; as follows:

1. On page 44, line 22, strike "Act" and insert "title".

2. On page 45, line 11, strike "Act:" and insert "title:"

3. Beginning on page 99, line 13, insert the following:

TITLE IX—CROSSROADS OF THE AMERICAN REVOLUTION NATIONAL HERITAGE AREA

SEC. 901. SHORT TITLE.

This title may be cited as the "Crossroads of the American Revolution National Heritage Area Act of 2002".

SEC. 902. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the State of New Jersey was critically important during the American Revolution because of the strategic location of the State between the British armies headquartered in New York City, New York, and the Continental Congress in the city of Philadelphia, Pennsylvania;

(2) General George Washington spent almost half of the period of the American Revolution personally commanding troops of the Continental Army in the State of New Jersey, including two severe winters spent in encampments in the area that is now Morristown National Historical Park, a unit of the National Park System;

(3) it was during the ten crucial days of the American Revolution between December 25, 1776, and January 3, 1777, that General Washington, after retreating across the State of New Jersey from the State of New York to the State of Pennsylvania in the face of total defeat, recrossed the Delaware River on the night of December 25, 1776, and went on to win crucial battles at Trenton and Princeton in the State of New Jersey;

(4) Thomas Paine, who accompanied the troops during the retreat, described the events during those days as "the times that try men's souls";

(5) the sites of 296 military engagements are located in the State of New Jersey, including—

(A) several important battles of the American Revolution that were significant to the outcome of the American Revolution and the history of the United States; and

(B) several national historic landmarks, including Washington's Crossing, the Old Trenton Barracks, and Princeton, Monmouth and Red Bank Battlefields;

(6) additional national historic landmarks in the State of New Jersey include the homes of—

(A) Richard Stockton, Joseph Hewes, John Witherspoon, and Francis Hopkinson, signers of the Declaration of Independence;

(B) Elias Boudinout, President of the Continental Congress; and

(C) William Livingston, patriot and Governor of the State of New Jersey from 1776 to 1790;

(7) portions of the landscapes important to the strategies of the British and Continental armies, including waterways, mountains, farms, wetlands, villages, and roadways—

(A) retain the integrity of the period of the American Revolution; and

(B) offer outstanding opportunities for conservation, education, and recreation;

(8) the National Register of Historic Places lists 251 buildings and sites in the National Park Service study area for the Crossroads of the American Revolution that are associated with the period of the American Revolution;

(9) civilian populations residing in the State of New Jersey during the American Revolution suffered extreme hardships because of the continuous conflict in the State and marauding contingents of loyalist Tories and rebel sympathizers;

(10) because of the important role that the State of New Jersey played in the successful outcome of the American Revolution, there is a Federal interest in developing a regional framework to assist the State of New Jersey, local governments and organizations, and private citizens in—

(A) preserving and protecting cultural, historic, and natural resources of the period; and

(B) bringing recognition to those resources for the educational and recreational benefit of the present and future generations of citizens of the United States; and

(11) the National Park Service has conducted a national heritage area feasibility study in the State of New Jersey that demonstrates that there is a sufficient assemblage of nationally distinctive cultural, historic, and natural resources necessary to establish the Crossroads of the American Revolution National Heritage Area.

(b) Purposes.—The purposes of this title are—

(1) to assist communities, organizations, and citizens in the State of New Jersey in preserving the special historic identity of the State and the importance of the State to the United States;

(2) to foster a close working relationship among all levels of government, the private sector, and local communities in the State;

(3) to provide for the management, preservation, protection, and interpretation of the cultural, historic, and natural resources of the State for the educational and inspirational benefit of future generations;

(4) to strengthen the value of Morristown National Historical Park as an asset to the State by—

(A) establishing a network of related historic resources, protected landscapes, educational opportunities, and events depicting the landscape of the State of New Jersey during the American Revolution; and

(B) establishing partnerships between Morristown National Historical Park and other public and privately owned resources in the Heritage Area that represent the fulcrum of the American Revolution; and

(5) to authorize Federal financial and technical assistance for the purposes described in paragraphs (1) through (4).

SEC. 903. DEFINITIONS.

In this title:

(1) Association.—The term "Association" means the Crossroads of the American Revolution Association, Inc., a nonprofit corporation in the State.

(2) Heritage area.—The term "Heritage Area" means the Crossroads of the American Revolution National Heritage Area established by section 904(a).

(3) Management entity.—The term "management entity" means the management entity for the Heritage Area designated by section 904(d).

(4) Management plan.—The term "management plan" means the management plan for the Heritage Area developed under section 905.

(5) Map.—The term "map" means the map entitled "Crossroads of the American Revolution National Heritage Area", numbered CRREL 80,000, and dated April 2002.

(6) Secretary.—The term "Secretary" means the Secretary of the Interior.

(7) State.—The term "State" means the State of New Jersey.

SEC. 904. CROSSROADS OF THE AMERICAN REVOLUTION NATIONAL HERITAGE AREA.

(a) Establishment.—There is established in the State the Crossroads of the American Revolution National Heritage Area.

(b) Boundaries.—The Heritage Area shall consist of the land and water within the boundaries of the Heritage Area, as depicted on the map.

(c) Availability of Map.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) Management Entity.—The Association shall be the management entity for the Heritage Area.

SEC. 905. MANAGEMENT PLAN.

(a) In General.—Not later than 3 years after the date on which funds are first made available to carry out this title, the management entity shall submit to the Secretary for approval a management plan for the Heritage Area.

(b) Requirements.—The management plan shall—

(1) include comprehensive policies, strategies, and recommendations for conservation, funding, management, and development of the Heritage Area;

(2) take into consideration existing State, county, and local plans;

(3) describe actions that units of local government, private organizations, and individuals have agreed to take to protect the cultural, historic, and natural resources of the Heritage Area;

(4) identify existing and potential sources of funding for the protection, management, and development of the Heritage Area during the first 5 years of implementation of the management plan; and

(5) include—

(A) an inventory of the cultural, educational, historic, natural, recreational, and scenic resources of the Heritage Area relating to the themes of the Heritage Area that should be restored, managed, or developed;

(B) recommendations of policies and strategies for resource management that result in—

(i) application of appropriate land and water management techniques; and

(ii) development of intergovernmental and interagency cooperative agreements to protect the cultural, educational, historic, natural, recreational, and scenic resources of the Heritage Area;

(C) a program of implementation of the management plan that includes for the first 5 years of implementation—

(i) plans for resource protection, restoration, construction; and

(ii) specific commitments for implementation that have been made by the management entity or any government, organization, or individual;

(D) an analysis of and recommendations for ways in which Federal, State, and local programs, including programs of the National Park Service, may be best coordinated to promote the purposes of this title; and

(E) an interpretive plan for the Heritage Area.

(c) Approval or Disapproval of Management Plan.—

(1) In general.—Not later than 90 days after the date of receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) Criteria.—In determining whether to approve the management plan, the Secretary shall consider whether—

(A) the Board of Directors of the management entity is representative of the diverse interests of the Heritage Area, including—

(i) governments;

(ii) natural and historic resource protection organizations;

(iii) educational institutions;

(iv) businesses; and

(v) recreational organizations;

(B) the management entity provided adequate opportunity for public and governmental involvement in the preparation of the management plan, including public hearings;

(C) the resource protection and interpretation strategies in the management plan would adequately protect the cultural, historic, and natural resources of the Heritage Area; and

(D) the Secretary has received adequate assurances from the appropriate State and local officials whose support is needed to ensure the effective implementation of the State and local aspects of the management plan.

(3) Action following disapproval.—If the Secretary disapproves the management plan under paragraph (1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 60 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(d) Amendments.—

(1) In general.—The Secretary shall approve or disapprove each amendment to the management plan that the Secretary determines may make a substantial change to the management plan.

(2) Use of funds.—Funds made available under this title shall not be expended by the management entity to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

(e) Implementation.—On completion of the 3-year period described in subsection (a), any funding made available under this title shall be made available to the management entity only for implementation of the approved management plan.

SEC. 906. AUTHORITIES, DUTIES, AND PROHIBITIONS APPLICABLE TO THE MANAGEMENT ENTITY.

(a) Authorities.—For purposes of preparing and implementing the management plan, the management entity may use funds made available under this title to—

(1) make grants to, provide technical assistance to, and enter into cooperative agreements with, the State (including a political subdivision thereof), a nonprofit organization, or any other person;

(2) hire and compensate staff, including individuals with expertise in—

(A) cultural, historic, or natural resource protection; or

(B) heritage programming;

(3) obtain funds or services from any source (including a Federal law or program);

(4) contract for goods or services; and

(5) support any other activity

(A) that furthers the purposes of the Heritage Area; and

(B) that is consistent with the management plan.

(b) Duties.—In addition to developing the management plan, the management entity shall

(1) assist units of local government, regional planning organizations, and nonprofit organizations in implementing the approved management plan by—

(A) carrying out programs and projects that recognize, protect, and enhance important resource values in the Heritage Area;

(B) establishing and maintaining interpretive exhibits and programs in the Heritage Area;

(C) developing recreational and educational opportunities in the Heritage Area;

(D) increasing public awareness of and appreciation for cultural, historic, and natural resources of the Heritage Area;

(E) protecting and restoring historic sites and buildings that are located in the Heritage Area and related to the themes of the Heritage Area;

(F) ensuring that clear, consistent, and appropriate signs identifying points of public access and sites of interest are installed throughout the Heritage Area; and

(G) promoting a wide range of partnerships among governments, organizations, and individuals to further the purposes of the Heritage Area;

(2) in preparing and implementing the management plan, consider the interests of diverse units of government, businesses, organizations, and individuals in the Heritage Area;

(3) conduct public meetings at least semiannually regarding the development and implementation of the management plan;

(4) for any fiscal year for which Federal funds are received under this title

(A) submit to the Secretary a report that describes for the year

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which a grant was made;

(B) make available for audit all information relating to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing expenditures of Federal funds by any entity, that the receiving entity make available for audit all records and other information relating to the expenditure of the funds; and

(5) encourage, by appropriate means, economic viability that is consistent with the purposes of the Heritage Area; and

(6) maintain headquarters for the management entity in Mercer County.

(c) Prohibition on the Acquisition of Real Property.

(1) Federal funds.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(2) Other funds.—Notwithstanding paragraph (1), the management entity may acquire real property or an interest in real property using any other source of funding, including other Federal funding.

SEC. 907. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) Technical and Financial Assistance.—

(1) In general.—On the request of the management entity, the Secretary may provide technical and financial assistance to the Heritage Area for the development and implementation of the management plan.

(2) Priority for Assistance.—In providing assistance under paragraph (1), the Secretary shall give priority to actions that assist in—

(A) conserving the significant cultural, historic, natural, and scenic resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(3) Preservation of Historic Properties.—To carry out the purposes of this title, the Secretary may provide assistance to a State or local government or nonprofit organization to provide for the appropriate treatment of

(A) historic objects; or

(B) structures that are listed or eligible for listing on the National Register of Historic Places.

(4) Cooperative agreements.—The Secretary may enter into cooperative agreements with the management entity and other public or private entities to carry out this subsection.

(b) Other Federal Agencies.—Any Federal agency conducting or supporting an activity that directly affects the Heritage Area shall—

(1) consult with the Secretary and the management entity regarding the activity;

(2) cooperate with the Secretary and the management entity in carrying out the activity, and to the maximum extent practicable, coordinate the activity with the carrying out of its duties; and

(3) to the maximum extent practicable, conduct the activity to avoid adverse effects on the Heritage Area.

SEC. 908. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) Cost-sharing Requirement.—The Federal share of the cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 909. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE X NATIONAL AVIATION HERITAGE AREA

SEC. 1001. SHORT TITLE.

This title may be cited as the "National Aviation Heritage Area Act".

SEC. 1002. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) Few technological advances have transformed the world or our Nation's economy, society, culture, and national character as the development of powered flight.

(2) The industrial, cultural, and natural heritage legacies of the aviation and aerospace industry in the State of Ohio are nationally significant.

(3) Dayton, Ohio, and other defined areas where the development of the airplane and aerospace technology established our Nation's leadership in both civil and military aeronautics and astronautics set the foundation for the 20th Century to be an American Century.

(4) Wright-Patterson Air Force Base in Dayton, Ohio, is the birthplace, the home, and an integral part of the future of aerospace.

(5) The economic strength of our Nation is connected integrally to the vitality of the aviation and aerospace industry, which is responsible for an estimated 11,200,000 American jobs.

(6) The industrial and cultural heritage of the aviation and aerospace industry in the State of Ohio includes the social history and living cultural traditions of several generations.

(7) The Department of the Interior is responsible for protecting and interpreting the Nation's cultural and historic resources, and there are significant examples of these resources within Ohio to merit the involvement of the Federal Government to develop programs and projects in cooperation with the Aviation Heritage Foundation, Incorporated, the State of Ohio, and other local and governmental entities to adequately conserve, protect, and interpret this heritage for the educational and recreational benefit of this and future generations of Americans, while providing opportunities for education and revitalization.

(8) Since the enactment of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102-419), partnerships among the Federal, State, and local governments and the private sector have greatly assisted the development and preservation of the historic aviation resources in the Miami Valley.

(9) An aviation heritage area centered in Southwest Ohio is a suitable and feasible management option to increase collaboration, promote heritage tourism, and build on the established partnerships among Ohio's historic aviation resources and related sites.

(10) A critical level of collaboration among the historic aviation resources in Southwest Ohio cannot be achieved without a congressionally established national heritage area and the support of the National Park Service and other Federal agencies which own significant historic aviation-related sites in Ohio.

(11) The Aviation Heritage Foundation, Incorporated, would be an appropriate management entity to oversee the development of the National Aviation Heritage Area.

(12) Five National Park Service and Dayton Aviation Heritage Commission studies and planning documents: "Study of Alternatives: Dayton's Aviation Heritage", "Dayton Aviation Heritage National Historical Park Suitability/Feasibility Study", "Dayton Aviation Heritage General Management Plan", "Dayton Historic Resources Preservation and Development Plan", and Heritage Area Concept Study (in progress), demonstrated that sufficient historical resources exist to establish the National Aviation Heritage Area.

(13) With the advent of the 100th anniversary of the first powered flight in 2003, it is recognized that the preservation of properties nationally significant in the history of aviation is an important goal for the future education of Americans.

(14) Local governments, the State of Ohio, and private sector interests have embraced the heritage area concept and desire to enter into a partnership with the Federal government to preserve, protect, and develop the Heritage Area for public benefit.

(15) The National Aviation Heritage Area would complement and enhance the aviation-related resources within the National Park Service, especially the Dayton Aviation Heritage National Historical Park, Ohio.

(b) Purpose.—The purpose of this title is to establish the Heritage Area to—

(1) encourage and facilitate collaboration among the facilities, sites, organizations, governmental entities, and educational institutions within the Heritage Area to promote heritage tourism and to develop educational and cultural programs for the public;

(2) preserve and interpret for the educational and inspirational benefit of present and future generations the unique and significant contributions to our national heritage of certain historic and cultural lands, structures, facilities, and sites within the National Aviation Heritage Area;

(3) encourage within the National Aviation Heritage Area a broad range of economic opportunities enhancing the quality of life for present and future generations;

(4) provide a management framework to assist the State of Ohio, its political subdivisions, other areas, and private organizations, or combinations thereof, in preparing and implementing an integrated Management Plan to conserve their aviation heritage and in developing policies and programs that will preserve, enhance, and interpret the cultural, historical, natural, recreation, and scenic resources of the Heritage Area; and

(5) authorize the Secretary to provide financial and technical assistance to the State of Ohio, its political subdivisions, and private organizations, or combinations thereof, in preparing and implementing the private Management Plan.

SEC. 1003. DEFINITIONS.

For purposes of this title:

(1) Board.—The term "Board" means the Board of Directors of the Foundation.

(2) Financial assistance.—The term "financial assistance" means funds appropriated by Congress and made available to

the management entity for the purpose of preparing and implementing the Management Plan.

(3) Heritage area.—The term "Heritage Area" means the National Aviation Heritage Area established by section 1004 to receive, distribute, and account for Federal funds appropriated for the purpose of this title.

(4) Management plan.—The term "Management Plan" means the management plan for the Heritage Area developed under section 1006.

(5) Management entity.—The term "management entity" means the Aviation Heritage Foundation, Incorporated (a nonprofit corporation established under the laws of the State of Ohio).

(6) Partner.—The term "partner" means a Federal, State, or local governmental entity, organization, private industry, educational institution, or individual involved in promoting the conservation and preservation of the cultural and natural resources of the Heritage Area.

(7) Secretary.—The term "Secretary" means the Secretary of the Interior.

(8) Technical assistance.—The term "technical assistance" means any guidance, advice, help, or aid, other than financial assistance, provided by the Secretary.

SEC. 1004. NATIONAL AVIATION HERITAGE AREA.

(a) Establishment.—There is established in the States of Ohio and Indiana, the National Aviation Heritage Area.

(b) Boundaries.—The Heritage Area shall include the following:

(1) A core area consisting of resources in Montgomery, Greene, Warren, Miami, Clark, and Champaign Counties in Ohio.

(2) The Neil Armstrong Air & Space Museum, Wapakoneta, Ohio, and the Wilbur Wright Birthplace and Museum, Millville, Indiana.

(3) Sites, buildings, and districts within the core area recommended by the Management Plan.

(c) Map.—A map of the Heritage Area shall be included in the Management Plan. The map shall be on file in the appropriate offices of the National Park Service, Department of the Interior.

(d) Management Entity.—The management entity for the Heritage Area shall be the Aviation Heritage Foundation.

SEC. 1005. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) Authorities.—For purposes of implementing the Management Plan, the management entity may use Federal funds made available through this title to—

(1) make grants to, and enter into cooperative agreements with, the State of Ohio and political subdivisions of that State, private organizations, or any person;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) Duties.—The management entity shall—

(1) develop and submit to the Secretary for approval the proposed Management Plan in accordance with section 1006;

(2) give priority to implementing actions set forth in the Management Plan, including taking steps to assist units of government and nonprofit organizations in preserving resources within the Heritage Area and encouraging local governments to adopt land use policies consistent with the management of the Heritage Area and the goals of the Management Plan;

(3) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area in developing and implementing the Management Plan;

(4) maintain a collaboration among the partners to promote heritage tourism and to assist partners to develop educational and cultural programs for the public;

(5) encourage economic viability in the Heritage Area consistent with the goals of the Management Plan;

(6) assist units of government and nonprofit organizations in—

(A) establishing and maintaining interpretive exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the historical, natural, and architectural resources and sites in the Heritage Area; and

(D) restoring historic buildings that relate to the purposes of the Heritage Area;

(7) assist units of government and nonprofit organizations to ensure that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are placed throughout the Heritage Area;

(8) conduct public meetings at least quarterly regarding the implementation of the Management Plan;

(9) submit substantial amendments to the Management Plan to the Secretary for the approval of the Secretary; and

(10) for any year in which Federal funds have been received under this title—

(A) submit an annual report to the Secretary that sets forth the accomplishments of the management entity and its expenses and income;

(B) make available to the Secretary for audit all records relating to the expenditure of such funds and any matching funds; and

(C) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of such funds.

(c) Use of Federal Funds.—

(1) In general.—The management entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(2) Other sources.—Nothing in this title precludes the management entity from using Federal funds from other sources for authorized purposes.

SEC. 1006. MANAGEMENT PLAN.

(a) Preparation of Plan.—Not later than 3 years after the date of enactment of this title, the management entity shall submit to the Secretary for approval a proposed Management Plan that shall take into consideration State and local plans and involve residents, public agencies, and private organizations in the Heritage Area.

(b) Contents.—The Management Plan shall incorporate an integrated and cooperative approach for the protection, enhancement, and interpretation of the natural, cultural, historic, scenic, and recreational resources of the Heritage Area and shall include the following:

(1) An inventory of the resources contained in the core area of the Heritage Area, including the Dayton Aviation Heritage Historical Park, the sites, buildings, and districts listed in section 202 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419), and any other property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, or maintained because of its significance.

(2) An assessment of cultural landscapes within the Heritage Area.

(3) Provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with the purposes of this title.

(4) An interpretation plan for the Heritage Area.

(5) A program for implementation of the Management Plan by the management entity, including the following:

(A) Facilitating ongoing collaboration among the partners to promote heritage tourism and to develop educational and cultural programs for the public.

(B) Assisting partners planning for restoration and construction.

(C) Specific commitments of the partners for the first 5 years of operation.

(6) The identification of sources of funding for implementing the plan.

(7) A description and evaluation of the management entity, including its membership and organizational structure.

(C) Disqualification from funding.—If a proposed Management Plan is not submitted to the Secretary within 3 years of the date of the enactment of this title, the management entity shall be ineligible to receive additional funding under this title until the date on which the Secretary receives the proposed Management Plan.

(d) Approval and Disapproval of Management Plan.—The Secretary, in consultation with the State of Ohio, shall approve or disapprove the proposed Management Plan submitted under this title not later than 90 days after receiving such proposed Management Plan.

(e) Action Following Disapproval.—If the Secretary disapproves a proposed Management Plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions to the proposed Management Plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(f) Approval of Amendments.—The Secretary shall review and approve substantial amendments to the Management Plan. Funds appropriated under this title may not be expended to implement any changes made by such amendment until the Secretary approves the amendment.

SEC. 1007. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) Technical and Financial Assistance.—Upon the request of the management entity, the Secretary may provide technical assistance, on a reimbursable or non-reimbursable basis, and financial assistance to the Heritage Area to develop and implement the management plan. The Secretary is authorized to enter into cooperative agreements with the management entitity and other public or private entities for this purpose. In assisting the Heritage Area, the Secretary shall give priority to actions that in general assist in—

(1) conserving the significant natural, historic, cultural, and scenic resources of the Heritage Area; and

(2) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(b) Duties of Other Federal Agencies.—Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title;

(3) to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(4) to the maximum extent practicable, conduct or support such activities in a manner which the management entity determines will not have an adverse effect on the Heritage Area.

SEC. 1008. COORDINATION BETWEEN THE SECRETARY AND THE SECRETARY OF DEFENSE AND THE ADMINISTRATOR OF NASA.

The decisions concerning the execution of this title as it applies to properties under the control of the Secretary of Defense and the Administrator of the National Aeronautics and Space Administration shall be made by such Secretary or such Administrator, in consultation with the Secretary of the Interior.

SEC. 1009. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—To carry out this title there is authorized to be appropriated $10,000,000, except that not more than $1,000,000 may be appropriated to carry out this title for any fiscal year.

(b) 50 PERCENT MATCH.—The Federal share of the cost of activities carried out using any assistance or grant under this title shall not exceed 50 percent.

SEC. 1010. SUNSET PROVISION.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

SEC. 1011. STUDY.

(a) IN GENERAL.—The Secretary shall conduct a special resource study updating the study required under section 104 of the Dayton Aviation Heritage Preservation Act of 1992 (Public Law 102–419) and detailing alternatives for incorporating the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park.

(b) CONTENTS.—The study shall include an analysis of alternatives for including the Wright Company factory as a unit of Dayton Aviation Heritage National Historical Park that detail management and development options and costs.

(c) CONSULTATION.—In conducting the study, the Secretary shall consult with the Delphi Corporation, the Dayton Aviation Heritage Commission, the Aviation Heritage Foundation, State and local agencies, and other interested parties in the area.

SEC. 1012. REPORT.

Not later than 3 years after funds are first made available for this title, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the results of the study conducted under section 1011.

TITLE XI—CHAMPLAIN VALLEY NATIONAL HERITAGE PARTNERSHIP

SECTION 1101. SHORT TITLE.

This title may be cited as the "Champlain Valley National Heritage Partnership Act of 2002".

SEC. 1102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Champlain Valley and its extensive cultural and natural resources have played a significant role in the history of the United States and the individual States of Vermont and New York;

(2) archeological evidence indicates that the Champlain Valley has been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Iroquois and Algonquin descent;

(3) the linked waterways of the Champlain Valley, including the Richelieu River in Canada, played a unique and significant role in the establishment and development of the United States and Canada through several distinct eras, including—

(A) the era of European exploration, during which Samuel de Champlain and other explorers used the waterways as a means of access through the wilderness;

(B) the era of military campaigns, including highly significant military campaigns of the French and Indian War, the American Revolution, and the War of 1812; and

(C) the era of maritime commerce, during which canals boats, schooners, and steamships formed the backbone of commercial transportation for the region;

(4) those unique and significant eras are best described by the theme "The Making of Nations and Corridors of Commerce";

(5) the artifacts are structures associated with those eras are unusually well-preserved;

(6) the Champlain Valley is recognized as having one of the richest collections of historical resources in North America;

(7) the history and cultural heritage of the Champlain Valley are shared with Canada and the Province of Quebec;

(8) there are benefits in celebrating and promoting this mutual heritage;

(9) tourism is among the most important industries in the Champlain Valley, and heritage tourism in particular plays a significant role in the economy of the Champlain Valley;

(10) it is important to enhance heritage tourism in the Champlain Valley while ensuring that increased visitation will not impair the historical and cultural resources of the region;

(11) according to the 1999 report of the National Park Service entitled "Champlain Valley Heritage Corridor Project", "the Champlain Valley contains resources and represents a theme 'The Making of Nations and Corridors of Commerce', that is of outstanding importance in H.S. history"; and

(12) it is in the interest of the United States to preserve and interpret the historical and cultural resources of the Champlain Valley for the education and benefit of present and future generations.

(b) PURPOSES.—The purposes of this title are—

(1) to establish the Champlain Valley National Heritage Partnership in the States of Vermont and New York to recognize the importance of the historical, cultural, and recreational resources of the Champlain Valley region to the United States;

(2) to assist the State of Vermont and New York, including units of local government and non-governmental organizations in the States, in preserving, protecting, and interpreting those resources for the benefit of the people of the United States;

(3) to use those resources and the theme "The Making of Nations and Corridors of Commerce" to—

(A) revitalize the economy of communities in the Champlain Valley; and

(B) generate and sustain increased levels of tourism in the Champlain Valley;

(4) to encourage—

(A) partnerships among State and local governments and non-governmental organizations in the United States; and

(B) collaboration with Canada and the Province of Quebec to—

(i) interpret and promote the history of the waterways of the Champlain Valley region;

(ii) form stronger bonds between the United States and Canada; and

(iii) promote the international aspects of the Champlain Valley region; and

(5) to provide financial and technical assistance for the purposes described in paragraphs (1) through (4).

SEC. 1103. DEFINITIONS.

In this title:

(1) HERITAGE PARTNERSHIP.—The term "Heritage Partnership" means the Champlain Valley National Heritage Partnership established by section 1104(a).

(2) MANAGEMENT ENTITY.—The term "management entity" means the Lake Champlain Basin Program.

(3) MANAGEMENT PLAN.—The term "management plan" means the management plan developed under section 1104(b)(B)(i).

(4) REGION.—

(A) IN GENERAL.—The term "region" means any area or community in one of the States in which a physical, cultural, or historical resource that represents the theme is located.

(B) INCLUSIONS.—The term "region" includes—

(i) the linked navigable waterways of—

(I) Lake Champlain;

(II) Lake George;

(III) the Champlain Canal; and

(IV) the portion of the Upper Hudson River extending south to Saratoga;

(ii) portions of Grand Isle, Franklin, Chittenden, Addison, Rutland, and Bennington Counties in the State of Vermont; and

(iii) portions of Clinton, Essex, Warren, Saratoga and Washington Counties in the State of New York.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) STATE.—The term "State" means—

(A) the State of Vermont; and

(B) the State of New York.

(7) THEME.—The term "theme" means the theme "The Making of Nations and Corridors of Commerce", as the term is used in the 1999 report of the National Park Service entitled "Champlain Valley Heritage Corridor Project", that describes the periods of international conflict and maritime commerce during which the region played a unique and significant role in the development of the United States and Canada.

SEC. 1104. HERITAGE PARTNERSHIP.

(a) ESTABLISHMENT.—There is established in the region the Champlain Valley National Heritage Partnership.

(b) MANAGEMENT ENTITY.—

(1) DUTIES.—

(A) IN GENERAL.—The management entity shall implement the title.

(B) MANAGEMENT PLAN.—(i) Not later than 3 years after the date of enactment of this title, the management entity shall develop a management plan for the Heritage Partnership.

(ii) EXISTING PLAN.—Pending the completion and approval of the management plan, the management entity may implement the provisions of this title based on its federally authorized plan "Opportunities for Action, an Evolving Plan for Lake Champlain".

(iii) CONTENTS.—The management plan shall include—

(I) recommendations for funding, managing, and developing the Heritage Partnership;

(II) a description of activities to be carried out by public and private organizations to protect the resources of the Heritage Partnership;

(III) a list of specific, potential sources of funding for the protection, management, and development of the Heritage Partnership;

(IV) an assessment of the organizational capacity of the management entity to achieve the goals for implementation; and

(V) recommendations of ways in which to encourage collaboration with Canada and the Province of Quebec in implementing this title.

(iv) CONSIDERATIONS.—In developing the management plan under clause (i), the management entity shall take into consideration existing Federal, State, and local plans relating to the region.

(v) SUBMISSION TO SECRETARY FOR APPROVAL.—

(I) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall submit the management plan to the Secretary for approval.

(II) EFFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (I), the Secretary shall not provide any additional funding under this title until a management plan for the Heritage Partnership is submitted to the Secretary.

(vi) APPROVAL.—Not later than 90 days after receiving the management plan submitted under subparagraph (v), the Secretary, in consultation with the States, shall approve or disapprove the management plan.

(vii) ACTION FOLLOWING DISAPPROVAL.—

(I) IN GENERAL.—If the Secretary disapproves a management plan under subparagraph (vi), the Secretary shall—

(aa) advise the management entity in writing of the reasons for the disapproval;

(bb) make recommendations for revisions to the management plan; and

(cc) allow the management entity to submit to the Secretary revisions to the management plan.

(II) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (vii)(I)(cc), the Secretary shall approve or disapprove the revision.

(viii) AMENDMENT.—

(I) IN GENERAL.—After approval by the Secretary of the management plan, the management entity shall periodically

(aa) review the management plan; and

(bb) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any amendments to the management plan that the management entity considers to be appropriate.

(II) EXPENDITURE OF FUNDS.—No funds made available under this title shall be used to implement any amendment proposed by the management entity under subparagraph (viii)(1) until the Secretary approves the amendments.

(2) PARTNERSHIPS.—

(A) IN GENERAL.—In carrying out this title, the management entity may enter into partnerships with—

(i) the States, including units of local governments in the States;

(ii) non-governmental organizations;

(iii) Indian Tribes; and

(iv) other persons in the Heritage Partnership.

(B) GRANTS.—Subject to the availability of funds, the management entity may provide grants to partners under subparagraph (A) to assist in implementing this title.

(3) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(c) ASSISTANCE FROM SECRETARY.—To carry out the purposes of this title, the Secretary may provide technical and financial assistance to the management entity.

SEC. 1105. SAVINGS PROVISIONS.

Nothing in this title—

(1) grants powers of zoning or land use to the management entity;

(2) modifies, enlarges, or diminishes the authority of the Federal Government or a State or local government to manage or regulate any use of land under any law (including regulations); or

(3) obstructs or limits private business development activities or resource development activities.

SEC. 1106. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title not more than a total of $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) shall not be less than 50 percent.

SEC. 1107. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE XII—BLUE RIDGE NATIONAL HERITAGE AREA

SEC. 1201. SHORT TITLE.

This title may be cited as the "Blue Ridge National Heritage Area Act of 2002".

SEC. 1202. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Blue Ridge Mountains and the extensive cultural and natural resources of the Blue Ridge Mountains have played a significant role in the history of the United States and the State of North Carolina;

(2) archaeological evidence indicates that the Blue Ridge Mountains have been inhabited by humans since the last retreat of the glaciers, with the Native Americans living in the area at the time of European discovery being primarily of Cherokee descent;

(3) the Blue Ridge Mountains of western North Carolina, including the Great Smoky Mountains, played a unique and significant role in the establishment and development of the culture of the United States through several distinct legacies, including—

(A) the craft heritage that—

(i) was first influenced by the Cherokee Indians;

(ii) was the origin of the traditional craft movement starting in 1900 and the contemporary craft movement starting in the 1940's; and

(iii) is carried out by over 4,000 craftspeople in the Blue Ridge Mountains of western North Carolina, the third largest concentration of such people in the United States;

(B) a musical heritage comprised of distinctive instrumental and vocal traditions that—

(i) includes stringband music, bluegrass, ballad singing, blues, and sacred music;

(ii) has received national recognition; and

(iii) has made the region 1 of the richest repositories of traditional music and folklife in the United States;

(C) the Cherokee heritage—

(i) dating back thousands of years; and

(ii) offering—

(I) nationally significant cultural traditions practiced by the Eastern Band of Cherokee Indians;

(II) authentic tradition bearers;

(III) historic sites; and

(IV) historically important collections of Cherokee artifacts; and

(D) the agricultural heritage established by the Cherokee Indians, including medicinal and ceremonial food crops, combined with the historic European patterns of raising livestock, culminating in the largest number of specialty crop farms in North Carolina;

(4) the artifacts and structures associated with those legacies are unusually well-preserved;

(5) the Blue Ridge Mountains are recognized as having one of the richest collections of historical resources in North America;

(6) the history and cultural heritage of the Blue Ridge Mountains are shared with the States of Virginia, Tennessee, and Georgia;

(7) there are significant cultural, economic, and educational benefits in celebrating and promoting this mutual heritage;

(8) according to the 2002 reports entitled "The Blue Ridge Heritage and Cultural Partnership" and "Western North Carolina National Heritage Area Feasibility Study and Plan", the Blue Ridge Mountains contain numerous resources that are of outstanding importance to the history of the United States; and

(9) it is in the interest of the United States to preserve and interpret the cultural and historical resources of the Blue Ridge Mountains for the education and benefit of present and future generations.

(b) PURPOSE.—The purpose of this title is to foster a close working relationship with, and to assist, all levels of government, the private sector, and local communities in the State in managing, preserving, protecting, and interpreting the cultural, historical, and natural resources of the Heritage Area while continuing to develop economic opportunities.

SEC. 1203. DEFINITIONS.

In this title:

(1) HERITAGE AREA.—The term "Heritage Area" means the Blue Ridge National Heritage Area established by section 1204(a).

(2) MANAGEMENT ENTITY.—The term "management entity" means the management entity for the Heritage Area designated by section 1204(c).

(3) MANAGEMENT PLAN.—The term "management plan" means the management plan for the Heritage Area approved under section 1205.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) STATE.—The term "State" means the State of North Carolina.

SEC. 1204. BLUE RIDGE NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Blue Ridge National Heritage Area in the State.

(b) BOUNDARIES.—The Heritage Area shall consist of the counties of Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Surry, Swain, Transylvania, Watauga, Wilkes, Yadkin, and Yancey in the State.

(c) MANAGEMENT ENTITY.—

(1) IN GENERAL.—As a condition of the receipt of funds made available under section 1209(a), the Blue Ridge National Heritage Area Partnership shall be the management entity for the Heritage Area.

(2) BOARD OF DIRECTORS.—

(A) COMPOSITION.—The management entity shall be governed by a board of directors composed of 9 members, of whom—

(i) 2 members shall be appointed by AdvantageWest;

(ii) 2 members shall be appointed by HandMade In America, Inc.;

(iii) one member shall be appointed by the Education Resources Consortium of Western North Carolina;

(iv) 1 member shall be appointed by the Eastern Band of the Cherokee Indians; and

(v) 3 members shall be appointed by the Governor of North Carolina and shall—

(I) reside in geographically diverse regions of the Heritage Area;

(II) be a representative of State or local governments or the private sector; and

(III) have knowledge of tourism, economic and community development, regional planning, historic preservation, cultural or natural resources development, regional planning, conservation, recreational services, education, or museum services.

SEC. 1205. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall submit to the Secretary for approval a management plan for the Heritage Area.

(b) CONSIDERATION OF OTHER PLANS AND ACTIONS.—In developing the management plan, the management entity shall—

(1) for the purpose of presenting a unified preservation and interpretation plan, take into consideration Federal, State, and local plans; and

(2) provide for the participation of residents, public agencies, and private organizations in the Heritage Area.

(c) CONTENTS.—The management plan shall—

(1) present comprehensive recommendations and strategies for the conservation, funding, management, and development of the Heritage Area;

(2) identify existing and potential sources of Federal and non-Federal funding for the conservation, management, and development of the Heritage Area; and

(3) include—

(A) an inventory of the cultural, historical, natural, and recreational resources of the Heritage Area, including a list of property that—

(i) relates to the purposes of the Heritage Area; and

(ii) should be conserved, restored, managed, developed, or maintained because of the significance of the property;

(B) a program of strategies and actions for the implementation of the management plan that identifies the roles of agencies and organizations that are involved in the implementation of the management plan;

(C) an interpretive and educational plan for the Heritage Area;

(D) a recommendation of policies for resource management and protection that develop intergovernmental cooperative agreements to manage and protect the cultural, historical, natural, and recreational resources of the Heritage Area; and

(E) an analysis of ways in which Federal, State, and local programs may best be coordinated to promote the purposes of this title.

(d) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date described in subsection (a), the Secretary shall not provide any additional funding under this title until a management plan is submitted to the Secretary.

(e) APPROVAL OR DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receiving the management plan submitted under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve the management plan, the Secretary shall consider whether the management plan—

(A) has strong local support from landowners, business interests, nonprofit organizations, and governments in the Heritage Area; and

(B) has a high potential for effective partnership mechanisms.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan under subsection (e)(1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) allow the management entity to submit to the Secretary revisions to the management plan.

(4) DEADLINE FOR APPROVAL OF REVISION.—Not later than 60 days after the date on which a revision is submitted under paragraph (3)(C), the Secretary shall approve or disapprove the proposed revision.

(f) AMENDMENT OF APPROVED MANAGEMENT PLAN.

(1) IN GENERAL.—After approval by the Secretary of a management plan, the management entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval, the recommendation of the management entity for any amendments to the management plan.

(2) USE OF FUNDS.—No funds made available under section 1209(a) shall be used to implement any amendment proposed by the management entity under paragraph (1)(B) until the Secretary approves the amendment.

SEC. 1206. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) AUTHORITIES.—For the purposes of developing and implementing the management plan, the management entity may use funds made available under section 1209(a) to—

(1) make grants to, and enter into cooperative agreements with, the State (including a political subdivision), nonprofit organizations, or persons;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—In addition to developing the management plan, the management entity shall—

(1) develop and implement the management plan while considering the interests of diverse units of government, businesses, private property owners, and nonprofit groups in the Heritage Area;

(2) conduct public meetings in the Heritage Area at least semiannually on the development and implementation of the management plan;

(3) give priority to the implementation of actions, goals, and strategies in the management plan, including providing assistance to units of government, nonprofit organizations, and persons in—

(A) carrying out the programs that protect resources in the Heritage Area;

(B) encouraging economic viability in the Heritage Area in accordance with the goals of the management plan;

(C) establishing and maintaining interpretive exhibits in the Heritage Area;

(D) developing recreational and educational opportunities in the Heritage Area; and

(E) increasing public awareness of and appreciation for the cultural, historical, and natural resources of the Heritage Area; and

(4) for any fiscal year for which Federal funds are received under section 1209(a)

(A) submit to the Secretary a report that describes, for the fiscal year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which a grant was made;

(B) make available for audit by Congress, the Secretary, and appropriate units of government, all records relating to the expenditure of funds and any matching funds; and

(C) require, for all agreements authorizing expenditure of Federal funds by any entity, that the receiving entity make available for audit all records relating to the expenditure of funds.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds received under section 1209(a) to acquire real property or an interest in real property.

SEC. 1207. TECHNICAL AND FINANCIAL ASSISTANCE.

(a) IN GENERAL.—The Secretary may provide to the management entity technical assistance and, subject to the availability of appropriations, financial assistance, for use in developing and implementing the management plan.

(b) PRIORITY FOR ASSISTANCE.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the preservation of the significant cultural, historical, natural, and recreational resources of the Heritage Area; and

(2) the provision of educational, interpretive, and recreational opportunities that are consistent with the resources of the Heritage Area.

SEC. 1208. LAND USE REGULATION.

(a) IN GENERAL.—Nothing in this title—

(1) grants any power of zoning or land use to the management entity; or

(2) modifies, enlarges, or diminishes any authority of the Federal Government or any State or local government to regulate any use of land under any law (including regulations).

(b) PRIVATE PROPERTY.—Nothing in this title—

(1) abridges the rights of any person with respect to private property;

(2) affects the authority of the State or local government with respect to private property; or

(3) imposes any additional burden on any property owner.

SEC. 1209. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 shall be made available for any fiscal year.

(b) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activities carried out using Federal funds made available under subsection (a) shall be not less than 50 percent.

SEC. 1210. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE XIII—ATCHAFALAYA NATIONAL HERITAGE AREA

SECTION 1301. SHORT TITLE.

This title may be cited as the "Atchafalaya National Heritage Area Act".

SEC. 1302. FINDINGS.

Congress finds that—

(1) the Atchafalaya Basin area of Louisiana, designated by the Louisiana Legislature as the "Atchafalaya Trace State Heritage Area" and consisting of the area described in section 1305(b), is an area in which natural, scenic, cultural, and historic resources form a cohesive and nationally distinctive landscape arising from patterns of human activity shaped by geography;

(2) the significance of the area is enhanced by the continued use of the area by people whose traditions have helped shape the landscape;

(3) there is a national interest in protecting, conserving, restoring, promoting, and interpreting the benefits of the area for the residents of, and visitors to, the area;

(4) the area represents an assemblage of rich and varied resources forming a unique aspect of the heritage of the United States;

(5) the area reflects a complex mixture of people and their origins, traditions, customs, beliefs, and folkways of interest to the public;

(6) the land and water of the area offer outstanding recreational opportunities, educational experiences, and potential for interpretation and scientific research; and

(7) local governments of the area support the establishment of a national heritage area.

SEC. 1303. PURPOSES.

The purposes of this title are—

(1) to protect, preserve, conserve, restore, promote, and interpret the significant resource values and functions of the Atchafalaya Basin area and advance sustainable economic development of the area;

(2) to foster a close working relationship with all levels of government, the private sector, and the local communities in the area so as to enable those communities to conserve their heritage while continuing to pursue economic opportunities; and

(3) to establish, in partnership with the State, local communities, preservation organizations, private corporations, and landowners in the Heritage Area, the Atchafalaya Trace State Heritage Area, as designated by the Louisiana Legislature, as the Atchafalaya National Heritage Area.

SEC. 1304. DEFINITIONS.

In this title:

(1) HERITAGE AREA.—The term "Heritage Area" means the Atchafalaya National Heritage Area established by section 1305(a).

(2) LOCAL COORDINATING ENTITY.—The term "local coordinating entity" means the local coordinating entity for the Heritage Area designated by section 1305(c).

(3) MANAGEMENT PLAN.—The term "management plan" means the management plan for the Heritage Area developed under section 1307.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(5) STATE.—The term "State" means the State of Louisiana.

SEC. 1305. ATCHAFALAYA NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established in the State the Atchafalaya National Heritage Area.

(b) BOUNDARIES.—The Heritage Area shall consist of the whole of the following parishes in the State: St. Mary, Iberia, St. Martin, St. Landry, Avoyelles, Pointe Coupee, Iberville, Assumption, Terrebonne, Lafayette, West Baton Rouge, Concordia, and East Baton Rouge.

(c) LOCAL COORDINATING ENTITY.—

(1) IN GENERAL.—The Atchafalaya Trace Commission shall be the local coordinating entity for the Heritage Area.

(2) COMPOSITION.—The local coordinating entity shall be composed of 13 members appointed by the governing authority of each parish within the Heritage Area.

SEC. 1306. AUTHORITIES AND DUTIES OF THE LOCAL COORDINATING ENTITY.

(a) AUTHORITIES.—For the purposes of developing and implementing the management plan and otherwise carrying out this title, the local coordinating entity may—

(1) make grants to, and enter into cooperative agreements with, the State, units of local government, and private organizations;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) DUTIES.—The local coordinating entity shall—

(1) submit to the Secretary for approval a management plan;

(2) implement the management plan, including providing assistance to units of government and others in—

(A) carrying out programs that recognize important resource values within the Heritage Area;

(B) encouraging sustainable economic development within the Heritage Area;

(C) establishing and maintaining interpretive sites within the Heritage Area; and

(D) increasing public awareness of, and appreciation for the natural, historic, and cultural resources of, the Heritage Area;

(3) adopt bylaws governing the conduct of the local coordinating entity; and

(4) for any year for which Federal funds are received under this title, submit to the Secretary a report that describes, for the year—

(A) the accomplishments of the local coordinating entity; and

(B) the expenses and income of the local coordinating entity.

(c) ACQUISITION OF REAL PROPERTY.—The local coordinating entity shall not use Federal funds received under this title to acquire real property or an interest in real property.

(d) PUBLIC MEETINGS.—The local coordinating entity shall conduct public meetings at least quarterly.

SEC. 1307. MANAGEMENT PLAN.

(a) IN GENERAL.—The local coordinating entity shall develop a management plan for the Heritage Area that incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, scenic, cultural, historic, and recreational resources of the Heritage Area.

(b) CONSIDERATION OF OTHER PLANS AND ACTIONS.—In developing the management plan, the local coordinating entity shall—

(1) take into consideration State and local plans; and

(2) invite the participation of residents, public agencies, and private organizations in the Heritage Area.

(c) CONTENTS.—The management plan shall include—

(1) an inventory of the resources in the Heritage Area, including—

(A) a list of property in the Heritage Area that—

(i) relates to the purposes of the Heritage Area; and

(ii) should be preserved, restored, managed, or maintained because of the significance of the property; and

(B) an assessment of cultural landscapes within the Heritage Area;

(2) provisions for the protection, interpretation, and enjoyment of the resources of the Heritage Area consistent with this title;

(3) an interpretation plan for the Heritage Area; and

(4) a program for implementation of the management plan that includes—

(A) actions to be carried out by units of government, private organizations, and public-private partnerships to protect the resources of the Heritage Area; and

(B) the identification of existing and potential sources of funding for implementing the plan.

(d) SUBMISSION TO SECRETARY FOR APPROVAL.—

(1) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the local coordinating entity shall submit the management plan to the Secretary for approval.

(2) EFFECT OF FAILURE TO SUBMIT.—If a management plan is not submitted to the Secretary by the date specified in paragraph (1), the Secretary shall not provide any additional funding under this title until a management plan for the Heritage Area is submitted to the Secretary.

(e) APPROVAL.—

(1) IN GENERAL.—Not later than 90 days after receiving the management plan submitted under subsection (d)(1), the Secretary, in consultation with the State, shall approve or disapprove the management plan.

(2) ACTION FOLLOWING DISAPPROVAL.—

(A) IN GENERAL.—If the Secretary disapproves a management plan under paragraph (1), the Secretary shall—

(i) advise the local coordinating entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the management plan; and

(iii) allow the local coordinating entity to submit to the Secretary revisions to the management plan.

(B) DEADLINE FOR APPROVAL OF REVISION.—Not later than 90 days after the date on which a revision is submitted under subparagraph (A)(iii), the Secretary shall approve or disapprove the revision.

(f) REVISION.—

(1) IN GENERAL.—After approval by the Secretary of a management plan, the local coordinating entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval by the Secretary, the recommendations of the local coordinating entity for any revisions to the management plan that the local coordinating entity considers to be appropriate.

(2) EXPENDITURE OF FUNDS.—No funds made available under this title shall be used to implement any revision proposed by the local coordinating entity under paragraph (1)(B) until the Secretary approves the revision.

SEC. 1308. COST SHARING.

The Federal share of the cost of any activity assisted by the local coordinating entity under this title shall not exceed 50 percent.

SEC. 1309. EFFECT.

Nothing in this title or in establishment of the Heritage Area—

(1) grants any Federal agency regulatory authority over any interest in the Heritage Area, unless cooperatively agreed on by all involved parties;

(2) modifies, enlarges, or diminishes any authority of the Federal Government or a State or local government to regulate any use of land as provided for by law (including regulations) in existence on the date of enactment of this title;

(3) grants any power of zoning or land use to the local coordinating entity;

(4) imposes any environmental, occupational, safety, or other rule, standard, or permitting process that is different from those in effect on the date of enactment of this

title that would be applicable had the Heritage Area not been established;

(5)(A) imposes any change in Federal environmental quality standards; or

(B) authorizes designation of any portion of the Heritage Area that is subject to part C of Title I of the Clean Air Act (42 U.S.C. 7470 et seq.) as class 1 for the purposes of that part solely by reason of the establishment of the Heritage Area;

(6) authorizes any Federal or State agency to impose more restrictive water use designations, or water quality standards on uses of or discharges to, waters of the United States or waters of the State within or adjacent to the Heritage Area solely by reason of the establishment of the Heritage Area;

(7) abridges, restricts, or alters any applicable rule, standard, or review procedure for permitting of facilities within or adjacent to the Heritage Area; or

(8) affects the continuing use and operation, where located on the date of enactment of this title, of any public utility or common carrier.

SEC. 1310. REPORTS.

For any year in which Federal funds have been made available under this title, the local coordinating entity shall submit to the Secretary a report that describes—

(1) the accomplishments of the local coordinating entity; and

(2) the expenses and income of the local coordinating entity.

SEC. 1311. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 shall be made available for any fiscal year.

SEC. 1312. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

SA 4971. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 941, to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

TITLE I—RANCHO CORRAL DE TIERRA GOLDEN GATE NATIONAL RECREATION AREA BOUNDARY ADJUSTMENT

SEC. 101. SHORT TITLE.

This title may be cited as the "Rancho Corral de Tierra Golden Gate National Recreation Area Boundary Adjustment Act of 2002".

SEC. 102. GOLDEN GATE NATIONAL RECREATION AREA, CALIFORNIA.

(a) BOUNDARY ADJUSTMENT.—Section 2(a) of Public Law 92-589 (16 U.S.C. 460bb-1(a)) is amended—

(1) by striking 'The recreation area shall comprise' and inserting the following:

"(1) IN GENERAL.—The recreation area shall comprise"; and

(2) by striking "The following additional lands are also" and all that follows through the period at the end of the paragraph and inserting the following:

"(2) ADDITIONAL LAND.—In addition to the land described in paragraph (1), the recreation area shall include—

"(A) the parcels numbered by the Assessor of Marin County, California, 119-040-04, 119-040-05, 119-040-18, 166-202-03, 166-010-06, 166-010-07, 166-010-24, 166-010-25, 119-240-19, 166-010-10, 166-010-22, 119-240-03, 119-240-51, 119-240-52, 119-240-54, 166-010-12, 166-010-13, and 119-235-10;

"(B) land and water in San Mateo County generally depicted on the map entitled 'Sweeney Ridge Addition, Golden Gate National Recreation Area', numbered NRA GG-80,000-A, and dated May 1980;

"(C) land acquired under the Golden Gate National Recreation Area Addition Act of 1992 (16 U.S.C. 460bb-1 note; Public Law 102-299);

"(D) land generally depicted on the map entitled 'Additions to Golden Gate National Recreation Area', numbered NPS-80-076, and dated July 2000/PWR-PLRPC; and

"(E) land generally depicted on the map entitled 'Rancho Corral de Tierra Additions to the Golden Gate National Recreation Area', numbered NPS-80,079A and dated July 2001.

"(3) ACQUISITION AUTHORITY.—The Secretary may acquire land described in paragraph 102(E) only from a willing seller.".

(b) EXTENSION OF TERM OF ADVISORY COMMISSION.—Section 5(g) of Public Law 92-589 (16 U.S.C. 460bb-4(g)) is amended by striking "thirty years after the enactment of this Act" and inserting "on December 31, 2012".

TITLE II—YOSEMITE NATIONAL PARK EDUCATION IMPROVEMENT

SEC. 201. SHORT TITLE.

This title may be cited as the "Yosemite National Park Education Improvement Act".

SEC. 202. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The three elementary schools serving the children of employees of Yosemite National Park are served by the Bass Lake Joint Union Elementary School District and Mariposa Unified School District.

(2) The schools are in remote mountainous areas and long distances from other educational and administrative facilities of the two local educational agencies.

(3) Because of their remote locations and relatively small number of students, schools serving the children of employees of the Park provide fewer services in more basic facilities than the educational services and facilities provided to students that attend other schools served by the two local educational agencies.

(4) Because of the long distances involved and adverse weather and road conditions that occur during much of the school year, it is impractical for the children of employees of the Park who live within or near the Park to attend other schools served by the two local educational agencies.

(b) PURPOSE.—The purpose of this title is to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist the State of California or local educational agencies in California in providing educational services for students attending schools located within the Park.

SEC. 203. PAYMENTS FOR EDUCATIONAL SERVICES.

(a) AUTHORITY TO PROVIDE FUNDS.—For fiscal years 2003 through 2007, the Secretary may provide funds to the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District for educational services to students who are dependents of persons engaged in the administration, operation, and maintenance of the Park or students who live at or near the Park upon real property of the United States.

(b) LIMITATIONS ON USE OF FUNDS.—Payments made by the Secretary under this section may not be used for new construction, construction contracts, or major capital improvements, and may be used only to pay public employees for services otherwise authorized by this title.

(c) LIMITATIONS ON AMOUNT OF FUNDS.—Payments made under this section shall not exceed the lesser of $400,000 in any fiscal year or the amount necessary to provide students described in subsection (a) with educational services that are normally provided and generally available to students who attend public schools elsewhere in the State of California.

(d) LIMITATION ON FUNDING SOURCES.—

(1) EXCEPTIONS.—Funds from the following sources may not be used to make payments under this section:

(A) Fees authorized and collected under the Land and Water Conservation Fund Act of 1956 (16 U.S.C., 4601-4 et seq.).

(B) The recreational fee demonstration program under section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104-134; 16 U.S.C. 4601-6a note).

(C) The national park passport program established under section 602 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5992).

(D) Emergency appropriations for Yosemite flood recovery.

(E) Funds appropriated for the Operation of the National Park Service (ONPS Funds).

(e) DEFINITIONS.—For the purposes of this title, the following definitions apply:

(1) LOCAL EDUCATIONAL AGENCIES.—The term "local educational agencies" has the meaning given that term in section 9109(26) of the Elementary and Secondary Education Act of 1965.

(2) EDUCATIONAL SERVICES.—The term "educational services" means services that may include maintenance and minor upgrades of facilities and transportation to and from school.

(3) PARK.—The term "Park" means Yosemite National Park.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 204. AUTHORIZATION FOR PARK FACILITIES TO BE LOCATED OUTSIDE THE BOUNDARIES OF YOSEMITE NATIONAL PARK.

Section 814(c) of the Omnibus Parks and Public Lands Management Act of 1966 (16 U.S.C. 346e) is amended—

(1) in the first sentence—

(A) by inserting "and Yosemite National Park" after "Zion National Park"; and

(B) by inserting "transportation systems and" before "the establishment of"; and

(2) by striking "park" each place it appears and inserting "parks".

SEC. 205. MANZANAR NATIONAL HISTORIC SITE ADVISORY COMMISSIONS.

Section 105(h) of Public Law 102-248 (16 U.S.C. 461 note) is amended by striking "10 years after the date of enactment of this title" and inserting "on December 31, 2012".

TITLE III—JOHN MUIR NATIONAL HISTORIC SITE BOUNDARY ADJUSTMENT

SEC. 301. SHORT TITLE.

This title may be cited as the "John Muir National Historic Site Boundary Adjustment Act".

SEC. 302. BOUNDARY ADJUSTMENT.

(a) BOUNDARY.—The boundary of the John Muir National Historic Site is adjusted to include the lands generally depicted on the map entitled "Boundary Map, John Muir National Historic Site" numbered PWR-OL 426-80,044a and dated August 2001.

(b) LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire the lands and interests in lands identified as the "Boundary Adjustment Area" on the map referred to in subsection (a) by donation, purchase with donated or appropriated funds, exchange, or otherwise.

(c) ADMINISTRATION.—The lands and interests in lands described in subsection (b) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

TITLE IV—SAN GABRIEL RIVER WATERSHEDS STUDY SEC. 401. SHORT TITLE.

This title may be cited as the "San Gabriel River Watersheds Study Act of 2002".

SEC. 402. AUTHORIZATION OF STUDY.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter in this title referred to as the 'Secretary', in consultation with the Secretary of Agriculture and the Secretary of the Army, shall conduct a comprehensive resource study of the following areas:

(1) The San Gabriel River and its tributaries north of and including the city of Santa Fe Springs, and

(2) The San Gabriel Mountains within the territory of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (as defined in section 32603(c)(1)(C) of the State of California Public Resource Code).

(b) STUDY CONDUCT AND COMPLETION.—(1) The Secretary shall conduct a comprehensive evaluation of the area's natural and recreational resources to make recommendations for the future coordinated management, protection and enhancement of these resources and an analysis of the cost of each option. In addition, the study shall consider a system of greenways, scenic roadways, river, and trail corridors linking communities within the area.

(2) The study shall be conducted in accordance with section 8(c) of Public Law 91-383 (16 U.S.C. 1a-5(c)).

(c) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS.—In conducting the study authorized by this section, the Secretary shall consult with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and other appropriate State, county, and local government entities.

(d) CONSIDERATIONS.—In conducting the study authorized by this section, the Secretary shall consider regional flood control and drainage needs and publicly owned infrastructure, including, but not limited to, wastewater treatment facilities.

SEC. 403. REPORT.

Not later than 3 years after funds are made available for this title, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report on the findings, conclusions, and recommendations of the study.

TITLE V—GRAND TETON NATIONAL PARK LAND EXCHANGE SEC. 501. DEFINITIONS.

As used in this title:

(1) FEDERAL LANDS.—The term "Federal lands" means public lands as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

(2) GOVERNOR.—The term "Governor" means the Governor of the State of Wyoming.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) STATE LANDS.—The term "State lands" means lands and interest in lands owned by the State of Wyoming within the boundaries of Grand Teton National Park as identified on a map titled "Private, State & County Inholdings Grand Teton National Park", dated March 2001, and numbered GTNP/0001.

SEC. 502. ACQUISITION OF STATE LANDS.

(a) AUTHORIZATION TO ACQUIRE LANDS.—The Secretary is authorized to acquire approximately 1,406 acres of State lands within the exterior boundaries of Grand Teton National Park, as generally depicted on the map referenced in section 101(4), by any one or a combination of the following—

(1) donation;

(2) purchase with donated or appropriated funds; or

(3) exchange of Federal lands in the State of Wyoming that are identified for disposal under approved land use plans in effect on the date of enactment of this title under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) that are of equal value to the State lands acquired in the exchange.

(b) IDENTIFICATION OF LANDS FOR EXCHANGE.—In the event that the Secretary or the Governor determines that the Federal lands eligible for exchange under subsection (a)(3) are not sufficient or acceptable for the acquisition of all the State lands identified in section 501(4), the Secretary shall identify other Federal lands or interests therein in the State of Wyoming for possible exchange and shall identify such lands or interests together with their estimated value in a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives. Such lands or interests shall not be available for exchange unless authorized by an Act of Congress enacted after the date of submission of the report.

SEC. 503. VALUATION OF STATE AND FEDERAL INTERESTS.

(a) AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the value of any Federal lands eligible for exchange under section 502(a)(3) or State lands, then the Secretary and the Governor may select a qualified appraiser to conduct an appraisal of those lands. The purchase or exchange under section 502(a) shall be conducted based on the values determined by the appraisal.

(b) NO AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the selection of a qualified appraiser under subsection (a), then the Secretary and the Governor shall each designate a qualified appraiser. The two designated appraisers shall select a qualified third appraiser to conduct the appraisal with the advice and assistance of the two designated appraisers. The purchase or exchange under section 502(a) shall be conducted based on the values determined by the appraisal.

(c) APPRAISAL COSTS.—The Secretary and the State of Wyoming shall each pay one-half of the appraisal costs under subsections (a) and (b).

SEC. 504. ADMINISTRATION OF STATE LANDS ACQUIRED BY THE UNITED STATES.

The State lands conveyed to the United States under section 502(a) shall become part of Grand Teton National Park. The Secretary shall manage such lands under the Act of August 25, 1916 (commonly known as the 'National Park Service Organic Act') and other laws, rules, and regulations applicable to Grand Teton National Park.

SEC. 505. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this title.

TITLE VI—GALISTEO BASIN ARCHAEOLOGICAL SITES PROTECTION

SEC. 601. SHORT TITLE.

This title may be cited as the "Galisteo Basin Archaeological Sites Protection Act".

SEC. 602. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that—

(1) the Galisteo Basin and surrounding area of New Mexico is the location of many well preserved prehistoric and historic archaeological resources of Native American and Spanish colonial cultures;

(2) these resources include the largest ruins of Pueblo Indian settlements in the United

States, spectacular examples of Native American rock art, and ruins of Spanish colonial settlements; and (3) these resources are being threatened by natural causes, urban development, vandalism, and uncontrolled excavations.

(b) PURPOSE.—The purpose of this title is to provide for the preservation, protection, and interpretation of the nationally significant archaeological resources in the Galisteo Basin in New Mexico.

SEC. 603. ESTABLISHMENT OF GALISTEO BASIN ARCHAEOLOGICAL PROTECTION SITES.

(a) IN GENERAL.—the following archaeological sites located in the Galisteo Basin in the State of New Mexico, totaling approximately 4,591 acres, are hereby designated as Galisteo Basin Archaeological Protection Sites:

Name	*Acres*
Arroyo Hondo Pueblo	21
Burnt Corn Pueblo	110
Chamisa Locita Pueblo	16
Comanche Gap Petroglyphs	764
Espinoso Ridge Site	160
La Cienega Pueblo & Petroglyphs	126
La Cienega Pithouse Village	179
La Cieneguilla Petroglyphs/Camino Real Site	531
La Cieneguilla Pueblo	11
Lamy Pueblo	30
Lamy Junction Site	80
Las Huertas	44
Pa'ako Pueblo	29
Petroglyph Hill	130
Pueblo Blanco	878
Pueblo Colorado	120
Pueblo Galisteo/Las Madres	133
Pueblo Largo	60
Pueblo She	120
Rote Chert Quarry	5
San Cristobal Pueblo	520
San Lazaro Pueblo	360
San Marcos Pueblo	152
Upper Arroyo Hondo Pueblo	12
Total Acreage	4,591

(b) AVAILABILITY OF MAPS.—The archaeological protection sites listed in subsection (b) are generally depicted on a series of 19 maps entitled 'Galisteo Basin Archaeological Protection Sites' and dated July, 2002. The Secretary shall keep the maps on file and available for public inspection in appropriate offices in New Mexico of the Bureau of Land Management and the National Park Service.

(c) BOUNDARY ADJUSTMENTS.—The Secretary may make minor boundary adjustments to the archaeological protection sites by publishing notice thereof in the Federal Register.

SEC. 604. ADDITIONAL SITES.

(a) IN GENERAL.—The Secretary of the Interior (in this title referred to as the "Secretary") shall—

(1) continue to search for additional Native American and Spanish colonial sites in the Galisteo Basin area of New Mexico; and

(2) submit to Congress, within three years after the date funds become available and thereafter as needed, recommendations for additions to, deletions from, and modifications of the boundaries of the list of archaeological protection sites in section 3 of this title.

(b) ADDITIONS ONLY BY STATUTE.—Additions to or deletions from the list in section 3 shall be made only by an Act of Congress.

SEC. 605. ADMINISTRATION.

(a) IN GENERAL.—

(1) The Secretary shall administer archaeological protection sites located on Federal land in accordance with the provisions of this title, the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.), the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.), and other applicable laws in a manner that will protect, preserve, and maintain the archaeological resources and provide for research thereon.

(2) The Secretary shall have no authority to administer archaeological protection sites which are on non-Federal lands except to the extent provided for in a cooperative agreement entered into between the Secretary and the landowner.

(3) Nothing in this title shall be construed to extend the authorities of the Archaeological Resources Protection Act of 1979 or the Native American Graves Protection and Repatriation Act to private lands which are designated as an archaeological protection site.

(b) MANAGEMENT PLAN.—

(1) IN GENERAL.—Within three complete fiscal years after the date funds are made available, the Secretary shall prepare and transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives, a general management plan for the identification, research, protection, and public interpretation of—

(A) the archaeological protection sites located on Federal land; and

(B) for sites on State or private lands for which the Secretary has entered into cooperative agreements pursuant to section 606 of this title.

(2) CONSULTATION.—The general management plan shall be developed by the Secretary in consultation with the Governor of New Mexico, the New Mexico State Land Commissioner, affected Native American pueblos, and other interested parties.

SEC. 606. COOPERATIVE AGREEMENTS.

The Secretary is authorized to enter into cooperative agreements with owners of non-Federal lands with regard to an archaeological protection site, or portion thereof, located on their property. The purpose of such an agreement shall be to enable the Secretary to assist with the protection, preservation, maintenance, and administration of the archaeological resources and associated lands. Where appropriate, a cooperative agreement may also provide for public interpretation of the site.

SEC. 607. ACQUISITIONS.

(a) IN GENERAL.—The Secretary is authorized to acquire lands and interests therein within the boundaries of the archaeological protection sites, including access thereto, by donation, by purchase with donated or appropriated funds, or by exchange.

(b) CONSENT OF OWNER REQUIRED.—The Secretary may only acquire lands or interests therein with the consent of the owner thereof.

(c) STATE LANDS.—The Secretary may acquire lands or interests therein owned by the State of New Mexico or a political subdivision thereof only by donation or exchange, except that State trust lands may only be acquired by exchange.

SEC. 608. WITHDRAWAL.

Subject to valid existing rights, all Federal lands within the archaeological protection sites are hereby withdrawn—

(1) from all forms of entry, appropriation, or disposal under the public land laws and all amendments thereto;

(2) from location, entry, and patent under the mining law and all amendments thereto; and

(3) from disposition under all laws relating to mineral and geothermal leasing, and all amendments thereto.

SEC. 609. SAVINGS PROVISIONS.

Nothing in this title shall be construed—

(1) to authorize the regulation of privately owned lands within an area designated as an archaeological protection site;

(2) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands;

(3) to modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(4) to restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

SEC. 610. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VII—KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK

SEC. 701. SHORT TITLE.

This title may be cited as the "Kaloko-Honokohau National Historical Park Addition Title of 2002".

SEC. 702. ADDITIONS TO KALOKO-HONOKŌHAU NATIONAL HISTORICAL PARK.

Section 505(a) of Public Law 95–625 (16 U.S.C. 396d(a)) is amended—

(1) by striking "(a) In order" and inserting "(a)(1) In order";

(2) by striking "1978," and all that follows and inserting "1978."; and

(3) by adding at the end the following new paragraphs:

"(2) The boundaries of the park are modified to include lands and interests therein comprised of Parcels 1 and 2 totaling 2.14 acres, identified as 'Trace A' on the map entitled 'Kaloko-Honokohau National Historical Park Proposed Boundary Adjustment', numbered PWR (PISO) 466/82,043 and dated April 2002.

"(3) The maps referred to in this subsection shall be on file and available for public inspection in the appropriate offices of the National Park Service.".

SEC. 703. AUTHORIZATIONS OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE VIII—MISCELLANEOUS TECHNICAL AMENDMENTS

SEC. 801. LACKAWANNA VALLEY HERITAGE AREA.

Section 106(a) of the Lackawanna Valley National Heritage Area Act of 2000 (Public Law 106–278; 16 U.S.C. 461 note.) is amended to read as follows:

"(a) AUTHORITIES OF MANAGEMENT ENTITY.—For purposes of preparing and implementing the management plan, the management entity may—

"(1) make grants to, and enter into cooperative agreements with, the State and political subdivisions of the State, private organizations, or any person; and

"(2) hire and compensate staff.".

SEC. 802. HAWAIIAN SPELLING ERRORS.

Section 5 of the Act entitled "An Act to add certain lands on the Island of Hawaii to the Hawaii National Park, and for other purposes", as added by Public Law 99–564 (100 Stat. 3179; 16 U.S.C. 392c) is amended by striking "Hawaii Volcanoes" each place it appears and inserting "Hawaìi Volcanoes".

SEC. 803. "I HAVE A DREAM" PLAQUE AT LINCOLN MEMORIAL.

Section 2 of Public Law 106–365 (114 Stat. 1409) is amended by striking "and expand contributions" and inserting "and expend contributions".

SEC. 804. WILD AND SCENIC RIVERS AND NATIONAL TRAILS.

(a) WILD AND SCENIC RIVERS.—Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)) is amended—

(1) by redesignating the paragraph (162), pertaining to White Clay Creek, Delaware and Pennsylvania, as paragraph (163);

(2) by designating the second paragraph (161), pertaining to the Wekiva River, Wekiwa Springs Run, Rock Springs Run, and Black Water Creek, Florida, as paragraph (162);

(3) by designating the undesignated paragraph pertaining to the Wildhorse and Kiger Creeks, Oregon, as paragraph (164); and

(4) by redesignating the third paragraph (161), pertaining to the Lower Delaware River and associated tributaries, New Jersey and Pennsylvania, as paragraph (165).

(b) NATIONAL TRAILS.—Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended by redesignating the second paragraph (21), pertaining to the Ala Kahakai National Historic Trail, and enacted by Public Law 106–509 as paragraph (22).

SEC. 805. JAMESTOWN 400th COMMEMORATION COMMISSION.

The Jamestown 400th Commemoration Commission Act of 2000 (Public Law 106–565; 114 Stat. 2812; 16 U.S.C. 81 note.) is amended—

(1) in section 2(a)(5), by striking "State";

(2) in sections 2(b), 3(3), and 4(h), by striking "State" and inserting "Commonwealth" each place it appears;

(3) in section 3, by striking paragraph (5) and inserting the following:

"(5) COMMONWEALTH.—The term 'Commonwealth' means the Commonwealth of Virginia, including agencies and entities of the Commonwealth." and

(4) in section 4(b)(1), by striking "16" and inserting "15".

SEC. 806. ROSIE THE RIVETER—WORLD WAR II HOME FRONT NATIONAL HISTORICAL PARK.

The Rosie the Riveter/World War II Home Front National Historical Park Establishment Act of 2000 (Public Law 106–352; 114 Stat. 1371; 16 U.S.C 410ggg–1) is amended—

(1) in section 2(a), by striking "numbered 963/80000" and inserting "numbered 963/80,000";

(2) in section 3(a)(1), by striking "August 35" and inserting "August 25".

(3) in section 3(b)(1), by striking "the World War II Child Development Centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67A," and inserting "the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A,"; and

(4) in section 3(e)(2), by striking "the World War II day care centers, the World War II worker housing, the Kaiser-Permanente Field Hospital, and Fire Station 67," and inserting "the Child Development Field Centers (Ruth C. Powers) (Maritime), Atchison Housing, the Kaiser-Permanente Field Hospital, and Richmond Fire Station 67A,".

SEC. 807. VICKSBURG CAMPAIGN TRAIL BATTLEFIELDS.

The Vicksburg Campaign Trail Battlefields Preservation Act of 2000 (Public Law 106–487; 114 Stat. 2202) is amended—

(1) in section 2(a)(1), by striking "and Tennessee" and inserting "Tennessee, and Kentucky";

(2) in section 3(1), by striking "and Tennessee," and inserting "Tennessee, and Kentucky,"; and

(3) in section 3(2)—

(A) by striking "and" at the end of subparagraph (R);

(B) by redesignating subparagraph (S) as subparagraph (T); and

(C) by inserting a new subparagraph (S) as follows:

"(S) Fort Heiman in Calloway County, Kentucky, and resources in and around Columbus in Hickman County, Kentucky; and".

SEC. 808. HARRIET TUBMAN SPECIAL RESOURCE STUDY.

Section 3(c) of the Harriet Tubman Special Resource Study Act (Public Law 106–516; 114 Stat. 2405) is amended by striking "Public Law 91–383" and all that follows through "3501)" and inserting "the National Park System General Authorities Act (16 U.S.C. 1a–5)".

SEC. 809. PUBLIC LAND MANAGEMENT AGENCY FOUNDATIONS.

Employees of the foundations established by Acts of Congress to solicit private sector funds on behalf of Federal land management agencies shall qualify for General Service Administration contract airfares.

SEC. 810. POPULAR NAMES.

(a) NATIONAL PARK SERVICE ORGANIC ACT.—The Act of August 25, 1916 (16 U.S.C. 1 et seq.; popularly known as the "National Park Service Organic Act" is amended by adding at the end the following new section:

"SEC. 5. This Act may be cited as the 'National Park Service Organic Act'.".

(b) NATIONAL PARK SYSTEM GENERAL AUTHORITIES ACT.—Public Law 91–383 (16 U.S.C. 1a–1 et seq.; popularly known as the "National Park System General Authorities Act") is amended by adding at the end the following new section:

"SEC. 14. This Act may be cited as the 'National Park System General Authorities Act.'"

SEC. 811. PARK POLICE INDEMNIFICATION.

Section 2(b) of the Act of November 6, 2000, (Public Law 106–437; 114 Stat. 1921) is amended by striking "the Act" and inserting "of the Act".

SEC. 812. BOSTON HARBOR ISLANDS NATIONAL RECREATION AREA.

Section 1029(c)(2)(B)(i) of division I of the Omnibus Parks and Public Lands Management Act of 1996 (Public Law 104–333; 110 Stat. 4233) is amended by striking "reference" and inserting "referenced".

SEC. 813. NATIONAL HISTORIC PRESERVATION ACT.

Section 5(a)(8) of the National Historic Preservation Act Amendments of 2000 (P.L. 106–208; 114 Stat. 319) is amended by striking "section 110(1)" and inserting "section 110(l)".

SEC. 814. ADDITIONAL TECHNICAL AMENDMENTS TO THE NATIONAL TRAILS SYSTEM ACT.

The National Trails System Act (16 U.S.C. 1241) is amended—

(1) in section 5(c)(19), by striking "Kissimme" and inserting "Kissimmee";

(2) in section 5(c)(40)(D) by striking "later that" and inserting "later than";

(3) in the first sentence of section 5(d) by striking "establishment."; and

(4) in section 10(c)(1) by striking "The Ice Age" and inserting "the Ice Age".".

TITLE IX—GOLDEN CHAIN HIGHWAY NATIONAL HERITAGE CORRIDOR STUDY

SEC. 401. GOLDEN CHAIN HIGHWAY STUDY.

(a) STUDY.—Not later than 3 years after the date that funds are made available for this section, the Secretary of the Interior, in consultation with affected local governments, the State of California, State and local historic preservation offices, community organizations, and the Golden Chain Council, shall complete a special resource study of the national significance, suitability, and feasibility of establishing Highway 49 in California, known as the "Golden Chain Highway", as a National Heritage Corridor.

(b) CONTENTS.—The study shall include an analysis of—

(1) the significance of Highway 49 in American history;

(2) options for preservation and use of the highway;

(3) options for interpretation of significant features associated with the highway; and

(4) private sector preservation alternatives.

(c) BOUNDARIES OF STUDY AREA.—The area studied under this section shall be comprised of Highway 49 in California extending from the city of Oakhurst in Madera County to the city of Tuttletown in Tuolumne County, and lands, structures, and cultural resources within the immediate vicinity of the highway.

(d) REPORT.—Not later than 30 days after completion of the study required by this section, the Secretary shall submit a report describing the results of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

TITLE X—AMENDMENTS TO THE VALLES CALDERA PRESERVATION ACT

SEC. 1001. AMENDMENTS TO THE VALLES CALDERA PRESERVATION ACT.

The Valles Caldera Preservation Act (16 U.S.C. 698v) is amended—

(1) in section 106(d)(1) by inserting after the first full sentence the following—

"Employees of the Trust may be employed under contract or employment agreement, the terms and conditions of which shall be determined by the Trust in conformance with this subsection.";

(2) in section 106(d)(2) by adding at the end the following—

"(C) RETURN TO COMPETITIVE SERVICE.—Employees of the Trust who have previous service in the competitive service shall not be precluded from consideration for any position open generally to other Federal employees. In considering an employee of the Trust for a position within the competitive service, the employing agency shall consider a position with the Trust to be comparable to a similar position within the competitive service as it relates to classification and General Schedule pay rates.";

(3) by modifying section 108(g) to read as follows—

"(g) LAW ENFORCEMENT AND FIRE MANAGEMENT.—

"(1) LAW ENFORCEMENT.—The Secretary shall provide law enforcement services under a cooperative agreement with the Trust to the extent generally authorized in other units of the National Forest System. The Trust shall be deemed a Federal agency for purposes of the law enforcement authorities of the Secretary within the meaning of section 15008 of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559(g).";

"(2) FIRE MANAGEMENT.—The Secretary shall provide fire suppression and rehabilitation services under a cooperative agreement with the Trust to the extent generally authorized on other units of the National Forest System. At the request of the Trust, the Secretary may provide fire presuppression services; except that the Trust shall reimburse the Secretary for salaries and expenses of fire management personnel, commensurate with services provided."; and

(4) by modifying section 107(e)(2) to read as follows

"(2) COMPENSATION OF TRUSTEES.—Trustees may receive, upon request, compensation for each day (including travel time) that they are engaged in the performance of functions of the Board. Compensation shall not exceed the daily equivalent of the annual rate in effect for members of the Senior Executive Service at the ES–1 level, and shall be in addition to any reimbursement for travel, subsistence and other necessary expenses incurred by them in the performance of their duties. Members of the Board who are officers or employees of the United States shall not receive any additional compensation by reason of service on the Board.".

TITLE XI—UTAH MUSEUM OF NATURAL HISTORY

SEC. 1101. SHORT TITLE.

This title may be cited as the "Utah Public Lands Artifact Preservation Act".

SEC. 1102. FINDINGS.

Congress finds that—

(1) the collection of the Utah Museum of Natural History in Salt Lake City, Utah, includes more than 1,000,000 archaeological, paleontological, zoological, geological, and botanical artifacts;

(2) the collection of items housed by the Museum contains artifacts from land managed by—

(A) the Bureau of Land Management;

(B) the Bureau of Reclamation;

(C) the National Park Service;

(D) the United States Fish and Wildlife Service; and

(E) the Forest Service;

(3) more than 75 percent of the Museum's collection was recovered from federally managed public land; and

(4) the Museum has been designated by the legislature of the State of Utah as the State museum of natural history.

SEC. 1103. DEFINITIONS.

In this title:

(1) MUSEUM.—The term "Museum" means the University of Utah Museum of Natural History in Salt Lake City, Utah.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 1104. ASSISTANCE FOR UNIVERSITY OF UTAH MUSEUM OF NATURAL HISTORY.

(a) ASSISTANCE FOR MUSEUM.—The Secretary shall make a grant to the University of Utah in Salt Lake City, Utah, to pay the Federal share of the costs of construction of a new facility for the Museum, including the design, planning, furnishing, and equipping of the Museum.

(b) GRANT REQUIREMENTS.—

(1) IN GENERAL.—To receive a grant under subsection (b), the Museum shall submit to the Secretary a proposal for the use of the grant.

(2) FEDERAL SHARE.—The Federal share of the costs described in subsection (a) shall not exceed 25 percent.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000, to remain available until expended.

SA 4972. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 1894, to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes; as follows:

In lieu of the matter proposed to be inserted by the House amendment, insert the following:

TITLE I—MIAMI CIRCLE SITE SPECIAL RESOURCE STUDY

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Tequesta Indians were one of the earliest groups to establish permanent villages in southeast Florida;

(2) the Tequestas had one of only two North American civilizations that thrived and developed into a complex social chiefdom without an agricultural base;

(3) the Tequesta sites that remain preserved today are rare;

(4) the discovery of the Miami Circle, occupied by the Tequesta approximately 2,000 years ago, presents a valuable new opportunity to learn more about the Tequesta culture; and

(5) Biscayne National Park also contains and protects several prehistoric Tequesta sites.

(b) PURPOSE.—The purpose of this title is to direct the Secretary to conduct a special resource study to determine the national significance of the Miami Circle site as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park.

SEC. 102. DEFINITIONS.

In this title:

(1) MIAMI CIRCLE.—The term "Miami Circle" means the Miami Circle archaeological site in Miami-Dade County, Florida.

(2) PARK.—The term "Park" means Biscayne National Park in the State of Florida.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 103. SPECIAL RESOURCE STUDY.

(a) IN GENERAL.—Not later than one year after the date funds are made available, the Secretary shall conduct a special resource study as described in subsection (b). In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) COMPONENTS.—In addition to a determination of national significance, feasibility, and suitability, the special resource study shall include the analysis and recommendations of the Secretary with respect to—

(1) which, if any, particular areas of or surrounding the Miami Circle should be included in the Park;

(2) whether any additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of the Park; and (3) any impact on the local area that would result from the inclusion of Miami Circle in the Park.

(c) REPORT.—Not later than 30 days after completion of the study, the Secretary shall submit a report describing the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE II—MOUNT NEBO WILDERNESS BOUNDARY ADJUSTMENTS

SEC. 201. BOUNDARY ADJUSTMENTS, MOUNT NEBO WILDERNESS, UTAH.

(a) LANDS REMOVED.—The boundary of the Mount Nebo Wilderness is adjusted to exclude the following:

(1) MONUMENT SPRINGS.—The approximately 8.4 acres of land depicted on the Map as "Monument Springs".

(2) GARDNER CANYON.—The approximately 177.8 acres of land depicted on the Map as "Gardner Canyon".

(3) BIRCH CREEK.—The approximately 5.0 acres of land depicted on the Map as "Birch Creek".

(4) INGRAM CANYON.—The approximately 15.4 acres of land depicted on the Map as "Ingram Canyon".

(5) WILLOW NORTH A.—The approximately 3.4 acres of land depicted on the Map as "Willow North A".

(6) WILLOW NORTH B.—The approximately 6.6 acres of land depicted on the Map as "Willow North B".

(7) WILLOW SOUTH.—The approximately 21.5 acres of land depicted on the Map as "Willow South".

(8) MENDENHALL CANYON.—The approximately 9.8 acres of land depicted on the Map as "Mendenhall Canyon".

(9) WASH CANYON.—The approximately 31.4 acres of land depicted on the Map as "Wash Canyon".

(b) LANDS ADDED.—Subject to valid existing rights, the boundary of the Mount Nebo Wilderness is adjusted to include the approximately 293.2 acres of land depicted on the Map for addition to the Mount Nebo Wilderness. The Utah Wilderness Act of 1984 (Public Law 94-428) shall apply to the land added to the Mount Nebo Wilderness pursuant to this subsection.

SEC. 202. MAP.

(a) DEFINITION.—In this title, the term "Map" means the map entitled "Mt. Nebo Wilderness Boundary Adjustment", numbered 531, and dated May 29, 2001.

(b) MAP ON FILE.—The Map and the final document entitled "Mount Nebo, Proposed Boundary Adjustments, Parcel Descriptions (See Map #531)" and dated June 4, 2001, shall be on file and available for inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(c) CORRECTIONS.—The Secretary of Agriculture may make technical corrections to the Map.

SEC. 203. TECHNICAL BOUNDARY ADJUSTMENT.

The boundary of the Mount Nebo Wilderness is adjusted to exclude the approximately 21.26 acres of private property located in Andrews Canyon, Utah, and depicted on the Map as "Dale".

TITLE III—BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL SPECIAL RESOURCE STUDY

SEC. 301. FINDINGS.

The Congress finds the following:

(1) During World War II on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, setting in motion the forced exile of more than 110,000 Japanese Americans.

(2) In Washington State, 12,892 men, women and children of Japanese ancestry experienced three years of incarceration, an incarceration violating the most basic freedoms of American citizens.

(3) On March 30, 1942, 227 Bainbridge Island residents were the first Japanese Americans in United States history to be forcibly removed from their homes by the U.S. Army and sent to internment camps. They boarded the ferry Kehloken from the former Eagledale Ferry Dock, located at the end of Taylor Avenue, in the city of Bainbridge Island, Washington State.

(4) The city of Bainbridge Island has adopted a resolution stating that this site should be a National Memorial, and similar resolutions have been introduced in the Washington State Legislature.

(5) Both the Minidoka National Monument and Manzanar National Historic Site can clearly tell the story of a time in our Nation's history when constitutional rights were ignored. These camps by design were placed in very remote places and are not easily accessible. Bainbridge Island is a short ferry ride from Seattle and the site would be within easy reach of many more people.

(6) This is a unique opportunity to create a site that will honor those who suffered, cherish the friends and community who stood beside them and welcomed them home, and inspire all to stand firm in the event our Nation again succumbs to similar fears.

(7) The site should be recognized by the National Park Service based on its high degree of national significance, association with significant events, and integrity of its location and setting. This site is critical as an anchor for future efforts to identify, interpret, serve, and ultimately honor the Nikkei-persons of Japanese ancestry-influence on Bainbridge Island.

SEC. 302. EAGLEDALE FERRY DOCK LOCATION AT TAYLOR AVENUE STUDY AND REPORT.

(a) STUDY.—The Secretary of the Interior shall carry out a special resource study regarding the national significance, suitability, and feasibility of designating as a unit of the National Park System the property commonly known as the Eagledale Ferry Dock at Taylor Avenue and the historical events associated with it, located in the town of Bainbridge Island, Kitsap County, Washington.

(b) REPORT.—Not later than three years after funds are first made available for the study under subsection (a), the Secretary of the Interior shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the findings, conclusions, and recommendations of the study.

(c) REQUIREMENTS FOR STUDY.—Except as otherwise provided in this section, the study under subsection (a) shall be conducted in accordance with section 8(c) of Public Law 91-383 (16 U.S.C. 1a-5(c)).

TITLE IV—AMENDMENTS TO HAWAII HOMES COMMISSION ACT

SEC. 401. CONSENT TO AMENDMENTS TO HAWAII HOMES COMMISSION ACT, 1920.

In accordance with section 4 of Public Law 86-3 (73 Stat. 4), the United States consents to the following amendment to the Hawaii Homes Commission Act, 1920:

(1) Act 107 of the Session Laws of Hawaii, 2001.

TITLE V—WIND CAVE NATIONAL PARK BOUNDARY REVISION

SEC. 501. SHORT TITLE.

This title may be cited as the "Wind Cave National Park Boundary Revision Act of 2002".

SEC. 502. DEFINITIONS.

In this title:

(1) Map.—The term "map" means the map entitled 'Wind Cave National Park Boundary Revision", numbered 108/80,030, and dated June 2002.

(2) Park.—The term "Park" means the Wind Cave National Park in the State.

(3) Secretary.—The term "Secretary" means the Secretary of the Interior.

(4) State.—The term "State" means the State of South Dakota.

SEC. 503. LAND ACQUISITION.

(a) Authority.—

(1) In general.—The Secretary may acquire the land or interest in land described in subsection (b)(1) for addition to the Park.

(2) Means.—An acquisition of land under paragraph (1) may be made by donation, purchase from a willing seller with donated or appropriated funds, or exchange.

(b) Boundary.—

(1) Map and acreage.—The land referred to in subsection (a)(1) shall consist of approximately 5,675 acres, as generally depicted on the map.

(2) Availability of map.—The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(3) Revision.—The boundary of the Park shall be adjusted to reflect the acquisition of land under subsection (a)(1).

SEC. 504. ADMINISTRATION.

(a) In General.—The Secretary shall administer any land acquired under section 503(a)(1) as part of the Park in accordance with laws (including regulations) applicable to the Park.

(b) Transfer of Administrative Jurisdiction.—

(1) In general.—The Secretary shall transfer from the Director of the Bureau of Land Management to the Director of the National Park Service administrative jurisdiction over the land described in paragraph (2).

(2) Map and acreage.—The land referred to in paragraph (1) consists of the approximately 80 acres of land identified on the map as "Bureau of Land Management land".

SEC. 505. GRAZING.

(a) Grazing Permitted.—Subject to any permits or leases in existence as of the date of acquisition, the Secretary may permit the continuation of livestock grazing on land acquired under section 503(a)(1).

(b) Limitation.—Grazing under subsection (a) shall be at not more than the level existing on the date on which the land is acquired under section 503(a)(1).

(c) Purchase of Permit or Lease.—The Secretary may purchase the outstanding portion of a grazing permit or lease on any land acquired under section 503(a)(1).

(d) Termination of Leases or Permits.—The Secretary may accept the voluntary termination of a permit or lease for grazing on any acquired land.

TITLE VI—GUNNISON NATIONAL PARK AND GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION

SEC. 601. SHORT TITLE.

This title may be cited as the "Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002".

SEC. 602. BLACK CANYON OF THE GUNNISON NATIONAL PARK BOUNDARY REVISION.

(a) Establishment.—Section 4(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-2(a)) is amended—

(1) by striking "There is hereby established" and inserting the following:

"(1) In General.—There is established"; and

(2) by adding at the end the following:

"(2) Boundary Revision.—The boundary of the Park is revised to include the addition of not more than 2,725 acres, as depicted on the map entitled 'Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications' and dated June 13, 2002.".

(b) Administration.—Section 4(b) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-2(b)) is amended—

(1) by striking "Upon" and inserting the following:

"(1) Land transfer.—

"(A) In general.—On"; and

(2) by striking "The Secretary shall" and inserting the following:

"(B) Additional land.—On the date of enactment of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Boundary Revision Act of 2002, the Secretary shall transfer the land under the jurisdiction of the Bureau of Land Management identified as 'Tract C' on the map described in subsection (a)(2) to the administrative jurisdiction of the National Park Service for inclusion in the Park.

"(2) Authority.—The Secretary shall".

SEC. 603. GRAZING PRIVILEGES AT BLACK CANYON OF THE GUNNISON NATIONAL PARK.

Section 4(e) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-2(e)) is amended—

(1) in paragraph (1)—

(A) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(B) by inserting after subparagraph (A) the following:

"(B) Transfer.—If land authorized for grazing under subparagraph (A) is exchanged for private land under this Act, the Secretary shall transfer any grazing privileges to the private land acquired in the exchange in accordance with this section."; and

(2) in paragraph (3)—

(A) in subparagraph (A), by striking "and" at the end;

(B) by redesignating subparagraph (B) as subparagraph (D);

(C) by inserting after subparagraph (A) the following:

"(B) with respect to the permit or lease issued to LeValley Ranch Ltd., a partnership, for the lifetime of the 2 limited partners as of October 21, 1999;

"(C) with respect to the permit or lease issued to Sanburg Herefords, L.L.P., a partnership, for the lifetime of the 2 general partners as of October 21, 1999; and"; and

(D) in subparagraph (D) (as redesignated by subparagraph (B))—

(i) by striking "partnership, corporation, or" in each place it appears and inserting "corporation or"; and

(ii) by striking "subparagraph (A)" and inserting "subparagraphs (A), (B), or (C)".

SEC. 604. ACQUISITION OF LAND.

(a) Authority to Acquire Land.—Section 5(a)(1) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-3(a)(1)) is amended by inserting "or the map described in section 4(a)(2)" after "the Map".

(b) Method of Acquisition.—

(1) In general.—Land or interest in land acquired under the amendments made by this title shall be made in accordance with section 5(a)(2)(A) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-3(a)(2)(A)).

(2) Consent.—No land or interest in land may be acquired without the consent of the landowner.

SEC. 605. GUNNISON GORGE NATIONAL CONSERVATION AREA BOUNDARY REVISION.

Section 7(a) of the Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999 (16 U.S.C. 410fff-5(a)) is amended—

(1) by striking "(a) In General.—There is established" and inserting the following:

"(a) Establishment.—

"(1) In general.—There is established"; and

(2) by adding at the end the following:

"(2) Boundary revision.—The boundary of the Conservation Area is revised to include the addition of not more than 7,100 acres, as depicted on the map entitled 'Black Canyon of the Gunnison National Park and Gunnison Gorge NCA Boundary Modifications' and dated June 13, 2002.".

TITLE VII—FRENCH COLONIAL NATIONAL PARK STUDY

SEC. 701. STUDY.

Not later than 3 years after the date of which funds are made available to carry out this title, the Secretary of the Interior shall, in consultation with the State of Missouri, complete a study on the suitability and feasibility of designating the French Colonial Historic District, including the Bequette-Ribault, St. Gemme-Amoureaux, and Wilhauk homes and the related and supporting historical assets in Ste. Genevieve County, Missouri, as a unit of the National Park System, and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report describing the findings of the study.

SEC. 702. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE VIII—COLTSVILLE NATIONAL PARK STUDY

SEC. 801. SHORT TITLE.

This title may be cited as the "Coltsville Study Act of 2002".

SEC. 802. FINDINGS.

Congress finds that—

(1) Hartford, Connecticut, home to Colt Manufacturing Company (referred to in this title as "Colt"), played a major role in the Industrial Revolution;

(2) Samuel Colt, founder of Colt, and his wife, Elizabeth Colt, inspired Coltsville, a community in the State of Connecticut that flourished during the Industrial Revolution and included Victorian mansions, an open green area, botanical gardens, and a deer park;

(3) the residence of Samuel and Elizabeth Colt in Hartford, Connecticut, known as "Armsmear", is a national historic landmark, and the distinctive Colt factory is a prominent feature of the Hartford, Connecticut, skyline;

(4) the Colt legacy is not only about firearms, but also about industrial innovation and the development of technology that would change the way of life in the United States, including—

(A) the development of telegraph technology; and

(B) advancements in jet engine technology by Francis Pratt and Amos Whitney, who served as apprentices at Colt;

(5) the influence of Colt extended beyond the United States when Samuel Colt was the first resident of the United States to open a manufacturing plant overseas;

(6) Coltsville—

(A) set the standard for excellence during the Industrial Revolution; and (B) continues to prove significant—

(i) as a place in which people of the United States can learn about that important period in history; and

(ii) by reason of the close proximity of Coltsville to the Mark Twain House, Trinity College, Old North Cemetery, and many historic homesteads and architecturally renowned buildings;

(7) in 1998, the National Park Service conducted a special resource reconnaissance study of the Connecticut River Valley to evaluate the significance of precision manufacturing sites; and

(8) the report on the study stated that—

(A) no other region of the United States contains an equal concentration of resources relating to the precision manufacturing theme that began with firearms production;

(B) properties relating to precision manufacturing encompass more than merely factories; and

(C) further study, which should be undertaken, may recommend inclusion of churches and other social institutions.

SEC. 803. STUDY.

(a) IN GENERAL.—Not later than three years after the date on which funds are made available to carry out this title, the Secretary of the Interior (referred to in this title as the "Secretary") shall complete a study of the site in the State of Connecticut commonly known as "Coltsville" to evaluate—

(1) the national significance of the site and surrounding area;

(2) the suitability and feasibility of designating the site and surrounding area as a unit of the National Park System; and

(3) the importance of the site to the history of precision manufacturing.

(b) APPLICABLE LAW.—The study required under subsection (a) shall be conducted in accordance with Public Law 91-383 (16 U.S.C. 1a-1 et seq.).

SEC. 804. REPORT.

Not later than 30 days after the date on which the study under section 803(a) is completed, the Secretary shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report that describes—

(1) the findings of the study; and

(2) any conclusions and recommendations of the Secretary.

SEC. 805. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE IX—BEAUFORT NATIONAL PARK STUDY

SEC. 901. SHORT TITLE.

This title may be cited as the "Beaufort, South Carolina Study Act of 2002".

SEC. 902. DEFINITIONS.

In this title:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) STUDY AREA.—The term "study area" means the area comprised of historical sites in Beaufort County, South Carolina, relating to the Reconstruction Era, and includes the following sites—

(A) the Penn School;

(B) the Old Fort Plantation on the Beaufort River;

(C) the Freedmen's Bureau in Beaufort College;

(D) the First Freedmen's Village of Mitchellville on Hilton Head Island;

(E) various historic buildings and archaeological sites associated with Robert Smalls;

(F) the Beaufort Arsenal; and

(G) other significant sites relating to the Reconstruction Era.

SEC. 903. SPECIAL RESOURCE STUDY.

(a) IN GENERAL.—The Secretary shall conduct a special resource study to determine whether the study area or individual sites within it are suitable and feasible for inclusion in the National Park System.

(b) APPLICABLE LAW.—The study required under subsection (a) shall be conducted in accordance with section 8(c) of Public Law 91-383 (16 U.S.C. 1a-5(c)).

(c) REPORT.—Not later than 3 years after the date on which funds are made available for the study under subsection (a), the Secretary shall submit the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

SEC. 904. THEME STUDY.

(a) IN GENERAL.—The Secretary shall conduct a National Historic Landmark theme study to identify sites and resources throughout the United States that are significant to the Reconstruction Era.

(b) CONTENTS.—The theme study shall include recommendations for commemorating and interpreting sites and resources identified by the theme study, including sites for which new national historic landmarks should be nominated, and sites for which further study for potential inclusion in the National Park System is needed.

(c) REPORT.—Not later than 3 years after the date on which funds are made available for the study under subsection (a), the Secretary submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes the findings, conclusions, and recommendations of the study.

SEC. 905. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as are necessary to carry out this title.

TITLE X—COLD WAR SITES STUDY

SEC. 1001. COLD WAR STUDY.

(a) SUBJECT OF STUDY.—The Secretary of the Interior, in consultation with the Secretary of Defense, State historic preservation offices, State and local officials, Cold War scholars, and other interested organizations and individuals, shall conduct a National Historic Landmark theme study to identify sites and resources in the United States that are significant to the Cold War. In conducting the study, the Secretary of the Interior shall—

(1) consider the inventory of sites and resources associated with the Cold War completed by the Secretary of Defense pursuant to section 8120(b)(9) of the Department of Defense Appropriations Act, 1991 (Public Law 101-511; 104 Stat. 1906);

(2) consider historical studies and research of Cold War sites and resources such as intercontinental ballistic missiles, nuclear weapons sites (such as the Nevada test site), flight training centers, manufacturing facilities, communications and command centers (such as Cheyenne Mountain, Colorado), defensive radar networks (such as the Distant Early Warning Line), and strategic and tactical aircraft; and

(3) inventory and consider nonmilitary sites and resources associated with the people, events, and social aspects of the Cold War.

(b) CONTENTS.—The study shall include—

(1) recommendations for commemorating and interpreting sites and resources identified by the study, including—

(A) sites for which studies for potential inclusion in the National Park System should be authorized;

(B) sites for which new national historic landmarks should be nominated; and

(C) recommendations on the suitability and feasibility of establishing a central repository for Cold War artifacts and information; and

(D) other appropriate designations;

(2) recommendations for cooperative arrangements with State and local governments, local historical organizations, and other entities; and

(3) cost estimates for carrying out each of those recommendations.

(c) GUIDELINES.—THE STUDY SHALL BE—

(1) conducted with public involvement; and

(2) submitted to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate no later than 3 years after the date that funds are made available for the study.

SEC. 1002. INTERPRETIVE HANDBOOK ON THE COLD WAR.

Not later than 4 years after funds are made available for that purpose, the Secretary of the Interior shall prepare and publish an interpretive handbook on the Cold War and shall disseminate information gathered through the study through appropriate means in addition to the handbook.

SEC. 1003. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $300,000 to carry out this title.

TITLE XI—PEOPLING OF AMERICA THEME STUDY

SEC. 1101. SHORT TITLE.

This title may be cited as the "Peopling of America Theme Study Act".

SEC. 1102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) an important facet of the history of the United States is the story of how the United States was populated;

(2) the migration, immigration, and settlement of the population of the United States—

(A) is broadly termed the "peopling of America"; and

(B) is characterized by—

(i) the movement of groups of people across external and internal boundaries of the United States and territories of the United States; and

(ii) the interactions of those groups with each other and with other populations;

(3) each of those groups has made unique, important contributions to American history, culture, art, and life;

(4) the spiritual, intellectual, cultural, political, and economic vitality of the United States is a result of the pluralism and diversity of the American population;

(5) the success of the United States in embracing and accommodating diversity has

strengthened the national fabric and unified the United States in its values, institutions, experiences, goals, and accomplishments;

(6)(A) the National Park Service's official thematic framework, revised in 1996, responds to the requirement of section 1209 of the Civil War Sites Study Act of 1990 (16 U.S.C. 1a–5 note; title XII of Public Law 101–628), that "the Secretary shall ensure that the full diversity of American history and prehistory are represented" in the identification and interpretation of historic properties by the National Park Service; and

(B) the thematic framework recognizes that "people are the primary agents of change" and establishes the theme of human population movement and change—or "peopling places"—as a primary thematic category for interpretation and preservation; and

(7) although there are approximately 70,000 listings on the National Register of Historic Places, sites associated with the exploration and settlement of the United States by a broad range of cultures are not well represented.

(b) PURPOSES.—The purposes of this title are—

(1) to foster a much-needed understanding of the diversity and contribution of the breadth of groups who have peopled the United States; and

(2) to strengthen the ability of the National Park Service to include groups and events otherwise not recognized in the peopling of the United States.

SEC. 1103. DEFINITIONS.

In this title:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) THEME STUDY.—The term "theme study" means the national historic landmark theme study required under section 1104.

(3) PEOPLING OF AMERICA.—The term "peopling of America" means the migration, immigration, and settlement of the population of the United States.

SEC. 1104. NATIONAL HISTORIC LANDMARK THEME STUDY ON THE PEOPLING OF AMERICA.

(a) THEME STUDY REQUIRED.—The Secretary shall prepare and submit to Congress a national historic landmark theme study on the peopling of America.

(b) PURPOSE.—The purpose of the theme study shall be to identify regions, areas, trails, districts, communities, sites, buildings, structures, objects, organizations, societies, and cultures that—

(1) best illustrate and commemorate key events or decisions affecting the peopling of America; and

(2) can provide a basis for the preservation and interpretation of the peopling of America that has shaped the culture and society of the United States.

(c) IDENTIFICATION AND DESIGNATION OF POTENTIAL NEW NATIONAL HISTORIC LANDMARKS.—

(1) IN GENERAL.—The theme study shall identify and recommend for designation new national historic landmarks.

(2) LIST OF APPROPRIATE SITES.—The theme study shall—

(A) include a list, in order of importance or merit, of the most appropriate sites for national historic landmark designation; and

(B) encourage the nomination of other properties to the National Register of Historic Places.

(3) DESIGNATION.—On the basis of the theme study, the Secretary shall designate new national historic landmarks.

(d) NATIONAL PARK SYSTEM.—

(1) IDENTIFICATION OF SITES WITHIN CURRENT UNITS.—The theme study shall identify appropriate sites within units of the National Park System at which the peopling of America may be interpreted.

(2) IDENTIFICATION OF NEW SITES.—On the basis of the theme study, the Secretary shall recommend to Congress sites for which studies for potential inclusion in the National Park System should be authorized.

(e) CONTINUING AUTHORITY.—After the date of submission to Congress of the theme study, the Secretary shall, on a continuing basis, as appropriate to interpret the peopling of America—

(1) evaluate, identify, and designate new national historic landmarks; and

(2) evaluate, identify, and recommend to Congress sites for which studies for potential inclusion in the National Park System should be authorized.

(f) PUBLIC EDUCATION AND RESEARCH.—

(1) LINKAGES.—

(A) ESTABLISHMENT.—On the basis of the theme study, the Secretary may identify appropriate means for establishing linkages—

(i) between—

(I) regions, areas, trails, districts, communities, sites, buildings, structures, objects, organizations, societies, and cultures identified under subsections (b) and (d); and

(II) groups of people; and

(ii) between—

(I) regions, areas, trails, districts, communities, sites, buildings, structures, objects, organizations, societies, and cultures identified under subsection (b); and

(II) units of the National Park System identified under subsection (d).

(B) PURPOSE.—The purpose of the linkages shall be to maximize opportunities for public education and scholarly research on the peopling of America.

(2) COOPERATIVE ARRANGEMENTS.—On the basis of the theme study, the Secretary shall, subject to the availability of funds, enter into cooperative arrangements with State and local governments, educational institutions, local historical organizations, communities, and other appropriate entities to preserve and interpret key sites in the peopling of America.

(3) EDUCATIONAL INITIATIVES.—

(A) IN GENERAL.—The documentation in the theme study shall be used for broad educational initiatives such as—

(i) popular publications;

(ii) curriculum material such as the Teaching with Historic Places program;

(iii) heritage tourism products such as the National Register of Historic Places Travel Itineraries program; and

(iv) oral history and ethnographic programs.

(B) COOPERATIVE PROGRAMS.—On the basis of the theme study, the Secretary shall implement cooperative programs to encourage the preservation and interpretation of the peopling of America.

SEC. 1105. COOPERATIVE AGREEMENTS.

The Secretary may enter into cooperative agreements with educational institutions, professional associations, or other entities knowledgeable about the peopling of America—

(1) to prepare the theme study;

(2) to ensure that the theme study is prepared in accordance with generally accepted scholarly standards; and

(3) to promote cooperative arrangements and programs relating to the peopling of America.

SEC. 1106. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

SA 4973. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 980, an act to establish the Moccasin Bend National Archeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Park; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—MOCCASIN BEND NATIONAL ARCHEOLOGICAL DISTRICT

SEC. 101. SHORT TITLE.

This title may be cited as the "Moccasin Bend National Archeological District Act".

SEC. 102. DEFINITIONS.

As used in this title:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) ARCHEOLOGICAL DISTRICT.—The term "archeological district" means the Moccasin Bend National Archeological District.

(3) STATE.—The term "State" means the State of Tennessee.

(4) MAP.—The term "Map" means the map entitled "Boundary Map, Moccasin Bend National Archeological District", numbered 301/80098, and dated September 2002.

SEC. 103. ESTABLISHMENT.

(a) IN GENERAL.—In order to preserve, protect, and interpret for the benefit of the public the nationally significant archeological and historic resources located on the peninsula known as Moccasin Bend, Tennessee, there is established as a unit of Chickamauga and Chattanooga National Military Park, the Moccasin Bend National Archeological District.

(b) BOUNDARIES.—The archeological district shall consist of approximately 780 acres generally depicted on the Map. The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(c) ACQUISITION OF LAND AND INTERESTS IN LAND.—

(1) IN GENERAL.—The Secretary may acquire by donation, purchase from willing sellers using donated or appropriated funds, or exchange, lands and interests in lands within the exterior boundary of the archeological district. The Secretary may acquire the State, county and city-owned land and interests in land for inclusion in the archeological district only by donation.

(2) EASEMENT OUTSIDE BOUNDARY.—To allow access between areas of the archeological district that on the date of enactment of this title are noncontiguous, the Secretary may acquire by donation or purchase from willing owners using donated or appropriated funds, or exchange, easements connecting the areas generally depicted on the Map.

SEC. 104. ADMINISTRATION.

(a) IN GENERAL.—The archeological district shall be administered by the Secretary in accordance with this title, with laws applicable to Chickamauga and Chattanooga National Military Park, and with the laws generally applicable to units of the National Park System.

(b) COOPERATIVE AGREEMENT.—The Secretary may consult and enter into cooperative agreements with culturally affiliated federally recognized Indian tribes, governmental entities, and interested persons to provide for the restoration, preservation, development, interpretation, and use of the archeological district.

(c) VISITOR INTERPRETIVE CENTER.—For purposes of interpreting the historical themes and cultural resources of the archeological district, the Secretary may establish and administer a visitor center in the archeological district.

(d) GENERAL MANAGEMENT PLAN.—Not later than three years after funds are made available for this purpose, the Secretary shall develop a general management plan for the archeological district. The general management plan shall describe the appropriate protection and preservation of natural, cultural, and scenic resources, visitor use, and facility development within the archeological district consistent with the purposes of this title, while ensuring continued access to private landowners to their property.

SEC. 105. REPEAL OF PREVIOUS ACQUISITION AUTHORITY.

The Act of August 3, 1950 (Chapter 532; 16 U.S.C. 424a-4), is repealed.

TITLE II—FORT BAYARD NATIONAL HISTORIC LANDMARK ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Fort Bayard National Historic Landmark Act".

SEC. 202. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) Fort Bayard, located in southwest New Mexico, was an Army post from 1866 until 1899, and served an important role in the settlement of New Mexico;

(2) among the troops stationed at the fort were several 'Buffalo Soldier' units who fought in the Apache Wars;

(3) following its closure as a military post, Fort Bayard was established by the War Department as general hospital for use as a military sanatorium;

(4) in 1965 the State of New Mexico assumed management of the site and currently operates the Fort Bayard State Hospital;

(5) the Fort Bayard historic site has been listed on the National Register of Historic Places in recognition of the national significance of its history, both as a military fort and as an historic medical facility.

SEC. 203. FORT BAYARD NATIONAL HISTORIC LANDMARK.

(a) DESIGNATION.—The Fort Bayard Historic District in Grant County, New Mexico, as listed on the National Register of Historic Places, is hereby designated as the Fort Bayard National Historic Landmark.

(b) ADMINISTRATION.—

(1) Consistent with the Department of the Interior's regulations concerning National Historic Landmarks (36 CFR Part 65), designation of the Fort Bayard Historic District as a National Historic Landmark shall not prohibit under Federal law or regulations any actions which may otherwise be taken by the property owner with respect to the property.

(2) Nothing in this title shall affect the administration of the Fort Bayard Historic District by the State of New Mexico.

SEC. 204. COOPERATIVE AGREEMENTS.

(a) IN GENERAL.—The Secretary, in consultation with the State of New Mexico, may enter into cooperative agreements with appropriate public or private entities, for the purposes of protecting historic resources at Fort Bayard and providing educational and interpretive facilities and programs for the public. The Secretary shall not enter into any agreement or provide assistance to any activity affecting Fort Bayard State Hospital without the concurrence of the State of New Mexico.

(b) TECHNICAL AND FINANCIAL ASSISTANCE.—The Secretary may provide technical and financial assistance with any, entity with which the Secretary has entered into a cooperative agreement under subsection (a) in furtherance of the agreement.

SEC. 205. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

TITLE III—VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE

SEC. 301. SHORT TITLE.

This title may be cited as the "Virgin River Dinosaur Footprint Preserve Act".

SEC. 302. VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.

(a) AUTHORIZATION FOR GRANT TO PURCHASE PRESERVE.—Of the funds appropriated in the section entitled "Land Acquisition" of the Fiscal Year 2002 Interior and Related Agencies Appropriations Act, Public Law 107-63, the Secretary of the Interior shall grant $500,000 to the City for—

(1) the purchase of up to 10 acres of land within the area generally depicted as the "Preserve Acquisition Area" on the map entitled "Map B" and dated May 9, 2002; and

(2) the preservation of such land and paleontological resources.

(b) CONDITIONS OF GRANT.—The grant under subsection (a) shall be made only after the City agrees to the following conditions:

(1) USE OF LAND.—The City shall use the Virgin River Dinosaur Footprint Preserve in a manner that accomplishes the following:

(A) Preserves and protects the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve.

(B) Provides opportunities for scientific research in a manner compatible with subparagraph (A).

(C) Provides the public with opportunities for educational activities in a manner compatible with subparagraph (A).

(2) REVERTER.—If at any time after the City acquires the Virgin River Dinosaur Footprint Preserve, the Secretary determines that the City is not substantially in compliance with the conditions described in paragraph (1), all right, title, and interest in and to the Virgin River Dinosaur Footprint Preserve shall immediately revert to the United States, with no further consideration on the part of the United States, and such property shall then be under the administrative jurisdiction of the Secretary of the Interior.

(3) CONDITIONS TO BE CONTAINED IN DEED.—If the City attempts to transfer title to the Virgin River Dinosaur Footprint Preserve (in whole or in part), the conditions set forth in this subsection shall transfer with such title and shall be enforceable against any subsequent owner of the Virgin River Dinosaur Footprint Preserve (in whole or in part).

(c) COOPERATIVE AGREEMENT AND ASSISTANCE.—

(1) ASSISTANCE.—The Secretary may provide to the City—

(A) financial assistance, if the Secretary determines that such assistance is necessary for protection of the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve; and

(B) technical assistance to assist the City in complying with subparagraphs (A) through (C) of subsection (b)(1).

(2) ADDITIONAL GRANTS.—

(A) IN GENERAL.—In addition to funds made available under subsection (a) and paragraph (2) of this subsection, the Secretary may provide grants to the City to carry out its duties under the cooperative agreement entered into under paragraph (1).

(B) LIMITATION ON AMOUNT; REQUIRED NONGEDERAL MATCH.—Grants under subparagraph (A) shall not exceed $500,000 and shall be provided only to the extent that the City matches the amount of such grants with non-Federal contributions (including in-kind contributions).

(d) MAP ON FILE.—The map shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.

(e) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) CITY.—The term "City" means the city of St. George, Utah.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.—The term "Virgin River Dinosaur Footprint Preserve" means the property (and all facilities and other appurtenances thereon) described in subsection (a).

TITLE IV—ARCHEOLOGICAL AND CULTURAL HERITAGE PROTECTION

SEC. 401. SHORT TITLE.

This title may be cited as the "Enhanced Protection of Our Cultural Heritage Act of 2002".

SEC. 402. ENHANCED PENALTIES FOR CULTURAL HERITAGE CRIMES.

(a) ENHANCED PENALTY FOR ARCHAEOLOGICAL RESOURCES.—Section 6(d) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ee(d)) is amended by striking "not more than 10,000" and all that follows through the end of the subsection and inserting "in accordance with title 18, United States Code, or imprisoned not more than ten years or both; but if the sum of the commercial and archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources does not exceed $500, such person shall be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both.".

(b) ENHANCED PENALTY FOR EMBEZZLEMENT AND THEFT FROM INDIAN TRIBAL ORGANIZATIONS.—Section 1163 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(c) ENHANCED PENALTY FOR ILLEGAL TRAFFICKING IN NATIVE AMERICAN HUMAN REMAINS AND CULTURAL ITEMS.—Section 1170 of title 18, United States Code, is amended—

(1) in subsection (a), by striking "or imprisoned not more than 12 months, or both, and in the case of second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years" and inserting "imprisoned not more than 10 years"; and

(2) in subsection (b), by striking "imprisoned not more than one year" and all that follows through the end of the subsection and inserting "imprisoned not more than 10 years, or both; but if the sum of the commercial and archaeological value of the cultural items involved and the cost of restoration and repair of such items does not exceed $500, such person shall be fined in accordance with this title, imprisoned not more than one year, or both.".

TITLE V—PALEONTOLOGICAL RESOURCES PRESERVATION ACT

SEC. 501. SHORT TITLE.

This title may be cited as the "Paleontological Resources Preservation Act".

SEC. 502. FINDINGS.

The Congress finds the following:

(1) Paleontological resources are nonrenewable. Such resources on Federal lands are an accessible and irreplaceable part of the heritage of the United States and offer significant educational opportunities to all citizens.

(2) Existing Federal laws, statutes, and other provisions that manage paleontological resources are not articulated in a unified national policy for Federal land management agencies and the public. Such a policy is needed to improve scientific understanding, to promote responsible stewardship, and to facilitate the enhancement of responsible paleontological collecting activities on Federal lands.

(3) Consistent with the statutory provisions applicable to each Federal land management system, reasonable access to paleontological resources on Federal lands should be provided for scientific, educational, and recreational purposes.

SEC. 503. PURPOSE.

The purpose of this title is to establish a comprehensive national policy for preserving and managing paleontological resources on Federal lands.

SEC. 504. DEFINITIONS.

As used in this title:

(1) Casual collecting.—The term "casual collecting" means the collecting of a reasonable amount of common invertebrate and plant paleontological resources for personal, scientific, educational or recreational use, either by surface collection or using nonpowered hand tools resulting in only negligible disturbance to the Earth's surface and other resources.

(2) Secretary.—The term "Secretary" means the Secretary of the Interior with respect to lands administered by the Secretary of the Interior or the Secretary of Agriculture with respect to National Forest System Lands administered by the Secretary of Agriculture.

(3) Federal lands.—The term "Federal lands" means lands administered by the Secretary of the Interior, except Indian lands, or National Forest System Lands administered by the Secretary of Agriculture.

(4) Indian lands.—The term "Indian Lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(5) State.—The term "State" means the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

(6) Paleontological resource.—The term "paleontological resource" means any fossilized remains, traces, or imprints of organisms, preserved in or on the earth's crust, that are of paleontological interest and that provide information about the history of life on earth, except that the term does not include—

(A) any materials associated with an archaeological resource (as defined in section 3(1) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470bb(1)); or

(B) any cultural item (as defined in section 2 of the Native American Graves Protection and Rehabilitation Act (25 U.S.C. 3001)).

SEC. 505. MANAGEMENT.

(a) In General.—The Secretary shall manage and protect paleontological resources on Federal lands using scientific principles and expertise. The Secretary shall develop appropriate plans for inventory, monitoring, and the scientific and educational use of paleontological resources, in accordance with applicable agency laws, regulations, and policies. These plans shall emphasize interagency coordination and collaborative efforts where possible with non-Federal partners, the scientific community, and the general public.

(b) Coordination of Implementation.—To the extent possible, the Secretary of the Interior and the Secretary of Agriculture shall coordinate in the implementation of this title.

SEC. 506. PUBLIC AWARENESS AND EDUCATION PROGRAM.

The Secretary shall establish a program to increase public awareness about the significance of paleontological resources.

SEC. 507. COLLECTION OF PALEONTOLOGICAL RESOURCES.

(a) Permit Requirement.—

(1) In general.—Except as provided in this title, a paleontological resource may not be collected from Federal lands without a permit issued under this Title by the Secretary.

(2) Casual collecting exception.—The Secretary may allow casual collecting without a permit on Federal lands administered by the Bureau of Land Management, the Bureau of Reclamation, and the U.S. Forest Service, where such collection is not inconsistent with the laws governing the management of those Federal lands and this title.

(3) Previous permit exception.—Nothing in this section shall affect a valid permit issued prior to the date of enactment of this title.

(b) Criteria for Issuance of a Permit.—The Secretary may issue a permit for the collection of a paleontological resource pursuant to an application if the Secretary determines that—

(1) the applicant is qualified to carry out the permitted activity;

(2) the permitted activity is undertaken for the purpose of furthering paleontological knowledge or for public education;

(3) the permitted activity is consistent with any management plan applicable to the Federal lands concerned; and

(4) the proposed methods of collecting will not threaten significant natural or cultural resources.

(c) Permit Specifications.—A permit for the collection of a paleontological resource issued under this section shall contain such terms and conditions as the Secretary deems necessary to carry out the purposes of this title. Every permit shall include requirements that—

(1) the paleontological resource that is collected from Federal lands under the permit will remain the property of the United States;

(2) the paleontological resource and copies of associated records will be preserved for the public in an approved repository, to be made available for scientific research and public education; and

(3) specific locality data will not be released by the permittee or repository without the written permission of the Secretary.

(d) Modification, Suspension, and Revocation of Permits.—

(1) The Secretary may modify, suspend, or revoke a permit issued under this section—

(A) for resource, safety, or other management considerations; or

(B) when there is a violation of term or condition of a permit issued pursuant to this section.

(2) The permit shall be revoked if any person working under the authority of the permit is convicted under section 509 or is assessed a civil penalty under section 510 of this title.

(e) Area Closures.—In order to protect paleontological or other resources and to provide for public safety, the Secretary may restrict access to or close areas under the Secretary's jurisdiction to the collection of paleontological resources.

SEC. 508. CURATION OF RESOURCES.

Any paleontological resource, and any data and records associated with the resource, collected under a permit, shall be deposited in an approved repository. The Secretary may enter into agreements with non-Federal repositories regarding the curation of these resources, data, and records.

SEC. 509. PROHIBITED ACTS; PENALTIES.

(a) In General.—A person may not—

(1) excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any paleontological resources located on Federal lands unless such activity is conducted in accordance with this title;

(2) exchange, transport, export, receive, or offer to exchange, transport, export, or receive any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, exchanged, transported, or received from Federal lands in violation of any provisions, rule, regulation, law, ordinance, or permit in effect under Federal law, including this Title; or

(3) sell or purchase or offer to sell or purchase any paleontological resource if, in the exercise of due care, the person knew or should have known such resource to have been excavated, removed, sold, purchased, exchanged, transported, or received from Federal lands.

(b) False Labeling Offenses.—A person may not make or submit any false record, account, or label for, or any false identification of, any paleontological resource excavated or removed from Federal lands.

(c) —Penalties.—

(1) In general.—Except as provided in paragraphs (2) and (3), a person who knowingly violates or counsels, procures, solicits, or employs another person to violate subsection (a) or (b) shall, upon conviction, be guilty of a class A misdemeanor.

(2) Damage over $1,000.—If the sum of the scientific or fair market value of the paleontological resources involved and the cost of restoration and repair of such resources exceeds the sum of $1,000, such person shall, upon conviction, be guilty of a class E felony.

(3) Multiple offenses.—In the case of a second or subsequent such violation, such person shall, upon conviction, be guilty of a class D felony.

(d) General Exception.—Nothing in subsection (a) shall apply to any person with respect to any paleontological resource which was in the lawful possession of such person prior to the date of the enactment of this title.

SEC. 510. CIVIL PENALTIES FOR VIOLATIONS OF REGULATIONS OR PERMIT CONDITIONS.

(a) In General.—

(1) Hearing.—A person who violates any prohibition contained in an applicable regulation or permit issued under this Title may be assessed a penalty by the Secretary after the person is given notice and opportunity for a hearing with respect to the violation. Each violation shall be considered a separate offense for purposes of this section.

(2) Amount of penalty.—The amount of such penalty assessed under paragraph (1) shall be determined under regulations promulgated pursuant to this title, taking into account the following factors:

(A) The scientific or fair market value, whichever is greater, of the paleontological resource involved.

(B) The cost of response, restoration, and repair of the resource and the paleontological site involved.

(C) Any other factors considered relevant by the Secretary assessing the penalty.

(3) Multiple offenses.—In the case of a second or subsequent violation by the same person, the amount of a penalty assessed under paragraph (2) may be doubled.

(4) Limitation.—The amount of any penalty assessed under this subsection for any one violation shall not exceed an amount equal to double the cost of response, restoration, and repair of resources and paleontological site damage plus double the scientific or fair market value of resources destroyed or not recovered.

(b) Petition for Judicial Review; Collection of Unpaid Assessments.—Any person against whom an order is issued assessing a penalty under subsection (a) may file a petition for judicial review of the order with an appropriate Federal district court within the 30-day period beginning on the date the order making the assessment was issued. The court shall hear the action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(c) Hearings.—Hearings held during proceedings instituted under subsection (a) shall be conducted in accordance with section 554 of title 5, United States Code.

(d) Use of Recovered Amounts.—No penalties collected under this section shall be available to the Secretary and without further appropriation may be used only as follows:

(1) To protect, restore, or repair the paleontological resources and sites which were the subject of the action, or to acquire sites with equivalent resources, and to protect, monitor, and study the resources and sites. Any acquisition shall be subject to any limitations contained in the organic legislation for such Federal lands.

(2) To provide educational materials to the public about paleontological resources and sites.

(3) To provide for the payment of Rewards as provided in section 511.

SEC. 511. REWARDS FORFEITURE.

(a) Rewards.—The Secretary may pay from penalties collected under section 509 or 510 of this title an amount equal to the lesser of one-half of the penalty or $500, to any person who furnishes information which leads to the finding of a civil violation, or the conviction of criminal violation, with respect to which the penalty was paid. If several persons provided the information, the amount shall be divided among the persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.

(b) Forfeiture.—All paleontological resources with respect to which a violation under section 509 or 510 occurred and which are in the possession of any person, and all vehicles and equipment of any person that were used in connection with the violation, may be subject to forfeiture to the United States upon—

(1) the person's conviction of the violation under section 509;

(2) assessment of a civil penalty against any person under section 510 with respect to the violation; or

(3) a determination by any court that the paleontological resources, vehicles, or equipment were involved in the violation.

SEC. 512. CONFIDENTIALITY.

Information concerning the nature and specific location of a paleontological resource the collection of which requires a permit under this Title or under any other provision of Federal law shall be withheld from the public under subchapter II of chapter 5 of title 5, United States Code, or under any other provision of law unless the responsible Secretary determines that disclosure would—

(1) further the purposes of this title;

(2) not create risk of harm to or theft or destruction of the resource or the site containing the resource; and

(3) be in accordance with other applicable laws.

SEC. 513. REGULATIONS.

As soon as practical after the date of the enactment of this title, the Secretary shall issue such regulations as are appropriate to carry out this title, providing opportunities for public notice and comment.

SEC. 514. SAVINGS PROVISIONS.

Nothing in this title shall be construed to—

(1) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time under the general mining laws, the mineral or geothermal leasing laws, laws providing for minerals materials disposal, or laws providing for the management or regulation of the activities authorized by the aforementioned laws including but not limited to the Federal Land Policy Management Act (43 U.S.C. 1701–1784), the Mining in the Parks Act, the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201–1358), and the Organic Administration Act (16 U.S.C. 478, 482, 551);

(2) invalidate, modify, or impose any additional restrictions or permitting requirements on any activities permitted at any time existing laws and authorities relating to reclamation and multiple uses of the public lands;

(3) apply to, or require a permit for, amateur collecting of a rock, mineral, or invertebrate or plant fossil that is not protected under this title;

(4) affect any lands other than Federal lands or affect the lawful recovery, collection, or sale of paleontological resources from lands other than Federal lands;

(5) alter or diminish the authority of a Federal agency under any other law to provide protection for paleontological resources on Federal lands in addition to the protection provided under this title; or

(6) create any right, privilege, benefit, or entitlement for any person who is not an officer or employee of the United States acting in that capacity. No person who is not an officer or employee of the United States acting in that capacity shall have standing to file any civil action in a court of the United States to enforce any provision or amendment made by this title.

SEC. 515. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out this title.

SA 4974. Mr. REID (for Mr. Bingaman) proposed an amendment to the bill H.R. 37, to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—NATIONAL HISTORIC TRAILS STUDIES

SEC. 101. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING NATIONAL HISTORIC TRAILS.

Section 5 of the National Trails System Act (16 U.S.C. 1244) is amended by inserting the following new subsection:

"(g) The Secretary shall revise the feasibility and suitability studies for certain national trails for consideration of possible additions to the trails.

"(1) In general.—

"(A) Definitions.—In this subsection:

"(i) Route.—The term 'route' includes a trail segment common known as a cutoff.

"(ii) Shared route.—The term 'shared' route means a route that was a segment of more than one historic trail, including a route shared with an existing national historic trail.

"(B) Study requirements and objectives.—The study requirements and objectives specified in subsection (b) shall apply to a study required by this subsection.

"(C) Completion and submission of study.—A study listed in this subsection shall be completed and submitted to the Congress not later than three complete fiscal years from the date of the enactment of this subsection, or from the date of the enactment of the addition of the study to this subsection, whichever is later.

"(2) Oregon national historic trail.—

"(A) Study required.—The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other routes of the Oregon Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Oregon National Historic Trail.

"(B) Covered routes.—The routes to be studied under subparagraph (A) shall include the following:

"(i) Whitman Mission route.—

"(ii) Upper Columbia River.

"(iii) Cowlitz River route.

"(iv) Meek cutoff.

"(v) Free Emigrant Road.

"(vi) North Alternate Oregon Trail.

"(vii) Goodale's cutoff.

"(viii) North Side alternate route.

"(ix) Cutoff to Barlow Road.

"(x) Naches Pass Trail.

"(3) Pony express national historic trail.—The Secretary of the Interior shall undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such other routes of the Pony Express Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Pony Express National Historic Trail.

"(4) California national historic trail.—

"(A) Study required.—The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other and shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the California National Historic Trail.

"(B) Covered routes.—The routes to be studied under subparagraph (A) shall include the following:

"(i) MISSOURI VALLEY ROUTES.—

"(I) Blue Mills-Independence Road.

"(II) Westport Landing Road.

"(III) Westport-Lawrence Road.

"(IV) Fort Leavenworth-Blue River route.

"(V) Road to Amazonia.

"(VI) Union Ferry Route.

"(VII) Old Wyoming-Nebraska City cutoff.

"(VIII) Lower Plattsmouth Route.

"(IX) Lower Bellevue Route.

"(X) Woodbury cutoff.

"(XI) Blue Ridge cutoff.

"(XII) Westport Road.

"(XIII) Gum Springs-Fort Leavenworth route.

"(XIV) Atchison/Independence Creek routes.

"(XV) Fort Leavenworth-Kansas River route.

"(XVI) Nebraska City cutoff routes.

"(XVII) Minersville-Nebraska City Road.

"(XVIII) Upper Plattsmouth route.

"(XIX) Upper Bellevue route.

"(ii) CENTRAL ROUTES.—

"(I) Cherokee Trail, including splits.

"(II) Weber Canyon route of Hastings cutoff.

"(III) Bishop Creek cutoff.

"(IV) McAuley cutoff.

"(V) Diamond Springs cutoff.

"(VI) Secret Pass.

"(VII) Greenhorn cutoff.

"(VIII) Central Overland Trail.

"(iii) WESTERN ROUTES.—

"(I) Bidwell-Bartleson route.

"(II) Georgetown/Dagget Pass Trail.

"(III) Big Trees Road.

"(IV) Grizzly Flat cutoff.

"(V) Nevada City Road.

"(VI) Yreka Trail.

"(VII) Henness Pass route.

"(VIII) Johnson cutoff.

"(IX) Luther Pass Trail.

"(X) Volcano Road.

"(XI) Sacramento-Coloma Wagon Road.

"(XII) Burnett cutoff.

"(XIII) Placer County Road to Auburn.

"(5) MORMON PIONEER NATIONAL HISTORIC TRAIL.—

"(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Mormon Pioneer Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other routes of the Mormon Pioneer Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Mormon Pioneer National Historic Trail.

"(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

"(i) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

"(ii) 1856–57 Handcart route (Iowa City to Council Bluffs).

"(iii) Keokuk route (Iowa).

"(iv) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

"(v) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon and California Trail routes used by Mormon emigrants).

"(vi) 1850 Golden Pass Road in Utah.

"(6) SHARED CALIFORNIA AND OREGON TRAIL ROUTES.—

"(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

"(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

"(i) St. Joe Road.

"(ii) Council Bluffs Road.

"(iii) Sublette cutoff.

"(iv) Applegate route.

"(v) Old Fort Kearny Road (Oxbow Trail).

"(vi) Childs cutoff.

"(vii) Raft River to Applegate."

TITLE II—NATIONAL TRAILS SYSTEM ACQUISITION AUTHORITIES

SEC. 201. SHORT TITLE.

This title may be cited as the "National Trails System Willing Seller Act".

SEC. 202. FINDINGS.

The Congress finds the following:

(1) In spite of commendable efforts by State and local governments and private volunteer trail groups to develop, operate, and maintain the national scenic and national historic trails designated by Act of Congress in section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)), the rate of progress towards developing and completing the trails is slower than anticipated.

(2) Nine of the twelve national scenic and historic trails designated between 1978 and 1986 are subject to restrictions totally excluding Federal authority for land acquisition outside the exterior boundaries of any federally administered area, including the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail.

(3) To complete the North Country National Scenic Trail, the Ice Age National Scenic Trail, and the Potomac Heritage National Scenic Trail as intended by Congress, acquisition authority to secure necessary rights-of-way and historic sites and segments, limited to acquisition from willing sellers only, and specifically excluding the use of condemnation, should be extended to the Secretary of the Federal department administering these trails.

SEC. 203. SENSE OF THE CONGRESS REGARDING MULTIJURISDICTIONAL AUTHORITY OVER THE NATIONAL TRAILS SYSTEM.

It is the sense of the Congress that in order to address the problems involving multi-jurisdictional authority over the National Trails System, the Secretary of the Federal department with jurisdiction over a national scenic or historic trail should—

(1) cooperate with appropriate officials of each State and political subdivisions of each State in which the trail is located and private persons with an interest in the trail to pursue the development of the trail; and

(2) be granted sufficient authority to purchase lands and interests in lands from willing sellers that are critical to the completion of the trail.

SEC. 204. AUTHORITY TO ACQUIRE LANDS FROM WILLING SELLERS FOR CERTAIN TRAILS OF THE NATIONAL TRAILS SYSTEM ACT.

(a) LIMITED ACQUISITION AUTHORITY.—

(1) NORTH COUNTRY NATIONAL SCENIC TRAIL.—Section 5(a)(8) of the National Trails System Act (16 U.S.C. 1244(a)(8)) is amended by adding at the end: "No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner thereof.".

(2) ICE AGE NATIONAL SCENIC TRAIL.—Section 5(a)(10) of the National Trails System Act (16 U.S.C. 1244(a)(10)) is amended by adding at the end: "No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner thereof.".

(3) POTOMAC HERITAGE NATIONAL SCENIC TRAIL.—Section 5(a)(11) of the National Trails System Act (16 U.S.C. 1244(a)(11)) is amended by adding at the end: "No lands or interests therein outside the exterior boundaries of any federally administered area may be acquired by the Federal Government for the trail except with the consent of the owner thereof.".

(b) CONFORMING AMENDMENT.—Section 10(c)(1) of the National Trails System Act (16 U.S.C. 1249(c)(1)) is amended by striking "the North Country National Scenic Trail, The Ice Age National Scenic Trail,".

TITLE III—OLD SPANISH TRAIL NATIONAL HISTORIC TRAIL

SEC. 301. SHORT TITLE.

This title may be cited as the "Old Spanish Trail Recognition Act of 2002".

SEC. 302. AUTHORIZATION AND ADMINISTRATION.

Section 5(a) of the National Trails System Act (16 U.S.C. 1244(a)) is amended—

(1) by redesignating the second paragraph (21) as paragraph (22); and

(2) by adding at the end the following:

"(23) OLD SPANISH NATIONAL HISTORIC TRAIL.—

"(A) IN GENERAL.—The Old Spanish National Historic Trail, an approximately 2,700 mile long trail extending from Santa Fe, New Mexico, to Los Angeles, California, that served as a major trade route between 1829 and 1848, as generally depicted on the maps numbered 1 through 9, as contained in the report entitled 'Old Spanish Trail National Historic Trail Feasibility Study', dated July 2001, including the Armijo Route, Northern Route, North Branch, and Mojave Road".

"(B) MAP.—A map generally depicting the trail shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.".

"(C) ADMINISTRATION.—The trail shall be administered by the Secretary of the Interior (referred to in this paragraph as the 'Secretary').

"(D) LAND ACQUISITION.—The United States shall not acquire for the trail any land or interest in land outside the exterior boundary of any federally-managed area without the consent of the owner of the land or interest in land.

"(E) CONSULTATION.—The Secretary shall consult with other Federal, State, local, and tribal agencies in the administration of the trail.

"(F) ADDITIONAL ROUTES.—The Secretary may designate additional routes to the trail if—

"(i) the additional routes were included in the Old Spanish Trail National Historic Trail Feasibility Study, but were not recommended for designation as a national historic trail; and

"(ii) the Secretary determines that the additional routes were used for trade and commerce between 1829 and 1848.".

TITLE IV—LEWIS AND CLARK NATIONAL HISTORIC TRAIL ADDITION

SEC. 401. SHORT TITLE.

This title may be cited as the "Lewis and Clark National Historic Trail Amendments Act of 2002".

SEC. 402. FINDINGS.

Congress finds that—

(1) the National Trails System—

(A) was established in 1968 to—

(i) provide additional recreational opportunities to the people of the United States; and

(ii) preserve access to outdoor areas and historical resources of the United States; and

(B) since 1968, has been modified to—

(i) recognize new categories of trails; and

(ii) expand trails;

(2) the Lewis and Clark National Historic Trail, as designated in 1978, omits several historically significant sites relating to the Lewis and Clark Expedition;

(3) Meriwether Lewis and William Clark gathered at the Falls of the Ohio, located in Clarksville, Indiana, and Louisville, Kentucky, to plan and prepare for the expedition;

(4) the Falls of the Ohio was also the site at which—

(A) Lewis and Clark selected the first enlisted members of the expedition; and

(B) those members were sworn into the Army at a ceremony witnessed by General George Rogers Clark;

(5) on July 13, 2001, the National Park Service certified the Falls of the Ohio as an official Lewis and Clark site associated with the Lewis and Clark National Historic Trail;

(6) on July 22, 2002, the National Park Service certified historic Locust Grove in Louisville, Kentucky, as an official Lewis and Clark site associated with the Lewis and Clark National Historic Trail;

(7) the National Council of the Lewis and Clark Bicentennial has designated the Falls of the Ohio as a national signature event site at which to commemorate, during October 2003, the bicentennial of events in the area relating to the Lewis and Clark Expedition; and

(8) the areas in and around Clarksville, Indiana, and Louisville, Kentucky, including the Falls of the Ohio—

(A) are the sites of events that were significant to the Lewis and Clark Expedition; and

(B) should be recognized and protected as components of the Lewis and Clark National Historic Trail.

SEC. 403. EXTENSION OF LEWIS AND CLARK NATIONAL HISTORIC TRAIL.

Section 5(a)(6) of the National Trails System Act (16 U.S.C. 1244(a)(6)) is amended—

(1) by striking "(6) The" and inserting the following:

"(6) LEWIS AND CLARK NATIONAL HISTORIC TRAIL.—

"(A) IN GENERAL.—The"; and

(2) by inserting after subparagraph (A) (as designated by paragraph (1)) the following:

"(B) ADDITIONAL ROUTE.—In addition to the route described in subparagraph (A), the Lewis and Clark National Historic Trail shall include the route traveled by Meriwether Lewis and William Clark from the Falls of the Ohio, located in Clarksville, Indiana, and Louisville, Kentucky, to Wood River, Illinois.".

SA 4975. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 198, to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land; as follows:

Strike all after the enacting clause and insert the following:

TITLE I.—NOXIOUS WEED CONTROL ACT OF 2002

SEC. 101. SHORT TITLE.

This title may be cited as the "Noxious Weed Control Act of 2002".

SEC. 102. DEFINITIONS.

In this title:

(1) NOXIOUS WEED.—The term "noxious weed" has the same meaning as in the Plant Protection Act (7 U.S.C. 7702(10)).

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(4) INDIAN TRIBE—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) WEED MANAGEMENT ENTITY.—The term "weed management entity" means an entity that—

(A) is recognized by the State in which it is established;

(C) is established for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds; and

(D) is multijurisdictional and multidisciplinary in nature.

SEC. 103. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program to provide financial assistance through States to eligible weed management entities to control or eradicate weeds. In developing the program, the Secretary shall consult with the National Invasive Species Council, the Invasive Species Advisory Committee, representatives from States and Indian tribes with weed management entities or that have particular problems with noxious weeds, and public and private entities with experience in noxious weed management.

SEC. 104. ALLOCATION OF FUNDS TO STATES AND INDIAN TRIBES.

The Secretary shall allocate funds to States to provide funding to weed management entities to carry out projects approved by States to control or eradicate weeds on the basis of the severity or potential severity of the noxious weed problem, the extent to which the Federal funds will be used to leverage non-Federal funds, the extent to which the State has made progress in addressing noxious weed problems, and such other factors as the Secretary deems relevant. The Secretary shall provide special consideration for States with approved weed management entities established by Indian tribes, and may provide an additional allocation to a State to meet the particular needs and projects that such a weed management entity will address.

SEC. 105. ELIGIBILITY AND USE OF FUNDS.

(a) REQUIREMENTS.—The Secretary shall prescribe requirements for applications by States for funding, including provisions for auditing of and reporting on the use of funds and criteria to ensure that weed management entities recognized by the States are capable of carrying out projects, monitoring and reporting on the use of funds, and are knowledgeable about and experienced in noxious weed management and represent private and public interests adversely affected by noxious weeds. Eligible activities for funding shall include—

(1) applied research to solve locally significant weed management problems and solutions, except that such research may not exceed 8 percent of the available funds in any year;

(2) incentive payments to encourage the formation of new weed management entities, except that such payments may not exceed 25 percent of the available funds in any year; and

(3) projects relating to the control or eradication of noxious weeds, including education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment that promote such control or eradication, and other activities to promote such control or eradication, if the results of the activities are disseminated to the public.

(b) PROJECT SELECTION.—A State shall select projects for funding to a weed management entity on a competitive basis considering—

(1) the seriousness of the noxious weed problem or potential problem addressed by the project;

(2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

(3) the extent to which the payment will leverage non-Federal funds to address the noxious weed problem addressed by the project;

(4) the extent to which the weed management entity has made progress in addressing noxious weed problems;

(5) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(6) the extent to which the project will reduce the total population of a noxious weed;

(7) the extent to which the project uses the principles of integrated vegetation management and sound science; and

(8) such other factors that the State determines to be relevant.

(c) INFORMATION AND REPORT.—As a condition of the receipt of funding, States shall require such information from grant recipients as necessary and shall submit to the Secretary a report that describes the purposes and results of each project for which the payment or award was used, by not later than 6 months after completion of the projects.

(d) FEDERAL SHARE.—The Federal share of any project or activity approved by a State or Indian tribe under this title may not exceed 50 percent unless the State meets criteria established by the Secretary that accommodates situations where a higher percentage is necessary to meet the needs of an underserved area or addresses a critical need that cannot be met otherwise.

SEC. 106. LIMITATIONS.

(a) LANDOWNER CONSENT; LAND UNDER CULTIVATION.—Any activity involving real property, either private or public, may be carried out under this title only with the consent of the landowner and no project may be undertaken on property that is devoted to the cultivation of row crops, fruits, or vegetables.

(b) COMPLIANCE WITH STATE LAW.—A weed management entity may carry out a project to address the noxious weed problem in more than one State only if the entity meets the requirements of the State laws in all States in which the entity will undertake the project.

(c) USE OF FUNDS.—Funding under this title may not be used to carry out a project—

(1) to control or eradicate animals, pests, or submerged or floating noxious aquatic weeds; or

(2) to protect an agricultural commodity (as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602)) other than—

(A) livestock (as defined in section 602 of the Agricultural Trade Act of 1949 (7 U.S.C. 1471); or

(B) an animal- or insect-based product.

SEC. 107. RELATIONSHIP TO OTHER PROGRAMS.

Assistance authorized under this title is intended to supplement, and not replace, assistance available to weed management entities, areas, and districts for control or eradication of harmful, invasive weeds on public lands and private lands, including funding available under the Pulling Together Initiative of the National Fish and Wildlife Foundation; and the provision of funds to any entity under this title shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code (commonly known as the Payments in Lieu of Taxes Act).

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

To carry out this title there is authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2002 through 2006, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.

TITLE III—NEWTOK LAND EXCHANGE

SEC. 301. FINDINGS.

Congress finds that:

(1) The continued existence of the village of Newtok, Alaska is threatened by the eroding banks of the Ninglick River.

(2) A relocation of the village will become necessary for the health and safety of the residents of Newtok within the next 8 years.

(3) Lands previously conveyed to the Newtok Native Corporation contain habitat of high value for waterfowl.

(4) An opportunity exists for an exchange of lands between the Newtok Native Corporation and the Yukon Delta National Wildlife Refuge that would address the relocation needs of the village while enhancing the quality of waterfowl habitat within the boundaries of the Refuge.

(5) An exchange of lands between Newtok and the United States on an other than equal value basis pursuant to the terms of this Act is in the public interest.

SEC. 302. DEFINITIONS.

For the purposes of this title, the term

(1) "ANCSA" means the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.);

(2) "ANILCA" means the Alaska National Interest Lands Conservation Act of 1980 (16 USC 410hh–3233, 43 USC 1602 et seq.);

(3) "Calista" means the Calista Corporation, an Alaska Native Regional Corporation established pursuant to ANCSA;

(4) "Identified Lands" means approximately 10,943 acres of lands (including surface and subsurface) designated as "Proposed Village Site" upon a map entitled "Proposed Newtok Exchange," dated September, 2002, and available for inspection in the Anchorage office of the United States Fish and Wildlife Service;

(5) "limited warranty deed" means a warranty deed which is, with respect to its warranties, limited to that portion of the chain of title from the moment of conveyance from the United States to Newtok to and including the moment at which such title is validly reconveyed to the United States of America and its assigns;

(6) "Newtok" means the Newtok Native Corporation, an Alaska Native Village Corporation established pursuant to ANCSA;

(7) "Newtok lands" means approximately 12,101 acres of surface estate comprising conveyed lands and selected lands identified as Aknerkochik on the map referred to in paragraph (4) and that surface estate selected by Newtok on Baird Inlet Island as shown on said map; and

(8) "Secretary" means the Secretary of the Interior.

SEC. 303. LANDS TO BE EXCHANGED.

(a) Lands Exchanged to the United States.—If, within 180 days after the date of enactment of this title, Newtok expresses to the Secretary in writing its intent to enter into a land exchange with the United States, the Secretary shall accept from Newtok a valid, unencumbered conveyance, by limited warranty deed, of the Newtok lands previously conveyed to Newtok. The Secretary shall also accept from Newtok a relinquishment of irrevocable prioritized selections for approximately 4,956 acres for those validly selected lands not yet conveyed to Newtok. The reconveyance of lands by Newtok to the United States and the prioritized, relinquished selections shall be 1.1 times the number of acres conveyed to Newtok under this title. The number of acres reconveyed to the United States and the prioritized, relinquished selections shall be charged to the entitlement of Newtok.

(b) Lands Exchanged to Newtok.—(1) In exchange for the Newtok lands conveyed and selections relinquished under subsection (a), the Secretary shall, subject to valid existing rights and notwithstanding section 14(f) of ANCSA, convey to Newtok the surface and subsurface estate of the Identified Lands. The conveyance shall be by interim conveyance. Subsequent to the interim conveyance, the Secretary shall survey the Identified Lands at no cost to Newtok and issue a patent to the Identified Lands subject to the provisions of ANCSA and this title. At the time of survey the charge against Newtok's entitlement for acres conveyed or irrevocable priorities relinquished by Newtok may be adjusted to conform to the standard of 1.1 acres relinquished by Newtok for each one acre received.

SEC. 304. CONVEYANCE.

(a) Timing.—The Secretary shall issue interim conveyances pursuant to subsection 303(b) at the earliest possible time after acceptance of the Newtok conveyance and relinquishment of selections under subsection 303(a).

(b) Relationship to ANCSA.—Lands conveyed to Newtok under this title shall be deemed to have been conveyed under the provisions of ANCSA, except that the provisions of 14(c) of ANCSA shall not apply to these lands, and to the extent that section 22(g) of ANCSA would otherwise be applicable to these lands, the provisions of 22(g) of ANCSA shall also not apply to these lands. Consistent with section 103(c) of ANILCA, these lands shall not be deemed to be included as a portion of the Yukon National Wildlife Refuge and shall not be subject to regulations applicable solely to public lands within this Conservation System Unit.

(c) Effect on Entitlement.—Nothing in this title shall be construed to change the total acreage of land to which Newtok is entitled under ANCSA.

(d) Effect on Newtok Lands.—The Newtok Lands shall be included in the Yukon Delta National Wildlife Refuge as of the date of acceptance of the conveyance of those lands from Newtok, except that residents of the Village of Newtok, Alaska, shall retain access rights to subsistence resources on those public lands as guaranteed under ANILCA section 811 (16 U.S.C. 3121), and to subsistence uses, such as traditional subsistence fishing, hunting and gathering, consistent with ANILCA section 803 (16 U.S.C. 3113).

(e) Adjustment to Calista Corporation ANCSA Entitlement for Relinquished Newtok Selections.—To the extent that Calista subsurface rights are affected by this title, Calista shall be entitled to an equivalent acreage of in-lieu subsurface entitlement for the Newtok selections relinquished in the exchange as set forth in subsection 303(a) of this title. This additional entitlement shall come from subsurface lands already selected by Calista, but which have not been conveyed. If Calista does not have sufficient subsurface selections to accommodate this additional entitlement, Calista Corporation is hereby authorized to make an additional in lieu selection for the deficient acreage.

(f) Adjustment to Exchange.—If requested by Newtok, the Secretary is authorized to consider and make adjustments to the original exchange to meet the purposes of this title, subject to all the same terms and conditions of this title.

TITLE IV—FLORIDA NATIONAL FOREST LAND MANAGEMENT ACT

SEC. 401. SHORT TITLE.

This title may be cited as the "Florida National Forest Land Management Act of 2002".

SEC. 402. DEFINITIONS.

In this title:

(1) Secretary.—The term "Secretary" means the Secretary of Agriculture.

(2) State.—The term "State" means the State of Florida.

SEC. 403. SALE OR EXCHANGE OF LAND.

(a) In General.—The Secretary may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the parcels of Federal land in the State described in subsection (b).

(b) Description of Land.—The parcels of Federal land in the State referred to in subsection (a) consist of—

(1) tract A–942a, East Bay, Santa Rosa County, consisting of approximately 61 acres, and more particularly described as T. 1 S., R. 27 W., Sec. 31, W ½ of SW ¼ ;

(2) tract A–942b, East Bay, Santa Rosa County, consisting of approximately 40 acres, and more particularly described as T. 1 S., R. 27 W., Sec. 38;

(3) tract A–942c, Ft. Walton, Okaloosa County, located southeast of the intersection of and adjacent to State Road 86 and Mooney Road, consisting of approximately 0.59 acres, and more particularly described as T. 1 S., R. 24 W., Sec. 26;

(4) tract A–942d, located southeast of Crestview, Okaloosa County, consisting of approximately 79.90 acres, and more particularly described as T. 2 N., R. 23 W., Sec. 2, NW ¼ NE ¼ and NE ¼ NW ¼;

(5) tract A–943, Okaloosa County Fairgrounds, Ft. Walton, Okaloosa County, consisting of approximately 30.14 acres, and more particularly described as T. 1 S., R. 24 W., Sec. 26, S ½;

(6) tract A–944, City Ball Park—Ft. Walton, Okaloosa County, consisting of approximately 12.43 acres, and more particularly described as T. 1 S., R. 24 W., Sec. 26, S ½;

(7) tract A–945, Landfill-Golf Course Driving Range, located southeast of Crestview, Okaloosa County, consisting of approximately 40.85 acres, and more particularly described as T. 2 N., R. 23 W., Sec. 4, NW ¼ NE ¼;

(8) tract A–959, 2 vacant lots on the north side of Micheaux Road in Bristol, Liberty County, consisting of approximately 0.5 acres, and more particularly described as T. 1 S., R. 7 W., Sec. 6;

(9) tract C–3m-d, located southwest of Astor in Lake County, consisting of approximately 15.0 acres, and more particularly described as T. 15 S., R. 28 E., Sec. 37;

(10) tract C–691, Lake County, consisting of the subsurface rights to approximately 40.76 acres of land, and more particularly described as T. 17 S., R. 29 E., Sec. 25, SE ¼ NW ¼;

(11) tract C–2208b, Lake County, consisting of approximately 39.99 acres, and more particularly described as T. 17 S., R. 28 E., Sec. 28, NW ¼ SE ¼;

(12) tract C–2209, Lake County, consisting of approximately 127.2 acres, as depicted on the map, and more particularly described as T. 17 S., R. 28 E., Sec. 21, NE ¼ SW ¼, SE ¼ NW ¼, and SE ¼ NE ¼;

(13) tract C–2209b, Lake County, consisting of approximately 39.41 acres, and more particularly described as T. 17 S., R. 29 E., Sec. 32, NE ¼ SE ¼;

(14) tract C–2209c, Lake County, consisting of approximately 40.09 acres, and more particularly described as T. 18 S., R. 28 E., Sec. 14, SE ¼ SW ¼;

(15) tract C–2209d, Lake County, consisting of approximately 79.58 acres, and more particularly described as T. 18 S., R. 29 E., Sec. 5, SE ¼ NW ¼, NE ¼ SW ¼;

(16) tract C–2210, government lot 1, 20 recreational residential lots, and adjacent land on Lake Kerr, Marion County, consisting of approximately 30 acres, and more particularly described as T. 13 S., R. 25 E., Sec. 22;

(17) tract C–2213, located in the F.M. Arrendondo grant, East of Ocala, Marion County, and including a portion of the land located east of the western right-of-way of State Highway 19, consisting of approximately 15.0 acres, and more particularly described as T. 14 and 15 S., R. 26 E., Sec. 36, 38, and 40; and

(18) all improvements on the parcels described in paragraphs (1) through (18).

(c) Legal Description Modification.—The Secretary may, for the purposes of soliciting offers for the sale or exchange of land under subsection (d), modify the descriptions of land specified in subsection (b) based on—

(1) a survey; or

(2) a determination by the Secretary that the modification would be in the best interest of the public.

(d) Solicitations of Offers.—

(1) In general.—Subject to such terms and conditions as the Secretary may prescribe, the Secretary may solicit offers for the sale or exchange of land described in subsection (b).

(2) Rejection of offers.—The Secretary may reject any offer received under this section if the Secretary determines that the offer—

(A) is not adequate; or

(B) is not in the public interest.

(e) Methods of Sale.—The Secretary may sell the land described in subsection (b) at public or private sale (including at auction), in accordance with any terms, conditions, and procedures that the Secretary determines to be appropriate.

(f) Brokers.—In any sale or exchange of land described in subsection (b), the Secretary may—

(1) use a real estate broker; and

(2) pay the real estate broker a commission in an amount that is comparable to the amounts of commission generally paid for real estate transactions in the area.

(g) Concurrence of the Secretary of the Air Force.—A parcel of land described in paragraphs (1) through (7) of subsection (b) shall not be sold or exchanged by the Secretary without the concurrence of the Secretary of the Air Force.

(h) Cash Equalization.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), if the value of non-Federal land for which Federal land is exchanged under this section is less than the value of the Federal land exchanged, the Secretary may accept a cash equalization payment in excess of 25 percent of the value of the Federal land.

(i) Disposition of Proceeds.—

(1) In general.—The net proceeds derived from any sale or exchange under this Act shall be deposited in the fund established by Public Law 90–171 (commonly known as the 'Sisk Act') (16 U.S.C. 484a).

(2) Use.—Amounts deposited under paragraph (1) shall be available to the Secretary for expenditure, without further appropriation, for—

(A) acquisition of land and interests in land for inclusion as units of the National Forest System in the State; and

(B) reimbursement of costs incurred by the Secretary in carrying out land sales and exchanges under this title, including the payment of real estate broker commissions under subsection (f).

SEC. 404. ADMINISTRATION.

(a) In General.—Land acquired by the United States under this title shall be—

(1) subject to the Act of March 1, 1911 (commonly known as the 'Weeks Act') (16 U.S.C. 480 et seq.); and

(2) administered in accordance with laws (including regulations) applicable to the National Forest System.

(b) Applicable Law.—The land described in section 403(b) shall not be subject to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

(c) Withdrawal.—Subject to valid existing rights, the land described in section 403(b) is withdrawn from location, entry, and patent under the public land laws, mining laws, and mineral leasing laws (including geothermal leasing laws).

TITLE V—AMERICAN FORK CANYON VISITORS CENTER

SEC. 501. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in one facility would—

(A) facilitate interagency coordination;

(B) serve the public better; and

(C) improve cost effectiveness.

(b) Purposes.—The purposes of this title are—

(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

SEC. 502. DEFINITIONS.

In this title:

(1) Facility.—The term "facility" means the facility constructed under section 506 to house—

(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

(2) Federal land.—The term "Federal land" means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW ¼, NE ¼, E ½, NW ¼ and E ½, SW ¼, as depicted on the map entitled "Long Hollow-Provo Canyon Parcel", dated March 12, 2001;

(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW ¼, as depicted on the map entitled "Provo Sign and Radio Shop", dated March 12, 2001;

(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE ¼, as depicted on the map entitled "Corner Canyon Parcel", dated March 12, 2001;

(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S ½, as depicted on the map entitled "Beaver Administrative Site", dated March 12, 2001;

(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE ¼, SW ¼, NE ¼, as depicted on the map entitled "Springville Parcel", dated March 12, 2001; and

(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled "Pleasant Grove Ranger District Parcel", dated March 12, 2001.

(3) Non-federal land.—The term "non-Federal land" means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW ¼, as depicted on the map entitled "The Highland Property", dated March 12, 2001.

(4) Secretary.—The term "Secretary" means the Secretary of Agriculture.

SEC. 503. MAPS AND LEGAL DESCRIPTIONS.

(a) Availability of Maps.—The maps described in paragraphs (2) and (3) of section 502 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the date on which the land depicted on the maps is exchanged under this title.

(b) Technical Corrections to Legal Descriptions.—The Secretary may correct minor errors in the legal descriptions in paragraphs (2) and (3) of section 502.

SEC. 504. EXCHANGE OF LAND FOR FACILITY SITE.

(a) In General.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

(b) Title to Non-Federal Land.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

(c) Valuation of Non-Federal Land.—

(1) Determination.—The fair market value of the land and the improvements on the land exchanged under this title shall be determined by an appraisal that—

(A) is approved by the Secretary; and

(B) conforms with the Federal appraisal standards, as defined in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions".

(2) Separate appraisals.—

(A) In general.—Each parcel of Federal land described in subparagraphs (A) through (F) of section 502(2) shall be appraised separately.

(B) Individual property values.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

(d) Cash Equalization.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may, as the circumstances require, either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.

(e) Administration of Land Acquisition by United States.—

(1) Boundary adjustment.—

(A) In general.—On acceptance of title by the Secretary—

(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

(ii) the boundaries of the national forest shall be adjusted to include the land.

(B) Allocation of land and water conservation fund moneys.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-099), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

(2) Applicable law.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the "Weeks Act"); and

(B) other laws (including regulations) that apply to National Forest System land.

SEC. 505. DISPOSITION OF FUNDS.

(a) Deposit.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the "Sisk Act").

(b) Use of Funds.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

SEC. 506. CONSTRUCTION AND OPERATION OF FACILITY.

(a) Construction.—

(1) In general.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this title, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 504.

(2) Design and specifications.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

(b) Operation and Maintenance of Facility.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

SEC. 507. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE VI—WASHOE TRIBE LAND CONVEYANCE

SEC. 601. WASHOE TRIBE LAND CONVEYANCE.

(a) Findings.—Congress finds that—

(1) the ancestral homeland of the Washoe Tribe of Nevada and California (referred to in this title as the "Tribe") included an area of approximately 5,000 square miles in and around Lake Tahoe, California and Nevada, and Lake Tahoe was the heart of the territory;

(2) in 1997, Federal, State, and local governments, together with many private landholders, recognized the Washoe people as indigenous people of Lake Tahoe Basin through a series of meetings convened by those governments at 2 locations in Lake Tahoe;

(3) the meetings were held to address protection of the extraordinary natural, recreational, and ecological resources in the Lake Tahoe region;

(4) the resulting multiagency agreement includes objectives that support the traditional and customary uses of National Forest System land by the Tribe; and

(5) those objectives include the provision of access by members of the Tribe to the shore of Lake Tahoe in order to reestablish traditional and customary cultural practices.

(b) Purposes.—The purposes of this title are—

(1) to implement the joint local, State, tribal, and Federal objective of returning the Tribe to Lake Tahoe; and

(2) to ensure that members of the Tribe have the opportunity to engage in traditional and customary cultural practices on the shore of Lake Tahoe to meet the needs of spiritual renewal, land stewardship, Washoe horticulture and ethnobotany, subsistence gathering, traditional learning, and reunification of tribal and family bonds.

(c) Conveyance on Condition Subsequent.—Subject to valid existing rights, the easement reserved under subsection (d), and the condition stated in subsection (e), the Secretary of Agriculture shall convey to the Secretary of the Interior, in trust for the Tribe, for no consideration, all right, title, and interest in the parcel of land comprising approximately 24.3 acres, located within the Lake Tahoe Basin Management Unit north of Skunk Harbor, Nevada, and more particularly described as Mount Diablo Meridian, T15N, R18E, section 27, lot 3.

(d) Easement.—

(1) In general.—The conveyance under subsection (c) shall be made subject to reservation to the United States of a nonexclusive easement for public and administrative access over Forest Development Road #15N67 to National Forest System land, to be administered by the Secretary of Agriculture.

(2) Access by individuals with disabilities.—The Secretary of Agriculture shall provide a reciprocal easement to the Tribe permitting vehicular access to the parcel over Forest Development Road #15N67 to—

(A) members of the Tribe for administrative and safety purposes; and

(B) members of the Tribe who, due to age, infirmity, or disability, would have difficulty accessing the conveyed parcel on foot.

(e) Condition on use of Land.—

(1) In general.—In using the parcel conveyed under subsection (c), the Tribe and members of the Tribe—

(A) shall limit the use of the parcel to traditional and customary uses and stewardship conservation for the benefit of the Tribe;

(B) shall not permit any permanent residential or recreational development on, or commercial use of, the parcel (including commercial development, tourist accommodations, gaming, sale of timber, or mineral extraction); and

(C) shall comply with environmental requirements that are no less protective than environmental requirements that apply under the Regional Plan of the Tahoe Regional Planning Agency.

(2) Termination and reversion.—If the Secretary of the Interior, after notice to the Tribe and an opportunity for a hearing, based on monitoring of use of the parcel by the Tribe, makes a finding that the Tribe has used or permitted the use of the parcel in violation of paragraph (1) and the Tribe fails to take corrective or remedial action directed by the Secretary of the Interior—

(A) title to the parcel in the Secretary of the Interior, in trust for the Tribe, shall terminate; and

(B) title to the parcel shall revert to the Secretary of Agriculture.

TITLE VII—SANTA CLARA AND SAN ILDEFONSO PUEBLO LAND CONVEYANCE

SEC. 701. DEFINITIONS.

In this title:

(1) Agreement.—The term "Agreement" means the agreement entitled "Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract", entered into by the Governors on December 20, 2000.

(2) Boundary line.—The term "boundary line" means the boundary line established under section 704(a).

(3) Governors.—The term "Governors" means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) Indian tribe.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) Pueblos.—The term "Pueblos" means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) Secretary.—The term "Secretary" means the Secretary of the Interior.

(7) Trust land.—The term "trust land" means the land held by the United States in trust under section 702(a) or 703(a).

SEC. 702. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) In General.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) Description of Land.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., Sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., Sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., Sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., Sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., Sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 703. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) In General.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) Description of Land.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., Sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., Sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., Sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., Sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., Sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 704. SURVEY AND LEGAL DESCRIPTIONS.

(a) Survey.—Not later than 180 days after the date of enactment of this title, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 702(b) and 703(b), the boundaries of the trust land.

(b) Legal Descriptions.—

(1) Publication.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) Technical corrections.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 702(b) and 703(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) Effect.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 705. ADMINISTRATION OF TRUST LAND.

(a) In General.—Beginning on the date of enactment of this title—

(1) the land held in trust under section 702(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 3(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) Applicable Law.—

(1) In general.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) Pueblo lands act.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the "Pueblo Lands Act") (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this title or acquired after the date of enactment of this title by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this title or acquired after the date of enactment of this title by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) Use of Trust Land.—

(1) In general.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) Criteria.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) Limitation.—Beginning on the date of enactment of this title, the trust land shall not be used for any new commercial developments.

SEC. 706. EFFECT.

Nothing in this title—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this title;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this title;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this title.

SA 4976. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2670, to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems; as follows:

Strike all after the enacting clause and insert the following:

TITLE I—WILDFIRE PREVENTION ACT

SEC. 101. SHORT TITLE.

This title may be cited as the "Wildfire Prevention Act of 2002".

SEC. 102. FINDINGS.

Congress finds that—

(1) there is an increasing threat of wildfire to millions of acres of forest land and rangeland throughout the United States;

(2) forest land and rangeland are degraded as a direct consequence of land management practices (including practices to control and prevent wildfires and the failure to harvest subdominant trees from overstocked stands) that disrupt the occurrence of frequent low-intensity fires that have periodically removed flammable undergrowth;

(3) at least 39,000,000 acres of land of the National Forest System in the interior West are at high risk of wildfire;

(4) an average of 95 percent of the expenditures by the Forest Service for wildfire suppression during fiscal years 1990 through 1994 were made to suppress wildfires in the interior West;

(5) the number, size, and severity of wildfires in the interior West are increasing;

(6) of the timberland in National Forests in the States of Arizona and New Mexico, 59 percent of such land in Arizona, and 56 percent of such land in New Mexico, has an average diameter of 9 to 12 inches diameter at breast height;

(7) the population of the interior West grew twice as fast as the national average during the 1990s;

(8) efforts to prioritize forests and communities for wildfire risk reduction have been inconsistent and insufficient and have resulted in funding to areas that are not prone to severe wildfires;

(9) catastrophic wildfires—

(A) endanger homes and communities;

(B) damage and destroy watersheds and soils; and

(C) pose a serious threat to the habitat of threatened and endangered species;

(10) a 1994 assessment of forest health in the interior West estimated that only a 15- to 30-year window of opportunity exists for effective management intervention before damage from uncontrollable wildfire becomes widespread, with 8 years having already elapsed since the assessment;

(11) following a catastrophic wildfire, certain forests in the interior West do not return to their former grandeur;

(12) healthy forest and woodland ecosystems—

(A) reduce the risk of wildfire to forests and communities;

(B) improve wildlife habitat and biodiversity;

(C) increase tree, grass, forb, and shrub productivity;

(D) enhance watershed values;

(E) improve the environment; and

(F) provide a basis in some areas for economically and environmentally sustainable uses;

(13) sustaining the long-term ecological and economic health of interior West forests and woodland, and their dependent human communities, requires preventing severe wildfires before the wildfires occur and permitting natural, low-intensity ground fires;

(14) more natural fire regimes cannot be accomplished without the reduction of excess fuels and thinning of subdorminant trees (which fuels and trees may be of commercial value);

(15) ecologically-based forest and woodland ecosystem restoration on a landscape scale will—

(A) improve long-term community protection;

(B) minimize the need for wildfire suppression;

(C) improve resource values;

(D) reduce rehabilitation costs;

(E) reduce loss of critical habitat; and

(F) protect forests for future generations;

(16) although the National Fire Plan, and the report entitled "Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy" (65 Fed. Reg. 67480), advocate a shift in wildfire policy from suppression to prevention (including restoration and hazardous fuels reduction), Federal land managers are not dedicating sufficient attention and financial resources to restoration activities that simultaneously restore forest health and reduce the risk of severe wildfire;

(17) although landscape scale restoration is needed to effectively reverse degradation, scientific understanding of landscape scale treatments is limited;

(18) the Federal wildfire research program is funded at approximately 1/3 of the amount that is required to address emerging wildfire problems, resulting in the lack of a cohesive strategy to address the threat of catastrophic wildfires; and

(19) rigorous, understandable, and applied scientific information is needed for—

(A) the design, implementation, and adaptation of landscape scale restoration treatments and improvement of wildfire management technology;

(B) the environmental review process; and

(C) affected entities that collaborate in the development and implementation of wildfire treatment.

SEC. 103. PURPOSES.

The purposes of this title are—

(1) to enhance the capacity to develop, transfer, apply, and monitor practical science-based forest restoration treatments that will reduce the risk of severe wildfires, and improve forest and woodland health, in the interior West;

(2) to develop the practical scientific knowledge required to implement forest and woodland restoration on a landscape scale;

(3) to develop the interdisciplinary knowledge required to understand the socioeconomic and environmental impacts of wildfire control on ecosystems and landscapes;

(4) to require Federal agencies—

(A) to use ecological restoration treatments to reverse declining forest health and reduce the risk of severe wildfires across the forest landscape;

(B) to ensure that sufficient funds are dedicated to wildlife prevention activities, including restoration treatments; and

(C) to monitor and use wildfire treatments based on the use of adaptive ecosystem management;

(5) to develop, transfer, and assist land managers in treating acres with restoration-based treatments and use new management technologies (including the transfer of understandable information, assistance with environmental review, and field and classroom training and collaboration) to accomplish the goals identified in—

(A) the National Fire Plan;

(B) the report entitled "Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy" (65 Fed. Reg. 67480); and

(C) the report entitled "10-Year Comprehensive Strategy: A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment" of the Western Governors' Association; and

(6) to provide technical assistance to collaborative efforts by affected entities to develop, implement, and monitor adaptive ecosystem management restoration treatments that are ecologically sound, economically viable, and socially responsible.

SEC. 104. DEFINITIONS.

In this title:

(1) ADAPTIVE ECOSYSTEM MANAGEMENT.—The term "adaptive ecosystem management" means a natural resource management process under which planning, implementation, monitoring, research, evaluation, and incorporation of new knowledge are combined into a management approach that is—

(A) based on scientific findings and the needs of society; and

(B) used to modify future management methods and policy.

(2) AFFECTED ENTITIES.—The term "affected entities" includes—

(A) land managers;

(B) stakeholders;

(C) concerned citizens; and

(D) State land managers.

(3) INSTITUTE.—The term "Institute" means an Institute established under section 105(a).

(4) INTERIOR WEST.—The term "interior West" means the States of Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah.

(5) LAND MANAGER.—

(A) IN GENERAL.—The term "land manager" means a person or entity that practices or guides natural resource management.

(B) INCLUSIONS.—The term "land manager" includes a Federal, State, local, or tribal land management agency.

(6) RESTORATION.—The term "restoration" means a process undertaken to return an ecosystem or habitat toward—

(A) the original condition of the ecosystem or habitat; or

(B) a condition that supports a related species, natural function, or ecological process (including a low intensity fire).

(7) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(8) SECRETARIES.—The term "Secretaries" means—

(A) the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) the Secretary of the Interior.

(9) STAKEHOLDER.—The term "stakeholder" means any person interested in or affected by management of forest or woodland ecosystems.

SEC. 105. ESTABLISHMENT OF INSTITUTES.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall—

(1) not later than 180 days after the date of enactment of this title, establish 3 Institutes to promote the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West; and

(2) provide assistance to the Institutes to promote the use of adaptive ecosystem management in accordance with paragraph (1).

(b) LOCATION.—

(1) EXISTING INSTITUTES.—The Secretary may designate an institute in existence on the date of enactment of this title to serve as an Institute established under this title.

(2) LOCATIONS.—Of the Institutes established under this title, the Secretary shall establish 1 Institute in each of the States of Arizona, New Mexico, and Colorado. The Institute established in Arizona shall be located at Northern Arizona University.

(c) DUTIES.—Each Institute shall—

(1) plan, conduct, or promote research on the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West, including—

(A) research that assists in providing information on the use of adaptive ecosystem management practices to affected entities; and

(B) research that will be useful in the development and implementation of practical, science-based, ecological restoration treatments for forest and woodland ecosystems affected by wildfires; and

(2) provide the results of research described in paragraph (1) to affected entities.

(d) COOPERATION.—To increase and accelerate efforts to restore forest ecosystem health and abate unnatural and unwanted wildfires in the interior West, each Institute shall cooperate with—

(1) researchers at colleges and universities in the States of Arizona, New Mexico, and Colorado that have a demonstrated capability to conduct research described in subsection (c); and

(2) other organizations and entities in the interior West (such as the Western Governors' Association).

(e) ANNUAL WORK PLANS.—As a condition of the receipt of funds made available under this title, for each fiscal year, each Institute shall submit to the Secretary, for review by the Secretary, in consultation with the Secretary of the Interior, an annual work plan that includes assurances, satisfactory to the Secretaries, that the proposed work of the Institute will serve the informational needs of affected entities.

SEC. 106. COOPERATION BETWEEN INSTITUTES AND FEDERAL AGENCIES.

In carrying out this title, the Secretary, in consultation with the Secretary of the Interior—

(1) shall ensure that adequate financial and technical assistance is provided to the Institutes to enable the Institutes to carry out the purposes of the Institutes under section 5, including prevention activities and ecological restoration for wildfires and affected ecosystems;

(2) shall use information and expertise provided by the Institutes;

(3) shall encourage Federal agencies to use, on a cooperative basis, information and expertise provided by the Institutes;

(4) shall encourage cooperation and coordination between Federal programs relating to—

(A) ecological restoration;

(B) wildfire risk reduction; and

(C) wildfire management technologies;

(5) notwithstanding chapter 63 of title 31, United States Code, may—

(A) enter into contracts, cooperative agreements, interagency personal agreements to carry out this title; and

(B) carry out other transactions under this title;

(6) may accept funds from other Federal agencies to supplement or fully fund grants made, and contracts entered into, by the Secretaries;

(7) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this title;

(8) shall encourage professional education and public information activities relating to the purposes of this title; and

(9) may promulgate such regulations as the Secretaries determine are necessary to carry out this title.

SEC. 107. MONITORING AND EVALUATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this title, and every 5 years thereafter, the Secretary, in consultation with the Secretary of the Interior, shall complete and submit to the appropriate committees of Congress a detailed evaluation of the programs and activities of each Institute—

(1) to ensure, to the maximum extent practicable, that the research, communication tools, and information transfer activities of each Institute meet the needs of affected entities; and

(2) to determine whether continued provision of Federal assistance to each Institute is warranted.

(b) TERMINATION OF ASSISTANCE.—If, as a result of an evaluation under subsection (a), the Secretary, in consultation with the Secretary of the Interior, determines that an Institute does not qualify for further Federal assistance under this title, the Institute shall receive no further Federal assistance under this title until such time as the qualifications of the Institute are reestablished to the satisfaction of the Secretaries.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title $15,000,000 for each fiscal year.

TITLE II—COMMUNITY-BASED FOREST AND PUBLIC LANDS RESTORATION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the "Community-Based Forest and Public Lands Restoration Act".

SEC. 202. PURPOSES.

The purposes of this title are—

(1) to create a coordinated, consistent, community-based program to restore and maintain the ecological integrity of degraded National Forest System and public lands watersheds;

(2) to ensure that restoration of degraded National Forest System and public lands recognizes variation in forest type and fire regimes, incorporates principles of community forestry, local and traditional knowledge, and conservation biology; and, where possible, uses the least intrusive methods practicable;

(3) to enable the Secretaries to assist small, rural communities to increase their capacity to restore and maintain the ecological integrity of surrounding National Forest System and public lands, and to use the by-products of such restoration in value-added processing;

(4) to require the Secretaries to monitor ecological, social, and economic conditions based on explicit mechanisms for accountability;

(5) to authorize the Secretaries to expand partnerships and to contract with non-profit organizations, conservation groups, small and micro-enterprises, cooperatives, non-Federal conservation corps, and other parties to encourage them to provide services or products that facilitate the restoration of damaged lands; and

(6) to improve communication and joint problem solving, consistent with Federal and State environmental laws, among individuals and groups who are interested in restoring the diversity and productivity of watersheds.

SEC. 203. DEFINITIONS.

As used in this title:

(1) The term "public lands" has the meaning given such term in section 103(e) of the Federal Land Policy and Management Act (43 U.S.C. 1702(e)).

(2) The term "National Forest System" has the meaning given such term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 1609(a)).

(3) The term "Secretaries" means the Secretary of Agriculture, acting through the Chief of the Forest Service, and the Secretary of the Interior, acting through the Director of the Bureau of Land Management.

(4) The term "restore" means to incorporate historic, current, and new scientific information as it becomes available, to reintroduce, maintain, or enhance the characteristics, functions, and ecological processes of healthy, properly functioning watersheds.

(5) The term "local" means within the same county, watershed unit, or jurisdiction of a Resource Advisory Council established pursuant to Public Law 106–393 where an associated restoration project, or projects, are conducted.

(6) The term "micro-enterprise" means a non-subsidiary business or cooperative employing five or fewer people.

(7) The term "small enterprise" means a non-subsidiary business or cooperative employing between 6 and 150 people.

(8) The term "value-added processing" means additional processing of a product to increase its economic value and to create additional jobs and benefits where the processing is done.

(9) The term "low-impact equipment" means the use of equipment for restorative, maintenance, or extraction purposes that minimizes or eliminates impacts to soils and other resources.

(10) The terms "rural" and "rural area" mean, a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

SEC. 204. ESTABLISHMENT OF PROGRAM.

(a) REQUIREMENTS.—The Secretaries shall jointly establish a National Forest System and public lands collaborative community-based restoration program. The purposes of the program shall be:

(1) to identify projects that will restore degraded National Forest System and public lands; and

(2) implement such projects in a collaborative way and in a way that builds rural community capacity to restore and maintain in perpetuity the health of the National Forest System and other public lands.

(b) COOPERATION.—The Secretaries may enter into cooperative agreements with willing tribal governments, State and local governments, private and nonprofit entities and landowners for protection, restoration, and enhancement of fish and wildlife habitat, forests, and other resources on the National Forest System and public lands.

(c) MONITORING.—

(1) The Secretaries shall establish a multiparty monitoring, evaluation, and accountability process in order to assess the cumulative accomplishments or adverse impacts of projects implemented under this title. The Secretaries shall include any interested individual or organization in the monitoring and evaluation process.

(2) Not later than 5 years after the date of enactment of this title, the Secretaries shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives detailing the information gathered as a result of the multiparty monitoring and evaluation. The report shall include an assessment on whether, and to what extent, the projects funded pursuant to this title are meeting the purposes of the title.

(3) The Secretaries shall ensure that monitoring data is collected and compiled in a way that the general public can easily access. The Secretaries may collect the data using cooperative agreements, grants, or contracts with small or micro-enterprises, or Youth Conservation Corps work crews or related partnerships with State, local, and other non-Federal conservation corps.

(d) The Secretaries shall hire additional outreach specialists, grants and agreements specialists, and contract specialists in order to implement this title.

SEC. 205. FOREST RESTORATION AND VALUE-ADDED CENTERS.

(a) ESTABLISHMENT.—Subject to subsection (d), the Secretaries shall provide cost-share grants, cooperative agreements, or both to establish Restoration and Value-Added Centers in order to improve the implementation of collaborative, community-based restoration projects on National Forest System or public lands.

(b) REQUIREMENTS.—The Restoration and Value-Added Centers shall provide technical assistance to non-profit organizations, small or micro-enterprises or individuals interested in creating a natural-resource related small or micro-enterprise in the following areas—

(1) restoration, and

(2) processing techniques for the byproducts of restoration and value-added manufacturing.

(c) ADDITIONAL REQUIREMENTS.—The Restoration and Value-Added Centers shall provide technical assistance in one or more of the following—

(1) using the latest, independent peer reviewed, scientific information and methodology to accomplish restoration and ecosystem health objectives,

(2) workforce training for value-added manufacturing and restoration,

(3) marketing and business support for conservation-based small and micro-enterprises,

(4) accessing urban markets for small and micro-enterprises located in rural communities,

(5) developing technology for restoration and the use of products resulting from restoration,

(6) accessing funding from government and non-government sources, and

(7) development of economic infrastructure including collaborative planning, proposal development, and grant writing where appropriate.

(d) LOCATIONS.—The Secretaries shall ensure that at least one Restoration and Value-Added Center is located within Idaho, New Mexico, Montana, northern California, eastern Oregon, and Washington and that every Restoration and Value-Added Center is located in a rural community that is adjacent to or surrounded by National Forest System or other public lands.

(1) The Secretaries may enter into partnerships and cooperative agreements with other Federal agencies or other organizations, including local non-profit organizations, conservation groups, or community colleges in creating and maintaining the Restoration and Value-Added Centers.

(2) The appropriate Regional Forester and State Bureau of Land Management Director will issue a request for proposals to create a Restoration and Value-Added Center. The Regional Forester and State Bureau of Land Management Director will select a proposal with input from existing Resource and Technical Advisory Committees where appropriate.

(3) The Secretaries shall provide cost-share grants, cooperative agreements, or both equaling 75 percent of each Restoration and Value-Added Center's operating costs, including business planning, not to exceed $1 million annually per center.

(4) Within 30 days of approving a grant or cooperative agreement to establish a Restoration and Value-Added Center, the Secretary shall notify the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives and identify the recipient of the grant award or cooperative agreement.

(5) After a Restoration and Value-Added Center has operated for five years, the Secretary of Agriculture shall assess the center's performance and begin to reduce, by 25 percent annually, the level of Federal funding for the center's operating costs.

(e) REPORT.—No later than five years after the date of enactment of this title, the Secretaries shall submit a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, assessing the Restoration and Value-Added Centers created pursuant to this section. The report shall include—

(1) descriptions of the organizations receiving assistance from the centers, including their geographic and demographic distribution,

(2) a summary of the projects the technical assistance recipients implemented, and

(3) an estimate of the number of non-profit organizations, small enterprises, micro-enterprises, or individuals assisted by the Restoration and Value-Added Centers.

SEC. 206. COMMUNITY-BASED NATIONAL FOREST SYSTEM AND PUBLIC LANDS RESTORATION.

(a) ESTABLISHMENT.—

(1) Notwithstanding Federal procurement laws, the Federal Grant and Cooperative Agreements Act of 1977 (31 U.S.C. 6301 et seq.), and the Competition in Contracting Act, the Secretaries shall ensure that a percentage of the total dollar value of contracts and agreements they award in each fiscal year beginning after the date of enactment of this Act are awarded to qualifying entities as follows:

(A) 10 percent in the first fiscal year;

(B) 20 percent in the second fiscal year;

(C) 30 percent in the third fiscal year;

(D) 40 percent in the fourth fiscal year; and

(E) 50 percent in the fifth fiscal year and each fiscal year thereafter.

(2) For purposes of this section:

(A) The term "contracts and agreements" means special salvage timber sale contracts, other timber sale contracts, service contracts, construction contracts, supply contracts, emergency equipment rental agreements, architectural and engineering contracts, challenge cost-share agreements, cooperative agreements, and participating agreements.

(B) The term "qualifying entity" means—

(i) a natural-resource related small or micro-enterprise;

(ii) a Youth Conservation Corps crews or related partnerships with State, local and other non-Federal conservation corps;

(iii) an entity that will hire and train local people to complete the service or timber sale contract;

(iv) an entity that will re-train non-local traditional forest workers to complete the service or timber sale contract; or

(v) a local entity that meets the criteria to qualify for the Historically Underutilized Business Zone Program under section 32 of the Small Business Act (15 U.S.C. 657a).

(b) NOTICE OF NATIONAL FOREST SYSTEM PLAN.—At the beginning of each fiscal year, each unit of the National Forest System shall make its advanced acquisition plan publicly available, including publishing it in a local newspaper for a minimum of 15 working days.

(c) BEST VALUE CONTRACTING.—In order to implement projects, the Secretaries may select a source for performance of a contract or agreement on a best value basis with consideration of one or more of the following:

(1) Understanding of the technical demands and complexity of the work to be done.

(2) Ability of the offeror to meet desired ecological objectives of the project and the sensitivity of the resources being treated.

(3) The potential for benefit to local small and micro-enterprises.

(4) The past performance and qualification by the contractor with the type of work being done, the application of low-impact equipment, and the ability of the contractor or purchaser to meet desired ecological conditions.

(5) The commitment of the contractor to training workers for high wage and high skill jobs.

(6) The commitment of the contractor to hiring highly qualified workers and local residents.

SEC. 207. NATIONAL FOREST SYSTEM RESEARCH AND TRAINING.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary of Agriculture shall establish a program of applied research using the resources of Forest Service Research Station and the Forest Product Laboratory. The purposes of the program shall be to—

(1) identify restoration methods and treatments that minimize impacts to the land, such as through the use of low-impact techniques and equipment; and

(2) test and develop value-added products created from the by-products of restoration.

(b) DISSEMINATION OF RESEARCH TO COMMUNITIES.—The Secretary of Agriculture shall disseminate the applied research to rural communities, including the Restoration and Value-Added Centers, adjacent to or surrounded by National Forest System or public lands. The Secretary of Agriculture shall annually conduct training workshops and classes in such communities to ensure that residents of such communities have access to the information.

(c) COOPERATION.—In establishing the program required pursuant to this section, the Secretary of Agriculture may partner with nonprofit organizations or community colleges.

(d) MONITORING.—In designing the multiparty monitoring and evaluation process to assess the cumulative accomplishments or adverse impacts of projects implemented under this title pursuant to section 204, the Secretaries shall use the expertise of Forest Service Research Stations.

SEC. 208. AUTHORIZATION OF APPROPRIATIONS.

These are authorized to be appropriated such sums as may be necessary to carry out this title.

SEC. 209. SMALL BUSINESS ADMINISTRATION.

Nothing in this title is intended to modify the Small Business Act, Public Law 83-167, regulations promulgated by the Small Business Administration at 13 CFR, Part 121, or affect the Small Business shares prescribed in the Memorandum of Understanding on the Small Business Set Aside Program or the amount of timber volume offered to SBA qualified companies.

TITLE III—FINGER LAKES NATIONAL FOREST LAND WITHDRAWAL

SEC. 301. FINGER LAKES NATIONAL FOREST LAND WITHDRAWAL.

All Federal land within the boundary of Finger Lakes National Forest in the State of New York is withdrawn from all forms of entry, appropriation, or disposal under the public land laws and disposition under all laws relating to oil and gas leasing.

TITLE IV—ALASKA NAVIGABLE WATERS COMMISSION

SEC. 401. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The efficient and orderly development of the State of Alaska will be better achieved if the Federal Government joins the State of Alaska in a carefully coordinated approach to identify ownership and jurisdictional interests in land and waters.

(2) Alaska has abundant water resources that are invaluable to State residents and all citizens of the United States.

(3) Because of the massive number of navigable waterways and other bodies of water in the State of Alaska, the task of resolving submerged land ownership and navigable water determinations has been very slow, counter-productive from an orderly resource management standpoint, and costly as the State, private landowners, and the Federal Government attempt to initiate long-range planning processes.

(b) PURPOSES.—The purposes of this title are:

(1) To expedite the process of quieting legitimate title to the submerged lands in the State of Alaska;

(2) To facilitate determinations for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.), to the extent possible, which bodies of water in Alaska are navigable waters and which such bodies of water are not navigable waters; and

(3) To recommend to the State of Alaska and the Federal Government—

(A) ways to improve the process of making water use and navigability decisions; and

(B) ways to fairly and expeditiously quiet title to the State's submerged lands and assist in the determination of the specifically reserved lands that will remain in Federal ownership.

SEC. 402. SHORT TITLE.

This title may be cited as the 'Joint Federal and State Navigable Waters Commission for Alaska Act".

SEC. 403. ESTABLISHMENT.

There is established a commission to be known as the "Joint Federal and State Navigable Waters Commission for Alaska" (referred to in this Act as the "Commission").

SEC. 404. DUTIES OF THE COMMISSION.

The Commission shall—

(1) make recommendations to the Secretary of the Interior and the State of Alaska regarding determinations of bodies of water in the State that are navigable waters for purposes of the Submerged Lands Act (43 U.S.C. 1301 et seq.);

(2) establish a process for employing established standards to facilitate making such recommendations and determinations;

(3) develop procedures for involving private landowners, including Alaska Native corporations and the general public, in that process;

(4) for purposes of making such recommendations, undertake a process to identify navigable waters in Alaska pursuant to established standards and criteria; and

(5) make recommendations to improve coordination and consultation between the government of the State of Alaska and the Federal Government regarding navigability determinations and decisions concerning title to submerged lands.

SEC. 405. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—

(1) IN GENERAL.—The Commission shall be composed of 14 members, of which 7 shall be Federal members appointed under subsection (b) and 7 shall be State members appointed under subsection (c).

(2) APPOINTMENT DEADLINE.—Initial appointments under this section shall be made not later than 60 days after the date of enactment of this title.

(b) FEDERAL MEMBERS.—The 7 Federal members shall consist of—

(1) 2 members appointed by the President of the United States, one of which shall be designated as the President's appointee for the position of Federal co-chair under subsection (e);

(2) 1 member appointed by each of the three members of the Congress who represent the State of Alaska;

(3) 1 member appointed by the Secretary of the Interior; and

(4) 1 member appointed by the Secretary of Agriculture.

(c) STATE MEMBERS.—The 7 State members shall be appointed in accordance with the requirements of state law.

(d) INELIGIBILITY FOR APPOINTMENT.—Members of Congress shall not be eligible for appointment to the Commission.

(e) CO-CHAIRS.—One of the members appointed by the President of the United States and the Governor or Governor's designee shall serve as co-chairs of the Commission.

(f) INITIAL MEETING.—The initial meeting of the Commission shall be called by the co-chairs.

(g) TERM OF APPOINTMENT.—

(1) IN GENERAL.—Subject to paragraph (2), members of the Commission shall be appointed for the life of the Commission.

(2) Early termination of appointment—

(A) Membership of a member of the Commission shall terminate if the member is an individual who is an officer or employee of a government body and who ceases to serve as such an officer or employee, or if the member is an individual who is not an officer or employee of a government and who becomes an officer or employee of a government.

(B) Termination of an individual's membership pursuant to paragraph (A) shall take effect on the expiration of the 90-day period beginning on the date such member ceases to be such an officer or employee of such government, or becomes an officer or employee of a government, respectively.

(h) QUORUM.—4 Federal members and 4 State members of the Commission shall constitute a quorum, but a lesser number may conduct meetings. All decisions of the Commission shall require concurrence by at least 4 State members and 4 Federal members of the Commission.

(i) VACANCY.—A vacancy in the membership of the Commission—

(1) shall not affect the powers of the Commission to meet or conduct business, subject to subsection (h); and (2) shall be filled in the same manner in which the original appointment was made, by the same appointing authority.

SEC. 406. COMPENSATION OF THE COMMISSION.

(a) Pay for Federal Members of the Commission—

(1) NON-GOVERNMENT EMPLOYEES.—Each Federal member of the Commission who is not otherwise an officer or employee of the Federal Government shall be entitled to receive the daily equivalent of the annual rate of basic pay payable for Level IV of the Executive Schedule under section 5315 of title 5, United States Code, as in effect from time to time, for each day (including travel time) during which such member is engaged in the actual performance of duties of the Commission.

(2) GOVERNMENT EMPLOYEES.—A member of the Commission who is an officer or employee of either the government of the State of Alaska or the Federal Government shall serve without additional pay or benefits for service as a member of the Commission.

(b) TRAVEL EXPENSES.—Federal members of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code. State members of the Commission are entitled to per diem and travel expenses as authorized under pertinent laws of the State of Alaska.

SEC. 407. POWERS OF THE COMMISSION.

(a) HEARINGS AND MEETINGS.—The Commission or, on the authorization of the Commission, any subcommittee or member of the Commission may, for the purposes of carrying out its duties, hold hearings, take testimony, receive evidence, print or otherwise reproduce and distribute all or part of commission proceedings and reports, and sit and act at those times and places as the Commission, subcommittee, or members consider desirable.

(b) INFORMATION FOR THE COMMISSION.—The Commission may obtain directly from any executive agency (as defined in section 105 of title 5 of the United States Code) or court, information necessary to enable it to carry out its duties under this Act. On this request of either co-chair of the Commission, and consistent with applicable law, the head of an executive agency or of a Federal court shall provide such information to the Commission.

(c) POWERS OF MEMBERS AND AGENTS.—Any member or agent of the Commission may, if authorized by the Commission, take any action which the Commission is authorized to take by this section.

(d) VOLUNTEER SERVICES.—The Commission may accept volunteer services for the purpose of aiding or facilitating the work of the Commission.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(f) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this title.

(g) CONTRACT AUTHORITY.—To the extent or in the amounts provided in advance in appropriation Acts, the Commission may contract with and compensate government and private agencies or persons for property or services, without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

SEC. 408. STAFF OF COMMISSION; EXPERTS AND CONSULTANTS.

(a) STAFF.—Subject to rules prescribed by the Commission, the co-chairs may appoint and fix the pay of personnel as they consider appropriate.

(b) APPLICABILITY OF CERTAIN CIVIL SERVICE LAWS.—The staff of the Commission may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay for GS-15 of the General Schedule.

(c) EXPERTS AND CONSULTANTS.—Subject to rules prescribed by the Commission, the co-chairs may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay for GS-15 of the General Schedule.

(d) STAFF OF FEDERAL AGENCIES.—Upon request of the co-chairs, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this title.

SEC. 409. RELATIONSHIP TO OTHER LAW.

The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the Commission.

SEC. 410. REPORTS.

(a) ANNUAL REPORT.—Not later than January 31 of each year, the Commission shall submit to the President of the United States, the Committee on Energy and Natural Resources of the United States Senate, the Committee on Resources of the House of Representatives, the Governor of the State of Alaska, and the legislature of the State of Alaska a written report describing its activities during the preceding year.

(b) FINAL REPORT.—The Commission shall submit a final comprehensive report to the officials and entities referred to in subsection (a) at least 10 days before the date the Commission terminates.

SEC. 411. TERMINATION OF THE COMMISSION.

The Commission is terminated 2 years after the date of completion of appointment of all members of the Commission.

TITLE V—LAND CONVEYANCE TO HAINES, OREGON

SEC. 501. CONVEYANCE TO THE CITY OF HAINES, OREGON.

(a) CONVEYANCE.—As soon as practicable after the date of enactment of this title, the Secretary of the Interior shall convey, without consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (b) to the city of Haines, Oregon.

(b) DESCRIPTION OF LAND.—The parcel of land referred to in subsection (a) is the parcel of Bureau of Land Management land consisting of approximately 40 acres, as indicated on the map entitled "S. 1907: Conveyance to the City of Haines, Oregon" and dated May 9, 2002.

SA 4977. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2222, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes, as follows:

Strike all after the enacting clause and insert:

TITLE I—CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT

SECTION 101. SHORT TITLE.

This title may be cited as the "Cape Fox Land Entitlement Adjustment Act of 2002".

SEC. 102. FINDINGS.

Congress finds that:

(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) for the Native Village of Saxman.

(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(1) of ANCSA (43 U.S.C. 1621(1)).

(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no known economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA (43 U.S.C. 1615(b)).

(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of additional split estate between National Forest System surface lands and Sealaska subsurface lands.

(9) There is an additional need to resolve existing areas of Sealaska/Tongass split estate, in which Sealaska holds title or conveyance rights to several thousand acres of subsurface lands that encumber management of Tongass National Forest surface lands.

(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve some of the Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

SEC. 103. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN LANDS.

Notwithstanding the provisions of section 16(b) of ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be required to select or receive conveyance of approximately 160 acres of federal unconveyed lands within Section 1, T. 75 S., R. 91 E., C.R.M.

SEC. 104. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

(a) Selection and Conveyance of Surface Estate.—In addition to lands made available for selection under ANCSA, within 24 months after the date of enactment of this title, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

(1) T. 73 S., R. 90 E., C.R.M.

(2) Section 33: SW portion of SE¼: 38 acres.

(3) Section 33: NW portion of SE¼: 13 acres.

(4) Section 33: SE¼ of SE¼: 40 acres.

(5) Section 33: SE¼ of SW¼: 8 acres.

(b) Conveyance of Subsurface Estate.—Upon conveyance to Cape Fox of the surface estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska the subsurface estate to the lands.

(c) Timing.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

SEC. 105. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

(a) General.—The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c) and, to the extent necessary, lands and interests therein identified under subsection (d).

(b) Lands To Be Exchanged to Cape Fox.—The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled "Proposed Kensington Project Land Exchange," dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska.

(c) Lands To Be Exchanged to the United States.—Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify in writing to the Secretaries of Agriculture and the Interior the lands and interests in lands that Cape Fox proposes to exchange for the federal lands described in subsection (b). The lands and interests in lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 2,900 acres and designated as parcels A–1 to A–3, B–1 to B–3, and C upon a map entitled "Cape Fox Corporation ANCSA Land Exchange Proposal," dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise. The value of the easement shall be included in determining the total value of lands exchanged to the United States.

(d) Valuation of Exchange Lands.—The Secretary of Agriculture shall determine whether the lands identified by Cape Fox under subsection (c) are equal in value to the lands described in subsection (b). If the lands identified under subsection (c) are determined to have insufficient value to equal the value of the lands described in subsection (b), Cape Fox and the Secretary shall mutually identify additional Cape Fox lands for exchange sufficient to equalize the value of lands conveyed to Cape Fox. Such land shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts.

(e) Conditions.—The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(f) Timing.—The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this title, to enter into an agreement with Cape Fox to consummate the exchange consistent with this title. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to conveyance from Cape Fox to the United States of all its rights, title and interests in the Cape Fox lands included in the exchange consistent with this title, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the federal lands included in the exchange within 180 days after the execution of the exchange agreement by Cape Fox and the Secretary of Agriculture.

SEC. 106. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

(a) General.—Upon conveyance of the Cape Fox lands included in the exchange under section 105 and conveyance and relinquishment by Sealaska in accordance with this title of the lands and interests in lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the federal lands identified for exchange under subsection (b).

(b) Lands To Be Exchanged to Sealaska.—The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled "Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area," dated April 2002 and available for inspection in the Forest Service Region 10 Regional Office in Juneau, Alaska. Within 60 days after receiving notice of the identification by Cape Fox of the exchange lands under Section 105(c), Sealaska shall be entitled to identify in writing to the Secretaries of Agriculture and the Interior the lands that Sealaska selects to receive in exchange for the Sealaska lands described in subsection (c). Lands selected by Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 105(b). The Secretary of Agriculture shall determine whether these selected lands are equal in value to the lands described in subsection (c) and may adjust the amount of selected lands in order to reach agreement with Sealaska regarding equal value. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands selected and agreed to by the Secretary but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(c) Lands To Be Exchanged to the United States.—The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 105(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to be additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2 and 3 lands as set forth in the Sealaska Corporation/United States Forest Service 3 lands as set forth in the Sealaska Corporation/United States Forest

Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

(d) Timing.—The Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska under subsection (b), to enter into an agreement with Sealaska to consummate the exchange consistent with this title. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to the Cape Fox and Sealaska conveyances and relinquishments described in subsection (a), the Secretary of the Interior shall complete the interim conveyance to Sealaska of the federal lands selected for exchange within 180 days after execution of the agreement by Sealaska and the Secretary of Agriculture.

(e) Modification of Agreement.—The executed exchange agreement under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102-415 (October 14, 1992).

SEC. 107. MISCELLANEOUS PROVISIONS.

(a) Equal Value Requirement.—The exchanges described in this title shall be of equal value. Cape Fox and Sealaska shall have the opportunity to present to the Secretary of Agriculture estimates of value of exchange lands with the Secretary of Agriculture estimates of value of exchange lands with supporting information.

(b) Title.—Cape Fox and Sealaska shall convey and provide evidence of title satisfactory to the Secretary of Agriculture for their respective lands to be exchanged to the United States under this title, subject only to exceptions, reservations and encumbrances in the interim conveyance or patent from the United States or otherwise acceptable to the Secretary of Agriculture.

(c) Hazardous Substances.—Cape Fox, Sealaska, and the United States each shall not be subject to liability for the presence of any hazardous substance in land or interests in land solely as a result of any conveyance or transfer of the land or interests under this title.

(d) Effect on ANCSA Selections.—Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this title shall be considered, for all purposes, land conveyed pursuant to ANCSA. Nothing in this title shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA. Cape Fox and Sealaska shall remain charged for any lands they exchange under this title and any lands conveyed pursuant to section 4, but shall not be charged for any lands received under section 5 or section 6. The exchanges described in this title shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States pursuant to ANCSA. Lands or interests therein transferred to the United States under this title shall become and be administered as part of the Tongass National Forest.

(e) Effect on Statehood Selections.—Lands conveyed to or selected by the State of Alaska under the Alaska Statehood Act (Public Law 85-508; 72 Stat. 339; 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this title without the consent of the State of Alaska.

(f) Maps.—The maps referred to in this title shall be maintained on file in the Forest Service Region 10 Regional Office in Juneau, Alaska. The acreages cited in this title are approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

(g) Easements.—Notwithstanding section 17(b) of ANCSA, federal lands conveyed to Cape Fox or Sealaska pursuant to this title shall be subject only to the reservation of public easements mutually agreed to and set forth in the exchange agreements executed under this title. The easements shall include easements necessary for access across the lands conveyed under this title for use of national forest or other public lands.

(h) Old Growth Reserves.—The Secretary of Agriculture shall add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this title.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS.

(a) Department of Agriculture.—There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary for value estimation and related costs of exchanging lands specified in this title, and for road rehabilitation, habitat and timber stand improvement, including thinning and pruning, on lands acquired by the United States under this title.

(b) Department of the Interior.—There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary for land surveys and conveyances pursuant to this title.

TITLE II—LAND CONVEYANCE TO CLARK COUNTY, NEVADA

SECTION 201. CONVEYANCE OF PROPERTY TO CLARK COUNTY, NEVADA.

(a) Findings.—Congress finds that—

(1) the Las Vegas area has experienced such rapid growth in the last few years that traditional locations for target shooting are now too close to populated areas for safety;

(2) there is a need to designate a centralized location in the Las Vegas valley where target shooters can practice safely; and

(3) a central facility is also needed for persons training in the use of firearms, such as local law enforcement and security personnel.

(b) Purposes.—The purposes of this title are—

(1) to provide a suitable location for the establishment of a centralized shooting facility in the Las Vegas valley; and

(2) to provide the public with—

(A) opportunities for education and recreation; and

(B) a location for competitive events and marksmanship training.

(c) Conveyance.—As soon as practicable after the date of enactment of this title, the Secretary of the Interior shall convey to Clark County, Nevada, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the following parcels of land:

(1) the approximately 640 acres of land depicted as "Site Location" on the map entitled "Shooting Range, Las Vegas Valley" and dated October 2, 2002 (hereinafter referred to as the "Map"), to be conveyed under the Recreation and Public Purposes Act (43 U.S.C. 869), notwithstanding subsection (b) of the Act, to the extent there is any conflict with this subsection; and

(2) the approximately 2,240 acres of land depicted as "Open Space" on the Map.

(d) Use of Land.—

(1) Shooting range.—The land depicted as "Site Location" on the Map shall be used by Clark County for the purposes described in subsection (b) only.

(2) Open space.—The land depicted as "Open Space" on the Map shall be used by Clark County solely to provide open space, wildlife habitat, and a buffer around the shooting range facility.

(3) Disposal.—None of the land conveyed under subsection (c) shall be disposed of by the County.

(4) Reversion.—If Clark County ceases to use any parcel for the purposes described in this subsection, or attempts to dispose of any parcel, title to the parcel shall revert to the United States, at the option of the United States.

(e) Additional Terms and Conditions.—The Secretary of the Interior may require such additional terms and conditions in connection with the conveyance as the Secretary considers appropriate to protect the interests of the United States.

TITLE III—BLUNT RESERVOIR AND PIERRE CANAL LAND CONVEYANCE

SECTION 301. SHORT TITLE.

This Act may be cited as the "Blunt Reservoir and Pierre Canal Land Conveyance Act of 2002".

SEC. 302. BLUNT RESERVOIR AND PIERRE CANAL.

(a) Definitions.—In this section:

(1) Blunt reservoir feature.—The term "Blunt Reservoir feature" means the Blunt Reservoir feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin Program.

(2) Commission.—The term "Commission" means the Commission of Schools and Public Lands of the State.

(3) Nonpreferential lease parcel.—The term "nonpreferential lease parcel" means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a nonpreferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(4) Pierre canal feature.—The term "Pierre Canal feature" means the Pierre Canal feature of the Oahe Unit, James Division, authorized by the Act of August 3, 1968 (82 Stat. 624), as part of the Pick-Sloan Missouri River Basin Program.

(5) Preferential leaseholder.—The term "preferential leaseholder" means a person or descendant of a person that held a lease on a preferential lease parcel as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(6) Preferential lease parcel.—The term 'preferential lease parcel' means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) was considered to be a preferential lease parcel by the Secretary as of January 1, 2001, and is reflected as such on the roster of leases of the Bureau of Reclamation for 2001.

(7) Secretary.—The term "Secretary" means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(8) State.—The term "State" means the State of South Dakota, including a successor in interest of the State.

(9) Unleased parcel.—The term "unleased parcel" means a parcel of land that—

(A) was purchased by the Secretary for use in connection with the Blunt Reservoir feature or the Pierre Canal feature; and

(B) is not under lease as of the date of enactment of this Act.

(b) DEAUTHORIZATION.—The Blunt Reservoir feature is deauthorized.

(c) ACCEPTANCE OF LAND AND OBLIGATIONS.—

(1) IN GENERAL.—As a condition of each conveyance under subsections (d)(5) and (e), respectively, the State shall agree to accept—

(A) in "as is" condition, the portions of the Blunt Reservoir Feature and the Pierre Canal Feature that pass into State ownership;

(B) any liability accruing after the date of conveyance as a result of the ownership, operation, or maintenance of the features referred to in subparagraph (A), including liability associated with certain outstanding obligations associated with expired easements, or any other right granted in, on, over, or across either feature; and

(C) the responsibility that the Commission will act as the agent for the Secretary in administering the purchase option extended to preferential leaseholders under subsection (d).

(2) RESPONSIBILITIES OF THE STATE.—An outstanding obligation described in paragraph (1)(B) shall inure to the benefit of, and be binding upon, the State.

(3) OIL, GAS, MINERAL AND OTHER OUTSTANDING RIGHTS.—A conveyance to the State under subsection (d)(5) or (e) or a sale to a preferential leaseholder under subsection (d) shall be made subject to—

(A) oil, gas, and other mineral rights reserved of record, as of the date of enactment of this Act, by or in favor of a third party; and

(B) any permit, license, lease, right-of-use, or right-of-way of record in, on, over, or across a feature referred to in paragraph (1)(A) that is outstanding as to a third party as of the date of enactment of this Act.

(4) ADDITIONAL CONDITIONS OF CONVEYANCE TO STATE.—A conveyance to the state under subsection (d)(5) or (e) shall be subject to the reservations by the United States and the conditions specified in section 1 of the Act of May 19, 1948 (chapter 310; 62 Stat. 240), as amended (16 U.S.C. 667b), for the transfer of property to state agencies for wildlife conservation purposes.

(d) PURCHASE OPTION.—

(1) IN GENERAL.—A preferential leaseholder shall have an option to purchase from the Commission, acting as an agent for the Secretary, the preferential lease parcel that is the subject of the lease.

(2) TERMS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a preferential leaseholder may elect to purchase a parcel on 1 of the following terms:

(i) Cash purchase for the amount that is equal to—

(I) the value of the parcel determined under paragraph (4); minus

(II) 10 percent of that value.

(ii) Installment purchase, with 10 percent of the value of the parcel determined under paragraph (4) to be paid on the date of purchase and the remainder to be paid over not more than 30 years at 3 percent annual interest.

(B) VALUE UNDER $10,000.—If the value of the parcel is under $10,000, the purchase shall be made on a cash basis in accordance with subparagraph (A)(i).

(3) OPTION EXERCISE PERIOD.—

(A) IN GENERAL.—A preferential leaseholder shall have until the date that is 5 years after enactment of this title to exercise the option under paragraph (1).

(B) CONTINUATION OF LEASES.—Until the date specified in subparagraph (A), a preferential leaseholder shall be entitled to continue to lease from the Secretary the parcel leased by the preferential leaseholder under the same terms and conditions as under the lease, as in effect as of the date of enactment of this Act.

(4) VALUATION.—

(A) IN GENERAL.—The value of a preferential lease parcel shall be its fair market value for agricultural purposes determined by an independent appraisal, exclusive of the value of private improvements made by the leaseholders while the land was federally owned before the date of the enactment of this title, in conformance with the Uniform Appraisal Standards for Federal Land Acquisition.

(B) FAIR MARKET VALUE.—Any dispute over the fair market value of a property under subparagraph (A) shall be resolved in accordance with section 2201.4 of title 43, Code of Federal Regulations.

(5) CONVEYANCE TO THE STATE.—

(A) IN GENERAL.—If a preferential leaseholder fails to purchase a parcel within the period specified in paragraph (3)(A), the Secretary shall convey the parcel to the State of South Dakota Department of Game, Fish, and Parks.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(6) USE OF PROCEEDS.—Proceeds of sales of land under this title shall be deposited as miscellaneous funds in the Treasury and such funds shall be made available, subject to appropriations, to the State for the establishment of a trust fund to pay the county taxes on the lands received by the State Department of Game, Fish, and Parks under the bill.

(e) CONVEYANCE OF NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(1) CONVEYANCE BY SECRETARY TO STATE.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall convey to the South Dakota Department of Game, Fish, and Parks the nonpreferential lease parcels and unleased parcels of the Blunt Reservoir and Pierre Canal.

(B) WILDLIFE HABITAT MITIGATION.—Land conveyed under subparagraph (A) shall be used by the South Dakota Department of Game, Fish, and Parks for the purpose of mitigating the wildlife habitat that was lost as a result of the development of the Pick-Sloan project.

(2) LAND EXCHANGES FOR NONPREFERENTIAL LEASE PARCELS AND UNLEASED PARCELS.—

(A) IN GENERAL.—With the concurrence of the South Dakota Department of Game, Fish, and Parks, the South Dakota Commission of Schools and Public Lands may allow a person to exchange land that the person owns elsewhere in the State for a nonpreferential lease parcel or unleased parcel at Blunt Reservoir or Pierre Canal, as the case may be.

(B) PRIORITY.—The right to exchange nonpreferential lease parcels or unleased parcels shall be granted in the following order or priority:

(i) Exchanges with current lessees for nonpreferential lease parcels.

(ii) Exchanges with adjoining and adjacent landowners for unleased parcels and nonpreferential lease parcels not exchanged by current lessees.

(C) EASEMENT FOR WATER CONVEYANCE STRUCTURE.—As a condition of the exchange of land of the Pierre Canal Feature under this paragraph, the United States reserves a perpetual easement to the land to allow for the right to design, construct, operate, maintain, repair, and replace a pipeline or other water conveyance structure over, under, across, or through the Pierre Canal Feature.

(f) RELEASE FROM LIABILITY.—

(1) IN GENERAL.—Effective on the date of conveyance of any parcel under this title, the United States shall not be held liable by any court for damages of any kind arising out of any act, omission, or occurrence relating to the parcel, except for damages for acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date of conveyance.

(2) NO ADDITIONAL LIABILITY.—Nothing in this section adds to any liability that the United States may have under chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act").

(g) REQUIREMENTS CONCERNING CONVEYANCE OF LEASE PARCELS.—

(1) INTERIM REQUIREMENTS.—During the period beginning on the date of enactment of this title and ending on the date of conveyance of the parcel, the Secretary shall continue to lease each preferential lease parcel or nonpreferential lease parcel to be conveyed under this section under the terms and conditions applicable to the parcel on the date of enactment of this title.

(2) PROVISION OF PARCEL DESCRIPTIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall provide the State a full legal description of all preferential lease parcels and nonpreferential lease parcels that may be conveyed under this section.

(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this Act $750,000 to reimburse the Secretary for expenses incurred in implementing this title, and such sums as are necessary to reimburse the Commission for expenses incurred implementing this title, not to exceed 10 percent of the cost of each transaction conducted under this title.

TITLE IV—GLEN CANYON NATIONAL RECREATION AREA BOUNDARY REVISION

SEC. 401. SHORT TITLE.

This title may be cited as the "Glen Canyon National Recreation Area Boundary Revision Act of 2002".

SEC. 402. GLEN CANYON NATIONAL RECREATION AREA BOUNDARY REVISION.

(a) IN GENERAL.—The first section of Public Law 92-593 (16 U.S.C. 460dd; 86 Stat. 1311) is amended—

(1) by striking "That in" and inserting "SECTION 1. (a) In"; and

(2) by adding at the end the following:

(b) In addition to the boundary change authority under subsection (a), the Secretary may acquire approximately 152 acres of private land in exchange for approximately 370 acres of land within the boundary of Glen Canyon National Recreation Area, as generally depicted on the map entitled "Page One Land Exchange Proposal", number 608/60573a-2002, and dated May 16, 2002. The map shall be on file and available for public inspection in the appropriate offices of the National Park Service. Upon conclusion of the exchange, the boundary of the recreation area shall be revised to reflect the exchange.

(c) CHANGE IN ACREAGE CEILING.—Such section is further amended by striking "one million two hundred and thirty-six thousand eight hundred and eighty acres" and inserting "1,256,000 acres".

TITLE V—WILD SKY WILDERNESS

SEC. 501. SHORT TITLE.

This title may be cited as the "Wild Sky Wilderness Act of 2002".

SEC. 502. FINDINGS AND STATEMENT OF POLICY.

(a) FINDINGS.—Congress finds the following:

(1) Americans cherish the continued existence of diverse wilderness ecosystems and wildlife found on their Federal lands and share a strong sense of moral responsibility to protect their wilderness heritage as an enduring resource to cherish, protect, and bequeath undisturbed to future generations of Americans.

(2) The values an area of wilderness offer to this and future generations of Americans are greatly enhanced to the degree that the area is diverse in topography, elevation, life zones and ecosystems, and to the extent that it offers a wide range of outdoor recreational and educational opportunities accessible in all seasons of the year.

(3) Large blocks of wildlands embracing a wide range of ecosystems and topography, including low-elevation forests, have seldom remained undisturbed due to many decades of development.

(4) Certain wildlands on the western slope of the Cascade Range in the Skykomish River valley of the State of Washington offer an outstanding representation of the original character of the forested landscape, ranging from high alpine meadows and extremely rugged peaks to low-elevation mature and old-growth forests, including groves with some of the largest and most spectacular trees in Washington, with diameters of eight feet and larger.

(5) These diverse, thickly forested mountain slopes and valleys of mature and old-growth trees in the Skykomish River valley harbor nearly the full complement of the original wildlife and fish species found by settlers of the 19th century, including mountain goats, bald eagles, black bear, pine marten, black-tailed deer, as well as rare and endangered wildlife such as northern spotted owls and goshawks, Chinook and Coho salmon, and steelhead and bull trout.

(6) An ecologically and topographically diverse wilderness area in the Skykomish River valley accessible in all seasons of the year will be enjoyable to users of various kinds, such as hikers, horse riders, hunters, anglers, and educational groups, but also to the many who cherish clean water and clean air, fish and wildlife (including endangered species such as wild salmon), and pristine mountain and riverside scenery.

(b) STATEMENT OF POLICY.—Congress hereby declares that it is the policy of the United States—

(1) to better serve the diverse wilderness and environmental education needs of the people of the State of Washington and its burgeoning metropolitan regions by granting wilderness protection to certain lower elevation wildlands in the Skykomish River valley of the State of Washington; and

(2) to protect additional lands adjacent to the Henry M. Jackson Wilderness designated by the Washington Wilderness Act of 1984 (Public Law 98-339), in further tribute to the ecologically enlightened vision of the distinguished Senator from the State of Washington and former Chairman of the Senate Committee on Energy and Natural Resources (formerly the Senate Interior and Insular Affairs Committee).

SEC. 503. ADDITIONS TO THE NATIONAL WILDERNESS PRESERVATION SYSTEM.

(a) ADDITIONS.—The following Federal lands in the State of Washington are hereby designated as wilderness and, therefore, as components of the National Wilderness Preservation System: Certain lands which comprise approximately 106,000 acres, as generally depicted on a map entitled "Wild Sky Wilderness Proposal", dated August 2002, which shall be known as the Wild Sky Wilderness.

(b) MAPS AND LEGAL DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture shall file a map and a legal description for the wilderness area designated under this Act with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives. The map and description shall have the same force and effect as if included in this title, except that the Secretary of Agriculture may correct clerical and typographical errors in the legal description and map. The map and legal description shall be on file and available for public inspection in the office of the Chief of the Forest Service, Department of Agriculture.

SEC. 504. ADMINISTRATIVE PROVISIONS.

(a) IN GENERAL.—Subject to valid existing rights, lands designated as wilderness by this title shall be managed by the Secretary of Agriculture in accordance with the Wilderness Act (16 U.S.C. 1131 et seq.) and this title, except that, with respect to any wilderness areas designated by this Act, any reference in the Wilderness Act to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this title.

(b) NEW TRAILS.—

(1) The Secretary of Agriculture shall consult with interested parties and shall establish a hiking trail plan designed to develop a system of hiking trails within or adjacent to or to provide access to the wilderness designated by this Act in a manner consistent with the Wilderness Act, Public Law 88-577 (16 U.S.C. 1131 et seq.).

(2) Within two years after the date of enactment of this Act, the Secretary of Agriculture shall complete a report on the implementation of the hiking trail plan required under this title. This report shall include the identification of priority hiking trails for development.

(c) REPEATER SITE.—Within the Wild Sky Wilderness, the Secretary of Agriculture is authorized to use helicopter access to construct and maintain a single communication repeater site to be used jointly by the Forest Service and Washington State's Snohomish County government to provide improved communication for safety and health purposes in a manner compatible with the preservation of the wilderness environment.

(d) FLOAT PLANE ACCESS.—As provided by Section 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)), the use of floatplanes on Lake Isabel, where such use has already become established, shall be permitted to continue subject to such reasonable restrictions as the Secretary of Agriculture deems desirable.

SEC. 505. AUTHORIZATION FOR LAND ACQUISITION.

(a)(1) IN GENERAL.—The Secretary of Agriculture is authorized to acquire lands and interests therein, by purchase, donation, or exchange, and shall give priority consideration to those lands identified as "Priority Acquisition Lands" on the map entitled "Wild Sky Wilderness Proposal", dated August 2002. The boundaries of the Snoqualmie National Forest and the Wild Sky Wilderness shall be adjusted to encompass any land acquired pursuant to this section.

(2) CORRIDOR.—Upon the acquisition by the Secretary of Agriculture of the two Priority Acquisition Lands parcels adjacent to the lands identified as the Corridor on the map entitled "Wild Sky Wilderness Proposal", date August 2002, the boundary of the Wild Sky Wilderness shall be adjusted to encompass the Corridor.

(b) ACCESS.—Consistent with section 5(a) of the Wilderness Act (Public Law 88-577; 16 U.S.C. 1134(a)), the Secretary of Agriculture shall assure adequate access to private inholdings within the Wild Sky Wilderness.

(c) APPRAISAL.—Valuation of private lands shall be determined without reference to any restrictions on access or use which arise out of designation as a wilderness area as a result of this title.

SEC. 506. LAND EXCHANGES.

The Secretary of Agriculture shall exchange lands and interests in lands, as generally depicted on a map entitled Chelan County Public Utility District Exchange and dated May 22, 2002, with the Chelan County Public Utility District in accordance with the following provisions:

(1) If the Chelan County Public Utility District, within ninety days after the date of enactment of this Act, offers to the Secretary of Agriculture approximately 371.8 acres within the Snoqualmie National Forest in the State of Washington, the Secretary shall accept such lands.

(2) Upon acceptance of title by the Secretary of Agriculture to such lands and interests therein, the Secretary of Agriculture shall convey to the Chelan County Public Utility District a permanent easement, including helicopter access, consistent with such levels as used as of date of enactment, to maintain an existing snowtel site on 1.82 acres on the Wenatchee National Forest in the State of Washington.

(3) The exchange directed by this Act shall be consummated if Chelan County Public Utility District conveys title acceptable to the Secretary and provided there is no hazardous material on the site, which is objectionable to the Secretary.

(4) In the event Chelan County Public Utility District determines there is no longer a need to maintain a snowtel site to monitor the snow pack for calculating expected runoff into the Lake Chelan hydroelectric project and the hydroelectric projects in the Columbia River Basin, the secretary shall be notified in writing and the easement shall be extinguished and all rights conveyed by this exchange shall revert to the United States.

TITLE VI—CONVEYANCE TO THE CITY OF CRAIG, ALASKA

SECTION 601. SHORT TITLE.

This title may be cited as the "Craig Recreation Land Purchase Act".

SEC. 602. AUTHORIZATION FOR CONVEYANCE.

If the City of Craig, Alaska, ("City") tenders all right, title and interest of the City in and to the municipal lands identified on the map entitled "Sunnahae Property and Trail," dated April 22. 1992 and labeled Attachment A, to the Secretary of Agriculture ("Secretary") within six months of the date the City receives the results of the appraisal conducted pursuant to section 4, the Secretary shall accept such tender.

SEC. 603. ACQUISITION OF LAND BY THE CITY OF CRAIG.

(a) Funds received by the City under section 2 shall be used by the City for the purchase of lands shown on the map entitled "Wards Cove Property," dated March 24, 1969 and labeled attachment B.

(b) The purchase of lands by the City under subsection (a) shall be for an amount equal to the appraised value of the lands conveyed to the Secretary by the City, except that the Secretary and the City may equalize the values by adjusting acreage or by payments not to exceed $100,000.

SEC. 604. APPRAISAL.

Prior to any conveyance, the Secretary shall conduct an appraisal of the lands identified for conveyance by the City in accordance with the United States Department of Justice Uniform Standards of Appraisal and shall notify the City of the results of the appraisal.

SEC. 605. MANAGEMENT OF CONVEYED LANDS.

Lands received by the Secretary shall be included in the Tongass National Forest and shall be managed in accordance with the laws, regulations, and forest plan applicable to the Tongass National Forest.

SEC. 606. AUTHORIZATION.

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title.

SA 4978. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill S. 2556, to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho; as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

TITLE I—FREMONT-MADISON CONVEYANCE

SECTION 101. SHORT TITLE.

This title may be cited as the "Fremont-Madison Conveyance Act".

SEC. 102. DEFINITIONS.

In this title:

(1) DISTRICT.—The term "District" means the Fremont-Madison Irrigation District, an irrigation district organized under the law of the State of Idaho.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 103. CONVEYANCE OF FACILITIES.

(a) CONVEYANCE REQUIREMENT.—The Secretary of the Interior shall convey to the Fremont-Madison Irrigation District, Idaho, pursuant to the terms of the memorandum of agreement (MOA) between the District and the Secretary (Contract No. 1425-0901-09MA-0910-093310), all right, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained by the District for delivery of water to and drainage of water from lands within the boundaries of the District as they exist upon the date of enactment of this Act, consistent with section 108.

(b) REPORT.—If the Secretary has not completed any conveyance required under this title by September 13, 2003, the Secretary shall, by no later than that date, submit a report to the Congress explaining the reasons that conveyance has not been completed and stating the date by which the conveyance will be completed.

SEC. 104. COSTS.

(a) IN GENERAL.—The Secretary shall require, as a condition of the conveyance under section 103, that the District pay the administrative costs of the conveyance and related activities, including the costs of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as described in Contract No. 1425-0901-09MA-0910-093310.

(b) VALUE OF FACILITIES TO BE TRANSFERRED.—In addition to subsection (a) the Secretary shall also require, as condition of the conveyance under section 103, that the District pay to the United States the lesser of the net present value of the remaining obligations owed by the District to the United States with respect to the facilities conveyed, or $280,000. Amounts received by the United States under this subsection shall be deposited into the Reclamation Fund.

SEC. 105. TETON EXCHANGE WELLS.

(a) CONTRACTS AND PERMIT.—In conveying the Teton Exchange Wells pursuant to section 103, the Secretary shall also convey to the District—

(1) Idaho Department of Water Resources permit number 22-097022, including drilled wells under the permit, as described in Contract No. 1425-0901-09MA-0910-093310; and

(2) all equipment appurtenant to such wells.

(b) EXTENSION OF WATER SERVICE CONTRACT.—The water service contract between the Secretary and the District (Contract No. 7-0907-0910-09W0179, dated September 16, 1977) is hereby extended and shall continue in full force and effect until all conditions described in this title are fulfilled.

SEC. 106. ENVIRONMENTAL REVIEW.

Prior to conveyance the Secretary shall complete all environmental reviews and analyses as set forth in the Memorandum of Agreement referenced in section 103(a).

SEC. 107. LIABILITY.

Effective on the date of the conveyance the United States shall not be liable for damages of any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section may increase the liability of the United States beyond that currently provided in chapter 171 of title 28, United States Code.

SEC. 108. WATER SUPPLY TO DISTRICT LANDS.

The acreage within the District eligible to receive water from the Minidoka Project and the Teton Basin Projects is increased to reflect the number of acres within the District as of the date of enactment of this title, including lands annexed into the District prior to enactment of this title as contemplated by the Teton Basin Project. The increase in acreage does not alter deliveries authorized under the District's existing water storage contracts and as allowed by State water law.

SEC. 109. DROUGHT MANAGEMENT PLANNING.

Within 60 days of enactment of this title, in collaboration with stakeholders in the Henry's Fork watershed, the Secretary shall initiate a drought management planning process to address all water uses, including irrigation and the wild trout fishery, in the Henry's Fork watershed. Within 18 months of enactment of this title, the Secretary shall submit a report to Congress, which shall include a final drought management plan.

SEC. 110. EFFECT.

(a) IN GENERAL.—Except as provided in this title, nothing in this title affects—

(1) the rights of any person; or

(2) any right in existence on the date of enactment of this Act of the Shoshone-Bannock Tribes of the Fort Hall Reservation to water based on a treaty, compact, executive order, agreement, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the "Winters Doctrine"), or law.

(b) CONVEYANCES.—Any conveyance under this title shall not affect or abrogate any provision of any contract executed by the United States or State law regarding any irrigation district's right to use water developed in the facilities conveyed.

TITLE II—DENVER WATER REUSE PROJECT

SEC. 201. DENVER WATER REUSE PROJECT.

(a) AUTHORIZATION.—The Secretary of the Interior, in cooperation with the appropriate State and local authorities, may participate in the design, planning, and construction of the Denver Water Reuse Project (hereinafter referred to as the "Project") to reclaim and reuse water in the service area of the Denver Water Department of the city and county of Denver, Colorado.

(b) COST SHARE.—The Federal share of the cost of the Project shall not exceed 25 percent of the total cost.

(c) LIMITATION.—Funds provided by the Secretary shall not be used for the operation or maintenance of the Project.

(d) FUNDING.—Funds appropriated pursuant to section 1631 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h-13) may be used for the Project.

SEC. 202. RECLAMATION WASTEWATER AND GROUNDWATER STUDY AND FACILITIES ACT.

Design, planning, and construction of the Project authorized by this title shall be in accordance with, and subject to the limitations contained in, the Reclamation Wastewater and Groundwater Study and Facilities Act (106 Stat. 4663-4669; 43 U.S.C. 390h *et seq.*), as amended.

TITLE III—WALLOWA LAKE DAM REHABILITATION

SEC. 301. SHORT TITLE.

This title may be cited as the "Wallowa Lake Dam Rehabilitation and Water Management Act of 2002".

SEC. 302. DEFINITIONS.

In this title:

(1) ASSOCIATED DITCH COMPANIES, INCORPORATED.—The term "Associated Ditch Companies, Incorporated" means the non-profit corporation by that name (as established under the laws of the State of Oregon) that operates Wallowa Lake Dam.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Commissioner of Reclamation.

(3) WALLOWA LAKE DAM REHABILITATION PROGRAM.— The term "Wallowa Lake Dam Rehabilitation Program" means the program for the rehabilitation of the Wallowa Lake Dam in Oregon, as contained in the engineering document entitled, "Phase I Dam Assessment and Preliminary Engineering Design", dated October 2001, and on file with the Bureau of Reclamation.

(4) WALLOWA VALLEY WATER MANAGEMENT PLAN.—The term "Wallowa Valley Water Management Plan" means the program developed for the Wallowa River watershed, as contained in the document entitled "Wallowa Lake Dam Rehabilitation and Water Management Plan Vision Statement", dated February 2001, and on file with the Bureau of Reclamation.

SEC. 303. AUTHORIZATION TO PARTICIPATE IN PROGRAM.

(a) AUTHORIZATION.—The Secretary—

(1) in cooperation with the Associated Ditch Companies, Incorporated, may participate in the Wallowa Lake Dam Rehabilitation Program; and

(2) in cooperation with tribal, State and local governmental entities, may participate in planning, design and construction of facilities needed to implement the Wallowa Valley Water Management Plan.

(b) COST SHARING.—

(1) IN GENERAL.—The Federal share of the costs of activities authorized under this title shall not exceed 80 percent.

(2) EXCLUSIONS FROM FEDERAL SHARE.—There shall not be credited against the Federal share of such costs—

(A) any expenditure by the Bonneville Power Administration in the Wallowa River watershed; and

(B) expenditures made by individual farmers in any Federal farm or conservation program.

(c) COMPLIANCE WITH STATE LAW.—The Secretary, in carrying out this title, shall comply with otherwise applicable State water law.

(d) PROHIBITION ON HOLDING TITLE.—The Federal Government shall not hold title to any facility rehabilitated or constructed under this title.

(e) PROHIBITION ON OPERATION AND MAINTENANCE.—The Federal Government shall not be responsible for the operation and maintenance of any facility constructed or rehabilitated under this title.

(f) OWNERSHIP AND OPERATION OF FISH PASSAGE FACILITY.—Any facility constructed using Federal funds authorized by this title located at Wallowa Lake Dam for trapping and transportation of migratory adult salmon shall be owned and operated by the Nez Perce Tribe.

SEC. 304. RELATIONSHIP TO OTHER LAW.

Activities funded under this title shall not be considered a supplemental or additional benefit under the Act of June 17, 1902 (32 Stat. 388), and all Acts amendatory thereof or supplementary thereto.

SEC. 305. APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $32,000,000 for the Federal share of the costs of activities authorized under this title.

TITLE IV—ALBUQUERQUE BIOLOGICAL PARK TITLE CLARIFICATION

SEC. 401. SHORT TITLE.

This title may be cited as the "Albuquerque Biological Park Title Clarification Act".

SEC. 402. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

(1) In 1997, the City of Albuquerque, New Mexico paid $ 3,875,000 to the Middle Rio Grande Conservancy District to acquire two parcels of land known as Tingley Beach and San Gabriel Park.

(2) The City intends to develop and improve Tingley Beach and San Gabriel Park as part of its Albuquerque Biological Park Project.

(3) In 2000, the United States claimed title to Tingley Beach and San Gabriel Park by asserting that these properties were transferred to the United States in the 1950's as part of the establishment of the Middle Rio Grande Project.

(4) The City's ability to continue developing the Albuquerque Biological Park Project has been hindered by the United States' claim of title to these properties.

(5) The United States' claim of ownership over the Middle Rio Grande Project properties is disputed by the City and MRGCD in Rio Grande Silvery Minnow v. John W. Keys, III, No. CV 99-1320 JP/RLP-ACE (D. N.M. filed Nov. 15, 1999).

(6) Tingley Beach and San Gabriel Park are surplus to the needs of the Bureau of Reclamation and the United States in administering the Middle Rio Grande Project.

(b) PURPOSE.—The purpose of this title is to direct the Secretary of the Interior to issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach or San Gabriel Park to the City, thereby removing the cloud on the City's title to these lands.

SEC. 403. DEFINITIONS.

In this title:

(1) CITY.—The term "City" means the City of Albuquerque, New Mexico.

(2) MIDDLE RIO GRANDE CONSERVANCY DISTRICT.—The terms "Middle Rio Grande Conservancy District" and "MRGCD" mean a political subdivision of the State of New Mexico, created in 1925 to provide and maintain flood protection and drainage, and maintenance of ditches, canals, and distribution systems for irrigation and water delivery and operations in the Middle Rio Grande Valley.

(3) MIDDLE RIO GRANDE PROJECT.—The term "Middle Rio Grande Project" means the works associated with water deliveries and operations in the Rio Grande basin as authorized by the Flood Control Act of 1948 (Public Law 80–858; 62 Stat. 1175) and the Flood Control Act of 1950 (Public Law 81–516; 64 Stat. 170).

(4) SAN GABRIEL PARK.—The term "San Gabriel Park" means the tract of land containing 40.2236 acres, more or less, situated within Section 12 and Section 13, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

(5) TINGLEY BEACH.—The term "Tingley Beach" means the tract of land containing 25.2005 acres, more or less, situated within Section 13 and Section 24, T10N, R2E, N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico, and described by New Mexico State Plane Grid Bearings (Central Zone) and ground distances in a Special Warranty Deed conveying the property from MRGCD to the City, dated November 25, 1997.

SEC. 404. CLARIFICATION OF PROPERTY INTEREST.

(a) REQUIRED ACTION.—The Secretary of the Interior shall issue a quitclaim deed conveying any right, title, and interest the United States may have in and to Tingley Beach and San Gabriel Park to the City.

(b) TIMING.—The Secretary shall carry out the action in subsection (a) as soon as practicable after the date of enactment of this title and in accordance with all applicable law.

(c) NO ADDITIONAL PAYMENT.—The City shall not be required to pay any additional costs to the United States for the value of San Gabriel Park and Tingley Beach.

SEC. 405. OTHER RIGHTS, TITLE, AND INTERESTS UNAFFECTED.

(a) IN GENERAL.—Except as expressly provided in section 404, nothing in this title shall be construed to affect any right, title, or interest in and to any land associated with the Middle Rio Grande Project.

(b) ONGOING LITIGATION.—Nothing contained in this title shall be construed or utilized to affect or otherwise interfere with any position set forth by any party in the lawsuit pending before the United States District Court for the District of New Mexico, No. CV 99-1320 JP/RLP-ACE, entitled Rio Grande Silvery Minnow v. John W. Keys, III, concerning the right, title, or interest in and to any property associated with the Middle Rio Grande Project.

TITLE V—HIGH PLAINS AQUIFER HYDROGEOLOGIC MAPPING

SEC. 501. SHORT TITLE.

This title may be cited as the "High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Act".

SEC. 502. DEFINITIONS.

For the purposes of this title:

(1) ASSOCIATION.—The term "Association" means the Association of American State Geologists.

(2) COUNCIL.—The term "Council" means the Western States Water Council.

(3) DIRECTOR.—The term "Director" means the Director of the United States Geological Survey.

(4) FEDERAL COMPONENT.—The term "Federal component" means the Federal component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 503(c).

(5) HIGH PLAINS AQUIFER.—The term "High Plains Aquifer" is the groundwater reserve depicted as Figure 1 in the United States Geological Survey Professional Paper 1400–B, titled "Geohydrology of the High Plains Aquifer in Parts of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas, and Wyoming."

(6) HIGH PLAINS AQUIFER STATES.—The term "High Plains Aquifer States" means the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(8) STATE COMPONENT.—The term "State component" means the State component of the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program described in section 503(d).

SEC. 503. ESTABLISHMENT.

(a) PROGRAM.—The Secretary, working through the United States Geological Survey, and in cooperation with participating State geological surveys and water management agencies of the High Plains Aquifer States, shall establish and carry out the High Plains Aquifer Comprehensive Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program, for the purposes of the characterization, mapping, modeling, and monitoring of the High Plains Aquifer. The Program shall undertake on a county-by-county level or at the largest scales and most detailed levels determined to be appropriate on a state-by-state and regional basis: (1) mapping of the hydrogeological configuration of the High Plains Aquifer; and (2) with respect to the High Plains Aquifer, analyses of the current and past rates at which groundwater is being withdrawn and recharged, the net rate of decrease or increase in High Plains Aquifer storage, the factors controlling the rate of horizontal and vertical migration of water within the High Plains Aquifer, and the current and past rate of change of saturated thickness within the High Plains Aquifer. The Program shall also develop, as recommended by the State panels referred to in subsection (d)(1), regional data bases and groundwater flow models.

(b) FUNDING.—The Secretary shall make available fifty percent of the funds available pursuant to this title for use in carrying out the State component of the Program, as provided for by subsection (d).

(c) FEDERAL PROGRAM COMPONENT.—

(1) PRIORITIES.—The Program shall include a Federal component, developed in consultation with the Federal Review Panel provided

for by subsection (e), which shall have as its priorities—

(A) coordinating Federal, State, and local, data, maps, and models into an integrated physical characterization of the High Plains Aquifer;

(B) supporting State and local activities with scientific and technical specialists; and

(C) undertaking activities and providing technical capabilities not available at the State and local levels.

(2) Interdisciplinary studies.—The Federal component shall include interdisciplinary studies that add value to hydrogeologic characterization, mapping, modeling and monitoring for the High Plains Aquifer.

(d) State Program Component.—

(1) Priorities.—Upon election by a High Plains Aquifer State, the State may participate in the State component of the Program which shall have as its priorities hydrogeologic characterization, mapping, modeling, and monitoring activities in areas of the High Plains Aquifer that will assist in addressing issues relating to groundwater depletion and resource assessment of the Aquifer. As a condition of participating in the State component of the Program, the Governor or Governor's designee shall appoint a State panel representing a broad range of users of, and persons knowledgeable regarding, hydrogeologic data and information, which shall be appointed by the Governor of the State or the Governor's designee. Priorities under the State component shall be based upon the recommendations of the State panel.

(2) Awards.—(A) Twenty percent of the Federal funds available under the State component shall be equally divided among the State geological surveys of the High Plains Aquifer States to carry out the purposes of the Program provided for by this title. In the event that the State geological survey is unable to utilize the funding for such purposes, the Secretary may, upon the petition of the Governor of the State, direct the funding to some other agency of the State to carry out the purposes of the Program.

(B) In the case of a High Plains Aquifer State that has elected to participate in the State component of the Program, the remaining funds under the State component shall be competitively awarded to State or local agencies or entities in the High Plains Aquifer States, including State geological surveys, State water management agencies, institutions of higher education, or consortia of such agencies or entities. A State may submit a proposal for the United States Geological Survey to undertake activities and provide technical capabilities not available at the State and local levels. Such funds shall be awarded by the Director only for proposals that have been recommended by the State panels referred to in subsection (d)(1), subjected to independent peer review, and given final prioritization and recommendation by the Federal Review Panel established under subsection (e). Proposals for multi-state activities must be recommended by the State panel of at least one of the affected States.

(e) Federal Review Panel.—

(1) Establishment.—There shall be established a Federal Review Panel to evaluate the proposals submitted for funding under the State component under subsection (d)(2)(B) and to recommend approvals and levels of funding. In addition, the Federal Review Panel shall review and coordinate the Federal component priorities under subsection (c)(1), Federal interdisciplinary studies under subsection (c)(2), and the State component priorities under subsection (d)(1).

(2) Composition and support.—Not later than three months after the date of enactment of this title, the Secretary shall appoint to the Federal Review Panel: (1) three representatives of the United States Geological Survey, at least one of which shall be a hydrologist or hydrogeologist; and (2) four representatives of the geological surveys and water management agencies of the High Plains Aquifer States from lists of nominees provided by the Association and the Council, so that there are two representatives of the State geological surveys and two representatives of the State water management agencies. Appointment to the Panel shall be for a term of three years. The Director shall provide technical and administrative support to the Federal Review Panel. Expenses for the Federal Review Panel shall be paid from funds available under the Federal component of the Program.

(f) Limitation.—The United States Geological Survey shall not use any of the Federal funds to be made available under the State component for any fiscal year to pay indirect, servicing, or Program management charges. Recipients of awards granted under subsection (d)(2)(B) shall not use more than eighteen percent of the Federal award amount for any fiscal year for indirect, servicing, or Program management charges. The Federal share of the costs of an activity funded under subsection (d)(2)(B) shall be no more than fifty percent of the total cost of that activity. The Secretary may apply the value of in-kind contributions of property and services to the non-Federal share of the costs of the activity.

SEC. 504. PLAN.

The Secretary, acting through the Director, shall, in consultation with the Association, the Council, the Federal Review Panel, and the State panels, prepare a plan for the High Plains Aquifer Hydrogeologic Characterization, Mapping, Modeling and Monitoring Program. The plan shall address overall priorities for the Program and a management structure and Program operations, including the role and responsibilities of the United States Geological Survey and the States in the Program, and mechanisms for identifying priorities for the Federal component and the State component.

SEC. 505. REPORTING REQUIREMENTS.

(a) Report on Program Implementation.—One year after the date of enactment of this title, and every two years thereafter through fiscal year 2011, the Secretary shall submit a report on the status of implementation of the Program established by this Act to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States. The initial report submitted by the Secretary shall contain the plan required by section 504.

(b) Report on High Plains Aquifer.—One year after the date of enactment of this title and every year thereafter through fiscal year 2011, the Secretary shall submit a report to the Committee on Energy and Natural Resources of the Senate, the Committee on Resources of the House of Representatives, and the Governors of the High Plains Aquifer States on the status of the High Plains Aquifer, including aquifer recharge rates, extraction rates, saturated thickness, and water table levels.

(c) Role of Federal Review Panel.—The Federal Review Panel shall be given an opportunity to review and comment on the reports required by this section.

SEC. 506. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2003 through 2011 to carry out this title.

TITLE VI—CALFED BAY-DELTA PROGRAM AUTHORIZATION

SEC. 601. CALFED BAY-DELTA PROGRAM.

(a) The Secretary of the Interior and the heads of the other Federal agencies may participate in the Calfed Bay-Delta Authority established by the California Bay-Delta Authority Act (2002 Cal. Stat. Chap. 812) to the extent not inconsistent with other law.

(b) During each of the fiscal years 2003 through 2005, the Secretary of the Interior and the heads of other Federal agencies identified in the Record of Decision of August 28, 2000, are also authorized to carry out aspects of the Calfed Bay-Delta Program for which federal funds are appropriated.

TITLE VII—T'UF SHUR BIEN PRESERVATION TRUST AREA ACT

SEC. 701. SHORT TITLE.

This Act may be cited as the "T'uf Shur Bien Preservation Trust Area Act".

SEC. 702. FINDING AND STATEMENT OF PURPOSE.

(a) Finding.—The Congress finds that in 1748, the Pueblo of Sandia received a grant from a representative of the King of Spain, which grant was recognized and confirmed by Congress in 1858 (11 Stat. 374). In 1994, the Pueblo filed a lawsuit against the Secretary of the Interior and the Secretary of Agriculture in the U.S. District Court for the District of Columbia, Civil No. 1:94CV02624, asserting that federal surveys of the grant boundaries erroneously excluded certain lands within the Cibola National Forest, including a portion of the Sandia Mountain Wilderness;

(b) Purposes.—The purposes of this Act are to—

(1) establish the T'uf Shur Bien Preservation Trust Area in the Cibola National Forest;

(2) confirm the status of National Forest and Wilderness lands in the Area while resolving issues associated with the Pueblo's lawsuit and the opinions of the Solicitor of the Department of the Interior dated December 9, 1988 (M-36963; 96 I.D. 331) and January 19, 2001 (M-37002); and

(3) provide the Pueblo, parties involved in the litigation, and the public with a fair and just settlement of the Pueblo's claim.

SEC. 703. DEFINITIONS.

For purposes of this Act:

(a) Area.—The term "Area" means the T'uf Shur Bien Preservation Trust Area as depicted on the map, and excludes the subdivisions, Pueblo-owned lands, the crest facilities, and the special use permit lands as set forth in this Act.

(b) Crest Facilities.—The term "crest facilities" means all facilities and developments located on the crest of Sandia Mountain, including the Sandia Crest Electronic Site; electronic site access roads; the Crest House; the upper terminal, restaurant, and related facilities of Sandia Peak Tram Company; the Crest Observation Area; parking lots; restrooms; the Crest Trail (Trail No. 130); hang glider launch sites; and the Kiwanis cabin; as well as the lands upon which such facilities are located and the lands extending 100 feet along terrain to the west of each such facility, unless a different distance is agreed to in writing between the Forest Service and the Pueblo and documented in the survey of the Area.

(c) Existing Uses and Activities.—The term "existing uses and activities" means uses and activities occurring in the Area on the date of enactment of this Act, or which have been authorized in the Area after November 1, 1995 but before the date of enactment of this Act.

(d) FOREST SERVICE.—The term "Forest Service" means the U.S. Forest Service.

(e) LA LUZ TRACT.—The term "La Luz tract" means that tract comprised of approximately 31 acres of land owned in fee by the Pueblo and depicted on the map.

(f) LOCAL PUBLIC BODIES.—The term "local public bodies" means political subdivisions of the State of New Mexico as defined in New Mexico Code §6-5-1.

(g) MAP.—The term "map" means the Forest Service map entitled "T'uf Shur Bien Preservation Trust Area," dated April 2000.

(h) MODIFIED USES OR ACTIVITIES.—The term "modified uses or activities" means existing uses which are being modified or reconfigured, but which are not being significantly expanded, including a trail or trailhead being modified, such as to accommodate handicapped access, a parking area being reconfigured though not expanded, or a special use authorization for a group recreation activity being authorized for a different use area or time period.

(i) NEW USES OR ACTIVITIES.—The term "new uses or activities" means uses or activities not occurring in the Area on the date of enactment of this Act, as well as existing uses or activities that are being modified such that they significantly expand or alter their previous scope, dimensions, or impacts on the land, water, air and/or wildlife resources of the Area. New uses and activities do not apply to new uses or activities that are categorically excluded from documentation requirements pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), or to activities undertaken to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(j) PIEDRA LISA TRACT.—The term "Piedra Lisa tract" means that tract comprised of approximately 160 acres of land held in private ownership and depicted on the map.

(k) PUEBLO.—The term "Pueblo" means the Pueblo of Sandia in its governmental capacity.

(l) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, except where otherwise expressly indicated.

(m) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the Agreement of Compromise and Settlement dated April 4, 2000, between the United States, the Pueblo, and the Sandia Peak Tram Company.

(n) SPECIAL USE PERMIT.—The term "special use permit" means the December 1, 1993, Special Use Permit issued by the Forest Service to Sandia Peak Tram Company and Sandia Peak Ski Company, encompassing approximately 46 acres of the corridor presently dedicated to aerial tramway use, and approximately 945 acres of the ski area, as well as the lands described generally in Exhibit A to the December 31, 1993, Special Use Permit, including the maintenance road to the lower tram tower, water storage and distribution facilities, seven helispots, and the other lands described therein.

(o) SUBDIVISIONS.—The term "subdivisions" means the subdivisions of Sandia Heights Addition, Sandia Heights North Units I, II, and 3, Tierra Monte, Valley View Acres, and Evergreen Hills, as well as any additional plats and privately owned properties depicted on the map.

(p) TRADITIONAL AND CULTURAL USES.—The terms "traditional and cultural uses" and "traditional and cultural purposes" mean ceremonial activities, including the placing of ceremonial materials in the Area, and the use, hunting, trapping or gathering of plants, animals, wood, water, and other natural resources, but only for non-commercial purposes.

SEC. 704. T'UF SHUR BIEN PRESERVATION TRUST AREA.

(a) ESTABLISHMENT.—The T'uf Shur Bien Preservation Trust Area is established within the Cibola National Forest and the Sandia Mountain Wilderness as depicted on the map:

(1) to recognize and protect in perpetuity the Pueblo's rights and interests in and to the Area, as specified in section 705(a) of this Act;

(2) to preserve in perpetuity the Wilderness and National Forest character of the Area; and

(3) to recognize and protect in perpetuity the public's longstanding use and enjoyment of the Area.

(b) ADMINISTRATION AND APPLICABLE LAW.—The Secretary, acting through the Forest Service, shall continue to administer the Area as part of the National Forest System and incorporate the provisions of this Act affecting management of the Area, including section 705(a)(3) and section 707.

(c) EXCEPTIONS.—

(1) Traditional and cultural uses by Pueblo members and members of other federally recognized Indian tribes authorized to use the Area by the Pueblo under section 705(a)(4) of this Act shall not be restricted except by the Wilderness Act and its regulations as they exist on the date of enactment of this Act and by applicable federal wildlife protection laws as provided in section 706(a)(2) of this Act.

(2) To the extent that laws enacted or amended after the date of this Act are inconsistent with this Act, they shall not apply to the Area unless expressly made applicable by Congress.

(3) The use of the word "Trust" in the name of the Area is in recognition of the Pueblo's specific rights and interests in the Area, and does not confer upon the Pueblo the ownership interest that exists when the Secretary of the Interior accepts the title to land in trust for the benefit of an Indian tribe.

(d) AREA DEFINED.—

(1) The Area shall be comprised of approximately 9890 acres of land within the Cibola National Forest as depicted on the map.

(2) As soon as practicable after enactment of this Act, the Secretary shall file the map and a legal description of the Area with the Committee on Resources of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate. The map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture, Washington, District of Columbia.

(3) Such map and legal description shall have the same force and effect as if included in this Act, except that

(A) clerical and typographical errors shall be corrected;

(B) changes that may be necessary pursuant to sections 709(b), 709(d), 709(e), 714(c), and 714(d) shall be made; and

(C) to the extent the map and the language of this Act conflict, the language of the Act controls.

(e) NO CONVEYANCE OF TITLE.—The United States' right, title and interest in or to the Area or any part thereof shall not be conveyed to or exchanged with any person, trust, or governmental entity, including the Pueblo, without specific authorization of Congress.

(f) PROHIBITED USES.—Notwithstanding any other provision of law, no use prohibited by the Wilderness Act as of the date of enactment of this Act may occur in the Wilderness portion of the Area; nor may any of the following uses occur in any portion of the Area: gaming or gambling of any kind, mineral production, timber production, and new uses or activities to which the Pueblo objects pursuant to section 705(a)(3) of this Act. The Area is closed to the location of mining claims under the Mining Law of 1872 (30 U.S.C. §22).

(g) NO MODIFICATION OF BOUNDARIES.—Creation of the T'uf Shur Bien Preservation Trust Area shall not affect the boundaries of, nor repeal or disestablish the Sandia Mountain Wilderness or the Cibola National Forest. Establishment of the Area does not in any way modify the existing boundary of the Pueblo grant.

SEC. 705. PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA.

(a) GENERAL.—The Pueblo shall have the following rights and interests in the Area:

(1) free and unrestricted access to the Area for traditional and cultural uses to the extent not inconsistent with the Wilderness Act and its regulations as they exist on the date of enactment of this Act and with applicable federal wildlife protection laws as provided in section 706(a)(2);

(2) perpetual preservation of the Wilderness and National Forest character of the Area under this Act;

(3) rights in the management of the Area as set forth in section 707, which include:

(A) the right to consent or withhold consent to new uses;

(B) the right to consultation regarding modified uses;

(C) the right to consultation regarding the management and preservation of the Area; and

(D) the right to dispute resolution procedures;

(4) exclusive authority, in accordance with its customs and laws, to administer access to the Area for traditional and cultural uses by members of the Pueblo and of other federally recognized Indian tribes; and

(5) such other rights and interests as are enumerated and recognized in sections 704, 705(c), 707, 708, and 709.

(b) LIMITATION.—Except as provided in subsection (a)(4), access to and use of the Area for all other purposes shall continue to be administered by the Secretary through the Forest Service.

(c) COMPENSABLE INTEREST.—

(1) If, by an Act of Congress enacted subsequent to the effective date of this Act, Congress diminishes the Wilderness and National Forest designation of the Area by authorizing a use prohibited by section 704(f) in all or any portion of the Area, or denies the Pueblo access for any traditional and cultural uses in all or any portion of the Area, the United States shall compensate the Pueblo as if the Pueblo had held a fee title interest in the affected portion of the Area and as though the United States had acquired such interest by legislative exercise of its power of eminent domain, and the restrictions of sections 704(f) and 706(a) shall be disregarded in determining just compensation owed to the Pueblo.

(2) Any compensation made to the Pueblo pursuant to subsection (c)(1) does not in any way affect the extinguishment of claims set forth in section 710.

SEC. 706. LIMITATIONS ON PUEBLO OF SANDIA RIGHTS AND INTERESTS IN THE AREA.

(a) LIMITATIONS.—The Pueblo's rights and interests recognized in this Act do not include:

(1) any right to sell, grant, lease, convey, encumber or exchange lands in the Area, or any right or interest therein, and any such conveyance shall not have validity in law or equity;

(2) any exemption from applicable federal wildlife protection laws;

(3) any right to engage in any activity or use prohibited in section 704(f); or

(4) any right to exclude persons or governmental entities from the Area.

(b) EXCEPTION.—No person who exercises traditional and cultural use rights as authorized in section 705(a)(4) of this Act may be prosecuted for a federal wildlife offense requiring proof of a violation of a state law or regulation.

SEC. 707. MANAGEMENT OF THE AREA.

(a) PROCESS.—

(1) GENERAL.—

(A) The Forest Service shall consult with the Pueblo of Sandia not less than twice a year, unless otherwise mutually agreed, concerning protection, preservation, and management of the Area, including proposed new and modified uses and activities in the Area and authorizations that are anticipated during the next six months and approved in the preceding six months.

(2) NEW USES AND ACTIVITIES.—

(A) If after consultation the Pueblo of Sandia denies its consent for a new use or activity within 30 days of the consultation, the Forest Service will not be authorized to proceed with the activity or use. If the Pueblo consents to the new use or activity in writing or fails to respond within 30 days, the Forest Service may proceed with the notice and comment process and the environmental analysis.

(B) Before the Forest Service signs a Record of Decision (ROD) or Decision Notice (DN) for a proposed use or activity, the Forest Service will again request Pueblo consent within 30 days of the Pueblo's receipt of the proposed ROD or DN. If the Pueblo refuses to consent, the activity or use will not be authorized. If the Pueblo fails to respond to the consent request within 30 days after the proposed ROD or DN is provided to the Pueblo, the Pueblo will be deemed to have consented to the proposed ROD or DN and the Forest Service may proceed to issue the final ROD or DN.

(3) PUBLIC INVOLVEMENT.—

(A) For proposed new and modified uses and activities, the public shall be provided notice of—

(i) the purpose and need for the proposed action or activity,

(ii) the Pueblo's role in the decision-making process, and

(iii) the Pueblo's position on the proposal.

Any person may file an action in the United States District Court for the District of New Mexico to challenge Forest Service determinations of what constitutes a new or a modified use or activity.

(b) EMERGENCIES AND EMERGENCY CLOSURE ORDERS.—The Forest Service shall retain its existing authorities to manage emergency situations, to provide for public safety, and to issue emergency closure orders in the Area subject to applicable law. The Forest Service shall notify the Pueblo of Sandia regarding emergencies, public safety issues, and emergency closure orders as soon as possible. Such actions are not subject to the Pueblo's right to withhold consent to new uses in the Area as set forth in section 705(a)(3)(i).

(c) DISPUTES INVOLVING FOREST SERVICE MANAGEMENT AND PUEBLO TRADITIONAL USES.—

(1) GENERAL.—In the event that Forest Service management of the Area and Pueblo traditional and cultural uses conflict, and the conflict does not pertain to new or modified uses subject to the process set forth in subsection (a), the process for dispute resolution set forth in this subsection shall take effect.

(2) DISPUTE RESOLUTION PROCESS.—(A) When there is a dispute between the Pueblo and the Forest Service regarding Pueblo traditional and cultural use and Forest Service management of the Area, the party identifying the dispute shall notify the other party in writing addressed to the Governor of the Pueblo or the Regional Forester respectively, setting forth the nature of the dispute. The Regional Forester or designee and the Governor of the Pueblo or designee shall attempt to resolve the dispute for no less than 30 days after notice has been provided before filing an action in United States District Court for the District of New Mexico.

(B) DISPUTES REQUIRING IMMEDIATE RESOLUTION.—In the event of a conflict that requires immediate resolution to avoid imminent, substantial and irreparable harm, the party alleging such conflict shall notify the other party and seek to resolve the dispute within 3 days of the date of notification. If the parties are unable to resolve the dispute within 3 days, either party may file an action for immediate relief in the United States District Court for the District of New Mexico, and the procedural exhaustion requirements set forth above shall not apply.

SEC. 708. JURISDICTION OVER THE AREA.

(a) CRIMINAL JURISDICTION.—Notwithstanding any other provision of law, jurisdiction over crimes committed in the Area shall be allocated as follows:

(1) To the extent that the allocations of criminal jurisdiction over the Area under paragraphs (2), (3), and (4) of this subsection are overlapping, they should be construed to allow for the exercise of concurrent criminal jurisdiction.

(2) The Pueblo shall have jurisdiction over crimes committed by its members or by members of another federally recognized Indian tribe who are present in the Area with the Pueblo's permission pursuant to section 705(a)(4).

(3) The United States shall have jurisdiction over—

(A) the offenses listed in section 1153 of title 18, U.S. Code, including any offenses added to the list in that statute by future amendments thereto, when such offenses are committed by members of the Pueblo and other federally recognized Indian tribes;

(B) crimes committed by any person in violation of laws and regulations pertaining to the protection and management of National Forests;

(C) enforcement of federal criminal laws of general applicability; and

(D) any other offense committed by a member of the Pueblo against a non-member of the Pueblo. Any offense which is not defined and punished by federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State of New Mexico.

(4) The State of New Mexico shall have jurisdiction over any crime under its laws committed by a person not a member of the Pueblo.

(b) CIVIL JURISDICTION.—

(1) Except as provided in paragraphs (2), (3), (4), and (5), the United States, the State of New Mexico, and local public bodies shall have the same civil adjudicatory, regulatory, and taxing jurisdiction over the Area as they exercised prior to the enactment of this Act.

(2) The Pueblo shall have exclusive civil adjudicatory jurisdiction over—

(A) disputes involving only members of the Pueblo;

(B) civil actions brought by the Pueblo against members of the Pueblo; and

(C) civil actions brought by the Pueblo against members of other federally recognized Indian tribes for violations of understandings between the Pueblo and that member's tribe regarding use or access to the Area for traditional and cultural purposes.

(3) The Pueblo shall have no regulatory jurisdiction over the Area with the exception of:

(A) exclusive authority to regulate traditional and cultural uses by the Pueblo's own members and to administer access to the Area by other federally recognized Indian tribes for traditional and cultural uses, to the extent such regulation is consistent with this Act; and

(B) The Pueblo shall have exclusive authority to regulate hunting and trapping in the Area by its members that is related to traditional and cultural purposes: Provided that any hunting and trapping conducted by Pueblo members as a traditional and cultural use within the Area, excluding that part of the Area contained within Sections 13, 14, 23, 24, and the northeast quarter of Section 25 of T12N, R4E, and Section 19 of T12N, R5E, N.M.P.M., Sandoval County, New Mexico, shall be regulated by the Pueblo in a manner consistent with the regulations of the State of New Mexico concerning types of weapons and proximity of hunting and trapping to trails and residences.

(4) The Pueblo shall have no authority to impose taxes within the Area.

(5) The State of New Mexico and local public bodies shall have no authority within the Area to tax the activities or the property of the Pueblo, its members, or members of other federally recognized Indian tribes authorized to use the Area under section 705(a)(4) of this Act.

SEC. 709. SUBDIVISIONS AND OTHER PROPERTY INTERESTS.

(a) SUBDIVISIONS.—The subdivisions are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the subdivisions and property interests therein, and the laws of the Pueblo shall not apply to the subdivisions. The jurisdiction of the State of New Mexico and local public bodies over the subdivisions and property interests therein shall continue in effect, except that upon application of the Pueblo a tract comprised of approximately 35 contiguous, non-subdivided acres in the northern section of Evergreen Hills owned in fee by the Pueblo at the time of enactment of this Act, shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior. Such trust land shall be subject to all limitations on use pertaining to the Area contained in this Act.

(b) PIEDRA LISA.—The Piedra Lisa tract is excluded from the Area notwithstanding any subsequent acquisition of the tract by the Pueblo. If the Secretary or the Pueblo acquires the Piedra Lisa tract, the tract shall be transferred to the United States and is hereby declared to be held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 706(a)(4) shall not apply outside of Forest Service System trails. Until acquired by the Secretary or Pueblo, the jurisdiction of the State of New Mexico and local public bodies over the Piedra Lisa tract and property interests therein shall continue in effect.

(c) CREST FACILITIES.—The lands on which the crest facilities are located are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the lands on which the crest facilities are located and property interests therein, and the laws of the Pueblo shall not apply to those lands. The pre-existing jurisdictional status of those lands shall continue in effect.

(d) SPECIAL USE PERMIT AREA.—The lands described in the special use permit are excluded from the Area. The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory, or any other form of jurisdiction, over the lands described in the special use permit, and the laws of the Pueblo shall not apply to those lands. The pre-existing jurisdictional status of these lands shall continue in effect. In the event the special use permit, during its existing term or any future terms or extensions, requires amendment to include other lands in the Area necessary to realign the existing or any future replacement tram line, associated structures, or facilities, the lands subject to that amendment shall thereafter be excluded from the Area and shall have the same status under this Act as the lands currently described in the special use permit. Any lands dedicated to aerial tramway and related uses and associated facilities that are excluded from the special use permit through expiration, termination or the amendment process shall thereafter be included in the Area but only after final agency action is no longer subject to any appeals.

(e) LA LUZ TRACT.—The La Luz tract now owned in fee by the Pueblo is excluded from the Area and upon application by the Pueblo shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this Act. The restriction contained in section 706(a)(4) shall not apply outside of Forest Service System trails.

(f) EVERGREEN HILLS ACCESS.—The Secretary, consistent with section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210), shall ensure that Forest Service Road 333D, as depicted on the map, is maintained in an adequate condition consistent with the terms of section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210).

(g) PUEBLO FEE LANDS.—Those properties not specifically addressed in subsections (a) or (e) of this section that are owned in fee by the Pueblo within the subdivisions are excluded from the Area and shall be subject to the jurisdictional provisions of subsection (a) of this section.

(h) RIGHTS-OF-WAY.—

(1) ROAD RIGHTS-OF-WAY.—(A) In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the County of Bernalillo, New Mexico, in perpetuity, the following irrevocable rights of way for roads identified on the map in order to provide for public access to the subdivisions, the special use permit land and facilities, the other leasehold and easement rights and interests of the Sandia Peak Tram Company and its affiliates, the Sandia Heights South Subdivision, and the Area:

(i) a right-of-way for Tramway Road;

(ii) a right-of-way for Juniper Hill Road North;

(iii) a right-of-way for Juniper Hill Road South;

(iv) a right-of-way for Sandia Heights Road; and

v) a right-of-way for Juan Tabo Canyon Road (Forest Road No. 333).

(B) The road rights-of-way shall be subject to the following conditions:

(i) Such rights-of-way may not be expanded or otherwise modified without the Pueblo's written consent, but road maintenance to the rights of way shall not be subject to Pueblo consent;

(ii) The rights-of-way shall not authorize uses for any purpose other than roads without the Pueblo's written consent.

(iii) Except as provided in the Settlement Agreement, existing rights-of-way or leasehold interests and obligations held by the Sandia Peak Tram Company and its affiliates, shall be preserved, protected, and unaffected by this Act.

(2) UTILITY RIGHTS-OF-WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant irrevocable utility rights-of-way in perpetuity across Pueblo lands to appropriate utility or other service providers serving Sandia Heights Addition, Sandia Heights North Units I, II, and 3, the special use permit lands, Tierra Monte, and Valley View Acres, including rights-of-way for natural gas, power, water, telecommunications, and cable television services. Such rights-of-way shall be within existing utility corridors as depicted on the map or, for certain water lines, as described in the existing grant of easement to the Sandia Peak Utility Company; provided that use of water line easements outside the utility corridors depicted on the map shall not be used for utility purposes other than water lines and associated facilities. Except where above-ground facilities already exist, all new utility facilities shall be installed underground unless the Pueblo agrees otherwise. To the extent that enlargement of existing utility corridors is required for any technologically-advanced telecommunication, television, or utility services, the Pueblo shall not unreasonably withhold agreement to a reasonable enlargement of the easements described above.

(i) FOREST SERVICE RIGHTS OF WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the Forest Service the following irrevocable rights-of-way in perpetuity for Forest Service trails crossing land of the Pueblo in order to provide for public access to the Area and through Pueblo lands:

(1) a right-of-way for a portion of the Crest Spur Trail (Trail No. 84), crossing a portion of the La Luz tract, as identified on the map;

(2) a right-of-way for the extension of the Foothills Trail (Trail No. 365A), as identified on the map; and

(3) a right-of-way for that portion of the Piedra Lisa North-South Trail (Trail No. 135) crossing the Piedra Lisa tract, if the Pueblo ever acquires the Piedra Lisa tract.

SEC. 710. EXTINGUISHMENT OF CLAIMS.

(a) GENERAL.—Except for the rights and interests in and to the Area specifically recognized in sections 704, 705, 707, 708, and 709, all Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to lands within the Area, any part thereof, and property interests therein, as well as related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished. The United States' title to the Area is hereby confirmed.

(b) SUBDIVISIONS.—Any Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to the subdivisions and property interests therein (except for land owned in fee by the Pueblo as of the date of enactment of this Act), as well as related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished.

(c) SPECIAL USE AND CREST FACILITIES AREAS.—Any Pueblo right, title and interest of any kind, including aboriginal claims, and related boundary, survey, trespass, and monetary damage claims, are hereby permanently extinguished in and to

(1) the lands described in the special use permit; and

(2) the lands on which the crest facilities are located.

(d) PUEBLO AGREEMENT.—As provided in the Settlement Agreement, the Pueblo has agreed to the relinquishment and extinguishment of those claims, rights, titles and interests extinguished pursuant to subsection (a), (b) and (c) of this section.

(e) CONSIDERATION.—The recognition of the Pueblo's rights and interests in this Act constitutes adequate consideration for the Pueblo's agreement to the extinguishment of the Pueblo's claims in this section and the right-of-way grants contained in section 709, and it is the intent of Congress that those rights and interests may only be diminished by a future Act of Congress specifically authorizing diminishment of such rights, with express reference to this Act.

SEC. 711. CONSTRUCTION.

(a) STRICT CONSTRUCTION.—This Act recognizes only enumerated rights and interests, and no additional rights, interests, obligations, or duties shall be created by implication.

(b) EXISTING RIGHTS.—To the extent there exists within the Area at the time of enactment of this Act any valid private property rights associated with the Piedra Lisa tract or other private lands that are not otherwise addressed in this Act, such rights are not modified or otherwise affected by this Act, nor is the exercise of any such right subject to the Pueblo's right to withhold consent to new uses in the Area as set forth in section 705(a)(3)(i).

(c) NOT PRECEDENT.—The provisions of this Act creating certain rights and interests in the National Forest System are uniquely suited to resolve the Pueblo's claim and the geographic and societal situation involved, and shall not be construed as precedent for any other situation involving management of the National Forest System.

(d) FISH AND WILDLIFE.—Except as provided in section 708(b)(3), nothing in this Act shall be construed as affecting the responsibilities of the State of New Mexico with respect to fish and wildlife, including the regulation of hunting, fishing, or trapping within the Area.

(e) FEDERAL LAND POLICY AND MANAGEMENT ACT.—Section 316 (43 U.S.C. 1746) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) is amended by adding the following sentence at the end thereof: "Any corrections authorized by this section which affect the boundaries of, or jurisdiction over, lands administered by another Federal agency shall be made only after consultation with, and the approval of, the head of such other agency."

SEC. 712. JUDICIAL REVIEW.

(a) ENFORCEMENT.—Suit to enforce the provisions of this Act may be brought to the extent permitted under chapter 7 of title 5, United States Code. Judicial review shall be based upon the administrative record and subject to the applicable standard of review set forth in section 706 of title 5.

(b) WAIVER.—Suit may be brought against the Pueblo for declaratory judgment or injunctive relief under this Act, but no money damages, including costs or attorney's fees, may be imposed on the Pueblo as a result of such judicial action.

(c) VENUE.—Venue for any suit provided for in this section, as well as any suit to contest the constitutionality of this Act, shall lie only in the United States District Court for the District of New Mexico.

SEC. 713. EFFECTIVE DATE.

The provisions of this Act shall take effect immediately upon enactment of this Act.

SEC. 714. AUTHORIZATION OF APPROPRIATIONS AND RELATED AUTHORITIES.

(a) GENERAL.—There are hereby authorized to be appropriated such sums as may be necessary to carry out this Act, including such sums as may be necessary for the Forest Service to acquire ownership of, or other interest in, lands within the external boundaries of the Area as authorized in subsection (d).

(b) CONTRIBUTIONS.—

(1) The Secretary is authorized to accept contributions from the Pueblo, or from other persons or governmental entities, to perform and complete a survey of the Area, or otherwise for the benefit of the Area in accordance with this Act.

(2) The Secretary shall complete a survey of the Area within one year of the date of enactment of this Act.

(c) LAND EXCHANGE.—Within 180 days after the date of enactment of this Act, after consultation with the Pueblo, the Secretary is directed in accordance with applicable laws to prepare and offer a land exchange of National Forest lands outside the Area and contiguous to the northern boundary of the Pueblo's Reservation within sections 10, 11, and 14 of T12N, R4E, N.M.P.M., Sandoval County, New Mexico excluding Wilderness land, for lands owned by the Pueblo in the Evergreen Hills subdivision in Sandoval County contiguous to National Forest land, and the La Luz tract in Bernalillo County.

Notwithstanding section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)), the Secretary may either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership. Any funds received by the Secretary as a result of the exchange shall be deposited in the fund established under the Act of December 4, 1967, known as the Sisk Act (16 U.S.C. 484a), and shall be available to purchase non-Federal lands within or adjacent to the National Forests in the State of New Mexico. All lands exchanged or conveyed to the Pueblo are hereby declared to be held in trust for the Pueblo by the United States and added to the Pueblo's Reservation subject to all existing and outstanding rights and shall remain in their natural state and shall not be subject to commercial development of any kind. Lands exchanged or conveyed to the Forest Service shall be subject to all limitations on use pertaining to the Area under this Act. If the land exchange offer is not made within 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, a report explaining the reasons for the failure to make the offer including an assessment of the need for any additional legislation that may be necessary for the exchange. If additional legislation is not necessary, the Secretary, consistent with this section, should proceed with the exchange pursuant to existing law.

(d) LAND ACQUISITION.—(1) The Secretary is authorized to acquire lands owned by the Pueblo within the Evergreen Hills Subdivision in Sandoval County or any other privately held lands inside of the exterior boundaries of the Area. The boundaries of the Cibola National Forest and the Area shall be adjusted to encompass any lands acquired pursuant to this section.

(2) In the event the Pueblo acquires the Piedra Lisa tract, the Secretary shall compensate the Pueblo for the fair market value of:

(A) the right-of-way established pursuant to section 709(i)(3); and

(B) the conservation easement established by the limitations on use of the Piedra Lisa tract pursuant to section 709(b).

(e) REIMBURSEMENT OF CERTAIN COSTS.—

(1) The Pueblo, the County of Bernalillo, New Mexico, and any person who owns or has owned property inside of the exterior boundaries of the Area as designated on the map, and who has incurred actual and direct costs as a result of participating in the case of Pueblo of Sandia v. Babbitt, Civ. No. 94-2624 HHG (D.D.C.), or other proceedings directly related to resolving the issues litigated in that case, may apply for reimbursement in accordance with this section. Costs directly related to such participation which shall qualify for reimbursement shall be—

(A) dues or payments to a homeowner association for the purpose of legal representation; and

(B) legal fees and related expenses.

(2) The reimbursement provided in this subsection shall be in lieu of that which might otherwise be available pursuant to the Equal Access to Justice Act (24 U.S.C. 2412).

(3) The Secretary of the Treasury is authorized and directed to make reimbursement payments as provided in this section out of any money not otherwise appropriated.

(4) Applications for reimbursement shall be filed within 180 days of the date of enactment of this Act with the Department of the Treasury, Financial Management Service, Washington, D.C.

(5) In no event shall any one party be compensated in excess of **$750,000** and the total amount reimbursed pursuant to this section shall not exceed **$3,000,000.**

PRIVILEGE OF THE FLOOR

Mr. CLELAND. I ask unanimous consent that my press secretary, Patricia Murphy, be admitted to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that privileges of the floor be granted to Ross Arends, a detailee in the office of Senator KOHL, during the pendency of the homeland security bill.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

FOREIGN CURRENCY REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following report(s) of standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2000

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S currency
Senator John McCain:									
United States	Dollar				6,409.34				6,409.34
Romania	Dollar		380.00						380.00
Georgia	Dollar		232.00						232.00
Croatia	Dollar		209.00						209.00
Bosnia	Dollar		184.00						184.00
Slovenia	Dollar		209.00						209.00
Dan Twining:									
United States	Dollar				6,955.34				6,955.34
Romania	Dollar		425.00						425.00
Georgia	Dollar		220.00						220.00
Croatia	Dollar		292.00						292.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2000—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Bosnia	Dollar		196.00						196.00
Slovenia	Dollar		355.00						355.00
Maren Leed:									
United States	Dollar				5,871.07				5,871.07
Germany	Euro		470.80		60.00		13.00		543.80
Italy	Euro		110.75				18.00		128.75
Joseph T. Sixeas:									
United States	Dollar				3,696.00				3,696.00
Italy	Euro		110.75						110.75
Germany	Euro		220.00						220.00
Ambrose R. Hock:									
United States	Dollar				3,187.83				3,187.83
South Korea	Won		1,002.86						1,002.86
Daniel J. Cox, Jr.:									
United States	Dollar				2,522.10				2,522.10
South Korea	Won		1,090.99						1,090.99
Total			5,708.15		28,701.68		31.00		34,440.83

CARL LEVIN,
Chairman, Committee on Armed Services, Oct. 1, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Phil Gramm:									
United Kingdom	Dollar		2,000.98						2,000.98
Norway	Dollar		504.33						504.33
Senator Mike Crapo:									
United Kingdom	Dollar		2,630.00						2,630.00
Norway	Dollar		717.00						717.00
Senator John Ensign:									
United Kingdom	Dollar		2,580.00						2,580.00
Norway	Dollar		693.97						693.97
Ms. Ruth Cymber:									
United Kingdom	Dollar		2,250.00						2,250.00
Norway	Dollar		529.69						529.69
[1] Delegation Expenses:									
United Kingdom	Dollar						14,073.85		14,073.85
Total			11,905.97				14,073.85		25,979.82

* Delegation expenses include direct payments and reimbursements to the Department of State under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384.

PAUL S. SARBANES,
Chairman, Committee on Banking, Housing and Urban Affairs, Oct. 7, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), SENATE BUDGET COMMITTEE FOR TRAVEL FROM AUG. 23 TO SEPT. 1, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Bernadette Kilroy:									
Thailand	Baht		358.45						358.45
Cambodia	Dollar		152.50						152.50
Viet Nam (HCMC)	Dollar		321.60						321.60
Viet Nam (Hanoi)	Dollar		143.80						143.80
Hong Kong	Dollar		703.56		6,252.83				6,956.39
Total			1,679.91		6,252.83				7,932.74

KENT CONRAD,
Chairman, Senate Budget Committee, Oct. 1, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JULY 1, 2002 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Sara Barth:									
South Africa	Rand		1,788.00		2,962.67				4,750.67
Floyd DesChamps:									
South Africa	Rand		1,839.27		3,265.10				5,104.37
Amy A. Fraenkel:									
South Africa	Rand		1,538.42		3,045.60				4,584.02
Total			5,156.69		9,273.37				14,439.06

ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation,
Nov. 5, 2002.

AMENDMENT TO 2ND QUARTER 2002, CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Shirley Neff:									
United Kingdom	Dollar		1,200.00		5,642.56				6,842.56
Total			1,200.00		5,642.56				6,842.56

JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, Sept. 17, 2002.

AMENDMENT TO 2ND QUARTER 2002 CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM APR. 1, 2002 TO JUNE 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator George Voinovich:[1]									
United Kingdom	Dollar						152.97		152.97
Total							152.97		152.97

[1] Delegation expenses include direct payments and reimbursements to the Department of State under authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384.

JOSEPH I. LIEBERMAN,
Chairman, Committee on Governmental Affairs, Oct. 7, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JULY 1, 2002 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Fred Thompson:									
United States					6,290.34				6,290.34
Romania	Lei		396.20						396.20
Georgia	Lari		245.51						245.51
Croatia	Kuna		174.76						174.76
Bosnia/Herzegovina	Marka		165.10						165.10
Slovenia	Tolar		200.95						200.95
Total			1,182.52		6,290.34				7,472.86

JOSEPH I. LIEBERMAN,
Chairman, Committee on Governmental Affairs, Oct. 7, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Lugar			2,084.00						2,084.00
	Dollar				4,985.34				4,985.34
Kenneth Myers, Jr.			2,320.00						2,320.00
	Dollar				4,985.34				4,985.34
Senator Richard Shelby			3,420.00						3,420.00
Christopher Ford			3,086.00						3,086.00
Anne Caldwell			3,420.00						3,420.00
Senator Bob Graham			1,559.00						1,559.00
Senator Mike DeWine			1,325.00						1,325.00
Senator Evan Bayh			1,153.00						1,153.00
	Dollar				2,627.54				2,627.54
Robert Filippone			1,559.00						1,559.00
James Barnett			1,159.00						1,159.00
Senator Jon Kyl			2,926.83						2,926.83
Matthew Pollard			3,272.00						3,272.00
	Dollar				5,106.74				5,106.74
Lorenzo Goco			1,066.00						1,066.00
	Dollar				6,270.88				6,270.88
Randy Bookout			150.00						150.00
	Dollar				4,985.00				4,985.00
Mary Patricia Lawrence			1,133.00						1,133.00
	Dollar				6,270.88				6,270.88
Hyon Kim			934.61						934.61
	Dollar				6,270.88				6,270.88
Senator Barbara Mikulski			1,686.00						1,686.00
	Dollar				9,172.52				9,172.52
George K. Johnson			9,389.66						9,389.66
	Dollar				8,070.19				8,070.19
Julia Frifield			1,542.00						1,542.00
	Dollar				9,172.52				9,172.52
Tracye Winfrey			608.00						608.00
	Dollar				5,142.11				5,142.11
James Barnett			953.00						953.00
	Dollar				6,572.33				6,572.33
Christopher Ford			1,095.00						1,095.00
	Dollar				9,243.63				9,243.63
James Hensler			872.08						872.08
	Dollar				9,243.63				9,243.63
Christopher Jackson			933.00						933.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
	Dollar				9,107.22				9,107.22
Matthew Pollard			1,077.34						1,077.34
	Dollar				9,313.63				9,313.63
Randy Bookout			2,605.00						2,605.00
	Dollar				9,004.00				9,004.00
Peter Dorn			1,422.08						1,422.08
	Dollar				9,107.22				9,107.22
Linda Taylor			1,145.97						1,145.97
	Dollar				9,107.22				9,107.22
Dana Lesemann			299.00						299.00
	Dollar				5,930.43				5,930.43
Linda Taylor			1,008.00						1,008.00
	Dollar				5,142.11				5,142.11
Peter Dorn			1,187.00						1,187.00
	Dollar				5,828.48				5,828.48
Patti Litman	Dollar		1,008.00						1,008.00
Total			57,398.57		160,659.84				218,058.41

BOB GRAHAM,
Chairman, Committee on Intelligence, Sept. 30, 2002

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), THE COMMISSION ON SECURITY AND COOPERATION IN EUROPE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Erika Schlager:									
U.S.A.	Dollar				3,292.38				3,292.38
Poland	Dollar		2,846.75						2,846.75
Representative Alcee L. Hastings:									
U.S.A.	Dollar				5,243.01				5,243.01
Spain	Dollar		2,317.00						2,317.00
Janice L. Helwig:									
U.S.A.	Dollar				4,807.52				4,807.52
Austria	Dollar		13,489.51						13,489.51
Poland	Dollar		2,988.00						2,988.00
Marlene Kaufmann:									
U.S.A.	Dollar				2,916.30				2,916.30
Romania	Dollar		810.00						810.00
Donald Kursch:									
U.S.A.	Dollar				3,292.38				3,292.38
Poland	Dollar		2,609.67						2,609.67
Ronald McNamara:									
U.S.A.	Dollar				5,403.88				5,403.88
Austria	Dollar		670.13						670.13
Spain	Dollar		132.00						132.00
Michael Ochs:									
U.S.A.	Dollar				10,047.71				10,047.71
Azerbaijan	Dollar		1,108.00						1,108.00
Poland	Dollar		1,328.00						1,328.00
Dorothy D. Taft:									
U.S.A.	Dollar				3,492.97				3,492.97
Macedonia	Dollar		613.00						613.00
Poland	Dollar		900.30						900.30
Maureen Walsh:									
U.S.A.	Dollar				3,966.44				3,966.44
Poland	Dollar		2,846.75						2,846.75
Robert A. Hand:									
U.S.A.	Dollar				3,487.99				3,487.99
(F.R.) Yugoslavia	Dollar		1,128.00						1,128.00
Bosnia Herzegovina	Dollar		1,078.00						1,078.00
Total			34,865.11		45,950.58				80,815.69

BEN NIGHTHORSE CAMPBELL,
Chairman, the Commission on Security and Cooperation in Europe,
Oct. 31, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TRENT LOTT FOR TRAVEL FROM JUNE 28 TO JULY 7, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Trent Lott:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Robert Bennett:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Craig Thomas:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Jim Bunning:									
Russia	Ruble		1,402.00						1,402.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TRENT LOTT FOR TRAVEL FROM JUNE 28 TO JULY 7, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Senator Benjamin Nelson:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Dr. John Eisold:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Mr. Ron Bonjean:									
Russia	Ruble		1,357.00						1,357.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Jeff McEvoy:									
Russia	Ruble		1,360.00						1,360.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Lauren Stanton:									
Russia	Ruble		1,302.00						1,302.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Sally Walsh:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Susan Wells:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Robert Wilkie:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Eric Womble:									
Russia	Ruble		1,402.00						1,402.00
Latvia	Lat		514.00						514.00
Ireland	Euro		658.00						658.00
Delegation Expenses: [1]									
Russia	Ruble						21,404.47		21,404.47
Latvia	Lat						10,293.85		10,293.85
Ireland	Euro						14,162.72		14,162.72
TOTAL			33,275.00				45,861.04		79,136.04

[1] Delegation expenses include payments and reimbursements to the Department of State, Executive Branch, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

TRENT LOTT,
Republican Leader, Oct. 16, 2002.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TOM DASCHLE FOR TRAVEL FROM AUG. 21 TO SEPT. 1, 2002

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Tom Daschle:									
South Africa	Rand		522.00						522.00
Kenya	Schilling		980.00						980.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Senator Jeff Bingaman:									
United States	Dollar				4,669.12				4,669.12
South Africa	Rand		422.00						422.00
Kenya	Schilling		777.50						777.50
Botswana	Pula		332.00						332.00
Nigeria	Naira		460.00						460.00
Senator Harry Reid:									
South Africa	Rand		522.00						522.00
Kenya	Schilling		975.00						975.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Senator Ben Nighthorse Campbell:									
South Africa	Rand		522.00						522.00
Kenya	Schilling		977.50						977.50
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Alton Dillard:									
South Africa	Rand		600.00						600.00
Kenya	Schilling		886.00						886.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Denis McDonough:									
South Africa	Rand		528.00						528.00
Kenya	Schilling		681.00						681.00
Botswana	Pula		427.00						427.00
Nigeria	Naira		500.00						500.00
Laura Petrou:									
South Africa	Rand		528.00						528.00
Kenya	Schilling		678.50						678.50
Botswana	Pula		427.00						427.00
Nigeria	Naira		500.00						500.00
Jim Ryan									
South Africa	Rand		600.00						600.00
Kenya	Schilling		876.00						876.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CONGRESSIONAL DELEGATION OF SENATOR TOM DASCHLE FOR TRAVEL FROM AUG. 21 TO SEPT. 1, 2002—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Sally Walsh:									
South Africa	Rand		600.00						600.00
Kenya	Schilling		876.00						876.00
Botswana	Pula		432.00						432.00
Nigeria	Naira		660.00						660.00
Delegation Expenses:[1]									
South Africa	Rand						17,963.33		17,963.33
Kenya	Schilling						13,234.70		13,234.70
Botswana	Pula						10,547.53		10,547.53
Nigeria	Naira						9,831.33		9,831.33
TOTAL			21,749.50		4,669.12		51,576.89		77,995.51

[1] Delegation expenses include payments and reimbursements to the Department of State, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

TOM DASCHLE,
Majority Leader, Nov. 9, 2002.

OIL REGION NATIONAL HERITAGE AREA ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 605, H.R. 695.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 695) to establish the Oil Region National Heritage Area.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu therof the following:

[Strike the part shown in black brackets and insert the part printed in italic.]

H.R. 695

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE; DEFINITIONS.

[(a) Short Title.—This Act may be cited as the "Oil Region National Heritage Area Act".

[(b) Definitions.—For the purposes of this Act, the following definitions shall apply:

[(1) Heritage area.—The term "Heritage Area" means the Oil Region National Heritage Area established in section 3(a).

[(2) Management entity.—The term "management entity" means the Oil Heritage Region, Inc., or its successor entity.

[(3) Secretary.—The term "Secretary" means the Secretary of the Interior.

[SEC. 2. FINDINGS AND PURPOSE.

[(a) Findings.—The Congress finds the following:

[(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

[(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

[(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

[(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

[(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

[(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

[(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

[(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania, local subdivisions of the Commonwealth of Pennsylvania, volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

[(b) Purpose.—The purpose of this Act is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

[SEC. 3. OIL REGION NATIONAL HERITAGE AREA.

[(a) Establishment.—There is hereby established the Oil Region National Heritage Area.

[(b) Boundaries.—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled "Oil Region National Heritage Area", numbered OIRE/20,000 and dated October, 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary of the Interior shall publish in the Federal Register, as soon as practical after the date of the enactment of this Act, a detailed description and map of the boundaries established under this subsection.

[(c) Management Entity.—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 5(b).

[SEC. 4. COMPACT.

[To carry out the purposes of this Act, the Secretary shall enter into a compact with the management entity. The compact shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

[SEC. 5. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

[(a) Authorities of the Management Entity.—The management entity may use funds made available under this Act for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

[(1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;

[(2) hiring and compensating staff; and

[(3) undertaking initiatives that advance the purposes of the Heritage Area.

[(b) Management Plan.—The management entity shall develop a management plan for the Heritage Area that—

[(1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

[(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

[(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

[(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

[(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

[(6) recommends policies for resource management which consider and detail application of appropriate land and water management techniques, including, but not limited to, the development of intergovernmental and interagency cooperative agreements to protect the Heritage Area's historical, cultural, recreational, and natural resources in a manner consistent with supporting appropriate and compatible economic viability;

[(7) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

[(8) includes an analysis of ways in which local, State, and Federal programs, including the role for the National Park Service in the Heritage Area, may best be coordinated to promote the purposes of this Act;

[(9) lists any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

[(10) includes an interpretation plan for the Heritage Area.

[(c) DEADLINE; TERMINATION OF FUNDING.—

[(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this Act.

[(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this Act.

[(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

[(1) give priority to implementing actions set forth in the compact and management plan;

[(2) assist units of government, regional planning organizations, and nonprofit organizations in—

[(A) establishing and maintaining interpretive exhibits in the Heritage Area;

[(B) developing recreational resources in the Heritage Area;

[(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

[(D) the restoration of any historic building relating to the themes of the Heritage Area;

[(E) ensuring that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

[(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of this Act;

[(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

[(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

[(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

[(A) conduct public meetings at least annually regarding the implementation of the management plan;

[(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and

[(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

[(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this Act to acquire real property or an interest in real property.

[SEC. 6. DUTIES AND AUTHORITIES OF THE SECRETARY.

[(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

[(1) IN GENERAL.—

[(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this Act, including updating and implementing a management plan that is submitted under section 5(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

[(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this Act (including updating and implementing a management plan that is submitted under section 5(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives), upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

[(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

[(A) implementation of the management plan;

[(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

[(C) development and application of techniques promoting the preservation of cultural and historic properties;

[(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

[(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

[(F) implementation of initiatives prior to approval of the management plan.

[(3) DOCUMENTATION OF STRUCTURES.—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

[(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this Act not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

[(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

[(2) The level of public participation in the development of the management plan.

[(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

[(c) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

[(d) APPROVING CHANGES.—The Secretary shall review and approve amendments to the management plan under section 5(b) that make substantial changes. Funds appropriated under this Act may not be expended to implement such changes until the Secretary approves the amendments.

[(e) EFFECT OF INACTION.—If the Secretary does not approve or disapprove a management plan, revision, or change within 90 days after it is submitted to the Secretary, then such management plan, revision, or change shall be deemed to have been approved by the Secretary.

[SEC. 7. DUTIES OF OTHER FEDERAL ENTITIES.

[Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

[(1) consult with the Secretary and the management entity with respect to such activities;

[(2) cooperate with the Secretary and the management entity in carrying out their duties under this Act and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

[(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

[SEC. 8. SUNSET.

[The Secretary may not make any grant or provide any assistance under this Act after the expiration of the 15-year period beginning on the date of the enactment of this Act.

[SEC. 9. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

[Nothing in this Act shall preclude the management entity from using Federal funds available under Acts other than this Act for the purposes for which those funds were authorized.

[SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

[(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act—

[(1) not more than $1,000,000 for any fiscal year; and

[(2) not more than a total of $10,000,000.

[(b) 50 PERCENT MATCH.—Financial assistance provided under this Act may not be

used to pay more than 50 percent of the total cost of any activity carried out with that assistance.▌

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus National Heritage Area Act of 2002".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—OIL REGION NATIONAL HERITAGE AREA

Sec. 101. Short title; definitions.
Sec. 102. Findings and purpose.
Sec. 103. Oil Region National Heritage Area.
Sec. 104. Memorandum of Understanding.
Sec. 105. Authorities and duties of management entity.
Sec. 106. Duties and authorities of the Secretary.
Sec. 107. Duties of other Federal entities.
Sec. 108. Use of Federal funds from other sources.
Sec. 109. Authorization of appropriations.
Sec. 110. Termination of authority.

TITLE II—ARABIA MOUNTAIN NATIONAL HERITAGE AREA

Sec. 201. Short title.
Sec. 202. Findings and purposes.
Sec. 203. Definitions.
Sec. 204. Arabia Mountain National Heritage Area.
Sec. 205. Authorities and duties of management entity.
Sec. 206. Management plan.
Sec. 207. Technical and financial assistance.
Sec. 208. Effect on certain authority.
Sec. 209. Authorization of appropriations.
Sec. 210. Termination of authority.

TITLE III—FREEDOM'S WAY NATIONAL HERITAGE AREA

Sec. 301. Short title.
Sec. 302. Findings and purposes.
Sec. 303. Definitions.
Sec. 304. Freedom's Way National Heritage Area.
Sec. 305. Management Plan.
Sec. 306. Authorities and duties of the management entity.
Sec. 307. Technical and financial assistance; other Federal agencies.
Sec. 308. Land use regulation; applicability of Federal law.
Sec. 309. Authorization of appropriations.
Sec. 310. Termination of authority.

TITLE IV—GREAT BASIN NATIONAL HERITAGE AREA

Sec. 401. Short title.
Sec. 402. Findings and purposes.
Sec. 403. Definitions.
Sec. 404. Great Basin National Heritage Area.
Sec. 405. Memorandum of Understanding.
Sec. 406. Management Plan.
Sec. 407. Authority and duties of management entity.
Sec. 408. Duties and authorities of Federal agencies.
Sec. 409. Land use regulation; applicability of Federal law.
Sec. 410. Authorization of appropriations.
Sec. 411. Termination of authority.

TITLE V—NORTHERN RIO GRANDE NATIONAL HERITAGE AREA

Sec. 501. Short title.
Sec. 502. Congressional findings.
Sec. 503. Definitions.
Sec. 504. Northern Rio Grande National Heritage Area.
Sec. 505. Authorities and duties of the management entity.
Sec. 506. Duties of the Secretary.
Sec. 507. Savings provision.
Sec. 508. Sunset.
Sec. 509. Authorization of appropriations.

TITLE VI—NATIONAL MORMON PIONEER HERITAGE AREA

Sec. 601. Short title.
Sec. 602. Findings and purposes.
Sec. 603. Definitions.
Sec. 604. National Mormon Pioneer Heritage Area.
Sec. 605. Designation of alliance as management entity.
Sec. 606. Management of the heritage area.
Sec. 607. Duties and authorities of Federal agencies.
Sec. 608. No effect on land use authority and private property.
Sec. 609. Authorization of appropriations.

TITLE VII—JOHN H. CHAFEE BLACKSTONE RIVER VALLEY NATIONAL HERITAGE AREA

Sec. 701. Authorization of appropriations.

TITLE I—OIL REGION NATIONAL HERITAGE AREA

SEC. 101. SHORT TITLE; DEFINITIONS.

(a) SHORT TITLE.—This title may be cited as the "Oil Region National Heritage Area".

(b) DEFINITIONS.—For the purposes of this title, the following definitions shall apply:

(1) HERITAGE AREA.—The term "Heritage Area" means the Oil Region National Heritage Area established in section 103(a).

(2) MANAGEMENT ENTITY.—The term "management entity" means the Oil Heritage Region, Inc., or its successor entity.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) The Oil Region of Northwestern Pennsylvania, with numerous sites and districts listed on the National Register of Historic Places, and designated by the Governor of Pennsylvania as one of the State Heritage Park Areas, is a region with tremendous physical and natural resources and possesses a story of State, national, and international significance.

(2) The single event of Colonel Edwin Drake's drilling of the world's first successful oil well in 1859 has affected the industrial, natural, social, and political structures of the modern world.

(3) Six national historic districts are located within the State Heritage Park boundary, in Emlenton, Franklin, Oil City, and Titusville, as well as 17 separate National Register sites.

(4) The Allegheny River, which was designated as a component of the national wild and scenic rivers system in 1992 by Public Law 102–271, traverses the Oil Region and connects several of its major sites, as do some of the river's tributaries such as Oil Creek, French Creek, and Sandy Creek.

(5) The unspoiled rural character of the Oil Region provides many natural and recreational resources, scenic vistas, and excellent water quality for people throughout the United States to enjoy.

(6) Remnants of the oil industry, visible on the landscape to this day, provide a direct link to the past for visitors, as do the historic valley settlements, riverbed settlements, plateau developments, farmlands, and industrial landscapes.

(7) The Oil Region also represents a cross section of American history associated with Native Americans, frontier settlements, the French and Indian War, African Americans and the Underground Railroad, and immigration of Swedish and Polish individuals, among others.

(8) Involvement by the Federal Government shall serve to enhance the efforts of the Commonwealth of Pennsylvania, local subdivisions of the Commonwealth of Pennsylvania, volunteer organizations, and private businesses, to promote the cultural, national, and recreational resources of the region in order to fulfill their full potential.

(b) PURPOSE.—The purpose of this title is to enhance a cooperative management framework to assist the Commonwealth of Pennsylvania, its units of local government, and area citizens in conserving, enhancing, and interpreting the significant features of the lands, water, and structures of the Oil Region, in a manner consistent with compatible economic development for the benefit and inspiration of present and future generations in the Commonwealth of Pennsylvania and the United States.

SEC. 103. OIL REGION NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Oil Region National Heritage Area.

(b) BOUNDARIES.—The boundaries of the Heritage Area shall include all of those lands depicted on a map entitled "Oil Region National Heritage Area", numbered OIRE/20,000 and dated October 2000. The map shall be on file in the appropriate offices of the National Park Service. The Secretary shall publish in the Federal Register, as soon as practical after the date of the enactment of this title, a detailed description and map of the boundaries established under this subsection.

(c) MANAGEMENT ENTITY.—The management entity for the Heritage Area shall be the Oil Heritage Region, Inc., the locally-based private, nonprofit management corporation which shall oversee the development of a management plan in accordance with section 105(b).

SEC. 104. MEMORANDUM OF UNDERSTANDING.

To carry out the purposes of this title, the Secretary shall enter into a memorandum of understanding with the management entity. The memorandum shall include information relating to the objectives and management of the area, including a discussion of the goals and objectives of the Heritage Area, including an explanation of the proposed approach to conservation and interpretation and a general outline of the protection measures committed to by the Secretary and management entity.

SEC. 105. AUTHORITIES AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES.—The management entity may use funds made available under this title for purposes of preparing, updating, and implementing the management plan developed under subsection (b). Such purposes may include—

(1) making grants to, and entering into cooperative agreements with, States and their political subdivisions, private organizations, or any other person;

(2) hiring and compensating staff; and

(3) undertaking initiatives that advance the purposes of the Heritage Area.

(b) MANAGEMENT PLAN.—The management entity shall develop a management plan for the Heritage Area that—

(1) presents comprehensive strategies and recommendations for conservation, funding, management, and development of the Heritage Area;

(2) takes into consideration existing State, county, and local plans and involves residents, public agencies, and private organizations working in the Heritage Area;

(3) includes a description of actions that units of government and private organizations have agreed to take to protect the resources of the Heritage Area;

(4) specifies the existing and potential sources of funding to protect, manage, and develop the Heritage Area;

(5) includes an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historic, recreational, or scenic significance;

(6) recommends policies for resource management which consider and detail application of appropriate land and water management techniques, including, but not limited to, the development of intergovernmental and interagency cooperative agreements to protect the Heritage Area's historical, cultural, recreational, and natural resources in a manner consistent with supporting appropriate and compatible economic viability;

(7) describes a program for implementation of the management plan by the management entity, including plans for restoration and construction, and specific commitments for that implementation that have been made by the management entity and any other persons for the first 5 years of implementation;

(8) includes an analysis of ways in which local, State, and Federal programs, including the role for the National Park Service in the Heritage Area, may best be coordinated to promote the purposes of this title;

(9) list any revisions to the boundaries of the Heritage Area proposed by the management entity and requested by the affected local government; and

(10) includes an interpretation plan for the Heritage Area.

(c) DEADLINE; TERMINATION OF FUNDING.—

(1) DEADLINE.—The management entity shall submit the management plan to the Secretary within 2 years after the funds are made available for this title.

(2) TERMINATION OF FUNDING.—If a management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall not qualify for Federal assistance under this title.

(d) DUTIES OF MANAGEMENT ENTITY.—The management entity shall—

(1) give priority to implementing actions set forth in the compact and management plan;

(2) assist units of government, regional planning organizations, and nonprofit organizations in—

(A) establishing and maintaining interpretative exhibits in the Heritage Area;

(B) developing recreational resources in the Heritage Area;

(C) increasing public awareness of and appreciation for the natural, historical, and architectural resources and sites in the Heritage Area;

(D) the restoration of any historic building relating to the themes of the Heritage Area;

(E) ensuring that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(F) carrying out other actions that the management entity determines to be advisable to fulfill the purposes of the title;

(3) encourage by appropriate means economic viability in the Heritage Area consistent with the goals of the management plan;

(4) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area; and

(5) for any year in which Federal funds have been provided to implement the management plan under subsection (b)—

(A) conduct public meetings at least annually regarding the implementation of the management plan;

(B) submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each person to which any grant was made by the management entity in the year for which the report is made; and

(C) require, for all agreements entered into by the management entity authorizing expenditure of Federal funds by any other person, that the person making the expenditure make available to the management entity for audit all records pertaining to the expenditure of such funds.

(e) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

SEC. 106. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—

(A) OVERALL ASSISTANCE.—The Secretary may, upon the request of the management entity, and subject to the availability of appropriations, provide technical and financial assistance to the management entity to carry out its duties under this title, including updating and implementing a management plan that is submitted under section 105(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives.

(B) OTHER ASSISTANCE.—If the Secretary has the resources available to provide technical assistance to the management entity to carry out its duties under this title (including updating and implementing a management plan that is submitted under section 105(b) and approved by the Secretary and, prior to such approval, providing assistance for initiatives, upon the request of the management entity the Secretary shall provide such assistance on a reimbursable basis. This subparagraph does not preclude the Secretary from providing nonreimbursable assistance under subparagraph (A).

(2) PRIORITY.—In assisting the management entity, the Secretary shall give priority to actions that assist in the—

(A) implementation of the management plan;

(B) provision of educational assistance and advice regarding land and water management techniques to conserve the significant natural resources of the region;

(C) development and application of techniques promoting the preservation of cultural and historic properties;

(D) preservation, restoration, and reuse of publicly and privately owned historic buildings;

(E) design and fabrication of a wide range of interpretive materials based on the management plan, including guide brochures, visitor displays, audio-visual and interactive exhibits, and educational curriculum materials for public education; and

(F) implementation of initiatives prior to approval of the management plan.

(3) DOCUMENTATION OF STRUCTURES.—The Secretary, acting through the Historic American Building Survey and the Historic American Engineering Record, shall conduct studies necessary to document the industrial, engineering, building, and architectural history of the Heritage Area.

(b) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLANS.—The Secretary, in consultation with the Governor of Pennsylvania, shall approve or disapprove a management plan submitted under this title not later than 90 days after receiving such plan. In approving the plan, the Secretary shall take into consideration the following criteria:

(1) The extent to which the management plan adequately preserves and protects the natural, cultural, and historical resources of the Heritage Area.

(2) The level of public participation in the development of the management plan.

(3) The extent to which the board of directors of the management entity is representative of the local government and a wide range of interested organizations and citizens.

(c) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan, the Secretary shall advise the management entity in writing of the reasons for the disapproval and shall make recommendations for revisions in the management plan. The Secretary shall approve or disapprove a proposed revision within 90 days after the date it is submitted.

(d) APPROVING CHANGES.—The Secretary shall review and approve amendments to the management plan under section 105(b) that make substantial changes. Funds appropriated under this title may not be expended to implement such changes until the Secretary approves the amendments.

SEC. 107. DUTIES OF OTHER FEDERAL ENTITIES.

Any Federal entity conducting or supporting activities directly affecting the Heritage Area shall—

(1) consult with the Secretary and the management entity with respect to such activities;

(2) cooperate with the Secretary and the management entity in carrying out their duties under this title and, to the maximum extent practicable, coordinate such activities with the carrying out of such duties; and

(3) to the maximum extent practicable, conduct or support such activities in a manner that the management entity determines shall not have an adverse effect on the Heritage Area.

SEC. 108. USE OF FEDERAL FUNDS FROM OTHER SOURCES.

Nothing in this title shall preclude the management entity from using Federal funds available under Acts other than this title for the purposes for which those funds were authorized.

SEC. 109. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 110. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE II—ARABIA MOUNTAIN NATIONAL HERITAGE AREA

SEC. 201. SHORT TITLE.

This title may be cited as the "Arabia Mountain Heritage Area Act of 2002".

SEC. 202. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the Arabia Mountain area contains a variety of natural, cultural, historical, scenic, and recreational resources that together represent distinctive aspects of the heritage of the United States that are worthy of recognition, conservation, interpretation, and continuing use;

(2) the best methods for managing the resources of the Arabia Mountain area would be through partnerships between public and private entities that combine diverse resources and active communities;

(3) Davidson-Arabia Mountain Nature Preserve, a 535-acre park in DeKalb County, Georgia—

(A) protects granite outcrop ecosystems, wetland, and pine and oak forests; and

(B) includes federally-protected plant species;

(4) Panola Mountain, a national natural landmark, located in the 860-acre Panola Mountain State Conservation Park, is a rare example of a pristine granite outcrop;

(5) The archaeological site at Miners Creek Preserve along the South River contains documented evidence of early human activity;

(6) the city of Lithonia, Georgia, and related sites of Arabia Mountain and Stone Mountain possess sites that display the history of granite mining as an industry and culture in Georgia, and the impact of that industry on the United States;

(7) the community of Klondike is eligible for designation as a National Historic District; and

(8) the city of Lithonia has two structures listed on the National Register of Historic Places.

(b) Purposes.—The purposes of this title are—

(1) to recognize, preserve, promote, interpret, and make available for the benefit of the public the natural, cultural, historical, scenic, and recreational resources in the area that includes Arabia Mountain, Panola Mountain, Miners Creek, and other significant sites and communities; and

(2) to assist the state of Georgia and the counties of DeKalb, Rockdale, and Henry in the State in developing and implementing an integrated cultural, historical, and land resource management program to protect, enhance, and interpret the significant resources within the heritage area.

SEC. 203. DEFINITIONS.

In this title:

(1) Heritage area.—The term "heritage area" means the Arabia Mountain National Heritage Area established by section 204.

(2) Management entity.— The term "management entity" means the Arabia Mountain Heritage Area Alliance or its successor.

(3) Management plan.—The term "management plan" means the management plan for the heritage area developed under section 206.

(4) Secretary.—The term "Secretary" means the Secretary of the Interior.

(5) State.—The term "State" means the State of Georgia.

SEC. 204. ARABIA MOUNTAIN NATIONAL HERITAGE AREA.

(a) Establishment.—There is established the Arabia Mountain National Heritage Area in the State.

(b) Boundaries.—The heritage area shall consist of certain parcels of land in the counties of DeKalb, Rockdale, and Henry in the State, as generally depicted on the map entitled "The Preferred Concept" contained in the document entitled "Arabia Mountain National Heritage Area Feasibility Study", dated February 28, 2001.

(c) Availability of Map.— The map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) Management Entity.— The Arabia Mountain Heritage Area Alliance shall be the management entity for the heritage area.

SEC. 205. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) Authorities.—For purposes of developing and implementing the management plan, the management entity may—

(1) make grants to, and enter into cooperative agreements with, the State, political subdivisions of the State, and private organizations;

(2) hire and compensate staff; and

(3) enter into contracts for goods and services.

(b) Duties.—

(1) Management plan.—

(A) In general.— The management entity shall develop and submit to the Secretary the management plan.

(B) Considerations.—In developing and implementing the management plan, the management entity shall consider the interests of diverse governmental, business, and nonprofit groups within the heritage area.

(2) Priorities.—The management entity shall give priority to implementing actions described in the management plan, including—

(A) assisting units of government and nonprofit organizations in preserving resources within the heritage area; and

(B) encouraging local governments to adopt land use policies consistent with the management of the heritage area and the goals of the management plan.

(3) Public meetings.—The management entity shall conduct public meetings at least quarterly on the implementation of the management plan.

(4) Annual report.—For any year in which Federal funds have been made available under this title, the management entity shall submit to the Secretary an annual report that describes—

(A) the accomplishments of the management entity; and

(B) the expenses and income of the management entity.

(5) Audit.—The management entity shall—

(A) make available to the Secretary for audit all records relating to the expenditure of Federal funds and any matching funds; and

(B) require, with respect to all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organizations make available to the Secretary for audit all records concerning the expenditure of those funds.

(c) Use of Federal Funds.—

(1) In general.—The management entity shall not use Federal funds made available under this title to acquire real property or an interest in real property.

(2) Other sources.—Nothing in this title precludes the management entity from using Federal funds made available under other Federal laws for any purpose for which the funds are authorized to be used.

SEC. 206. MANAGEMENT PLAN.

(a) In General.—The management entity shall develop a management plan for the heritage area that incorporates an integrated and cooperative approach to protect, interpret, and enhance the natural, cultural, historical, scenic, and recreational resources of the heritage area.

(b) Basis.—The management plan shall be based on the preferred concept in the document entitled "Arab Mountain National Heritage Area Feasibility Study", dated February 28, 2001.

(c) Consideration of Other Plans and Actions.—The management plan shall—

(1) take into consideration State and local plans; and

(2) involve residents, public agencies, and private organizations in the heritage area.

(d) Reqirements.—The management plan shall include—

(1) an inventory of the resources in the heritage area, including—

(A) a list of property in the heritage area that—

(i) relates to the purposes of the heritage area; and

(ii) should be preserved, restored, managed, or maintained because of the significance of the property; and

(B) an assessment of cultural landscapes within the heritage area;

(2) provisions for the protection, interpretation, and enjoyment of the resources of the heritage area consistent with the purposes of this title;

(3) an interpretation plan for the heritage area;

(4) a program for implementation of the management plan that includes—

(A) actions to be carried out by units of government, private organizations, and public-private partnerships to protect the resources of the heritage area; and

(B) the identification of existing and potential sources of funding for implementing the plan; and

(5) a description and evaluation of the management entity, including the membership and organizational structure of the management entity.

(e) Submission to Secretary for Approval.—

(1) In general.—Not later than 3 years after the date of enactment of this title, the management entity shall submit the management plan to the Secretary for approval.

(2) Effect of failure to submit.—If a management plan is not submitted to the Secretary by the date specified in paragraph (1), the Secretary shall not provide any additional funding under this title until such date as a management plan for the heritage area is submitted to the Secretary.

(f) Approval and Disapproval of Management Plan.—

(1) In general.—Not later than 90 days after receiving the management plan submitted under subsection (e), the Secretary, in consultation with the State, shall approve or disapprove the management plan.

(2) Action following disapproval.—

(A) Revision.—If the Secretary disapproves a management plan submitted under paragraph (1), the Secretary shall—

(i) advise the management entity in writing of the reasons for the disapproval;

(ii) make recommendations for revisions to the management plan; and

(iii) allow the management entity to submit to the Secretary revisions to the management plan.

(B) Deadline for approval of revision.—Not later than 90 days after the date on which a revision is submitted under subparagraph (A)(iii), the Secretary shall approve or disapprove the revision.

(g) Revision of Management Plan.—

(1) In general.—After approval by the Secretary of a management plan, the management entity shall periodically—

(A) review the management plan; and

(B) submit to the Secretary, for review and approval by the Secretary, the recommendations of the management entity for any revisions to the management plan that the management entity considers to be appropriate.

(2) Expenditure of funds.—No funds made available under this title shall be used to implement any revision proposed by the management entity under paragraph (1)(B) until the Secretary approves the revision.

SEC. 207. TECHNICAL AND FINANCIAL ASSISTANCE.

(a) In General.—At the request of the management entity, the Secretary may provide technical and financial assistance to the heritage area to develop and implement the management plan.

(b) Priority.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the conservation of the significant natural, cultural, historical, scenic, and recreational resources that support the purposes of the heritage area; and

(2) the provision of educational, interpretive, and recreational opportunities that are consistent with the resources and associated values of the heritage area.

SEC. 208. EFFECT ON CERTAIN AUTHORITY.

(a) Occupational, Safety, Conservation, and Environmental Regulation.—Nothing in this title—

(1) imposes an occupational, safety, conservation, or environmental regulation on the heritage area that is more stringent than the regulations that would be applicable to the land described in section 204(b) but for the establishment of the heritage area by section 204; or

(2) authorizes a Federal agency to promulgate an occupational, safety, conservation, or environmental regulation for the heritage area that is more stringent than the regulations applicable to the land described in section 204(b) as of the date of enactment of this title, solely as a result of the establishment of the heritage area by section 204.

(b) Land Use Regulation.—Nothing in this title—

(1) modifies, enlarges, or diminishes any authority of the Federal Government or a State or local government to regulate any use of land as provided for by law (including regulations) in existence on the date of enactment of this title; or

(2) grants powers of zoning or land use to the management entity.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 210. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE III—FREEDOM'S WAY NATIONAL HERITAGE AREA

SEC. 301. SHORT TITLE.

This title may be cited as the "Freedom's Way National Heritage Area Act".

SEC. 302. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the cultural and natural legacies of an area encompassing 36 communities in Massachusetts and 6 communities in New Hampshire have made important and distinctive contributions to the national character of America;

(2) recognizing and protecting those legacies will help sustain the quality of life in the future;

(3) significant legacies of the area include—

(A) the early settlement of the United States and the early evolution of democratic forms of government;

(B) the development of intellectual traditions of the philosophies of freedom, democracy, and conservation;

(C) the evolution of social ideas and religious freedom;

(D) the role of immigrants and industry in contributing to ethnic diversity;

(E) Native American and African American resources; and

(F) the role of innovation and invention in cottage industries;

(4) the communities in the area know the value of the legacies but need a cooperative framework and technical assistance to achieve important goals by working together;

(5) there is a Federal interest in supporting the development of a regional framework to assist the States, local governments, local organizations, and other persons in the region with conserving, protecting, and bringing recognition to the heritage of the area for the educational and recreation benefit of future generations of Americans;

(6) significant examples of the area's resources include—

(A) Walden Pond State Reservation in Concord, Massachusetts;

(B) Minute Man National Historical Park in the State of Massachusetts;

(C) Shaker Villages in Shirley and Harvard in the State of Massachusetts;

(D) Wachusett Mountain State Reservation, Fitchburg Art Museum, and Barrett House in New Ipswich, New Hampshire; and

(E) Beaver Brook Farms and Lost City of Monson in Hollis, New Hampshire;

(7) the study entitled "Freedom's Way Heritage Area Feasibility Study", prepared by the Freedom's Way Heritage Association, Inc., and the Massachusetts Department of Environmental Management, demonstrates that there are sufficient nationally distinctive historical resources necessary to establish the Freedom's Way National Heritage Area; and

(8) the Freedom's Way Heritage Association, Inc., should oversee the development of the Freedom's Way National Heritage Area.

(b) PURPOSES.—The purposes of this Act are—

(1) to foster a close working relationship between the Secretary and all levels of government, the private sector, and local communities in the States of Massachusetts and New Hampshire;

(2) to assist the entities referred to in paragraph (1) in preserving the special historic identity of the Heritage Area; and

(3) to manage, preserve, protect, and interpret the cultural, historical, and natural resources of the Heritage Area for the educational and inspirational benefit of future generations.

SEC. 303. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term "Heritage Area" means the Freedom's Way National Heritage Area established by section 304(a).

(2) MANAGEMENT ENTITY.—The term "management entity" means the management entity for the Heritage Area designated by section 304(d).

(3) MANAGEMENT PLAN.—The term "management plan" means the management plan for the Heritage Area developed under section 305.

(4) MAP.—The term "Map" means the map entitled "Freedom's Way National Heritage Area", numbered FRWA P-75/80,000 and dated July 2002.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 304. FREEDOM'S WAY NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Freedom's Way National Heritage Area in the States of Massachusetts and New Hampshire.

(b) BOUNDARIES.—

(1) IN GENERAL.—The Heritage Area shall consist of the land within the boundaries of the Heritage Area, as depicted on the Map.

(2) REVISION.—The boundaries of the Heritage Area may be revised if the revision is—

(A) proposed in the management plan;

(B) approved by the Secretary in accordance with section 305(c); and

(C) placed on file in accordance with subsection (c).

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall publish in the Federal Register a legal description of the Heritage Area.

(2) AVAILABILITY.—The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service.

(d) MANAGEMENT ENTITY.—The Freedom's Way Heritage Association, Inc., shall serve as the management entity for the Heritage Area.

SEC. 305. MANAGEMENT PLAN.

(A) IN GENERAL.—Not later than 3 years after the date of enactment of this Act, the management entity shall develop and submit to the Secretary for approval a management plan for the Heritage Area that presents comprehensive recommendations and strategies for the conservation, funding, management, and development of the Heritage Area.

(b) REQUIREMENTS.—The management plan shall—

(1) take into consideration and coordinate Federal, State, and local plans to present a unified historic preservation and interpretation plan;

(2) involve residents, public agencies, and private organizations in the Heritage Area;

(3) describe actions that units of government and private organizations recommend for the protection of the resources of the Heritage Area;

(4) identify existing and potential sources of Federal and non-Federal funding for the conservation, management, and development of the Heritage Area; and

(5) include—

(A) an inventory of the cultural, historic, natural, or recreational resources contained in the Heritage Area, including a list of property that—

(i) is related to the themes of the Heritage Area; and

(ii) should be conserved, restored, managed, developed, or maintained;

(B) a recommendation of policies for resource management and protection that—

(i) apply appropriate land and water management techniques;

(ii) develop intergovernmental cooperative agreements to manage and protect the cultural, historic, and natural resources and recreation opportunities of the Heritage Area; and

(iii) support economic revitalization efforts;

(C) a program of strategies and actions to implement the management plan that—

(i) identifies the roles of agencies and organizations that are involved in the implementation of the management plan and the role of the management entity;

(ii) includes—

(I) restoration and construction plans or goals;

(II) a program of public involvement;

(III) annual work plans; and

(IV) annual reports;

(D) an analysis of ways in which Federal, State, and local programs may best be coordinated to promote the purposes of this title;

(E) an interpretive and educational plan for the Heritage Area;

(F) any revisions proposed by the management entity to the boundaries of the Heritage Area and requested by the affected local government; and

(G) a process to provide public access to the management entity for the purpose of attempting to resolve informally any disputes arising from the management plan.

(c) FAILURE TO SUBMIT.—If the management entity fails to submit the management plan to the Secretary in accordance with subsection (a), the Heritage Area shall no longer qualify for Federal funding.

(d) APPROVAL OR DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receipt of the management plan under subsection (a), the Secretary shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve the management plan, the Secretary shall consider whether—

(A) the management entity afforded adequate opportunity, including public hearings, for public and governmental involvement in the preparation of the management plan;

(B) the resource protection and interpretation strategies contained in the management plan would adequately protect the cultural and historic resources of the Heritage Area; and

(C) the Secretary has received adequate assurances from the appropriate State and local officials whose support is needed to ensure the effective implementation of the State and local aspects of the management plan.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan under paragraph (1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 60 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(e) AMENDMENTS.—

(1) In general.—In accordance with subsection (b), the Secretary shall approve or disapprove each amendment to the management plan that the Secretary determines may make a substantial change to the management plan.

(2) Use of funds.—Funds made available under this title shall not be expended by the management entity to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 306. AUTHORITIES AND DUTIES OF THE MANAGEMENT ENTITY.

(a) Authorities.—The Management Entity may, for purposes of preparing and implementing the management plan, use funds made available under this title to—

(1) make grants to, and enter into cooperative agreements with, the States of Massachusetts and New Hampshire (including a political subdivision thereof), a nonprofit organizations, or any person;

(2) hire and compensate staff;

(3) obtain funds from any source (including a program that has a cost-sharing requirement); and

(4) contract for goods and services.

(b) Duties of the Management Entity.—In addition to developing the management plan, the management entity shall—

(1) give priority to the implementation of actions, goals, and strategies set forth in the management plan, including assisting units of government and other persons in—

(A) carrying out the programs that recognize and protect important resource values in the Heritage Area;

(B) encouraging economic viability in the Heritage Area in accordance with the goals of the management plan;

(C) establishing and maintaining interpretive exhibits in the Heritage Area;

(D) developing recreational and educational opportunities in the Heritage Area;

(E) increasing public awareness of and appreciation for the cultural, historical, and natural resources of the Heritage Area;

(F) restoring historic buildings that are located in the Heritage Area and relate to the themes of the Heritage Area; and

(G) installing throughout the Heritage Area clear, consistent, and appropriate signs identifying public access points and sites of interest;

(2) prepare and implement the management plan while considering the interests of diverse units of government, businesses, private property owners, and nonprofit groups within the Heritage Area;

(3) conduct public meetings at least quarterly regarding the development and implementation of the management plan;

(4) for any fiscal year for which Federal funds are received under this title—

(A) submit to the Secretary a report that describes, for the year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which a grant was made;

(B) make available for audit by Congress, the Secretary, and appropriate units of governments, all records pertaining to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing expenditure of Federal funds by any entity, that the receiving entity make available for audit all records pertaining to the expenditure of the funds.

(c) Prohibition on the Acquisition of Real Property.—

(1) Federal funds.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(2) Other funds.—Notwithstanding paragraph (1), the management entity may acquire real property or an interest in real property using non-Federal funds.

SEC. 307. TECHNICAL AND FINANCIAL ASSISTANCE; OTHER FEDERAL AGENCIES.

(a) Technical and Financial Assistance.—

(1) In general.—On the request of the management entity, the Secretary may provide technical and financial assistance for the development and implementation of the management plan.

(2) Priority for assistance.—In providing assistance under paragraph (1), the Secretary shall give priority to actions that assist in—

(A) conserving the significant cultural, historic, and natural resources of the Heritage Area; and

(B) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(3) Spending on non-Federal property.—The management entity may expend Federal funds made available under this title on nonfederally owned property that is—

(A) identified in the management plan; or

(B) listed or eligible for listing on the National Register of Historic Places.

(4) Other assistance.—The Secretary may enter into cooperative agreements with public and private organizations to carry out this subsection.

(b) Other Federal Agencies.—Any Federal entity conducting or supporting an activity that directly affects the Heritage Area shall—

(1) consider the potential effect of the activity on the purposes of the Heritage Area and the management plan;

(2) consult with the management entity regarding the activity; and

(3) to the maximum extent practicable, conduct or support the activity to avoid adverse effects on the Heritage Area.

SEC. 308. LAND USE REGULATION; APPLICABILITY OF FEDERAL LAW.

(a) Land Use Regulation.—

(1) In general.—The management entity shall provide assistance and encouragement to State and local governments, private organizations, and persons to protect and promote the resources and values of the Heritage Area.

(2) Effect.—Nothing in this title—

(A) Affects the authority of the State or local governments to regulate under law any use of land; or

(B) grants any power of zoning or land use to the management entity.

(b) Private Property.—

(1) In general.—The management entity shall be an advocate for land management practices consistent with the purposes of the Heritage Area.

(2) Effect.—Nothing in this title—

(A) abridges the rights of any person with regard to private property;

(B) affects the authority of the State or local government regarding private property; or

(C) imposes any additional burden on any property owner.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There is authorized to be appropriated to carry out this title 10,000,000, of which not more than $1,000,0900 may be authorized to be appropriate for any fiscal year.

(b) Cost-Sharing Requirement.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 310. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this Act.

TITLE IV—GREAT BASIN NATIONAL HERITAGE AREA

SEC. 401. SHORT TITLE.

This title may be cited as the "Great Basin National Heritage Area Act of 2002."

SEC. 402. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) the natural, cultural, and historic heritage of the North American Great Basin is nationally significant;

(2) communities in the Great Basin Heritage Area (including the towns of Delta, Utah, Ely, Nevada, and the surrounding communities) are located in a classic western landscape that contains long natural visits, isolated higher desert valleys, mountain ranges, ranches, mines, historic railroads, archaeological sites, and tribal communities;

(3) the Native American, pioneer, ranching, mining, timber, and railroad heritages in the Great Basin Heritage Area include the social history and living cultural traditions of a rich diversity of nationalities;

(4) the pioneer, Mormon and other religious settlements, ranching, timber, and mining activities of the region played and continue to play a significant role in the development of the United States, shaped by—

(A) the unique geography of the Great Basin;

(B) an influx of people of Greek, Chinese, Basque, Serb, Croat, Italian, and Hispanic descent; and

(C) a Native American presence (Western Shoshone, Northern and Southern Paiute, and Goshute) that continues in the Great Basin today;

(5) the Great Basin housed internment camps for Japanese-American citizens during World War II, one of which, Topaz, was located within the Heritage Area;

(6) the pioneer heritage of the Heritage Area includes the Pony Express route and stations, the Overland Stage, and many examples of 19th century exploration of the western United States;

(7) the Native American heritage of the Heritage Area dates back thousands of years and includes—

(A) archaeological sites;

(B) petroglyphs and pictographs;

(C) the westernmost village of the Fremont culture; and

(D) communities of Western Shoshone, Paiute, and Goshute tribes;

(8) the Heritage Area contains multiple biologically diverse ecological communities that are home to exceptional species such as—

(A) bristlecone pines, the oldest living trees in the world;

(B) wildlife adapted to harsh desert conditions;

(C) unique plant communities, lakes, and streams; and

(D) native Bonneville cutthroat trout;

(9) the air and water quality of the Heritage Area is among the best in the United States, and the clear air permits outstanding viewing of the night skies;

(10) the Heritage Area includes unique and outstanding geologic features such as numerous limestone caves, classic basin and range topography with playa lakes, alluvial fans, volcanics, cold and hot springs, and recognizable features of ancient Lake Bonneville;

(11) the Heritage Area includes an unusual variety of open space and recreational and educational opportunities because of the great quantity of ranching activity and public land (including city, county, and State parks, national forests, Bureau of Land Management land, and a national park);

(12) there are significant archaeological, historical, cultural, natural, scenic, and recreational resources in the Great Basin to merit

the involvement of the Federal Government in the development, in cooperation with the Great Basin Heritage Area Partnership and other local and governmental entities, of programs and projects to—

(A) adequately conserve, protect, and interpret the heritage of the Great Basin for present and future generations; and

(B) provide opportunities in the Great Basin for education; and

(13) the Great Basin Heritage Area Partnership shall serve as the management entity for a Heritage Area established in the Great Basin.

(b) PURPOSES.—The purposes of this title are—

(1) to foster a close working relationship with all levels of government, the private sector, and the local communities within White Pine County, Nevada, Millard County, Utah, and the Duckwater Shoshone Reservation;

(2) to enable communities referred to in paragraph (1) to conserve their heritage while continuing to develop economic opportunities; and

(3) to conserve, interpret, and develop the archaeological, historical, cultural, natural, scenic, and recreational resources related to the unique ranching, industrial, and cultural heritage of the Great Basin, in a manner that promotes multiple uses permitted as of the date of enactment of this title, without managing or regulating land use.

SEC. 403. DEFINITIONS.

In this title:

(1) GREAT BASIN.—The term "Great Basin" means the North American Great Basin.

(2) HERITAGE AREA.—The term "Heritage Area" means the Great Basin National Heritage Area established by section 404(a).

(3) MANAGEMENT ENTITY.—The term "management entity" means the Great Basin Heritage Area Partnership established by section 404(c).

(4) MANAGEMENT PLAN.—The term "management plan" means the plan developed by the management entity under section 406(a).

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 404. GREAT BASIN NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is established the Great Basin National Heritage Area.

(b) COMPOSITION.—The Heritage Area shall include historical, cultural, natural, scenic, and recreational resources within White Pine County, Nevada, Millard County, Utah, and the Duckwater Shoshone Reservation in Nye County, Nevada. The boundaries of the Heritage Area shall be specified in detail in the management plan developed in section 406.

(c) MANAGEMENT ENTITY.—

(1) IN GENERAL.—The Great Basin Heritage Area Partnership shall serve as the management entity for the Heritage Area.

(2) BOARD OF DIRECTORS.—The Great Basin Heritage Area Partnership shall be governed by a board of directors that consists of—

(A) 4 members who are appointed by the Board of County Commissioners for Millard County, Utah;

(B) 4 members who are appointed by the Board of County Commissioners for White Pine County, Nevada; and

(C) a representative appointed by each Native American Tribe participating in the Heritage Area.

SEC. 405. MEMORANDUM OF UNDERSTANDING.

(a) IN GENERAL.—In carrying out this title, the Secretary, in consultation with the Governors of the States of Nevada and Utah, and each tribe participating in the Heritage Area, shall enter into a memorandum of understanding with the management entity.

(b) INCLUSIONS.—The memorandum of understanding shall include information relating to the objectives and management of the Heritage Area, including—

(1) a description of the resources within the Heritage Area;

(2) a discussion of the goals and objectives of the Heritage Area, including—

(A) an explanation of the proposed approach to conservation, development, and interpretation; and

(B) a general outline of the anticipated protection and development measures;

(3) a description of the management entity;

(4) a list and statement of the financial commitment of the initial partners to be involved in developing and implementing the management plan; and

(5) a description of the role of the States of Nevada and Utah in the management of the Heritage Area.

(c) ADDITIONAL REQUIREMENTS.—In developing the terms of the memorandum of understanding, the Secretary and the management entity shall—

(1) provide opportunities for local participation; and

(2) include terms that ensure, to the maximum extent practicable, timely implementation of all aspects of the memorandum of understanding.

(d) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review any amendments of the memorandum of understanding proposed by the management entity or the Governor of the State of Nevada or Utah.

(2) USE OF FUNDS.—Funds made available under this title shall not be expended to implement a change made by a proposed amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 406. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 3 years after the date of enactment of this title, the management entity shall develop and submit to the Secretary for approval a management plan for the Heritage Area that presents clear and comprehensive recommendations for the conservation, funding, management, and development of the Heritage Area.

(b) CONSIDERATIONS.—In developing the management plan, the management entity shall—

(1) provide for the participation of local residents, public agencies, and private organizations located within the counties of Millard County, Utah, White Pine County, Nevada, and the Duckwater Shoshone Reservation in the protection and development of resources of the Heritage Area, taking into consideration State, tribal, county, and local land use plans in existence on the date of enactment of this title;

(2) identify sources of funding; and

(3) include—

(A) an inventory of the archaeological, historical, cultural, natural, scenic, and recreational resources contained in the Heritage Area, including a list of public and tribal property that—

(i) is related to the themes of the Heritage Area; and

(ii) should be preserved, restored, managed, developed, or maintained because of the archaeological, historical, cultural, natural, scenic, and recreational significance of the property;

(B) a program for implementation of the management plan by the management entity, including—

(i) plans for restoration, stabilization, rehabilitation, and construction of public or tribal property; and

(ii) specific commitments by the identified partners referred to in section 405(b)(4) for the first 5 years of operation; and

(C) an interpretation plan for the Heritage Area; and

(4) develop a management plan that will not infringe on private property rights without the consent of the owner of the private property.

(c) FAILURE TO SUBMIT.—If the management entity fails to submit a management plan to the Secretary in accordance with subsection (a), the Heritage Area shall no longer qualify for Federal funding.

(d) APPROVAL AND DISAPPROVAL OF MANAGEMENT PLAN.—

(1) IN GENERAL.—Not later than 90 days after receipt of a management plan under subsection (a), the Secretary, in consultation with the Governors of the States of Nevada and Utah, shall approve or disapprove the management plan.

(2) CRITERIA.—In determining whether to approve a management plan, the Secretary shall consider whether the management plan—

(A) has strong local support from a diversity of landowners, business interests, nonprofit organizations, and governments within the Heritage Area;

(B) is consistent with and complements continued economic activity in the Heritage Area;

(C) has a high potential for effective partnership mechanisms;

(D) infringes on private property rights; and

(E) provides methods to take appropriate action to ensure that private property rights are observed.

(3) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves a management plan under subsection (d)(1), the Secretary shall—

(A) advise the management entity in writing of the reasons for the disapproval;

(B) make recommendations for revisions to the management plan; and

(C) not later than 90 days after the receipt of any proposed revision of the management plan from the management entity, approve or disapprove the proposed revision.

(e) IMPLEMENTATION.—On approval of the management plan as provided in section 406(d)(1), the management entity, in conjunction with the Secretary, shall take appropriate steps to implement the management plan.

(f) AMENDMENTS.—

(1) IN GENERAL.—The Secretary shall review each amendment to the management plan that the Secretary determines may make a substantial change to the management plan.

(2) USE OF FUNDS.—Funds made available under this title shall not be expended to implement an amendment described in paragraph (1) until the Secretary approves the amendment.

SEC. 407. AUTHORITY AND DUTIES OF MANAGEMENT ENTITY.

(a) AUTHORITIES.—The management entity may, for purposes of preparing and implementing the management plan, use funds made available under this title to—

(1) make grants to, and enter into cooperative agreements with, a State (including a political subdivision), a tribe, a private organization, or any person; and

(2) hire and compensate staff.

(b) DUTIES.—In addition to developing the management plan, the management entity shall—

(1) give priority to implementing the memorandum of understanding and the management plan, including taking steps to—

(A) assist units of government, regional planning organizations, and nonprofit organizations in—

(i) establishing and maintaining interpretive exhibits in the Heritage Area;

(ii) developing recreational resources in the Heritage Area;

(iii) increasing public awareness of and appreciation for the archaeological, historical, cultural, natural, scenic, and recreational resources and sites in the Heritage Area; and

(iv) if requested by the owner, restoring, stabilizing, or rehabilitating any private, public, or tribal historical building relating to the themes of the Heritage Area;

(B) encourage economic viability and diversity in the Heritage Area in accordance with the objectives of the management plan; and

(C) encourage the installation of clear, consistent, and environmentally appropriate signage identifying access points and sites of interest throughout the Heritage Area;

(2) consider the interests of diverse governmental, business, and nonprofit groups within the Heritage Area;

(3) conduct public meetings within the Heritage Area at least semiannually regarding the implementation of the management plan;

(4) submit substantial amendments (including any increase of more than 20 percent in the cost estimates for implementation) to the management plan to the Secretary for approval by the Secretary; and

(5) for any year for which Federal funds are received under this title—

(A) submit to the Secretary a report that describes, for the year—

(i) the accomplishments of the management entity;

(ii) the expenses and income of the management entity; and

(iii) each entity to which any loan or grant was made;

(B) make available for audit all records pertaining to the expenditure of the funds and any matching funds; and

(C) require, for all agreements authorizing the expenditure of federal funds by any entity, that the receiving entity make available for audit all records pertaining to the expenditure of the funds.

(c) PROHIBITION ON THE ACQUISITION OF REAL PROPERTY.—The management entity shall not use Federal funds made available under this title to acquire real property or any interest in real property.

(d) PROHIBITION ON THE REGULATION OF LAND USE.—The management entity shall not regulate land use within the Heritage Area.

SEC. 408. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.

(a) TECHNICAL AND FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—The Secretary may, on request of the management entity, provide technical and financial assistance to develop and implement the management plan and memorandum of understanding.

(2) PRIORITY FOR ASSISTANCE.—In providing assistance under paragraph (1), the Secretary shall, on request of the management entity, give priority to actions that assist in—

(A) conserving the significant archaeological, historical, cultural, natural, scenic, and recreational resources of the Heritage Area; and

(B) providing education, interpretive, and recreational opportunities, consistent with those resources.

(b) APPLICATION OF FEDERAL LAW.—The establishment of the Heritage Area shall have no effect on the application of any Federal law to any property within the Heritage Area.

SEC. 409. LAND USE REGULATION; APPLICABILITY OF FEDERAL LAW.

(a) LAND USE REGULATION.—Nothing in this title—

(1) modifies, enlarges, or diminishes any authority of the Federal, State, tribal, or local government to regulate by law (including by regulation) any use of land; or

(2) grants any power of zoning or land use to the management entity.

(b) APPLICABILITY OF FEDERAL LAW.—Nothing in this title—

(1) imposes on the Heritage Area, as a result of the designation of the Heritage Area, any regulation that is not applicable to the area within the Heritage area as of the date of enactment of this title; or

(2) authorizes any agency to promulgate a regulation that applies to the Heritage Area solely as a result of the designation under this title.

SEC. 410. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) COST-SHARING REQUIREMENT.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

SEC. 411. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE V—NORTHERN RIO GRANDE NATIONAL HERITAGE AREA

SEC. 501. SHORT TITLE.

This title may be cited as the "Northern Rio Grande National Heritage Area Act".

SEC. 502. CONGRESSIONAL FINDINGS.

The Congress finds that—

(1) northern New Mexico encompasses a mosaic of cultures and history, including eight Pueblos and the descendants of Spanish ancestors who settled in the area in 1598;

(2) the combination of cultures, languages, folk arts, customs, and architecture make northern New Mexico unique;

(3) the area includes spectacular natural, scenic, and recreational resources;

(4) there is broad support from local governments and interested individuals to establish a National Heritage Area to coordinate and assist in the preservation and interpretation of these resources;

(5) in 1991, the National Park Service study Alternative Concepts for Commemorating Spanish Colonization identified several alternatives consistent with the establishment of a National Heritage Area, including conducting a comprehensive archaeological and historical research program, coordinating a comprehensive interpretation program, and interpreting a cultural heritage scene; and

(6) establishment of a National Heritage Area in northern New Mexico would assist local communities and residents in preserving these unique cultural, historical and natural resources.

SEC. 503. DEFINITIONS.

As used in this title—

(1) the term "heritage area" means the Northern Rio Grande Heritage Area; and

(2) the term "Secretary" means the Secretary of the Interior.

SEC. 504. NORTHERN RIO GRANDE NATIONAL HERITAGE AREA.

(a) ESTABLISHMENT.—There is hereby established the Northern Rio Grande National Heritage Area in the State of New Mexico.

(b) BOUNDARIES.—The heritage area shall include the counties of Santa Fe, Rio Arriba, and Taos.

(c) MANAGEMENT ENTITY.—

(1) The Northern Rio Grande National Heritage Area, Inc., a non-profit corporation chartered in the State of New Mexico, shall serve as the management entity for the heritage area.

(2) The Board of Directors for the management entity shall include representatives of the State of New Mexico, the counties of Santa Fe, Rio Arriba and Taos, tribes and pueblos within the heritage area, the cities of Santa Fe, Espanola and Taos, and members of the general public. The total number of Board members and the number of Directors representing State, local and tribal governments and interested communities shall be established to ensure that all parties have appropriate representation on the Board.

SEC. 505. AUTHORITY AND DUTIES OF THE MANAGEMENT ENTITY.

(a) MANAGEMENT PLAN.—

(1) Not later than 3 years after the date of enactment of this title, the management entity shall develop and forward to the Secretary a management plan for the heritage area.

(2) The management entity shall develop and implement the management plan in cooperation with affected communities, tribal and local governments and shall provide for public involvement in the development and implementation of the management plan.

(3) The management plan shall, at a minimum—

(A) provide recommendations for the conservation, funding, management, and development of the resources of the heritage area;

(B) identify sources of funding;

(C) include an inventory of the cultural, historical, archaeological, natural, and recreational resources of the heritage area;

(D) provide recommendations for educational and interpretive programs to inform the public about the resources of the heritage area; and

(E) include an analysis of ways in which local, State, Federal, and tribal programs may best be coordinated to promote the purposes of this title.

(4) If the management entity fails to submit a management plan to the secretary as provided in paragraph (1), the heritage area shall no longer be eligible to receive Federal funding under this title until such time as a plan is submitted to the Secretary.

(5) The Secretary shall approve or disapprove the management plan within 90 days after the date of submission. If the Secretary disapproves the management plan, the Secretary shall advise the management entity in writing of the reasons therefore and shall make recommendations for revisions to the plan.

(6) The management entity shall periodically review the management plan and submit to the Secretary any recommendations for proposed revisions to the management plan. Any major revisions to the management plan must be approved by the Secretary.

(b) AUTHORITY.—The management entity may make grants and provide technical assistance to tribal and local governments, and other public and private entities to carry out the management plan.

(c) DUTIES.—The management entity shall—

(1) give priority in implementing actions set forth in the management plan;

(2) coordinate with tribal and local governments to better enable them to adopt land use policies consistent with the goals of the management plan;

(3) encourage by appropriate means economic viability in the heritage area consistent with the goals of the management plan; and

(4) assist local and tribal governments and non-profit organizations in—

(A) establishing and maintaining interpretive exhibits in the heritage area;

(B) developing recreational resources in the heritage area;

(C) increasing public awareness of, and appreciation for, the cultural, historical, archaeological and natural resources and sites in the heritage area;

(D) the restoration of historic structures related to the heritage area; and

(E) carrying out other actions that the management entity determines appropriate to fulfill the purposes of this title, consistent with the management plan.

(d) PROHIBITION ON ACQUIRING REAL PROPERTY.—The management entity may not use Federal funds received under this title to acquire real property or an interest in real property.

(e) PUBLIC MEETINGS.—The management entity shall hold public meetings at least annually regarding the implementation of the management plan.

(f) Annual Reports and Audits.—

(1) For any year in which the management entity receives Federal funds under this title, the management entity shall submit an annual report to the Secretary setting forth accomplishments, expenses and income, and each entity to which any grant was made by the management entity.

(2) The management entity shall make available to the Secretary for audit all records relating to the expenditure of Federal funds and any matching funds. The management entity shall also require, for all agreements authorizing expenditure of Federal funds by other organizations, that the receiving organization make available to the Secretary for audit all records concerning the expenditure of those funds.

SEC. 506. DUTIES OF THE SECRETARY.

(a) Technical and Financial Assistance.—The Secretary may, upon request of the management entity, provide technical and financial assistance to develop and implement the management plan.

(b) Priority.—In providing assistance under subsection (a), the Secretary shall give priority to actions that facilitate—

(1) the conservation of the significant natural, cultural, historical, archaeological, scenic, and recreational resources of the heritage area; and

(2) the provision of educational, interpretive, and recreational opportunities consistent with the resources and associated values of the heritage area.

SEC. 507. SAVINGS PROVISIONS.

(a) No Effect on Private Property.—Nothing in this title shall be construed—

(1) to modify, enlarge, or diminish any authority of Federal, State, or local governments to regulate any use of privately owned lands; or

(2) to grant the management entity any authority to regulate the use of privately owned lands.

(b) Tribal Lands.—Nothing in this title shall restrict or limit a tribe from protecting cultural or religious sites on tribal lands.

(c) Authority of Governments.—Nothing in this title shall—

(1) modify, enlarge, or diminish any authority of Federal, State, tribal, or local governments to manage or regulate any use of land as provided for by law or regulation; or

(2) authorize the management entity to assume any management authorities over such lands.

(d) Trust Responsibilities.—Nothing in this title shall diminish the Federal Government's trust responsibilities or government-to-government obligations to any federally recognized Indian tribe.

SEC. 508. SUNSET.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

SEC. 509. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There are authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be authorized to be appropriated for any fiscal year.

(b) Cost-Sharing Requirement.—The Federal share of the total cost of any activity assisted under this title shall be not more than 50 percent.

TITLE VI—NATIONAL MORMON PIONEER HERITAGE AREA

SEC. 601. SHORT TITLE.

This title may be cited as the "National Mormon Pioneer Heritage Area Act".

SEC. 602. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds that—

(1) the historical, cultural, and natural heritage legacies of Mormon colonization and settlement are nationally significant;

(2) in the area starting along the Highway 89 corridor at the Arizona border, passing through Kane, Garfield, Piute, Sevier, Wayne, and Sanpete Counties in the State of Utah, and terminating in Fairview, Utah, there are a variety of heritage resources that demonstrate—

(A) the colonization of the western United States; and

(B) the expansion of the United States as a major world power;

(3) the great relocation to the western United States was facilitated by—

(A) the 1,400 mile trek from Illinois to the Great Salt Lake by the Mormon pioneers; and

(B) the subsequent colonization effort in Nevada, Utah, the southeast corner of Idaho, the southwest corner of Wyoming, large areas of southeastern Oregon, much of southern California, and areas along the eastern border of California;

(4) the 250-mile Highway 89 corridor from Kanab to Fairview, Utah, contains some of the best features of the Mormon colonization experience in the United States;

(5) the landscape, architecture, traditions, beliefs, folk life, products, and events along Highway 89 convey the heritage of the pioneer settlement;

(6) the Boulder Loop, Capitol Reef National Park, Zion National Park, Bryce Canyon National Park, and the Highway 89 area convey the compelling story of how early settlers—

(A) interacted with Native Americans; and

(B) established towns and cities in a harsh, yet spectacular, natural environment;

(7) the colonization and settlement of the Mormon settlers opened up vast amounts of natural resources, including coal, uranium, silver, gold, and copper;

(8) the Mormon colonization played a significant role in the history and progress of the development and settlement of the western United States; and

(9) the artisans, crafters, innkeepers, outfitters, historic landscape, customs, national parks, and architecture in the Heritage Area make the Heritage Area unique.

(b) Purpose.—The purpose of this title is to establish the Heritage Area to—

(1) foster a close working relationship with all levels of government, the private sector, residents, business interests, and local communities in the State;

(2) empower communities in the State to conserve, preserve, and enhance the heritage of the communities while strengthening future economic opportunities;

(3) conserve, interpret, and develop the historical, cultural, natural, and recreational resources within the Heritage Area; and

(4) expand, foster, and develop heritage businesses and products relating to the cultural heritage of the Heritage Area.

SEC. 603. DEFINITIONS.

In this title:

(1) Alliance.—The term "Alliance" means the Utah Heritage Highway 89 Alliance.

(2) Board.—The term "Board" means the Board of Directors of the Alliance.

(3) Heritage area.—The term "Heritage Area" means the National Mormon Pioneer Heritage Area established by section 604(a).

(4) Management plan.—The term "management plan" means the plan developed by the Board under section 606(a).

(5) Secretary.—The term "Secretary" means the Secretary of the Interior.

(6) State.— The term "State" means the State of Utah.

SEC. 604. NATIONAL MORMON PIONEER HERITAGE AREA.

(a) Establishment.—There is established the National Mormon Pioneer Heritage Area.

(b) Boundaries.—

(1) In general.—The boundaries of the Heritage Area shall include areas in the State that are—

(A) related to the corridors—

(i) from the Arizona border northward through Kanab, Utah, and to the intersection of Highway 89 and Highway 12, including Highway 12 and Highway 24 as those highways loop off Highway 89 and rejoin Highway 89 at Sigurd;

(ii) from Highway 89 at the intersection of Highway 12 through Panguitch, Junction, Marysvale, and Sevier County to Sigurd;

(iii) continuing northward along Highway 89 through Axtell and Sterling, Sanpete County, to Fairview, Sanpete County, at the junction with Utah Highway 31; and

(iv) continuing northward along Highway 89 through Fairview and Thistle Junction, to the junction with Highway 6; and

(B) located in the following communities; Kanab, Mt. Carmel, Orderville, Glendale, Alton, Cannonville, Tropic, Henrieville, Escalante, Boulder, Teasdale, Fruita, Hanksville, Torrey, Bicknell, Loa, Hatch, Panquitch, Circleville, Antimony, Junction, Marysvale, Koosharem, Sevier, Joseph, Monroe, Elsinore, Richfield, Glenwood, Sigurd, Aurora, Salina, Mayfield, Sterling, Gunnison, Fayette, Manti, Ephraim, Spring City, Mt. Pleasant, Moroni, Fountain Green, and Fairview.

(2) Map.—The Secretary shall prepare a map of the Heritage Area, which shall be on file and available for public inspection in the office of the Director of the National Park Service.

(3) Notice to local governments.—The Alliance shall provide to the government of each city, town, and county that has jurisdiction over property proposed to be included in the Heritage Area written notice of the proposed inclusion.

(c) Administration.—The Heritage Area shall be administered in accordance with this title.

SEC. 605. DESIGNATION OF ALLIANCE AS MANAGEMENT ENTITY.

(a) In General.—The Alliance shall be the management entity for the Heritage Area.

(b) Federal Funding.—

(1) Authorization to Receive funds.—The Alliance may receive amounts made available to carry out this title.

(2) Disqualification.—If a management plan is not submitted to the Secretary as required under section 606 within the time period specified in that section, the Alliance may not receive Federal funding under this title until a management plan is submitted to the Secretary.

(c) Use of Federal Funds.—The Alliance may, for the purposes of developing and implementing the management plan, use Federal funds made available under this title—

(1) to make grants and loans to the State, political subdivision of the State, nonprofit organizations, and other persons;

(2) to enter into cooperative agreements with or provide technical assistance to the State, political subdivisions of the State, nonprofit organizations, and other organizations;

(3) to hire and compensate staff;

(4) to obtain funds from any source under any program or law requiring the recipient of funds to make a contribution in order to receive the funds; and

(5) to contract for goods and services.

(d) Prohibition of Acquisition of Real Property.—The Alliance may not use Federal funds received under this title to acquire real property or any interest in real property.

SEC. 606. MANAGEMENT OF THE HERITAGE AREA.

(a) Heritage Area Management Plan.—

(1) Development and submission for review.—Not later than 3 years after the date of enactment of this title, the Board, with public participation, shall develop and submit for review to the Secretary a management plan for the Heritage Area.

(2) CONTENTS.—The management plan shall—

(A) present comprehensive recommendation for the conservation, funding, management, and development of the Heritage Area;

(B) take into consideration Federal, State, county, and local plans in effect on the date of enactment of this title;

(C) involve residents, public agencies, and private organizations in the Heritage Area;

(D) include a description of actions that units of government and private organizations are recommended to take to protect the resources of the Heritage Area;

(E) specify existing and potential sources of Federal and non-Federal funding for the conservation, management, and development of the Heritage Area; and

(F) include—

(i) an inventory of resources in the Heritage Area that—

(I) includes a list of property in the Heritage Area that should be conserved, restored, managed, developed, or maintained because of the historical, cultural, or natural significance of the property as the property relates to the themes of the Heritage Area; and

(II) does not include any property that is privately owned unless the owner of the property consents in writing to the inclusion;

(ii) a recommendation of policies for resource management that consider the application of appropriate land and water management techniques, including policies for the development of intergovernmental cooperative agreements to manage the historical, cultural, and natural resources and recreational opportunities of the Heritage Area in a manner that is consistent with the support of appropriate and compatible economic viability;

(iii) a program for implementation of the management plan, including plans for restoration and construction;

(iv) a description of any commitments that have been made by persons interested in management of the Heritage Area;

(v) an analysis of means by which Federal, State, and local programs may best be coordinated to promote the purposes of this title; and

(vi) an interpretive plan for the Heritage Area.

(3) APPROVAL OR DISAPPROVAL OF THE MANAGEMENT PLAN.—

(A) IN GENERAL.—Not later than 180 days after submission of the management plan by the Board, the Secretary shall approve or disapprove the management plan.

(B) DISAPPROVAL AND REVISIONS.—

(i) IN GENERAL.—If the Secretary disapproves the management plan, the Secretary shall—

(I) advise the Board, in writing, of the reasons for the disapproval; and

(II) make recommendations for revision of the management plans.

(ii) APPROVAL OR DISAPPROVAL.—The Secretary shall approve or disapprove proposed revisions to the management plan not later than 60 days after receipt of the revisions from the Board.

(b) PRIORITIES.—The Alliance shall give priority to the implementation of actions, goals, and policies set forth in the management plan, including—

(1) assisting units of government, regional planning organizations, and nonprofit organizations in—

(A) conserving the historical, cultural, and natural resources of the Heritage Area;

(B) establishing and maintaining interpretive exhibits in the Heritage Area;

(C) developing recreational opportunities in the Heritage Area;

(D) increasing public awareness of and appreciation for the historical, cultural, and natural resources of the Heritage Area;

(E) restoring historic buildings that are—

(i) located within the boundaries of the Heritage Area; and

(ii) related to the theme of the Heritage Area; and

(F) ensuring that clear, consistent, and environmentally appropriate signs identifying access points and sites of interest are put in place throughout the Heritage Area; and

(2) consistent with the goals of the management plan, encouraging economic viability in the affected communities by appropriate means, including encouraging and soliciting the development of heritage products.

(c) CONSIDERATION OF INTERESTS OF LOCAL GROUPS.—In developing and implementing the management plan, the Board shall consider the interests of diverse units of government, businesses, private property owners, and nonprofit organizations in the Heritage Area.

(d) PUBLIC MEETINGS.—The Board shall conduct public meetings at least annually regarding the implementation of the management plan.

(e) ANNUAL REPORTS.—For any fiscal year in which the Alliance receives Federal funds under this title or in which a loan made by the Alliance with Federal funds under section 605(c)(1) is outstanding, the Alliance shall submit to the Secretary an annual report that describes—

(1) the accomplishments of the Alliance;

(2) the expenses and income of the Alliance; and

(3) the entities to which the Alliance made any loans or grants during the year for which the report is made.

(f) COOPERATION WITH AUDITS.—For any fiscal year in which the Alliance receives Federal funds under this title or in which a loan made by the Alliance with Federal funds under section 605(c)(1) is outstanding, the Alliance shall—

(1) make available for audit by Congress, the Secretary, and appropriate units of government all records and other information relating to the expenditure of the Federal funds and any matching funds; and

(2) require, with respect to all agreements authorizing expenditure of the Federal funds by other organizations, that the receiving organizations make available for audit all records and other information relating to the expenditure of the Federal funds.

(g) DELEGATION.—

(1) IN GENERAL.—The Alliance may delete the responsibilities and actions under this section for each area identified in section 604(b)(1).

(2) REVIEW.—All delegated responsibilities and actions are subject to review and approval by the Alliance.

SEC. 607. DUTIES AND AUTHORITIES OF FEDERAL AGENCIES.

(a) TECHNICAL ASSISTANCE AND GRANTS.—

(1) IN GENERAL.—The Secretary may provide technical assistance and, subject to the availability of appropriations, grants to—

(A) units of government, nonprofit organizations, and other persons, at the request of the Alliance; and

(B) the Alliance, for use in developing and implementing the management plan.

(2) PROHIBITION OF CERTAIN REQUIREMENTS.—The Secretary may not, as a condition of the award of technical assistance or grants under this section, require any recipient of the technical assistance or a grant to enact or modify any land use restriction.

(3) DETERMINATION REGARDING ASSISTANCE.—The Secretary shall determine whether a unit of government, nonprofit organization, or other person shall be awarded technical assistance or grants and the amount of technical assistance—

(A) based on the extent to which the assistance—

(i) fulfills the objectives of the management plan; and

(ii) achieves the purposes of this title; and

(B) after giving special consideration to projects that provide a greater leverage of Federal funds.

(b) PROVISION OF INFORMATION.—In cooperation with other Federal agencies, the Secretary shall provide the public with information concerning the location and character of the Heritage Area.

(c) OTHER ASSISTANCE.—The Secretary may enter into cooperative agreements with public and private organizations for the purposes of implementing this section.

(d) DUTIES OF OTHER FEDERAL AGENCIES.—A Federal entity conducting any activity directly affecting the Heritage Area shall—

(1) consider the potential effect of the activity on the management plan; and

(2) consult with the Alliance with respect to the activity to minimize the adverse effects of the activity on the Heritage Area.

SEC. 608. NO EFFECT ON LAND USE AUTHORITY AND PRIVATE PROPERTY.

(a) NO EFFECT ON LAND USE AUTHORITY.—Nothing in this title modifies, enlarges, or diminishes any authority of Federal, State, or local government to regulate any use of land under any other law (including regulations).

(b) NO ZONING OR LAND USE POWERS.—Nothing in this title grants powers of zoning or land use control to the Alliance.

(c) LOCAL AUTHORITY AND PRIVATE PROPERTY NOT AFFECTED.—Nothing in this title affects or authorizes the Alliance to interfere with—

(1) the right of any person with respect to private property; or

(2) any local zoning ordinance or land use plan of the State or a political subdivision of the State.

SEC. 609. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $10,000,000, of which not more than $1,000,000 may be made available for any fiscal year.

(b) FEDERAL SHARE.—The Federal share of the cost of any activity carried out using funds made available under this title shall not exceed 50 percent.

SEC. 610. TERMINATION OF AUTHORITY.

The authority of the Secretary to provide assistance under this title terminates on the date that is 15 years after the date of enactment of this title.

TITLE VII—JOHN H. CHAFEE BLACKSTONE RIVER VALLEY NATIONAL HERITAGE CORRIDOR

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of Public Law 99–647 (16 U.S.C. 461 note) is amended by striking subsection (b) and inserting the following:

"(b) DEVELOPMENT FUNDS.—There is authorized to be appropriated to carry out section 8(c) for the period of fiscal years 2003 through 2007 not more than $5,000,000, to remain available until expended.".

Mr. REID. Mr. President, it is my understanding that Senator BINGAMAN has an amendment at the desk, and I ask unanimous consent that the amendment be considered and agreed to, the committee-reported substitute amendment, as amended, be agreed to, the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, and that any statements relating to this matter be printed in the RECORD, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 4970

(Purpose: To designate additional National Heritage Areas)

The amendment (No. 4970) was agreed to.

(The amendment is printed in today's Record under "Text of Amendments.")

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 695), as amended, was read the third time and passed.

GOLDEN GATE NATIONAL RECREATION AREA ACT

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 941.

The Acting President pro tempore laid before the Senate the following message from the House of Representatives on S. 941.

Resolved, That the bill from the Senate (S. 941) entitled "An Act to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—GOLDEN GATE NATIONAL RECREATION AREA

SEC. 101. BOUNDARY ADJUSTMENT.

Section 2(a) of Public Law 92–589 (16 U.S.C. 460bb–1(a)) is amended—

(1) by striking "(a)" and inserting "(a) Recreation Area Lands.—";

(2) by striking "The recreation area shall comprise" and inserting the following:

"(1) In General.—The recreation area shall comprise"; and

(3) by striking "The following additional lands are also" and all that follows through the period at the end of the paragraph and inserting the following:

"(2) Additional Land.—In addition to the land described in paragraph (1), the recreation area shall include—

"(A) the parcels numbered by the Assessor of Marin County, California, 119–040–04, 119–040–05, 119–040–18, 166–202–03, 166–010–06, 166–010–07, 166–010–24, 166–010–25, 119–240–19, 166–010–10, 166–010–22, 119–240–03, 119–240–51, 119–240–52, 119–240–54, 166–010–12, 166–010–13, and 119–235–10;

"(B) land and water in San Mateo County generally depicted on the map entitled 'Sweeney Ridge Addition, Golden Gate National Recreation Area', numbered NRA GG–80,000–A, and dated May 1980;

"(C) land acquired under the Golden Gate National Recreation Area Addition Act of 1992 (16 U.S.C. 460bb–1 note; Public Law 10–299);

"(D) land generally depicted on the map entitled 'Additions to Golden Gate National Recreation Area', numbered NPS–80–076, and dated July 2000/PWR–PLRPC; and

"(E) land generally depicted on the map entitled 'Rancho Corral de Tierra Additions to the Golden Gate National Recreation Area', numbered NPS–80,079A and dated July 2001.

"(3) Acquisition Authority.—The Secretary may acquire land described in paragraph (2)(E) only from a willing seller.".

TITLE II—ADVISORY COMMISSIONS

SEC. 201. GOLDEN GATE NATIONAL RECREATION AREA ADVISORY COMMISSION.

Section 5 of Public Law 92–589 (16 U.S.C. 460bb–4) is amended—

(1) in subsection (b)—

(A) by striking "(b) The Commission" and inserting the following:

"(b) Membership.—

"(1) In General.—The Commission";

(B) by striking "Provided, That the" and all that follows through the period; and

(C) by inserting after paragraph (1) (as designated by subparagraph (A)) the following:

"(2) Considerations.—In appointing members to the Commission, the Secretary shall ensure that the interests of local, historic recreational users of the recreation area shall be represented."; and

(2) in subsection (g), by striking "thirty years after the enactment of this Act" and inserting "on December 31, 2012".

SEC. 202. MANZANAR NATIONAL HISTORIC SITE ADVISORY COMMISSION.

Section 105(h) of Public Law 102–248 (16 U.S.C. 461 note) is amended by striking "10 years after the date of enactment of this title" and inserting "on December 31, 2012".

TITLE III—YOSEMITE NATIONAL PARK

SEC. 301. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds the following:

(1) The three elementary schools serving the children of employees of Yosemite National Park are served by the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District.

(2) The schools are in remote mountainous areas and long distances from other educational and administrative facilities of the two local educational agencies.

(3) Because of their remote locations and relatively small number of students, schools serving the children of employees of the Park provide fewer services in more basic facilities than the educational services and facilities provided to students that attend other schools served by the two local educational agencies.

(4) Because of the long distances involved and adverse weather and road conditions that occur during much of the school year, it is impractical for the children of employees of the Park who live within or near the Park to attend other schools served by the two local educational agencies.

(b) Purpose.—The purpose of this title is to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist the State of California or local educational agencies in California in providing educational services for students attending schools located within the Park.

SEC. 302. PAYMENTS FOR EDUCATIONAL SERVICES.

(a) Authority To Provide Funds.—For fiscal years 2003 through 2007, the Secretary may provide funds to the Bass Lake Joint Union Elementary School District and the Mariposa Unified School District for educational services to students who are dependents of persons engaged in the administration, operation, and maintenance of the Park or students who live at or near the Park upon real property of the United States.

(b) Limitation on Use of Funds.—Payments made by the Secretary under this section may not be used for new construction, construction contracts, or major capital improvements, and may be used only to pay public employees for services otherwise authorized by this title.

(c) Limitation on Amount of Funds.—Payments made under this section shall not exceed the lesser of $750,000 in any fiscal year or the amount necessary to provide students described in subsection (a) with educational services that are normally provided and generally available to students who attend public schools elsewhere in the State of California.

(d) Adjustment of Payments.—Subject to subsection (c), the Secretary is authorized to adjust payments made under this section if the State of California or the appropriate local educational agencies do not continue to provide funding for educational services at Park schools at per student levels that are equivalent to or greater than those provided in the fiscal year prior to the date of enactment of this title.

(e) Source of Payments.—

(1) Authorized Sources.—Except as provided in paragraph (2), in order to make payments under this section, the Secretary may use funds available to the National Park Service from appropriations, donations, or fees.

(2) Exceptions.—Funds from the following sources may not be used to make payments under this section:

(A) Fees authorized and collected under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–4 et seq.).

(B) The recreational fee demonstration program under section 315 of the Department of the Interior and Related Agencies Appropriations Act, 1996 (as contained in section 101(c) of Public Law 104–134; 16 U.S.C. 460l–6a note).

(C) The national park passport program established under section 602 of the National Parks Omnibus Management Act of 1998 (16 U.S.C. 5992).

(D) Emergency appropriations for Yosemite flood recovery.

(f) Definitions.—For the purposes of this title, the following definitions apply:

(1) Local Educational Agencies.—The term "local educational agencies" has the meaning given that term in section 9101(26) of the Elementary and Secondary Education Act of 1965.

(2) Educational Services.—The term "educational services" means services that may include maintenance and minor upgrades of facilities and transportation to and from school.

(3) Park.—The term "Park" means Yosemite National Park.

(4) Secretary.—The term "Secretary" means the Secretary of the Interior.

SEC. 303. AUTHORIZATION FOR PARK FACILITIES TO BE LOCATED OUTSIDE THE BOUNDARIES OF YOSEMITE NATIONAL PARK.

Section 814(c) of the Omnibus Parks and Public Lands Management Act of 1996 (16 U.S.C. 346e) is amended—

(1) in the first sentence—

(A) by inserting "and Yosemite National Park" after "Zion National Park"; and

(B) by inserting "transportation systems and" before "the establishment of"; and

(2) by striking "park" each place it appears and inserting "parks".

TITLE IV—ESTABLISHMENT OF GOLDEN CHAIN HIGHWAY AS A NATIONAL HERITAGE CORRIDOR STUDY

SEC. 401. STUDY; REPORT.

(a) Study.—

(1) In General.—Not later than 1 year after the date that funds are first made available for this section, the Secretary of the Interior, in consultation with the affected local governments, the State government, State and local historic preservation offices, community organizations, and the Golden Chain Council, shall complete a special resource study of the national significance, suitability, and feasibility of establishing Highway 49 in California, known as the "Golden Chain Highway", as a National Heritage Corridor.

(2) Contents.—The study shall include an analysis of—

(A) the significance of Highway 49 in American history;

(B) options for preservation and use of the highway;

(C) options for interpretation of significant features associated with the highway; and

(D) private sector preservation alternatives.

(3) BOUNDARIES OF STUDY AREA.—The area studied under this section shall be comprised of Highway 49 in California extending from the city of Oakhurst in Madera County to the city of Tuttletown in Tuolumne County, and lands, structures, and cultural resources within the immediate vicinity of the highway.

(b) REPORT.—Not later than 30 days after completion of the study required by subsection (a), the Secretary shall submit a report describing the results of the study to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

TITLE V—JOHN MUIR NATIONAL HISTORIC SITE BOUNDARY ADJUSTMENT

SEC. 501. BOUNDARY ADJUSTMENT.

(a) BOUNDARY.—The boundary of the John Muir National Historic Site is adjusted to include the lands generally depicted on the map entitled "Boundary Map, John Muir National Historic Site" numbered PWR–OL 426–80,044a and dated August 2001.

(b) LAND ACQUISITION.—The Secretary of the Interior is authorized to acquire the lands and interests in lands identified as the "Boundary Adjustment Area" on the map referred to in subsection (a) by donation, purchase with donated or appropriated funds, exchange, or otherwise.

(c) ADMINISTRATION.—The lands and interests in lands described in subsection (b) shall be administered as part of the John Muir National Historic Site established by the Act of August 31, 1964 (78 Stat. 753; 16 U.S.C. 461 note).

TITLE VI—SAN GABRIEL RIVER WATERSHEDS STUDY

SEC. 601. AUTHORIZATION OF STUDY.

(a) IN GENERAL.—The Secretary of the Interior (hereinafter in this title referred to as the "Secretary") shall conduct a special resource study of the following areas:

(1) The San Gabriel River and its tributaries north of and including the city of Santa Fe Springs.

(2) The San Gabriel Mountains within the territory of the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (as defined in section 32603(c)(1)(C) of the State of California Public Resource Code).

(b) STUDY CONDUCT AND COMPLETION.—Section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)) shall apply to the conduct and completion of the study required by this section.

(c) CONSULTATION WITH FEDERAL, STATE, AND LOCAL GOVERNMENTS.—In conducting the study authorized by this section, the Secretary shall consult with the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy and other appropriate Federal, State, and local governmental entities.

(d) CONSIDERATIONS.—In conducting the study authorized by this section, the Secretary shall consider regional flood control and drainage needs and publicly owned infrastructure, including, but not limited to, wastewater treatment facilities.

SEC. 602. REPORT.

Not later than 3 years after funds are made available for this title, the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report on the findings, conclusions, and recommendations of the study.

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with a further Bingaman amendment, which is at the desk; that the amendment be considered and agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 4971

(Purpose: To concur in the House amendment with an amendment in the nature of a substitute)

The amendment (No. 4971) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

MIAMI CIRCLE SITE SPECIAL RESOURCE STUDY ACT

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 1894.

The Acting President pro tempore laid before the Senate a message from the House of Representatives on S. 1894.

Resolved, That the bill from the Senate (S. 1894) entitled "An Act to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—MIAMI CIRCLE SITE SPECIAL RESOURCE STUDY

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the Tequesta Indians were one of the earliest groups to establish permanent villages in southeast Florida;

(2) the Tequestas had one of only two North American civilizations that thrived and developed into a complex social chiefdom without an agricultural base;

(3) the Tequesta sites that remain preserved today are rare;

(4) the discovery of the Miami Circle, occupied by the Tequesta approximately 2,000 years ago, presents a valuable new opportunity to learn more about the Tequesta culture; and

(5) Biscayne National Park also contains and protects several prehistoric Tequesta sites.

(b) PURPOSE.—The purpose of this title is to direct the Secretary to conduct a special resource study to determine the national significance of the Miami Circle site as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park.

SEC. 102. DEFINITIONS.

In this title:

(1) MIAMI CIRCLE.—The term "Miami Circle" means the Miami Circle archaeological site in Miami-Dade County, Florida.

(2) PARK.—The term "Park" means Biscayne National Park in the State of Florida.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 103. SPECIAL RESOURCE STUDY.

(a) IN GENERAL.—Not later than one year after the date funds are made available, the Secretary shall conduct a special resource study as described in subsection (b). In conducting the study, the Secretary shall consult with the appropriate American Indian tribes and other interested groups and organizations.

(b) COMPONENTS.—In addition to a determination of national significance, feasibility, and suitability, the special resource study shall include the analysis and recommendations of the Secretary with respect to—

(1) which, if any, particular areas of or surrounding the Miami Circle should be included in the Park;

(2) whether any additional staff, facilities, or other resources would be necessary to administer the Miami Circle as a unit of the Park; and

(3) any impact on the local area that would result from the inclusion of Miami Circle in the Park.

(c) REPORT.—Not later than 30 days after completion of the study, the Secretary shall submit a report describing the findings and recommendations of the study to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the United States House of Representatives.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE II—GATEWAY COMMUNITIES COOPERATION

SEC. 201. IMPROVED RELATIONSHIP BETWEEN FEDERAL LAND MANAGERS AND GATEWAY COMMUNITIES TO SUPPORT COMPATIBLE LAND MANAGEMENT OF BOTH FEDERAL AND ADJACENT LANDS.

(a) FINDINGS.—The Congress finds the following:

(1) Communities that are adjacent to or near Federal lands, including units of the National Park System, units of the National Wildlife Refuge System, units of the National Forest System, and lands administered by the Bureau of Land Management, are vitally impacted by the management and public use of these Federal lands.

(2) These communities, commonly known as gateway communities, fulfill an integral part in the mission of the Federal lands by providing necessary services, such as schools, roads, search and rescue, emergency, medical, provisioning, logistical support, living quarters, and drinking water and sanitary systems, for both visitors to the Federal lands and employees of Federal land management agencies.

(3) Provision of these vital services by gateway communities is an essential ingredient for a meaningful and enjoyable experience by visitors to the Federal lands because Federal land management agencies are unable to provide, or are prevented from providing, these services.

(4) Gateway communities serve as an entry point for persons who visit the Federal lands and are ideal for establishment of visitor services, including lodging, food service, fuel and auto repairs, emergency services, and visitor information.

(5) Development in these gateway communities affect the management and protection of these Federal lands, depending on the extent to which advance planning for the local development is coordinated between the communities and Federal land managers.

(6) The planning and management decisions of Federal land managers can have unintended consequences for gateway communities and the Federal lands, when the decisions are not adequately communicated to, or coordinated with, the elected officials and residents of gateway communities.

(7) Experts in land management planning are available to Federal land managers, but persons with technical planning skills are often not readily available to gateway communities, particularly small gateway communities.

(8) Gateway communities are often affected by the policies and actions of several Federal land agencies and both the communities and the agencies would benefit from greater interagency coordination of those policies and actions.

(9) Persuading gateway communities to make decisions and undertake actions in their communities that would also be in the best interest of

the Federal lands is most likely to occur when such decisionmaking and actions are built upon a foundation of cooperation and coordination.

(b) PURPOSE.—It is the purpose of this title to require Federal land managers to communicate, coordinate, and cooperate with gateway communities in order to—

(1) improve the relationships among Federal land managers, elected officials, and residents of gateway communities;

(2) enhance the facilities and services in gateway communities available to visitors to Federal lands, when compatible with the management of these lands; and

(3) result in better local land use planning and decisions by Federal land managers.

(c) DEFINITIONS.—In this section:

(1) GATEWAY COMMUNITY.—The term "gateway community" means a county, city, town, village, or other subdivision of a State, or a federally recognized American Indian tribe or Alaska Native village, that—

(A) is incorporated or recognized in a county or regional land use plan; and

(B) a Federal land manager (or the head of the tourism office for the State) determines is significantly affected economically, socially, or environmentally by planning and management decisions regarding Federal lands administered by that Federal land manager.

(2) FEDERAL LAND AGENCIES.—The term "Federal land agencies" means the National Park Service, United States Forest Service, United States Fish and Wildlife Service, and the Bureau of Land Management.

(3) FEDERAL LAND MANAGER.—The term "Federal land manager" means—

(A) the superintendent of a unit of the National Park System;

(B) the manager of a national wildlife refuge;

(C) the field office manager of a Bureau of Land Management area; or

(D) the supervisor of a unit of the National Forest System.

(d) PARTICIPATION IN FEDERAL PLANNING AND LAND USE.—

(1) PARTICIPATION IN PLANNING.—The Federal land agencies shall provide for meaningful public involvement at the earliest possible time by elected and appointed officials of governments of local gateway communities in the development of land use plans, programs, land use regulations, land use decisions, transportation plans, general management plans, and any other plans, decisions, projects, or policies for Federal public lands under the jurisdiction of these agencies that will have a significant impact on these gateway communities. To facilitate such involvement, the Federal land agencies shall provide these officials, at the earliest possible time, with a summary in nontechnical language of the assumptions, purposes, goals, and objectives of such a plan, decision, project, or policy and a description of any anticipated significant impact of the plan, decision, or policy on gateway communities.

(2) EARLY NOTICE OF PROPOSED DECISIONS.—To the extent practicable, the Federal land agencies shall provide local gateway communities with early public notice of proposed decisions of these agencies that may have a significant impact on gateway communities.

(3) TRAINING SESSIONS.—The Federal land agencies shall offer training sessions for elected and appointed officials of gateway communities at which such officials can obtain a better understanding of—

(A) agency planning processes; and

(B) the methods by which they can participate most meaningfully in the development of the agency plans, decisions, and policies referred to in paragraph (1).

(4) TECHNICAL ASSISTANCE.—At the request of the government of a gateway community, a Federal land agency shall assign, to the extent practicable, an agency employee or contractor to work with the community to develop data and analysis relevant to the preparation of agency plans, decisions, and policies referred to in paragraph (1).

(5) REVIEW OF FEDERAL LAND MANAGEMENT PLANNING.—At the request of a gateway community, and to the extent practicable, a Federal land manager shall assist the gateway community to conduct a review of land use, management, or transportation plans of the Federal land manager likely to affect the gateway community.

(6) COORDINATION OF LAND USE.—To the extent consistent with the laws governing the administration of the Federal public lands, a Federal land manager may enter into a cooperative agreement with a gateway community to provide for coordination between—

(A) the land use inventory, planning, and management activities for the Federal lands administered by the Federal land manager; and

(B) the land use planning and management activities of other Federal agencies, agencies of the State in which the Federal lands are located, and local and tribal governments in the vicinity of the Federal lands.

(7) INTERAGENCY COOPERATION AND COORDINATION.—To the extent practicable, when the plans and activities of two or more Federal land agencies are anticipated to have a significant impact on a gateway community, the Federal land agencies involved shall consolidate and coordinate their plans and planning processes to facilitate the participation of the gateway community in the planning processes.

(8) TREATMENT AS COOPERATING AGENCIES.—When a proposed action is determined to require the preparation of an environmental impact statement, the Federal land agencies shall, as soon as practicable, but not later than the scoping process, actively solicit the participation of gateway communities as cooperating agencies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(e) GRANTS TO ASSIST GATEWAY COMMUNITIES.—

(1) GRANTS AUTHORIZED; PURPOSES.—A Federal land manager may make grants to an eligible gateway community to enable the gateway community—

(A) to participate in Federal land planning or management processes;

(B) to obtain professional land use or transportation planning assistance necessary as a result of Federal action;

(C) to address and resolve public infrastructure impacts that are identified through these processes as a likely result of the Federal land management decisions and for which sufficient funds are not otherwise available; and

(D) to provide public information and interpretive services about the Federal lands administered by the Federal land manager and the gateway community.

(2) ELIGIBLE GATEWAY COMMUNITIES.—To be eligible for a grant under this subsection, a gateway community may not have a population in excess of 10,000 persons.

(f) FUNDING SOURCES.—

(1) GENERAL AGENCY FUNDS.—A Federal land agency may use amounts available for the general operation of the agency to provide funds to Federal land managers of that agency to make grants under subsection (e).

(2) OTHER PLANNING OR PROJECT DEVELOPMENT FUNDS.—Funds available to a Federal land manager for planning, construction, or project development may also be used to fund programs under subsection (d) and make grants under subsection (e).

(3) COMBINATION OF FUNDS.—Federal land managers from different Federal land agencies may combine financial resources to make grants under subsection (e).

TITLE III—MOUNT NEBO WILDERNESS BOUNDARY ADJUSTMENTS

SEC. 301. BOUNDARY ADJUSTMENTS, MOUNT NEBO WILDERNESS, UTAH.

(a) LANDS REMOVED.—The boundary of the Mount Nebo Wilderness is adjusted to exclude the following:

(1) MONUMENT SPRINGS.—The approximately 8.4 acres of land depicted on the Map as "Monument Springs".

(2) GARDNER CANYON.—The approximately 177.8 acres of land depicted on the Map as "Gardner Canyon".

(3) BIRCH CREEK.—The approximately 5.0 acres of land depicted on the Map as "Birch Creek".

(4) INGRAM CANYON.—The approximately 15.4 acres of land depicted on the Map as "Ingram Canyon".

(5) WILLOW NORTH A.—The approximately 3.4 acres of land depicted on the Map as "Willow North A".

(6) WILLOW NORTH B.—The approximately 6.6 acres of land depicted on the Map as "Willow North B".

(7) WILLOW SOUTH.—The approximately 21.5 acres of land depicted on the Map as "Willow South".

(8) MENDENHALL CANYON.—The approximately 9.8 acres of land depicted on the Map as "Mendenhall Canyon".

(9) WASH CANYON.—The approximately 31.4 acres of land depicted on the Map as "Wash Canyon".

(b) LANDS ADDED.—Subject to valid existing rights, the boundary of the Mount Nebo Wilderness is adjusted to include the approximately 293.2 acres of land depicted on the Map for addition to the Mount Nebo Wilderness. The Utah Wilderness Act of 1984 (Public Law 94–428) shall apply to the land added to the Mount Nebo Wilderness pursuant to this subsection.

SEC. 302. MAP.

(a) DEFINITION.—In this title, the term "Map" means the map entitled "Mt. Nebo Wilderness Boundary Adjustment", numbered 531, and dated May 29, 2001.

(b) MAP ON FILE.—The Map and the final document entitled "Mount Nebo, Proposed Boundary Adjustments, Parcel Descriptions (See Map #531)" and dated June 4, 2001, shall be on file and available for inspection in the office of the Chief of the Forest Service, Department of Agriculture.

(c) CORRECTIONS.—The Secretary of Agriculture may make technical corrections to the Map.

SEC. 303. TECHNICAL BOUNDARY ADJUSTMENT.

The boundary of the Mount Nebo Wilderness is adjusted to exclude the approximately 21.26 acres of private property located in Andrews Canyon, Utah, and depicted on the Map as "Dale".

TITLE IV—BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL SPECIAL RESOURCE STUDY

SEC. 401. FINDINGS.

The Congress finds the following:

(1) During World War II on February 19, 1942, President Franklin Delano Roosevelt signed Executive Order 9066, setting in motion the forced exile of more than 110,000 Japanese Americans.

(2) In Washington State, 12,892 men, women and children of Japanese ancestry experienced three years of incarceration, an incarceration violating the most basic freedoms of American citizens.

(3) On March 30, 1942, 227 Bainbridge Island residents were the first Japanese Americans in United States history to be forcibly removed from their homes by the U.S. Army and sent to

internment camps. They boarded the ferry Kehloken from the former Eagledale Ferry Dock, located at the end of Taylor Avenue, in the city of Bainbridge Island, Washington State.

(4) The city of Bainbridge Island has adopted a resolution stating that this site should be a National Memorial, and similar resolutions have been introduced in the Washington State Legislature.

(5) Both the Minidoka National Monument and Manzanar National Historic Site can clearly tell the story of a time in our Nation's history when constitutional rights were ignored. These camps by design were placed in very remote places and are not easily accessible. Bainbridge Island is a short ferry ride from Seattle and the site would be within easy reach of many more people.

(6) This is a unique opportunity to create a site that will honor those who suffered, cherish the friends and community who stood beside them and welcomed them home, and inspire all to stand firm in the event our Nation again succumbs to similar fears.

(7) The site should be recognized by the National Park Service based on its high degree of national significance, association with significant events, and integrity of its location and setting. This site is critical as an anchor for future efforts to identify, interpret, serve, and ultimately honor the Nikkei- persons of Japanese ancestry- influence on Bainbridge Island.

SEC. 402. EAGLEDALE FERRY DOCK LOCATION AT TAYLOR AVENUE STUDY AND REPORT.

(a) STUDY.—The Secretary of the Interior shall carry out a special resource study regarding the national significance, suitability, and feasibility of designating as a unit of the National Park System the property commonly known as the Eagledale Ferry Dock at Taylor Avenue and the historical events associated with it, located in the town of Bainbridge Island, Kitsap County, Washington.

(b) REPORT.—Not later than 1 year after funds are first made available for the study under subsection (a), the Secretary of the Interior shall submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the findings, conclusions, and recommendations of the study.

(c) REQUIREMENTS FOR STUDY.—Except as otherwise provided in this section, the study under subsection (a) shall be conducted in accordance with section 8(c) of Public Law 91-383 (16 U.S.C. 1a-5(c)).

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment with a further Bingaman amendment, which is at the desk; that the amendment be considered and agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 4972

(Purpose: To concur in the House amendment with an amendment in the nature of a substitute)

The amendment (No. 4972) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.").

MOCCASIN BEND NATIONAL HISTORIC SITE ESTABLISHMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 674, H.R. 980.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 980) to establish the Moccasin Bend National Historic Site in the State of Tennessee as a unit of the National Park System.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 980

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Moccasin Bend National Historic Site Establishment Act".

[SEC. 2. DEFINITIONS.

[For the purposes of this Act the following definitions apply:

[(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

[(2) HISTORIC SITE.—The term "historic site" means the Moccasin Bend National Historic Site.

[(3) STATE.—The term "State" means the State of Tennessee.

[(4) MAP.—The term "Map" means the map entitled "Boundary Map, Moccasin Bend National Historic Site", numbered NAMB/80000A, and dated September 2001.

[SEC. 3. ESTABLISHMENT.

[(a) IN GENERAL.—In order to preserve, protect, and interpret for the benefit of the public the nationally significant archeological and historic resources located on the peninsula known as Moccasin Bend, Tennessee, there is established as a unit of the National Park System the Moccasin Bend National Historic Site.

[(b) BOUNDARIES.—The historic site shall consist of approximately 900 acres generally depicted on the Map. The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior. The Secretary may make minor revisions in the boundaries of the historic site in accordance with section 7(c) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-9(c)).

[(c) ACQUISITION OF LAND AND INTERESTS IN LAND.—

[(1) IN GENERAL.—The Secretary may acquire by donation or purchase from willing sellers, using donated or appropriated funds, lands and interests in lands within the exterior boundary of the historic site.

[(2) MOCCASIN BEND MENTAL HEALTH INSTITUTE.—Notwithstanding paragraph (1), the Secretary may acquire the State-owned land and interests in land (including structures on that land) known as the Moccasin Bend Mental Health Institute for inclusion in the historic site only by donation and only after the facility is no longer used to provide health care services, except that the Secretary may acquire by donation only, at any time, any such State-owned land or interests in land that the State determines is excess to the needs of the Moccasin Bend Mental Health Institute. The Secretary may work with the State through a cost sharing arrangement for the purpose of demolishing the structures located on that land that the Secretary determines should be demolished.

[(3) EASEMENT OUTSIDE BOUNDARY.—To allow access between areas of the historic site that on the date of the enactment of this Act are noncontiguous, the Secretary may acquire by donation or purchase from willing owners, using donated or appropriated funds, an easement connecting the areas generally depicted on the Map as the "Moccasin Bend Archeological National Historic Landmark" and the "Rock-Tenn" property.

[(d) MOCCASIN BEND GOLF COURSE.—On the date of the enactment of this Act, the boundary of the historic site shall not include the approximately 157 acres of land generally depicted on the Map as the "Golf Course" as such lands shall not be within the boundary of the historic site. In the event that those lands are no longer used as a public golf course, the Secretary may acquire the lands for inclusion in the historic site by donation only. Upon such acquisition, the Secretary shall adjust the boundary of the historic site to include the newly acquired lands.

[(e) RADIO TOWER PROPERTY.—On the date of the enactment of this Act, the boundary of the historic site shall not include the approximately 13 acres of land generally depicted on the Map as "WDEF". In the event that those lands are no longer used as a location from which to transmit radio signals, the Secretary may acquire the lands for inclusion in the historic site by donation or purchase from willing sellers with appropriated or donated funds. Upon such acquisition, the Secretary shall adjust the boundary of the historic site to include the newly acquired lands.

[SEC. 4. ADMINISTRATION.

[(a) IN GENERAL.—The historic site shall be administered by the Secretary in accordance with this Act and with the laws generally applicable to units of the National Park System.

[(b) COOPERATIVE AGREEMENT.—The Secretary may consult and enter into cooperative agreements with culturally affiliated federally recognized Indian tribes, governmental entities, and interested persons to provide for the restoration, preservation, development, interpretation, and use of the historic site.

[(c) VISITOR INTERPRETIVE CENTER.—For purposes of interpreting the historical themes and cultural resources of the historic site, the Secretary may establish and administer a visitor center in the development of the center's operation and interpretive programs.

[(d) GENERAL MANAGEMENT PLAN.—Not later than three years after funds are made available for this purpose, the Secretary shall develop and submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a general management plan for the historic site. The general management plan shall describe the appropriate protection and preservation of natural, cultural, and scenic resources, visitor use, and facility development within the historic area consistent with the purposes of this Act, while ensuring continued access to private landowners to their property.

[SEC. 5. REPEAL OF PREVIOUS ACQUISITION AUTHORITY.

[The Act of August 3, 1950 (Chapter 532; 16 U.S.C. 424a-4) is repealed.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Moccasin Bend National Archeological District Act".

SEC. 2. DEFINITIONS.

As used in this Act:

(1) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(2) ARCHEOLOGICAL DISTRICT.—The term "archeological district" means the Moccasin Bend National Archeological District.

(3) STATE.—The term "State" means the State of Tennessee.

(4) MAP.—The term "Map" means the map entitled "Boundary Map, Moccasin Bend National Archeological District", numbered 301/80098, and dated September 2002.

SEC. 3. ESTABLISHMENT.

(a) IN GENERAL.—In order to preserve, protect, and interpret for the benefit of the public the nationally significant archeological and historic resources located on the peninsula known as Moccasin Bend, Tennessee, there is established as a unit of Chickamauga and Chattanooga National Military Park, the Moccasin Bend National Archeological District.

(b) BOUNDARIES.—The archeological district shall consist of approximately 780 acres generally depicted on the Map. The Map shall be on file and available for public inspection in the appropriate offices of the National Park Service, Department of the Interior.

(c) ACQUISITION OF LAND AND INTERESTS IN LAND.—

(1) IN GENERAL.—The Secretary may acquire by donation, purchase from willing sellers using donated or appropriated funds, or exchange, lands and interests in lands within the exterior boundary of the archeological district. The Secretary may acquire the State, county and city-owned land and interests in land for inclusion in the archeological district only by donation.

(2) EASEMENT OUTSIDE BOUNDARY.—To allow access between areas of the archeological district that on the date of enactment of this Act are noncontiguous, the Secretary may acquire by donation or purchase from willing owners using donated or appropriated funds, or exchange, easements connecting the areas generally depicted on the Map.

SEC. 4. ADMINISTRATION.

(a) IN GENERAL.—The archeological district shall be administered by the Secretary in accordance with this Act, with laws applicable to Chickamauga and Chattanooga National Military Park, and with the laws generally applicable to units of the National Park System.

(b) COOPERATIVE AGREEMENT.—The Secretary may consult and enter into cooperative agreements with culturally affiliated federally recognized Indian tribes, governmental entities, and interested persons to provide for the restoration, preservation, development, interpretation, and use of the archeological district.

(c) VISITOR INTERPRETIVE CENTER.—For purposes of interpreting the historical themes and cultural resources of the archeological district, the Secretary may establish and administer a visitor center in the archeological district.

(d) GENERAL MANAGEMENT PLAN.—Not later than three years after funds are made available for this purpose, the Secretary shall develop a general management plan for the archeological district. The general management plan shall describe the appropriate protection and preservation of natural, cultural, and scenic resources, visitor use, and facility development within the archeological district consistent with the purposes of this Act, while ensuring continued access to private landowners to their property.

SEC. 5. REPEAL OF PREVIOUS ACQUISITION AUTHORITY.

The Act of August 3, 1950 (Chapter 532; 16 U.S.C. 424a–4), is repealed.

Amend the title so as to read: "An Act To establish the Moccasin Bend National Archeological District in the State of Tennessee as a unit of Chickamauga and Chattanooga National Military Park.".

Mr. REID. Mr. President, Senator BINGAMAN has a substitute amendment at the desk, and I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid upon the table; that the committee-reported substitute, as amended, be agreed to; that the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, and that the title amendment be agreed to, with no intervening action or debate, and that any statements be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDMENT NO. 4973

(Purpose: To provide a complete substitute)

The amendment (No. 4973), in the nature of a substitute, was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment, in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 980), as amended, was read the third time and passed.

The title amendment was agreed to.

AMENDING THE NATURAL TRAILS SYSTEM ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 576, H.R. 37.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 37) to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part printed in italic.]

H.R. 37

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING NATIONAL HISTORIC TRAILS.

[The National Trails System Act is amended by inserting after section 5 (16 U.S.C. 1244) the following new section:

["SEC. 5A. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING TRAILS FOR POSSIBLE TRAIL EXPANSION.

["(a) IN GENERAL.—

["(1) DEFINITIONS.—In this section:

["(A) ROUTE.—The term 'route' includes a trail segment commonly known as a cutoff.

["(B) SHARED ROUTE.—The term 'shared route' means a route that was a segment of more than one historic trail, including a route shared with an existing national historic trail.

["(2) STUDY REQUIREMENTS AND OBJECTIVES.—The study requirements and objectives specified in section 5(b) shall apply to a study required by this section. The study shall also assess the effect that designation of the studied route as a component of an existing national scenic trail or national historic trail may have on private property along the proposed route.

["(3) COMPLETION AND SUBMISSION OF STUDY.—A study listed in this section shall be completed and submitted to the Congress not later than three complete fiscal years from the date of the enactment of this section, or from the date of the enactment of the addition of the study to this section, whichever is later.

["(4) IMPLEMENTATION OF STUDY RESULTS.—Upon completion of a study required by this section, if the Secretary conducting the study determines that a studied route is a feasible and suitable addition to the existing national scenic trail or national historic trail that was the subject of the study, the Secretary shall designate the route as a component of that national scenic trail or national historic trail. The Secretary shall publish notice of the designation in the Federal Register.

["(b) OREGON NATIONAL HISTORIC TRAIL.—

["(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in paragraph (2) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Oregon National Historic Trail.

["(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

["(A) Whitman Mission route.

["(B) Upper Columbia River.

["(C) Cowlitz River route.

["(D) Meek cutoff.

["(E) Free Emigrant Road.

["(F) North Alternate Oregon Trail.

["(G) Goodale's cutoff.

["(H) North Side alternate route.

["(I) Cutoff to Barlow Road.

["(J) Naches Pass Trail.

["(c) PONY EXPRESS NATIONAL HISTORIC TRAIL.—The Secretary of the Interior shall undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Pony Express National Historic Trail.

["(d) CALIFORNIA NATIONAL HISTORIC TRAIL.—

["(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in paragraph (2) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the California National Historic Trail.

[“(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[“(A) MISSOURI VALLEY ROUTES.—

[“(i) Blue Mills-Independence Road.

[“(ii) Westport Landing Road.

[“(iii) Westport-Lawrence Road.

[“(iv) Fort Leavenworth-Blue River route.

[“(v) Road to Amazonia.

[“(vi) Union Ferry Route.

[“(vii) Old Wyoming-Nebraska City cutoff.

[“(viii) Lower Plattsmouth Route.

[“(ix) Lower Bellevue Route.

[“(x) Woodbury cutoff.

[“(xi) Blue Ridge cutoff.

[“(xii) Westport Road.

[“(xiii) Gum Springs-Fort Leavenworth route.

[“(xiv) Atchison/Independence Creek routes.

[“(xv) Fort Leavenworth-Kansas River route.

[“(xvi) Nebraska City cutoff routes.

[“(xvii) Minersville-Nebraska City Road.

[“(xviii) Upper Plattsmouth route.

[“(xix) Upper Bellevue route.

[“(B) CENTRAL ROUTES.—

[“(i) Cherokee Trail, including splits.

[“(ii) Weber Canyon route of Hastings cutoff.

[“(iii) Bishop Creek cutoff.

[“(iv) McAuley cutoff.

[“(v) Diamond Springs cutoff.

[“(vi) Secret Pass.

[“(vii) Greenhorn cutoff.

[“(viii) Central Overland Trail.

[“(C) WESTERN ROUTES.—

[“(i) Bidwell-Bartleson route.

[“(ii) Georgetown/Dagget Pass Trail.

[“(iii) Big Trees Road.

[“(iv) Grizzly Flat cutoff.

[“(v) Nevada City Road.

[“(vi) Yreka Trail.

[“(vii) Henness Pass route.

[“(viii) Johnson cutoff.

[“(ix) Luther Pass Trail.

[“(x) Volcano Road.

[“(xi) Sacramento-Coloma Wagon Road.

[“(xii) Burnett cutoff.

[“(xiii) Placer County Road to Auburn.

[“(e) MORMON PIONEER NATIONAL HISTORIC TRAIL.—

[“(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Morman Pioneer Trail listed in paragraph (2) and generally depicted on the map entitled ‘Western Emigrant Trails 1830/1870’ and dated 1991/1993, and of such shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Mormon Pioneer National Historic Trail.

[“(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[“(A) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

[“(B) 1856–57 Handcart route (Iowa City to Council Bluffs)

[“(C) Keokuk route (Iowa).

[“(D) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

[“(E) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon and California Trail routes used by Mormon emigrants).

[“(F) 1850 Golden Pass Road in Utah.

[“(f) SHARED CALIFORNIA AND OREGON TRAIL ROUTES.—

[“(1) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in paragraph (2) and generally depicted on the map entitled ‘Western Emigrant Trails 1830/1870’ and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

[“(2) COVERED ROUTES.—The routes to be studied under paragraph (1) are the following:

[“(A) St. Joe Road.

[“(B) Council Bluffs Road.

[“(C) Sublette cutoff.

[“(D) Applegate route.

[“(E) Old Fort Kearny Road (Oxbow Trail).

[“(F) Childs cutoff.

[“(G) Raft River to Applegate.”.]

SECTION 1. REVISION OF FEASIBILITY AND SUITABILITY STUDIES OF EXISTING NATIONAL HISTORIC TRAILS.

Section 5 of the National Trails System Act (16 U.S.C. 1244) is amended by inserting the following new subsection (g):

“(g) The Secretary shall revise the feasibility and suitability studies for certain national trails for consideration of possible additions to the trails.

“(1) IN GENERAL.—

“(A) DEFINITIONS.—In this subsection:

“(i) ROUTE.—The term ‘route’ includes a trail segment commonly known as a cutoff.

“(ii) SHARED ROUTE.—The term ‘shared’ route means a route that was a segment of more than one historic trail, including a route shared with an existing national historic trail.

“(B) STUDY REQUIREMENTS AND OBJECTIVES.—The study requirements and objectives specified in subsection (b) shall apply to a study required by this subsection.

“(C) COMPLETION AND SUBMISSION OF STUDY.—A study listed in this subsection shall be completed and submitted to the Congress not later than three complete fiscal years from the date of the enactment of this subsection, or from the date of the enactment of the addition of the study to this subsection, whichever is later.

“(2) OREGON NATIONAL HISTORIC TRAIL.—

“(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled ‘Western Emigrant Trails 1830/1870’ and dated 1991/1993, and of such other routes of the Oregon Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Oregon National Historic Trail.

“(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

“(i) Whitman Mission route.

“(ii) Upper Columbia River.

“(iii) Cowlitz River route.

“(iv) Meek cutoff.

“(v) Free Emigrant Road.

“(vi) North Alternate Oregon Trail.

“(vii) Goodale’s cutoff.

“(viii) North Side alternate route.

“(ix) Cutoff to Barlow Road.

“(x) Naches Pass Trail.

“(3) PONY EXPRESS NATIONAL HISTORIC TRAIL.—The Secretary of the Interior shall undertake a study of the approximately 20-mile southern alternative route of the Pony Express Trail from Wathena, Kansas, to Troy, Kansas, and such other routes of the Pony Express Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Pony Express National Historic Trail.

“(4) CALIFORNIA NATIONAL HISTORIC TRAIL.—

“(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the Missouri Valley, central, and western routes of the California Trail listed in subparagraph (B) and generally depicted on the map entitled ‘Western Emigrant Trails 1830/1870’ and dated 1991/1993, and of such other and shared Missouri Valley, central, and western routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the California National Historic Trail.

“(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

“(i) MISSOURI VALLEY ROUTES.—

“(I) Blue Mills-Independence Road.

“(II) Westport Landing Road.

“(III) Westport-Lawrence Road.

“(IV) Fort Leavenworth-Blue River route.

“(V) Road to Amazonia.

“(VI) Union Ferry Route.

“(VII) Old Wyoming-Nebraska City cutoff.

“(VIII) Lower Plattsmouth Route.

“(IX) Lower Bellevue Route.

“(X) Woodbury cutoff.

“(XI) Blue Ridge cutoff.

“(XII) Westport Road.

“(XIII) Gum Springs-Fort Leavenworth route.

“(XIV) Atchison/Independence Creek routes.

“(XV) Fort Leavenworth-Kansas River route.

“(XVI) Nebraska City cutoff routes.

“(XVII) Minersville-Nebraska City Road.

“(XVIII) Upper Plattsmouth route.

“(XIX) Upper Bellevue route.

“(ii) CENTRAL ROUTES.—

“(I) Cherokee Trail, including splits.

“(II) Weber Canyon route of Hastings cutoff.

“(III) Bishop Creek cutoff.

“(IV) McAuley cutoff.

“(V) Diamond Springs cutoff.

“(VI) Secret Pass.

“(VII) Greenhorn cutoff.

“(VIII) Central Overland Trail.

“(iii) WESTERN ROUTES.—

“(I) Bidwell-Bartleson route.

“(II) Georgetown/Dagget Pass Trail.

“(III) Big Trees Road.

“(IV) Grizzly Flat cutoff.

“(V) Nevada City Road.

“(VI) Yreka Trail.

“(VII) Henness Pass route.

“(VIII) Johnson cutoff.

“(IX) Luther Pass Trail.

“(X) Volcano Road.

“(XI) Sacramento-Coloma Wagon Road.

“(XII) Burnett cutoff.

“(XIII) Placer County Road to Auburn.

“(5) MORMON PIONEER NATIONAL HISTORIC TRAIL.—

“(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the routes of the Mormon Pioneer Trail listed in subparagraph (B) and generally depicted on the map entitled ‘Western Emigrant Trails 1830/1870’ and dated 1991/1993, and of such other routes of the Mormon Pioneer Trail that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as components of the Mormon Pioneer National Historic Trail.

“(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

“(i) 1846 Subsequent routes A and B (Lucas and Clarke Counties, Iowa).

“(ii) 1856–57 Handcart route (Iowa City to Council Bluffs)

“(iii) Keokuk route (Iowa).

“(iv) 1847 Alternative Elkhorn and Loup River Crossings in Nebraska.

“(v) Fort Leavenworth Road; Ox Bow route and alternates in Kansas and Missouri (Oregon

and California Trail routes used by Mormon emigrants).

"(vi) 1850 Golden Pass Road in Utah.

"(6) SHARED CALIFORNIA AND OREGON TRAIL ROUTES.—

"(A) STUDY REQUIRED.—The Secretary of the Interior shall undertake a study of the shared routes of the California Trail and Oregon Trail listed in subparagraph (B) and generally depicted on the map entitled 'Western Emigrant Trails 1830/1870' and dated 1991/1993, and of such other shared routes that the Secretary considers appropriate, to determine the feasibility and suitability of designation of one or more of the routes as shared components of the California National Historic Trail and the Oregon National Historic Trail.

"(B) COVERED ROUTES.—The routes to be studied under subparagraph (A) shall include the following:

"(i) St. Joe Road.

"(ii) Council Bluffs Road.

"(iii) Sublette cutoff.

"(iv) Applegate route.

"(v) Old Fort Kearny Road (Oxbow Trail).

"(vi) Childs cutoff.

"(vii) Raft River to Applegate."

Passed the House of Representatives June 6, 2001.

Mr. REID. Mr. President, Chairman BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table, and any statements relating to the bill be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 4974) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 37), as amended, was read the third time and passed.

NOXIOUS WEED CONTROL ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 600, S. 198.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 198) to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Striking the part shown in black brackets and insert the part shown in italic.]

S. 198

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Harmful Nonnative Weed Control Act of 2000".

[SEC. 2. FINDINGS AND PURPOSES.

[(a) FINDINGS.—Congress finds that—

[(1) public and private land in the United States faces unprecedented and severe stress from harmful, nonnative weeds;

[(2) the economic and resource value of the land is being destroyed as harmful nonnative weeds overtake native vegetation, making the land unusable for forage and for diverse plant and animal communities;

[(3) damage caused by harmful nonnative weeds has been estimated to run in the hundreds of millions of dollars annually;

[(4) successfully fighting this scourge will require coordinated action by all affected stakeholders, including Federal, State, and local governments, private landowners, and nongovernmental organizations;

[(5) the fight must begin at the local level, since it is at the local level that persons feel the loss caused by harmful nonnative weeds and will therefore have the greatest motivation to take effective action; and

[(6) to date, effective action has been hampered by inadequate funding at all levels of government and by inadequate coordination.

[(b) PURPOSES.—The purposes of this Act are—

[(1) to provide assistance to eligible weed management entities in carrying out projects to control or eradicate harmful, nonnative weeds on public and private land;

[(2) to coordinate the projects with existing weed management areas and districts;

[(3) in locations in which no weed management entity, area, or district exists, to stimulate the formation of additional local or regional cooperative weed management entities, such as entities for weed management areas or districts, that organize locally affected stakeholders to control or eradicate weeds;

[(4) to leverage additional funds from a variety of public and private sources to control or eradicate weeds through local stakeholders; and

[(5) to promote healthy, diverse, and desirable plant communities by abating through a variety of measures the threat posed by harmful, nonnative weeds.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) ADVISORY COMMITTEE.—The term "Advisory Committee" means the advisory committee established under section 5.

[(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

[(3) STATE.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

[SEC. 4. ESTABLISHMENT OF PROGRAM.

[The Secretary shall establish in the Office of the Secretary a program to provide financial assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

[SEC. 5. ADVISORY COMMITTEE.

[(a) IN GENERAL.—The Secretary shall establish in the Department of the Interior an advisory committee to make recommendations to the Secretary regarding the annual allocation of funds to States under section 6 and other issues related to funding under this Act.

[(b) COMPOSITION.—The Advisory Committee shall be composed of not more than 10 individuals appointed by the Secretary who—

[(1) have knowledge and experience in harmful, nonnative weed management; and

[(2) represent the range of economic, conservation, geographic, and social interests affected by harmful, nonnative weeds.

[(c) TERM.—The term of a member of the Advisory Committee shall be 4 years.

[(d) COMPENSATION.—

[(1) IN GENERAL.—A member of the Advisory Committee shall receive no compensation for the service of the member on the Advisory Committee.

[(2) TRAVEL EXPENSES.—A member of the Advisory Committee shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Advisory Committee.

[(e) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

[SEC. 6. ALLOCATION OF FUNDS TO STATES.

[(a) IN GENERAL.—In consultation with the Advisory Committee, the Secretary shall allocate funds made available for each fiscal year under section 8 to States to provide funding in accordance with section 7 to eligible weed management entities to carry out projects approved by States to control or eradicate harmful, nonnative weeds on public and private land.

[(b) AMOUNT.—The Secretary shall determine the amount of funds allocated to a State for a fiscal year under this section on the basis of—

[(1) the seriousness of the harmful, nonnative weed problem or potential problem in the State, or a portion of the State;

[(2) the extent to which the Federal funds will be used to leverage non-Federal funds to address the harmful, nonnative weed problems in the State;

[(3) the extent to which the State has made progress in addressing harmful, nonnative weed problems in the State;

[(4) the extent to which weed management entities in a State are eligible for base payments under section 7; and

[(5) other factors recommended by the Advisory Committee and approved by the Secretary.

[SEC. 7. USE OF FUNDS ALLOCATED TO STATES.

[(a) IN GENERAL.—A State that receives an allocation of funds under section 6 for a fiscal year shall use—

[(1) not more than 25 percent of the allocation to make a base payment to each weed management entity in accordance with subsection (b); and

[(2) not less than 75 percent of the allocation to make financial awards to weed management entities in accordance with subsection (c).

[(b) BASE PAYMENTS.—

[(1) USE BY WEED MANAGEMENT ENTITIES.—

[(A) IN GENERAL.—Base payments under subsection (a)(1) shall be used by weed management entities—

[(i) to pay the Federal share of the cost of carrying out projects described in subsection (d) that are selected by the State in accordance with subsection (d); or

[(ii) for any other purpose relating to the activities of the weed management entities, subject to guidelines established by the State.

[(B) Federal share.—Under subparagraph (A), the Federal share of the cost of carrying out a project described in subsection (d) shall not exceed 50 percent.

[(2) Eligibility of weed management entities.—To be eligible to obtain a base payment under paragraph (1) for a fiscal year, a weed management entity in a State shall—

[(A) be established by local stakeholders—

[(i) to control or eradicate harmful, nonnative weeds on public or private land; or

[(ii) to increase public knowledge and education concerning the need to control or eradicate harmful, nonnative weeds on public or private land;

[(B)(i) for the first fiscal year for which the entity receives a base payment, provide to the State a description of—

[(I) the purposes for which the entity was established; and

[(II) any projects carried out to accomplish those purposes; and

[(ii) for any subsequent fiscal year for which the entity receives a base payment, provide to the State—

[(I) a description of the activities carried out by the entity in the previous fiscal year—

[(aa) to control or eradicate harmful, nonnative weeds on public or private land; or

[(bb) to increase public knowledge and education concerning the need to control or eradicate harmful, nonnative weeds on public or private land; and

[(II) the results of each such activity; and

[(C) meet such additional eligibility requirements, and conform to such process for determining eligibility, as the State may establish.

[(c) Financial Awards.—

[(1) Use by weed management entities.—

[(A) In general.—Financial awards under subsection (a)(2) shall be used by weed management entities to pay the Federal share of the cost of carrying out projects described in subsection (d) that are selected by the State in accordance with subsection (d).

[(B) Federal share.—Under subparagraph (A), the Federal share of the cost of carrying out a project described in subsection (d) shall not exceed 50 percent.

[(2) Eligibility of weed management entities.—To be eligible to obtain a financial award under paragraph (1) for a fiscal year, a weed management entity in a State shall—

[(A) meet the requirements for eligibility for a base payment under subsection (b)(2); and

[(B) submit to the State a description of the project for which the financial award is sought.

[(d) Projects.—

[(1) In general.—An eligible weed management entity may use a base payment or financial award received under this section to carry out a project relating to the control or eradication of harmful, nonnative weeds on public or private land, including—

[(A) education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment; and

[(B) innovative projects, with results that are disseminated to the public.

[(2) Selection of projects.—A State shall select projects for funding under this section on a competitive basis, taking into consideration (with equal consideration given to economic and natural values)—

[(A) the seriousness of the harmful, nonnative weed problem or potential problem addressed by the project;

[(B) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

[(C) the extent to which the payment will leverage non-Federal funds to address the harmful, nonnative weed problem addressed by the project;

[(D) the extent to which the entity has made progress in addressing harmful, nonnative weed problems;

[(E) the extent to which the project will provide a comprehensive approach to the control or eradication of harmful, nonnative weeds;

[(F) the extent to which the project will reduce the total population of a harmful, nonnative weed within the State; and

[(G) other factors that the State determines to be relevant.

[(3) Scope of projects.—

[(A) In general.—A weed management entity shall determine the geographic scope of the harmful, nonnative weed problem to be addressed through a project using a base payment or financial award received under this section.

[(B) Multiple states.—A weed management entity may use the base payment or financial award to carry out a project to address the harmful, nonnative weed problem of more than 1 State if the entity meets the requirements of applicable State laws.

[(4) Land.—A weed management entity may use a base payment or financial award received under this section to carry out a project to control or eradicate weeds on any public or private land with the approval of the owner or operator of the land, other than land that is devoted to the cultivation of row crops, fruits, or vegetables.

[(5) Prohibition on projects to control aquatic noxious weeds or animal pests.—A base payment or financial award under this section may not be used to carry out a project to control or eradicate aquatic noxious weeds or animal pests.

[(e) Administrative Costs.—Not more than 5 percent of the funds made available under section 8 for a fiscal year may be used by the States or the Federal Government to pay the administrative costs of the program established by this Act, including the costs of complying with Federal environmental laws.

[SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as are necessary to carry out this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Noxious Weed Control Act of 2002".

SEC. 2. DEFINITIONS.

In this Act:

(1) Noxious weed.—The term "noxious weed" has the same meaning as in the Plant Protection Act (7 U.S.C. 7702(10)).

(2) Secretary.—The term "Secretary" means the Secretary of the Interior.

(3) State.—The term "State" means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States.

(4) Indian tribe.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) Weed management entity.—The term "weed management entity" means an entity that—

(A) is recognized by the State in which it is established;

(C) is established for the purpose of controlling or eradicating harmful, invasive weeds and increasing public knowledge and education concerning the need to control or eradicate harmful, invasive weeds; and

(D) is multijurisdictional and multidisciplinary in nature.

SEC. 3. ESTABLISHMENT OF PROGRAM.

The Secretary shall establish a program to provide financial assistance through States to eligible weed management entities to control or eradicate weeds. In developing the program, the Secretary shall consult with the National Invasive Species Council, the Invasive Species Advisory Committee, representatives from States and Indian tribes with weed management entities or that have particular problems with noxious weeds, and public and private entities with experience in noxious weed management.

SEC. 4. ALLOCATION OF FUNDS TO STATES AND INDIAN TRIBES.

The Secretary shall allocate funds to States to provide funding to weed management entities to carry out projects approved by States to control or eradicate weeds on the basis of the severity or potential severity of the noxious weed problem, the extent to which the Federal funds will be used to leverage non-Federal funds, the extent to which the State has made progress in addressing noxious weed problems, and such other factors as the Secretary deems relevant. The Secretary shall provide special consideration for States with approved weed management entities established by Indian tribes, and may provide an additional allocation to a State to meet the particular needs and projects that such a weed management entity will address.

SEC. 5. ELIGIBILITY AND USE OF FUNDS.

(a) Requirements.—The Secretary shall prescribe requirements for applications by States for funding, including provisions for auditing of and reporting on the use of funds and criteria to ensure that weed management entities recognized by the States are capable of carrying out projects, monitoring and reporting on the use of funds, and are knowledgeable about and experienced in noxious weed management and represent private and public interests adversely affected by noxious weeds. Eligible activities for funding shall include—

(1) applied research to solve locally significant weed management problems and solutions, except that such research may not exceed 8 percent of the available funds in any year;

(2) incentive payments to encourage the formation of new weed management entities, except that such payments may not exceed 25 percent of the available funds in any year; and

(3) projects relating to the control or eradication of noxious weeds, including education, inventories and mapping, management, monitoring, and similar activities, including the payment of the cost of personnel and equipment that promote such control or eradication, and other activities to promote such control or eradication, if the results of the activities are disseminated to the public.

(b) Project Selection.—A State shall select projects for funding to a weed management entity on a competitive basis considering—

(1) the seriousness of the noxious weed problem or potential problem addressed by the project;

(2) the likelihood that the project will prevent or resolve the problem, or increase knowledge about resolving similar problems in the future;

(3) the extent to which the payment will leverage non-Federal funds to address the noxious weed problem addressed by the project;

(4) the extent to which the weed management entity has made progress in addressing noxious weed problems;

(5) the extent to which the project will provide a comprehensive approach to the control or eradication of noxious weeds;

(6) the extent to which the project will reduce the total population of a noxious weed;

(7) the extent to which the project uses the principles of integrated vegetation management and sound science; and

(8) such other factors that the State determines to be relevant.

(c) INFORMATION AND REPORT.—As a condition of the receipt of funding, States shall require such information from grant recipients as necessary and shall submit to the Secretary a report that describes the purposes and results of each project for which the payment or award was used, by not later than 6 months after completion of the projects.

(d) FEDERAL SHARE.—The Federal share of any project or activity approved by a State or Indian tribe under this Act may not exceed 50 percent unless the State meets criteria established by the Secretary that accommodates situations where a higher percentage is necessary to meet the needs of an underserved area or addresses a critical need that cannot be met otherwise.

SEC. 6. LIMITATIONS.

(a) LANDOWNER CONSENT; LAND UNDER CULTIVATION.—Any activity involving real property, either private or public, may be carried out under this Act only with the consent of the landowner and no project may be undertaken on property that is devoted to the cultivation of row crops, fruits, or vegetables.

(b) COMPLIANCE WITH STATE LAW.—A weed management entity may carry out a project to address the noxious weed problem in more than one State only if the entity meets the requirements of the State laws in all States in which the entity will undertake the project.

(c) USE OF FUNDS.—Funding under this Act may not be used to carry out a project—

(1) to control or eradicate animals, pests, or submerged or floating noxious aquatic weeds; or

(2) to protect an agricultural commodity (as defined in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602)) other than—

(A) livestock (as defined in section 602 of the Agricultural Trade Act of 1949 (7 U.S.C. 1471); or

(B) an animal- or insect-based product.

SEC. 7. RELATIONSHIP TO OTHER PROGRAMS.

Assistance authorized under this Act is intended to supplement, and not replace, assistance available to weed management entities, areas, and districts for control or eradication of harmful, invasive weeds on public lands and private lands, including funding available under the Pulling Together Initiative of the National Fish and Wildlife Foundation; and the provision of funds to any entity under this Act shall have no effect on the amount of any payment received by a county from the Federal Government under chapter 69 of title 31, United States Code (commonly known as the Payments in Lieu of Taxes Act).

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

To carry out this Act there is authorized to be appropriated to the Secretary $100,000,000 for each of fiscal years 2002 through 2006, of which not more than 5 percent of the funds made available for a fiscal year may be used by the Secretary for administrative costs of Federal agencies.

Mr. REID. Mr. President, Senator BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table, the committee-reported substitute, as amended, be agreed to, the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 4975) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 198), as amended, was read the third time and passed.

WILDFIRE PREVENTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 652, S. 2670.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2670) to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems of the interior West.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 2670

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Wildfire Prevention Act of 2002".

SEC. 2. FINDINGS.

Congress finds that—

(1) there is an increasing threat of wildfire to millions of acres of forest land and rangeland throughout the United States;

(2) forest land and rangeland are degraded as a direct consequence of land management practices (including practices to control and prevent wildfires and the failure to harvest subdominant trees from overstocked stands) that disrupt the occurrence of frequent low-intensity fires that have periodically removed flammable undergrowth;

(3) at least 39,000,000 acres of land of the National Forest System in the interior West are at high risk of wildfire;

(4) an average of 95 percent of the expenditures by the Forest Service for wildfire suppression during fiscal years 1990 through 1994 were made to suppress wildfires in the interior West;

(5) the number, size, and severity of wildfires in the interior West are increasing;

(6) of the timberland in National Forests in the States of Arizona and New Mexico, 59 percent of such land in Arizona, and 56 percent of such land in New Mexico, has an average diameter of 9 to 12 inches diameter at breast height;

(7) the population of the interior West grew twice as fast as the national average during the 1990s;

(8) efforts to prioritize forests and communities for wildfire risk reduction have been inconsistent and insufficient and have resulted in funding to areas that are not prone to severe wildfires;

(9) catastrophic wildfires—

(A) endanger homes and communities;

(B) damage and destroy watersheds and soils; and

(C) pose a serious threat to the habitat of threatened and endangered species;

(10) a 1994 assessment of forest health in the interior West estimated that only a 15- to 30-year window of opportunity exists for effective management intervention before damage from uncontrollable wildfire becomes widespread, with 8 years having already elapsed since the assessment;

(11) following a catastrophic wildfire, certain forests in the interior West do not return to their former grandeur;

(12) healthy forest and woodland ecosystems—

(A) reduce the risk of wildfire to forests and communities;

(B) improve wildlife habitat and biodiversity;

(C) increase tree, grass, forb, and shrub productivity;

(D) enhance watershed values;

(E) improve the environment; and

(F) provide a basis in some areas for economically and environmentally sustainable uses;

(13) sustaining the long-term ecological and economic health of interior West forests and woodland, and their dependent human communities, requires preventing severe wildfires before the wildfires occur and permitting natural, low-intensity ground fires;

(14) more natural fire regimes cannot be accomplished without the reduction of excess fuels and thinning of subdorminant trees (which fuels and trees may be of commercial value);

(15) ecologically-based forest and woodland ecosystem restoration on a landscape scale will—

(A) improve long-term community protection;

(B) minimize the need for wildfire suppression;

(C) improve resource values;

(D) reduce rehabilitation costs;

(E) reduce loss of critical habitat; and

(F) protect forests for future generations;

(16) although the National Fire Plan, and the report entitled "Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy" (65 Fed. Reg. 67480), advocate a shift in wildfire policy from suppression to prevention (including restoration and hazardous fuels reduction), Federal land managers are not dedicating sufficient attention and financial resources to restoration activities that simultaneously restore forest health and reduce the risk of severe wildfire;

(17) although landscape scale restoration is needed to effectively reverse degradation, scientific understanding of landscape scale treatments is limited;

(18) the Federal wildfire research program is funded at approximately ⅓ of the amount that is required to address emerging wildfire problems, resulting in the lack of a cohesive strategy to address the threat of catastrophic wildfires; and

(19) rigorous, understandable, and applied scientific information is needed for—

(A) the design, implementation, and adaptation of landscape scale restoration treatments and improvement of wildfire management technology;

(B) the environmental review process; and

(C) affected entities that collaborate in the development and implementation of wildfire treatment.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to enhance the capacity to develop, transfer, apply, and monitor practical science-based forest restoration treatments that will reduce the risk of severe wildfires, and improve forest and woodland health, in the interior West;

(2) to develop the practical scientific knowledge required to implement forest and woodland restoration on a landscape scale;

(3) to develop the interdisciplinary knowledge required to understand the socioeconomic and environmental impacts of wildfire control on ecosystems and landscapes;

(4) to require Federal agencies—

(A) to use ecological restoration treatments to reverse declining forest health and reduce the risk of severe wildfires across the forest landscape;

(B) to ensure that sufficient funds are dedicated to wildlife prevention activities, including restoration treatments; and

(C) to monitor and use wildfire treatments based on the use of adaptive ecosystem management;

(5) to develop, transfer, and assist land managers in treating acres with restoration-based treatments and use new management technologies (including the transfer of understandable information, assistance with environmental review, and field and classroom training and collaboration) to accomplish the goals identified in—

(A) the National Fire Plan;

(B) the report entitled "Protecting People and Sustaining Resources in Fire-Adapted Ecosystems—A Cohesive Strategy" (65 Fed. Reg. 67480); and

(C) the report entitled "10-Year Comprehensive Strategy: A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment" of the Western Governors' Association; and

(6) to provide technical assistance to collaborative efforts by affected entities to develop, implement, and monitor adaptive ecosystem management restoration treatments that are ecologically sound, economically viable, and socially responsible.

SEC. 4. DEFINITIONS.

In this Act:

(1) ADAPTIVE ECOSYSTEM MANAGEMENT.—The term "adaptive ecosystem management" means a natural resource management process under which planning, implementation, monitoring, research, evaluation, and incorporation of new knowledge are combined into a management approach that is—

(A) based on scientific findings and the needs of society; and

(B) used to modify future management methods and policy.

(2) AFFECTED ENTITIES.—The term "affected entities" includes—

(A) land managers;.

(B) stakeholders;

(C) concerned citizens; and

(D) the States of the interior West, including political subdivisions of the States.

(3) INSTITUTE.—The term "Institute" means an Institute established under section 5(a).

(4) INTERIOR WEST.—The term "interior West" means the States of Arizona, Colorado, Idaho, Nevada, New Mexico, and Utah.

(5) LAND MANAGER.—

(A) IN GENERAL.—The term "land manager" means a person or entity that practices or guides natural resource management.

(B) INCLUSIONS.—The term "land manager" includes a Federal, State, local, or tribal land management agency.

(6) RESTORATION.—The term "restoration" means a process undertaken to return an ecosystem or habitat toward—

(A) the original condition of the ecosystem or habitat; or

(B) a condition that supports a related species, natural function, or ecological process (including a low intensity fire).

(7) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(8) SECRETARIES.—The term "Secretaries" means—

(A) the Secretary of Agriculture, acting through the Chief of the Forest Service; and

(B) the Secretary of the Interior.

(9) STAKEHOLDER.—The term "stakeholder" means any person interested in or affected by management of forest or woodland ecosystems.

(10) STATES.—The term "States" means—

(A) the [State of Arizona] *State of Arizona at Northern Arizona University*;

(B) the State of New Mexico; and

(C) the State of Colorado.

SEC. 5. ESTABLISHMENT OF INSTITUTES.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, shall—

(1) not later than 180 days after the date of enactment of this Act, establish 3 Institutes to promote the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West; and

(2) provide assistance to the Institutes to promote the use of adaptive ecosystem management in accordance with paragraph (1).

(b) LOCATION.—

(1) EXISTING INSTITUTES.—The Secretary may designate an institute in existence on the date of enactment of this Act to serve as an Institute established under this Act.

(2) STATES.—Of the Institutes established under this Act, the Secretary shall establish 1 Institute in each of the States of Arizona, New Mexico, and Colorado.

(c) DUTIES.—Each Institute shall—

(1) plan, conduct, or promote research on the use of adaptive ecosystem management to reduce the risk of wildfires, and improve the health of forest and woodland ecosystems, in the interior West, including—

(A) research that assists in providing information on the use of adaptive ecosystem management practices to affected entities; and

(B) research that will be useful in the development and implementation of practical, science-based, ecological restoration treatments for forest and woodland ecosystems affected by wildfires; and

(2) provide the results of research described in paragraph (1) to affected entities.

(d) COOPERATION.—To increase and accelerate efforts to restore forest ecosystem health and abate unnatural and unwanted wildfires in the interior West, each Institute shall cooperate with—

(1) researchers at colleges and universities in the States that have a demonstrated capability to conduct research described in subsection (c); and

(2) other organizations and entities in the interior West (such as the Western Governors' Association).

(e) ANNUAL WORK PLANS.—As a condition of the receipt of funds made available under this Act, for each fiscal year, each Institute shall submit to the Secretary, for review by the Secretary, in consultation with the Secretary of the Interior, an annual work plan that includes assurances, satisfactory to the Secretaries, that the proposed work of the Institute will serve the informational needs of affected entities.

SEC. 6. COOPERATION BETWEEN INSTITUTES AND FEDERAL AGENCIES.

In carrying out this Act, the Secretary, in consultation with the Secretary of the Interior—

(1) shall ensure that adequate financial and technical assistance is provided to the Institutes to enable the Institutes to carry out the purposes of the Institutes under section 5, including prevention activities and ecological restoration for wildfires and affected ecosystems;

(2) shall use information and expertise provided by the Institutes;

(3) shall encourage Federal agencies to use, on a cooperative basis, information and expertise provided by the Institutes;

(4) shall encourage cooperation and coordination between Federal programs relating to—

(A) ecological restoration;

(B) wildfire risk reduction; and

(C) wildfire management technologies;

(5) notwithstanding chapter 63 of title 31, United States Code, may—

(A) enter into contracts, cooperative agreements, interagency personal agreements to carry out this Act; and

(B) carry out other transactions under this Act;

(6) may accept funds from other Federal agencies to supplement or fully fund grants made, and contracts entered into, by the Secretaries;

(7) may support a program of internships for qualified individuals at the undergraduate and graduate levels to carry out the educational and training objectives of this Act;

(8) shall encourage professional education and public information activities relating to the purposes of this Act; and

(9) may promulgate such regulations as the Secretaries determine are necessary to carry out this Act.

SEC. 7. MONITORING AND EVALUATION.

(a) IN GENERAL.—Not later than 5 years after the date of enactment of this Act, and every 5 years thereafter, the Secretary, in consultation with the Secretary of Interior, shall complete and submit to the appropriate committees of Congress a detailed evaluation of the programs and activities of each Institute—

(1) to ensure, to the maximum extent practicable, that the research, communication tools, and information transfer activities of each Institutes meet the needs of affected entities; and

(2) to determine whether continued provision of Federal assistance to each Institute is warranted.

(b) TERMINATION OF ASSISTANCE.—If, as a result of an evaluation under subsection (a), the Secretary, in consultation with the Secretary of the Interior, determines that an Institute does not qualify for further Federal assistance under this Act, the Institute shall receive no further Federal assistance under this Act until such time as the qualifications of the Institute are reestablished to the satisfaction of the Secretaries.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $15,000,000 for each fiscal year.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported amendment be agreed and the motion to reconsider be laid on the table. Senator BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table; that the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table; that there be no intervening action or debate, and any statements related thereto be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The committee amendment was agreed to.

The amendment (No. 4976) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The bill (S. 2670), as amended, was read the third time and passed.

CAPE FOX LAND ENTITLEMENT ADJUSTMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 599, S. 2222.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2222) to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

S. 2222

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. FINDINGS.

[Congress finds and declares that:

[(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act, as amended, (ANCSA) (43 U.S.C. 1601, et seq.) for the Native Village of Saxman.

[(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

[(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

[(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(l) of ANCSA.

[(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

[(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA.

[(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

[(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of split estate between national forest surface and Sealaska subsurface lands.

[(9) There is an additional need to resolve existing areas of Sealaska/Tongass National Forest split estate.

[(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve certain Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

[(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

[SEC. 2. SHORT TITLE.

[This Act may be cited as the "Cape Fox Land Entitlement Adjustment Act of 2002".

[SEC. 3. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN NON-PRODUCTIVE LANDS.

[Notwithstanding the provisions of section 16(b) of ANCSA, Cape Fox Corporation (Cape Fox) shall not be required to select or receive conveyance of approximately 160 nonproductive acres, more particularly described as within the following described lands:

[T. 75 S., R. 91 E., C.R.M., section 1.

[SEC. 4. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

[(a) In addition to lands made available for selection under ANCSA and [notwithstanding any other provision of law, within 24 months after the date of enactment of this Act, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

[T. 73 S., R. 90 E., C.R.M.

[Section 33: SW portion of SE¼: 38 acres.

[Section 33: NW portion of SE¼: 13 acres.

[Section 33: SE¼ of SE¼: 40 acres.

[Section 33: SE¼ of SW¼: 8 acres.

[(b) Upon conveyance to Cape Fox of the surface estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska Corporation (Sealaska) the subsurface estate to said lands.

[(c) The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

[SEC. 5. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

[(a) The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the Federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c).

[(b) The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled "Proposed Kensington Project Land Exchange", dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. The Secretary of Agriculture shall exclude from the lands offered all land from the mean high tide mark to a point five hundred feet inland of all marine shorelands in and adjacent to the waters of Berners Bay; Provided, said exclusion shall not include any lands in the Slate Creek Cove area within T. 36 S., R 62 E., C.R.M., section 1, W½ W½ or section 2, E½ E½.

[(c) Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify for exchange lands that the Secretary of Agriculture agrees are equal in value to the Federal exchange lands described in subsection (b). The lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 3,000 acres and designated as parcels A–1 to A–3, B–1 to B–3, and C upon a map entitled "Cape Fox Corporation ANCSA Lands Exchange Proposal", dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent national forest lands and in reasonably compact tracts. Cape Fox shall notify the Secretaries of Agriculture and the Interior and Sealaska in writing which lands and interests therein Cape Fox has identified for exchange. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise.

[(d) The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

[(e) The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to Cape Fox agreement and conveyance to the United States of all its right, title and interest in the Cape Fox lands included in the exchange, the Secretary of Agriculture shall complete the exchange. Subject only to said agreement and conveyance, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the Federal lands included in the exchange within 180 days after the date of enactment of this Act.

[SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

[(a) Upon conveyance by Cape Fox of all its right, title and interest in the Cape Fox lands included in the exchange under section 5 and conveyance and relinquishment by Sealaska Corporation of all its right, title and interest in the lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the Federal lands identified for exchange under subsection (b). Subject only to said Cape Fox and Sealaska conveyances and relinquishment, the Secretary of the Interior shall complete the interim conveyance to Sealaska of the Federal lands identified for exchange within 180 days after the date of enactment of this Act.

[(b) The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled "Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area," dated April, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska. Sealaska shall be entitled, within 60 days after receiving notice of the identification of Cape Fox exchange lands under section 5(c), to identify for exchange to Sealaska lands that the Secretary of Agriculture agrees are equal in value to the Sealaska exchange lands described in subsection (c). Lands identified for exchange to Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 5(b). Sealaska shall notify Cape Fox and the Secretaries of Agriculture and the Interior in writing which lands Sealaska has identified for exchange. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands identified, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

[(c) The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to an additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2, and 3 lands set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

[(d) The exchange under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102–415 (October 14, 1992).

[SEC. 7. MISCELLANEOUS PROVISIONS.

[(a) For the exchanges described in this Act, estimates of value for exchange purposes shall be completed from available information, and detailed appraisals of the exchange lands or additional resource inventories shall not be required.

[(b) Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this Act shall be considered, for all purposes, land conveyed pursuant to ANCSA in partial fulfillment of, respectively, the entitlement of Cape Fox or Sealaska. The exchanges described in this Act shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States under this Act shall become and be administered as part of the Tongass National Forest.

[(c) Lands conveyed to or selected by the State of Alaska under Public Law 85–508 (72 Stat. 339, 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

[(d) The maps referred to in this Act shall be maintained on file in the Forest Service Region 10 regional office in Juneau, Alaska. The acreage cited in this section is approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

[SEC. 8. AUTHORIZATION OF APPROPRIATION.

[There is authorized to be appropriated to the Secretary of the Department of Agriculture such sums as may be necessary for any required surveys, value estimation and related costs of exchanging lands specified in this Act, and for habitat and timber stand improvement, including thinning and pruning, on lands acquired by the Department of Agriculture under this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Cape Fox Land Entitlement Adjustment Act of 2002".

SEC. 2. FINDINGS.

Congress finds that:

(1) Cape Fox Corporation (Cape Fox) is an Alaska Native Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (ANCSA) (43 U.S.C. 1601 et seq.) for the Native Village of Saxman.

(2) As with other ANCSA village corporations in Southeast Alaska, Cape Fox was limited to selecting 23,040 acres under section 16 of ANCSA.

(3) Except for Cape Fox, all other Southeast Alaska ANCSA village corporations were restricted from selecting within two miles of a home rule city.

(4) To protect the watersheds in the vicinity of Ketchikan, Cape Fox was restricted from selecting lands within six miles from the boundary of the home rule City of Ketchikan under section 22(1) of ANCSA (43 U.S.C. 1621(1)).

(5) The six mile restriction damaged Cape Fox by precluding the corporation from selecting valuable timber lands, industrial sites, and other commercial property, not only in its core township but in surrounding lands far removed from Ketchikan and its watershed.

(6) As a result of the six mile restriction, only the remote mountainous northeast corner of Cape Fox's core township, which is nonproductive and of no known economic value, was available for selection by the corporation. Selection of this parcel was, however, mandated by section 16(b) of ANCSA (43 U.S.C. 1615(b)).

(7) Cape Fox's land selections were further limited by the fact that the Annette Island Indian Reservation is within its selection area, and those lands were unavailable for ANCSA selection. Cape Fox is the only ANCSA village corporation affected by this restriction.

(8) Adjustment of Cape Fox's selections and conveyances of land under ANCSA requires adjustment of Sealaska Corporation's (Sealaska) selections and conveyances to avoid creation of additional split estate between National Forest System surface lands and Sealaska subsurface lands.

(9) There is an additional need to resolve existing areas of Sealaska/Tongass split estate, in which Sealaska holds title or conveyance rights to several thousand acres of subsurface lands that encumber management of Tongass National Forest surface lands.

(10) The Tongass National Forest lands identified in this Act for selection by and conveyance to Cape Fox and Sealaska, subject to valid existing rights, provide a means to resolve some of the Cape Fox and Sealaska ANCSA land entitlement issues without significantly affecting Tongass National Forest resources, uses or values.

(11) Adjustment of Cape Fox's selections and conveyances of land under ANCSA through the provisions of this Act, and the related adjustment of Sealaska's selections and conveyances hereunder, are in accordance with the purposes of ANCSA and otherwise in the public interest.

SEC. 3. WAIVER OF CORE TOWNSHIP REQUIREMENT FOR CERTAIN LANDS.

Notwithstanding the provisions of section 16(b) of ANCSA (43 U.S.C. 1615(b)), Cape Fox shall not be required to select or receive conveyance of approximately 160 acres of federal unconveyed lands within Section 1, T. 75 S., R. 91 E., C.R.M.

SEC. 4. SELECTION OUTSIDE EXTERIOR SELECTION BOUNDARY.

(a) Selection and Conveyance of Surface Estate.—In addition to lands made available for selection under ANCSA, within 24 months after the date of enactment of this Act, Cape Fox may select, and, upon receiving written notice of such selection, the Secretary of the Interior shall convey approximately 99 acres of the surface estate of Tongass National Forest lands outside Cape Fox's current exterior selection boundary, specifically that parcel described as follows:

(1) T. 73 S., R. 90 E., C.R.M.

(2) Section 33: SW portion of SE ¼: 38 acres.

(3) Section 33: NW portion of SE ¼: 13 acres.

(4) Section 33: SE ¼ of SE ¼: 40 acres.

(5) Section 33: SE ¼ of SW ¼: 8 acres.

(b) Conveyance of Subsurface Estate.—Upon conveyance to Cape Fox of the surface estate to the lands identified in subsection (a), the Secretary of the Interior shall convey to Sealaska the subsurface estate to the lands.

(c) Timing.—The Secretary of the Interior shall complete the interim conveyances to Cape Fox and Sealaska under this section within 180 days after the Secretary of the Interior receives notice of the Cape Fox selection under subsection (a).

SEC. 5. EXCHANGE OF LANDS BETWEEN CAPE FOX AND THE TONGASS NATIONAL FOREST.

(a) General.—The Secretary of Agriculture shall offer, and if accepted by Cape Fox, shall exchange the federal lands described in subsection (b) for lands and interests therein identified by Cape Fox under subsection (c) and, to the extent necessary, lands and interests therein identified under subsection (d).

(b) Lands To Be Exchanged to Cape Fox.—The lands to be offered for exchange by the Secretary of Agriculture are Tongass National Forest lands comprising approximately 2,663.9 acres in T. 36 S., R. 62 E., C.R.M. and T. 35 S., R. 62 E., C.R.M., as designated upon a map entitled "Proposed Kensington Project Land Exchange," dated March 18, 2002, and available for inspection in the Forest Service Region 10 regional office in Juneau, Alaska.

(c) Lands To Be Exchanged to the United States.—Cape Fox shall be entitled, within 60 days after the date of enactment of this Act, to identify in writing to the Secretaries of Agriculture and the Interior the lands and interests in lands that Cape Fox proposes to exchange for the federal lands described in subsection (b). The lands and interests in lands shall be identified from lands previously conveyed to Cape Fox comprising approximately 2,900 acres and designated as parcels A–1 to A–3, B–1 to B–3, and C upon a map entitled "Cape Fox Corporation ANCSA Land Exchange Proposal," dated March 15, 2002, and available for inspection in the Forest Service Region 10 regional office in

Juneau, Alaska. Lands identified for exchange within each parcel shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts. The lands identified for exchange shall include a public trail easement designated as D on said map, unless the Secretary of Agriculture agrees otherwise. The value of the easement shall be included in determining the total value of lands exchanged to the United States.

(d) VALUATION OF EXCHANGE LANDS.—The Secretary of Agriculture shall determine whether the lands identified by Cape Fox under subsection (c) are equal in value to the lands described in subsection (b). If the lands identified under subsection (c) are determined to have insufficient value to equal the value of the lands described in subsection (b), Cape Fox and the Secretary shall mutually identify additional Cape Fox lands for exchange sufficient to equalize the value of lands conveyed to Cape Fox. Such land shall be contiguous to adjacent National Forest System lands and in reasonably compact tracts.

(e) CONDITIONS.—The offer and conveyance of Federal lands to Cape Fox in the exchange shall, notwithstanding section 14(f) of ANCSA, be of the surface and subsurface estate, but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(f) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after the date of enactment of this Act, to enter into an agreement with Cape Fox to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to conveyance from Cape Fox to the United States of all its rights, title and interests in the Cape Fox lands included in the exchange consistent with this Act, the Secretary of the Interior shall complete the interim conveyance to Cape Fox of the federal lands included in the exchange within 180 days after the execution of the exchange agreement by Cape Fox and the Secretary of Agriculture.

SEC. 6. EXCHANGE OF LANDS BETWEEN SEALASKA AND THE TONGASS NATIONAL FOREST.

(a) GENERAL.—Upon conveyance of the Cape Fox lands included in the exchange under section 5 and conveyance and relinquishment by Sealaska in accordance with this Act of the lands and interests in lands described in subsection (c), the Secretary of the Interior shall convey to Sealaska the federal lands identified for exchange under subsection (b).

(b) LANDS TO BE EXCHANGED TO SEALASKA.—The lands to be exchanged to Sealaska are to be selected by Sealaska from Tongass National Forest lands comprising approximately 9,329 acres in T. 36 S., R. 62 E., C.R.M., T. 35 S., R. 62 E., C.R.M., and T. 34 S., Range 62 E., C.R.M., as designated upon a map entitled "Proposed Sealaska Corporation Land Exchange Kensington Lands Selection Area," dated April 2002 and available for inspection in the Forest Service Region 10 Regional Office in Juneau, Alaska. Within 60 days after receiving notice of the identification by Cape Fox of the exchange lands under Section 5(c), Sealaska shall be entitled to identify in writing to the Secretaries of Agriculture and the Interior the lands that Sealaska selects to receive in exchange for the Sealaska lands described in subsection (c). Lands selected by Sealaska shall be in no more than two contiguous and reasonably compact tracts that adjoin the lands described for exchange to Cape Fox in section 5(b). The Secretary of Agriculture shall determine whether these selected lands are equal in value to the lands described in subsection (c) and may adjust the amount of selected lands in order to reach agreement with Sealaska regarding equal value. The exchange conveyance to Sealaska shall be of the surface and subsurface estate in the lands selected and agreed to by the Secretary but subject to valid existing rights and all other provisions of section 14(g) of ANCSA.

(c) LANDS TO BE EXCHANGED TO THE UNITED STATES.—The lands and interests therein to be exchanged by Sealaska are the subsurface estate underlying the Cape Fox exchange lands described in section 5(c), an additional approximately 2,506 acres of the subsurface estate underlying Tongass National Forest surface estate, described in Interim Conveyance No. 1673, and rights to be additional approximately 2,698 acres of subsurface estate of Tongass National Forest lands remaining to be conveyed to Sealaska from Group 1, 2 and 3 lands as set forth in the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement of November 26, 1991, at Schedule B, as modified on January 20, 1995.

(d) TIMING.—The Secretary of Agriculture shall attempt, within 90 days after receipt of the selection of lands by Sealaska under subsection (b), to enter into an agreement with Sealaska to consummate the exchange consistent with this Act. The lands identified in the exchange agreement shall be exchanged by conveyance at the earliest possible date after the exchange agreement is signed. Subject only to the Cape Fox and Sealaska conveyances and relinquishments described in subsection (a), the Secretary of the Interior shall complete the interim conveyance to Sealaska of the federal lands selected for exchange within 180 days after execution of the agreement by Sealaska and the Secretary of Agriculture.

(e) MODIFICATION OF AGREEMENT.—The executed exchange agreement under this section shall be considered a further modification of the Sealaska Corporation/United States Forest Service Split Estate Exchange Agreement, as ratified in section 17 of Public Law 102–415 (October 14, 1992).

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) EQUAL VALUE REQUIREMENT.—The exchanges described in this Act shall be of equal value. Cape Fox and Sealaska shall have the opportunity to present to the Secretary of Agriculture estimates of value of exchange lands with supporting information.

(b) TITLE.—Cape Fox and Sealaska shall convey and provide evidence of title satisfactory to the Secretary of Agriculture for their respective lands to be exchanged to the United States under this Act, subject only to exceptions, reservations and encumbrances in the interim conveyance or patent from the United States or otherwise acceptable to the Secretary of Agriculture.

(c) HAZARDOUS SUBSTANCES.—Cape Fox, Sealaska, and the United States each shall not be subject to liability for the presence of any hazardous substance in land or interests in land solely as a result of any conveyance or transfer of the land or interests under this Act.

(d) EFFECT ON ANCSA SELECTIONS.—Any conveyance of federal surface or subsurface lands to Cape Fox or Sealaska under this Act shall be considered, for all purposes, land conveyed pursuant to ANCSA. Nothing in this Act shall be construed to change the total acreage of land entitlement of Cape Fox or Sealaska under ANCSA. Cape Fox and Sealaska shall remain charged for any lands they exchange under this Act and any lands conveyed pursuant to section 4, but shall not be charged for any lands received under section 5 or section 6. The exchanges described in this Act shall be considered, for all purposes, actions which lead to the issuance of conveyances to Native Corporations pursuant to ANCSA. Lands or interests therein transferred to the United States under this Act shall become and be administered as part of the Tongass National Forest.

(e) EFFECT ON STATEHOOD SELECTIONS.—Lands conveyed to or selected by the State of Alaska under the Alaska Statehood Act (Public Law 85-508; 72 Stat. 339; 48 U.S.C. note prec. 21) shall not be eligible for selection or conveyance under this Act without the consent of the State of Alaska.

(f) MAPS.—The maps referred to in this Act shall be maintained on file in the Forest Service Region 10 Regional Office in Juneau, Alaska. The acreages cited in this Act are approximate, and if there is any discrepancy between cited acreage and the land depicted on the specified maps, the maps shall control. The maps do not constitute an attempt by the United States to convey State or private land.

(g) EASEMENTS.—Notwithstanding section 17(b) of ANCSA, federal lands conveyed to Cape Fox or Sealaska pursuant to this Act shall be subject only to the reservation of public easements mutually agreed to and set forth in the exchange agreements executed under this Act. The easements shall include easements necessary for access across the lands conveyed under this Act for use of national forest or other public lands.

(h) OLD GROWTH RESERVES.—The Secretary of Agriculture shall add an equal number of acres to old growth reserves on the Tongass National Forest as are transferred out of Federal ownership as a result of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF AGRICULTURE.—There are authorized to be appropriated to the Secretary of Agriculture such sums as may be necessary for value estimation and related costs of exchanging lands specified in this Act, and for road rehabilitation, habitat and timber stand improvement, including thinning and pruning, on lands acquired by the United States under this Act.

(b) DEPARTMENT OF THE INTERIOR.—There are authorized to be appropriated to the Secretary of the Interior such sums as may be necessary for land surveys and conveyances pursuant to this Act.

Mr. REID. Mr. President, I understand Senator BINGAMAN has a substitute amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table; that the committee-reported substitute, as amended, be agreed to, the motion to reconsider be laid on the table, that the bill, as amended, be read three times and passed, the motion to reconsider be laid on the table; that there be no intervening action or debate, and that any statements related thereto be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 4977) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 2222), as amended, was read the third time and passed.

FREMONT-MADISON CONVEYANCE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed

to the consideration of Calendar No. 645, S. 2556.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2556) to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Energy and Natural Resources, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in Italic.]

S. 2556

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Fremont-Madison Conveyance Act".

[SEC. 2. DEFINITIONS.

[In this Act:

[(1) AGREEMENT.—The term "Agreement" means the memorandum of agreement between the Secretary and the District identified as Contract No. 1425–01–MA–10–3310, and dated September 13, 2001.

[(2) DISTRICT.—The term "District" means the Fremont-Madison Irrigation District, an irrigation district organized under State law.

[(3) FACILITY.—The term "facility" means—

[(A) the Cross Cut Diversion Dam, the Cross Cut Canal, and the Teton Exchange Wells in the State;

[(B) any canal, lateral, drain, or other component of the water distribution and drainage system that, on the date of enactment of this Act, is operated or maintained by the District to deliver water to and drainage of water from land within the boundaries of the District; and

[(C) with respect to the Teton Exchange Wells—

[(i) Idaho Department of Water Resources permit number 22–7022, including drilled wells under the permit, as described in the Agreement; and

[(ii) any appurtenant equipment.

[(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

[(5) STATE.—The term "State" means the State of Idaho.

[SEC. 3. CONVEYANCE OF FACILITIES.

[(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, but not later than September 13, 2003, subject to applicable laws and in accordance with the Agreement, the Secretary shall convey to the District all right, title, and interest of the United States in and to the facilities.

[(b) CONSIDERATION.—

[(1) IN GENERAL.—In exchange for the conveyance of the facilities under subsection (a), the District shall pay to the Secretary an amount equal to the lesser of—

[(A) the net value of any remaining obligations owed to the United States by the District with respect to the facilities conveyed, as determined on the date of the conveyance; or

[(B) $280,000.

[(2) ADMINISTRATIVE COSTS.—

[(A) IN GENERAL.—In addition to amounts paid to the Secretary under paragraph (1), the District shall pay to the Secretary, subject to subparagraph (B), any administrative costs incurred by the Secretary in conveying the facilities, including the costs of carrying out a review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[(B) LIMITATION.—The District shall pay to the Secretary not more than $40,000 in administrative costs under subparagraph (A).

[(3) DEPOSIT.—Amounts received by the Secretary under paragraph (1) or (2) shall be deposited in the reclamation fund established under the first section of the Act of June 17, 1902 (43 U.S.C. 391).

[(c) CONDITION.—As a condition of the conveyance under subsection (a), the Secretary shall, not later than the date on which the facilities are conveyed, comply with any applicable requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

[SEC. 4. LIABILITY.

[(a) IN GENERAL.—Beginning on the date on which the facilities are conveyed under section 3(a), the United States shall not be liable, except as provided in subsection (b), under any Federal or State law for damage from any act, omission, or occurrence relating to the facilities.

[(b) EXCEPTION.—Notwithstanding subsection (a), the United States shall be liable for damage caused by acts of negligence committed by the United States or by an employee, agent, or contractor of the United States, before the date on which the facilities are conveyed under section 3(a).

[(c) FEDERAL TORT CLAIMS.—Nothing in this section increases the liability of the United States beyond that provided in chapter 171 of title 28, United States Code (commonly known as the "Federal Tort Claims Act") as in effect on the date of enactment of this Act.

[SEC. 5. WATER SUPPLY TO DISTRICT LAND.

[(a) IN GENERAL.—The Secretary shall increase, by a quantity equal to the number of acres that are in the District on the date of enactment of this Act, the number of acres in the District that are eligible to receive water from the Minidoka Project and the Teton Basin Project.

[(b) EXTENSION OF WATER SERVICE CONTRACT.—The water service contract between the Secretary and the District, numbered 7–07–10–W0179, and dated September 16, 1977, is extended until the date on which the conditions of this Act are fulfilled, as determined by the Secretary.

[(c) EFFECT.—This section does not authorize the use of any additional water from a project carried out under Federal reclamation law (the Act of June 17, 1902 (32 Stat. 388, chapter 1093), and Acts supplemental to and amendatory of that Act (43 U.S.C. 371 et seq.)) beyond that which is authorized on the date of enactment of this Act under—

[(1) water storage contracts; and

[(2) State water law.

[SEC. 6. EFFECT.

[Except as specifically provided in this Act, nothing in this Act affects—

[(1) the rights of any person with respect to the facilities; or

[(2) any contract executed by the United States or under State law with respect to any right of an irrigation district to use water made available by the facilities conveyed under this Act.

[SEC. 7. REPORT.

[If the Secretary has not conveyed the facilities to the District by the date that is 1 year after the date of enactment of this Act, the Secretary shall, not later than that date, submit to Congress a report that—

[(1) explains the reasons why the conveyance has not been completed; and

[(2) specifies the date by which the conveyance is proposed to be completed.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fremont-Madison Conveyance Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) DISTRICT.—The term "District" means the Fremont-Madison Irrigation District, an irrigation district organized under the law of the State of Idaho.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 3. CONVEYANCE OF FACILITIES.

(a) CONVEYANCE REQUIREMENT.—The Secretary of the Interior shall convey to the Fremont-Madison Irrigation District, Idaho, pursuant to the terms of the memorandum of agreement (MOA) between the District and the Secretary (Contract No. 1425–0901–09MA–0910–093310), all right, title, and interest of the United States in and to the canals, laterals, drains, and other components of the water distribution and drainage system that is operated or maintained by the District for delivery of water to and drainage of water from lands within the boundaries of the District as they exist upon the date of enactment of this Act, consistent with section 8.

(b) REPORT.—If the Secretary has not completed any conveyance required under this Act by September 13, 2003, the Secretary shall, by no later than that date, submit a report to the Congress explaining the reasons that conveyance has not been completed and stating the date by which the conveyance will be completed.

SEC. 4. COSTS.

(a) IN GENERAL.—The Secretary shall require, as a condition of the conveyance under section 3, that the District pay the administrative costs of the conveyance and related activities, including the costs of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as described in Contract No. 1425–0901–09MA–0910–093310.

(b) VALUE OF FACILITIES TO BE TRANSFERRED.—In addition to subsection (a) the Secretary shall also require, as a condition of the conveyance under section 2, that the District pay to the United States the lesser of the net present value of the remaining obligations owed by the District to the United States with respect to the facilities conveyed, or $280,000. Amounts received by the United States under this subsection shall be deposited into the Reclamation Fund.

SEC. 5. TETON EXCHANGE WELLS.

(a) CONTRACTS AND PERMIT.—In conveying the Teton Exchange Wells referenced in section 3, the Secretary shall also convey to the District—

(1) Idaho Department of Water Resources permit number 22–097022, including drilled wells under the permit, as described in Contract No. 1425–0901–09MA–0910–093310; and

(2) all equipment appurtenant to such wells.

(b) EXTENSION OF WATER SERVICE CONTRACT.—The water service contract between the Secretary and the District (Contract No. 7–0907–0910–09W0179, dated September 16, 1977) is hereby extended and shall continue in full force and effect until all conditions described in this Act are fulfilled.

SEC. 6. ENVIRONMENTAL REVIEW

Prior to conveyance the Secretary shall complete all environmental reviews and analyses as set forth in the MOA.

SEC. 7. LIABILITY.

Effective on the date of the conveyance the United States shall not be liable for damages of *any kind arising out of any act, omission, or occurrence relating to the conveyed facilities, except for damages caused by acts of negligence committed by the United States or by its employees, agents, or contractors prior to the date of conveyance. Nothing in this section may increase the liability of the United States beyond that currently provided in chapter 171 of title 28, United States Code.*

SEC. 8. WATER SUPPLY TO DISTRICT LANDS.

The acreage within the District eligible to receive water from the Minidoka Project and the Teton Basin Projects is increased to reflect the number of acres within the District as of the date of enactment of this Act, including lands annexed into the District prior to enactment of this Act as contemplated by the Teton Basin Project. The increase in acreage does not alter deliveries authorized under their existing water storage contracts and as allowed by State water law.

SEC. 9. DROUGHT MANAGEMENT PLANNING.

Within 60 days of enactment of this Act, in collaboration with stakeholders in the Henry's Fork watershed, the Secretary shall initiate a drought management planning process to address all water uses, including irrigation and the wild trout fisherey, in the Henry's Fork watershed. Within 18 months of enactment of this Act, the Secretary shall report to Congress with a final drought management plan.

SEC. 10. EFFECT.

(a) IN GENERAL.—Except as provided in this Act, nothing in this Act affects—

(1) the rights of any person; or

(2) any right in existence on the date of enactment of this Act of the Shoshone-Bannock Tribes of the Fort Hall Reservation to water based on a treaty, compact, executive order, agreement, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the "Winters Doctrine"), or law.

(b) CONVEYANCES.—Any conveyance under this Act shall not affect or abrogate any provision of any contract executed by the United States or State law regarding any irrigation district's right to use water developed in the facilities conveyed.

Mrs. FEINSTEIN. Mr. President, I rise today in support of legislation to authorize the Secretary of the Interior and other Federal agency heads to carry out activities during fiscal years 2003 through 2005 to implement the Calfed Bay-Delta Program. This program is of tremendous importance to my home State of California. Its mission is to develop and implement a long-term comprehensive plan that will improve water management for the Bay-Delta and restore its ecological health. The program has several goals: improving water supply reliability, including additional water storage and conveyance; protecting drinking water quality; restoring ecological health; and protecting Delta levees.

Mr. President, on August 28, 2000, the Federal Government and the State of California entered into a Record of Decision (ROD) which selects a preferred program alternative for the Calfed Bay-Delta Program, setting forth the overall direction of this program. Under the ROD, the Calfed agencies (comprised of both Federal and State agencies) will proceed with the specific actions in Stage 1, which covers the first 7 years of this program. This legislation authorizes those Stage 1 actions which are to take place in fiscal years 2003 through 2005 for which there are appropriations. A fundamental tenet of this program is that all program elements proceed in a balanced manner. The Record of Decision explicitly requires balance in carrying out the program.

While the provision that the Senate is considering today is scaled back from the bills that I have previously introduced on this matter, the intent of the legislation is the same: to provide that the Calfed Program be carried out in a balanced manner consistent with the Record of Decision of August 28, 2000, including the principles and schedules stated therein, and other applicable law. I want to clarify that this provision in no way affects or modifies any other authority that an agency has to carry out activities related to, or in furtherance of, the Calfed Program.

Finally, this legislation would provide authority to the Secretary of the Interior and the other Federal agency heads identified in the ROD to participate in the Calfed Bay-Delta Authority established by the California Bay-Delta Authority Act, to the extent not inconsistent with other law.

Mr. President, early next Congress, Senator KYL and I plan to introduce additional Calfed authorizing legislation on which we have collaborated that would provide greater specificity. I thank Senator KYL for his willingness to work with me on this important matter.

Mr. President, I am pleased that the Senate is favorably considering this legislation today. The Calfed Bay-Delta Program enjoys broad-based support in California and is vital to the future of the State.

Mrs. BOXER. Mr. President, I am pleased today that the Senate is passing legislation to authorize the Secretary of the Interior and other Federal agency heads to participate in the implementation of the CALFED Bay-Delta Program.

For decades, water allocation in California was conducted through endless appeals, lawsuits, and divisive ballot initiatives. Such battles were painful and they prevented us from finding real solutions to our state's very real water problems. In 1994, a new state-federal partnership program called CALFED promised a better way. Through a plan to provide reliable, clean water to farms, businesses, and millions of Californians while at the same time restoring our fish, wildlife and environment, CALFED was committed to identifying a solution that all water users could share.

Over the years, what has made CALFED work is that it employs a consensus approach that balances the needs of the various interests competing for California's scarce water resources. This balance is most clearly articulated in the Record of Decision (ROD) that was agreed to on August 28, 2000 by the Federal Government and the State of California. The CALFED ROD outlines clearly the CALFED Bay-Delta Programs' goals and repeatedly reiterates the need to move forward with these goals in a balanced manner.

This legislation authorizes the federal agencies to undertake the actions and activities identified in the ROD. It is our intent that all activities are to be implemented in a manner consistent with the ROD. This legislation is not intended to authorize activities, such as major construction projects, that would otherwise require completion of feasibility studies, permits under section 404(a) of the Clean Water Act and other applicable laws, and project-specific authorizations. In addition, the legislation requires that federal participation in the CALFED Bay-Delta Program proceed in a way that is consistent with other laws.

I want to particularly thank my colleague, Senator FEINSTEIN, for her continued leadership on this legislation. This bill will help insure that the CALFED Bay-Delta Program continues to play a vital role in meeting California's water needs.

AMENDMENT NO. 4978

Mr. REID. Senator BINGAMAN has a substitute at the desk. I ask unanimous consent that the amendment be agreed to, the motion to reconsider be laid upon the table, the committee-reported substitute, as amended, be agreed to, and the motion to reconsider be laid upon the table, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon table, with no intervening action or debate, and that any statements relating to this matter be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendment (No. 4978) was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in he nature of a substitute, as amended, was agreed to.

The bill (S. 2556), as amended, was read the third time and passed, as follows:

(The bill will be printed in a future edition of the RECORD.)

CONVEYANCE OF CERTAIN PUBLIC LANDS IN THE STATE OF ALASKA TO THE UNIVERSITY OF ALASKA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 640, S. 1816.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 1816) to provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 1816) was read the third time and passed, as follows:

S. 1816

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) the University of Alaska is the successor to and the beneficiary of all Federal grants and conveyances to or for the Alaska Agricultural College and School of Mines;

(2) under the Acts of March 4, 1915, 38 Stat. 1214, and January 21, 1929, 45 Stat. 1091, the United States granted to the Territory of Alaska certain Federal lands for the University of Alaska;

(3) the Territory did not receive most of the land intended to be conveyed by the Act of March 4, 1915, before repeal of that Act by section 6(k) of the Alaska Statehood Act (Public Law 85–508, 72 Stat. 339);

(4) only one other State land grant college in the United States has obtained a smaller land grant from the Federal Government than has the University of Alaska, and all land grant colleges in the western States of the United States have obtained substantially larger land grants than has the University of Alaska;

(5) an academically strong and financially secure state university system is a cornerstone to the long-term development of a stable population and to a healthy, diverse economy and is in the national interest;

(6) the Federal Government now desires to acquire certain lands for addendum to various conservation units;

(7) the national interest is served by transferring certain Federal lands to the University of Alaska which will be able to use and develop the resources of such lands and by returning certain lands held by the University of Alaska located within certain Federal conservation system units to Federal ownership; and

(8) the University of Alaska holds valid legal title to and is responsible for management of lands transferred by the United States to the Territory and State of Alaska for the University and an exchange of lands for lands that are capable of producing revenues to support the education objectives of the original grants is consistent with and in furtherance of the purposes and terms of, and thus not in violation of, the Federal grant of such lands.

(b) PURPOSES.—The purposes of this Act are—

(1) to fulfill the original commitment of Congress to establish the University of Alaska as a land grant university with holdings sufficient to facilitate operation and maintenance of a university system for the inhabitants of the State of Alaska; and

(2) to acquire from the University of Alaska lands it holds within Federal parks, wildlife refuges, and wilderness areas to further the purposes for which those areas were established.

SEC. 2. LAND GRANT.

(a) Notwithstanding any other provision of law and subject to valid existing rights, the University of Alaska ("University") is entitled to select up to 250,000 acres of Federal lands or interests in lands in or adjacent to Alaska as a land grant. The Secretary of the Interior ("Secretary") shall promptly convey to the University the Federal lands selected and approved in accordance with the provisions of this Act.

(b)(1) Within forty-eight (48) months of the enactment of this Act, the University of Alaska may submit to the Secretary a description of lands or interests in lands for conveyance. The initial selection may be less than or exceed 250,000 acres and the University may add or delete lands or interests in lands, or until 250,000 patented acres have been conveyed pursuant to this Act, except that the total of land selected and conveyed shall not exceed 275,000 areas at any time.

(2) The University may select lands validly selected but not conveyed to the State of Alaska or to a Native Corporation organized pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), except that these lands or interests in lands may not be approved or convey to the University unless the State of Alaska or the Native Corporation relinquishes its selection in writing.

(3) The University may not make selections within a conversation system unit, as defined in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101), or in the Tongass National Forest except within lands classified as LUD III or LUD IV by the United States Forest Service and limited to areas of second growth timber where timber harvest occurred after January 1, 1952.

(4) The University may make selections within the National Petroleum Reserve—Alaska ("NPRA"), except that—

(A) no selection may be made within an area withdrawn for village selection pursuant to section 11(a) of the Alaska Native Claims Settlement Act for the Native villages of Atkasook, Barrow, Nuiqsit and Wainwright;

(B) no selection may be made in the Teshekpuk Lake Special Management Area as depicted on a map that is included in the final environmental impact statement for the Northeast NPRA dated October 7, 1998; and

(C) No selections may be made within those portions of NPRA north of latitude 69 degrees North in excess of 92,000 acres and no selection may be made within such area during the two year period extending from the date of enactment of this Act. The Secretary shall attempt to conclude an agreement with the University of Alaska and the State of Alaska providing for sharing NPRA leasing revenues within the two year period. If the Secretary concludes such an agreement, the Secretary shall transmit it to the Congress, and no selection may be made within such area during the three year period extending from the date of enactment of this Act. If legislation has not been enacted within three years of the date of enactment of this Act approving the agreement, the University of Alaska may make selections within such area. An agreement shall provide for the University of Alaska to receive a portion of annual revenues from mineral leases within NPRA in lieu of any lands selections within NPRA north of latitude 69 degrees North, but not to exceed ten percent of such revenues or $9 million annually, whichever is less.

(5) Within forty-five (45) days of receipt of a selection, the Secretary shall publish notice of the selection in the Federal Register. The notice shall identify the lands or interest in lands included in the selection and provide for a period for public comment not to exceed sixty (60) days.

(6) Within six months of the receipt of such a selection, the Secretary shall accept or reject the selection and shall promptly notify the University of his decision, including the reasons for any rejection. A selection that is not rejected within six months of notification to the Secretary is deemed approved.

(7) The Secretary may reject a selection if the Secretary finds that the selection would have a significant adverse impact on the ability of the Secretary to comply with the land entitlement provisions of the Alaska Statehood Act or the Alaska Native Claims Settlement Act (43 U.S.C. 1601) or if the Secretary finds that the selection would have a direct, significant and irreversible adverse effect on a conservation system unit as defined in the Alaska National Interest Conservation Act.

(8) The Secretary shall promptly publish notice of an acceptance or rejection of a selection in the Federal Register.

(9) An action taken pursuant to this Act is not a major Federal action within the meaning of section 102(2)(C) of Public Law 91–190 (83 Stat. 852, 853).

(c) The University may not select Federal lands or interests in lands reserved for military purposes or reserved for the administration of a Federal agency, unless the Secretary of Defense or the head of the affected agency agrees to relinquish the lands or interest in lands.

(d) The University may select additional lands or interest in lands to replace lands rejected by the Secretary.

(e) Lands or interests in lands shall be segregated and unavailable for selection by and conveyance to the State of Alaska or a Native Corporation and shall not be otherwise encumbered or disposed of by the United States pending completion of the selection process.

(f) The University may enter selected lands on a non-exclusive basis to assess the oil, gas, mineral and other resource potential therein and to exercise due diligence regarding making a final selection. The University, and its delegates or agents, shall be permitted to engage in assessment techniques including, but not limited to, core drilling to assess the metalliferous or other values, and surface geological exploration and seismic exploration for oil and gas, except that exploratory drilling of oil and gas wells shall not be permitted.

(g) Within one year of the Secretary's approval of a selection, the University may make a final decision whether to accept these lands or interests in lands and shall notify the Secretary of its decision. The Secretary shall publish notice of any such acceptance or rejection in the Federal Register within six months. If the University has decided to accept the selection, effective on the date that the notice of such acceptance is published, all right, title, and interest of the United States in the described selection shall vest in the University.

(h) Lakes, rivers and streams contained within final selections shall be meandered and lands submerged thereunder shall be conveyed in accordance with section 901 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, 2430; 43 U.S.C. 1631).

(i) Upon completion of a survey of lands or interest in lands subject to an interim approval, the Secretary shall promptly issue patent to such lands or interests in lands.

(j) The Secretary of Agriculture and the heads of other Federal departments and agencies shall promptly take such actions as may be necessary to assist the Secretary in implementing this Act.

SEC. 3. RELINQUISHMENT OF CERTAIN UNIVERSITY OF ALASKA HOLDINGS.

(a) As a condition to any grant provided by section 2 of this Act, the University shall begin to convey to the Secretary those lands listed in "The University of Alaska's Inholding Reconveyance Document" and dated November 13, 2001.

(b) The University shall begin conveyance of the lands described in section 3(a) of this Act upon approval of selected lands and shall convey to the Secretary a percentage of these lands approximately equal to that percentage of the total grant represented by the approval. The University shall not be required to convey to the Secretary any lands other than those referred to in section 3(a) of this Act. The Secretary shall accept quitclaim deeds from the University for these lands.

SEC. 4. JUDICIAL REVIEW.

The University of Alaska may bring an appropriate action, including an action in the nature of mandamus, against the Department of the Interior, naming the Secretary, for violation of this Act or. for review of a final agency decision taken under this Act. An action pursuant to this section may be filed in the United States District Court for the District of Alaska within two (2) years of the alleged violation or final agency decision and such court shall have exclusive jurisdiction over any such suit.

SEC. 5. STATE MATCHING GRANT.

(a) Notwithstanding any other provision of law and subject to valid existing rights, within forty-eight (48) months of receiving evidence of ownership from the State, the University may, in addition to the grant made available in section 2 of this Act, select up to 250,000 acres of Federal lands or interests in lands in or adjacent to Alaska to be conveyed on an acre-for-acre basis as a matching grant for any lands received from the State of Alaska after the date of enactment of this Act.

(b) Selections of lands or interests in lands pursuant to this section shall be in parcels of 25,000 acres or greater.

(c) Grants made pursuant to this section shall be separately subject to the terms and conditions applicable to grants made under section 2 of this Act.

MOUNT NEBO WILDERNESS BOUNDARY ADJUSTMENT ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 673, H.R. 451.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 451) to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 451) was read the third time and passed.

REINSTATE AND EXTEND THE DEADLINE FOR THE COMMENCEMENT OF CONSTRUCTION OF A HYDROELECTRIC PROJECT IN THE STATE OF ILLINOIS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 663, S. 2872.

The ACTING PRESIDENT pro tempore. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 2872) to reinstate the extended deadline for commencement of construction of a hydroelectric project in the State of Illinois.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider laid upon the table, that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (S. 2872) was read the third time and passed, as follows:

S. 2872

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF TIME FOR FEDERAL ENERGY REGULATORY COMMISSION PROJECT.

Notwithstanding the time period specified in section 13 of the Federal Power Act (16 U.S.C. 806) that would otherwise apply to the Federal Energy Regulatory Commission project numbered 11214, the Commission may, at the request of the licensee for the project, and after reasonable notice, in accordance with the good faith, due diligence, and public interest requirements of that section and the Commission's procedures under that section—

(1) reinstate the license for the construction of the project as of the effective date of the surrender of the license; and

(2) extend the time period during which the licensee is required to commence the construction of the project for 3 consecutive 2-year periods beyond the date that is 4 years after the date of issuance of the license.

GRAND TETON NATIONAL PARK LAND EXCHANGE ACT

Mr. REID. Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 1105.

The ACTING PRESIDENT pro tempore laid before the Senate a message from the House as follows:

Resolved, That the bill from the Senate (S. 1105) entitled "An Act to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—GRAND TETON NATIONAL PARK LAND EXCHANGE

SEC. 101. DEFINITIONS.

As used in this title:

(1) FEDERAL LANDS.—The term "Federal lands" means public lands as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

(2) GOVERNOR.—The term "Governor" means the Governor of the State of Wyoming.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(4) STATE LANDS.—The term "State lands" means lands and interest in lands owned by the State of Wyoming within the boundaries of Grand Teton National Park as identified on a map titled "Private, State & County Inholdings Grand Teton National Park", dated March 2001, and numbered GTNP/0001.

SEC. 102. ACQUISITION OF STATE LANDS.

(a) AUTHORIZATION TO ACQUIRE LANDS.—The Secretary is authorized to acquire approximately 1,406 acres of State lands within the exterior boundaries of Grand Teton National Park, as generally depicted on the map referenced in section 101(4), by any one or a combination of the following—

(1) donation;

(2) purchase with donated or appropriated funds; or

(3) exchange of Federal lands in the State of Wyoming that are identified for disposal under approved land use plans in effect on the date of enactment of this Act under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) that are of equal value to the State lands acquired in the exchange.

(b) IDENTIFICATION OF LANDS FOR EXCHANGE.—In the event that the Secretary or the Governor determines that the Federal lands eligible for exchange under subsection (a)(3) are not sufficient or acceptable for the acquisition of all the State lands identified in section 101(4), the Secretary shall identify other Federal lands or interests therein in the State of Wyoming for possible exchange and shall identify such lands or interests together with their estimated value in a report to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the House of Representatives. Such lands or interests shall not be available for exchange unless authorized by an Act of Congress enacted after the date of submission of the report.

SEC. 103. VALUATION OF STATE AND FEDERAL INTERESTS.

(a) AGREEMENT ON APPRAISER.—If the Secretary and the Governor are unable to agree on the value of any Federal lands eligible for exchange under section 102(a)(3) or State lands, then the Secretary and the Governor may select a qualified appraiser to conduct an appraisal of those lands. The purchase or exchange under section 102(a) shall be conducted based on the values determined by the appraisal.

(b) No Agreement on Appraiser.—If the Secretary and the Governor are unable to agree on the selection of a qualified appraiser under subsection (a), then the Secretary and the Governor shall each designate a qualified appraiser. The two designated appraisers shall select a qualified third appraiser to conduct the appraisal with the advice and assistance of the two designated appraisers. The purchase or exchange under section 102(a) shall be conducted based on the values determined by the appraisal.

(c) Appraisal Costs.—The Secretary and the State of Wyoming shall each pay one-half of the appraisal costs under subsections (a) and (b).

SEC. 104. ADMINISTRATION OF STATE LANDS ACQUIRED BY THE UNITED STATES.

The State lands conveyed to the United States under section 102(a) shall become part of Grand Teton National Park. The Secretary shall manage such lands under the Act of August 25, 1916 (commonly known as the "National Park Service Organic Act") and other laws, rules, and regulations applicable to Grand Teton National Park.

SEC. 105. AUTHORIZATION FOR APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary for the purposes of this title.

TITLE II—JAMES V. HANSEN SHOSHONE NATIONAL TRAIL

SEC. 201. SHOSHONE NATIONAL TRAIL.

(a) Definitions.—For the purposes of this section, the following definitions shall apply:

(1) Appropriate Secretary.—The term "appropriate Secretary" means—

(A) the Secretary of Agriculture when referring to land under the jurisdiction of that Secretary; and

(B) the Secretary of the Interior when referring.to any land except that under the jurisdiction of the Secretary of Agriculture.

(2) Map.—The term "Map" means the map entitled "James V. Hansen Shoshone National Trail" and dated April 5, 2002.

(3) Trail.—The term "Trail" means the system of trails designated in subsection (b) as the James V. Hansen Shoshone National Trail.

(b) Designation.—The trails that are open to motorized use pursuant to applicable Federal and State law and are depicted on the Map as the Shoshone National Trail are hereby designated as the "James V. Hansen Shoshone National Trail".

(c) Management.—

(1) In general.—Except as otherwise provided in this title, the appropriate Secretary shall manage the Trail consistent with the requirements of a national recreation trail in accordance with—

(A) the National Trails System Act (16 U.S.C. 1241 et seq.); and

(B) other applicable laws and regulations for trails on Federal lands.

(2) Cooperation; agreements.—The Secretary of the Interior and the Secretary of Agriculture shall cooperate with the State of Utah Department of Natural Resources and appropriate county governments in managing the Trail. The appropriate Secretary shall make every reasonable effort to enter into cooperative agreements with the State of Utah Department of Natural Resources and appropriate county governments (separately,' collectively, or in an any combination, as agreed by the parties) for management of the Trail.

(3) Primary purpose.—The primary purpose of this title is to provide recreational trail opportunities for motorized vehicle use on the Trail. The Trail shall be managed in a manner that is consistent with this purpose, ensures user safety, and minimizes user conflicts.

(4) Addition of trails.—

(A) In general.—The appropriate Secretary may add trails to the Trail in accordance with the National Trails System Act and this title. The Secretary shall consider the Trail a national recreation trail for the purpose of making such additions.

(B) Requirement for addition of trails on non-Federal land.—If a trail to be added to the Trail is located on non-Federal land, the appropriate Secretary may add the trail only if the owner of the land upon which the trail is located has—

(i) consented to the addition of the trail to the Trail; and

(ii) entered into an agreement with the appropriate Secretary for management of the additional trail in a manner that is consistent with this title.

(5) Notice of open routes.—The Secretary of the Interior and the Secretary of Agriculture shall ensure that the public is adequately informed regarding the routes open for the Trail, including by appropriate signage along the Trail.

(d) No Effect on Non-Federal Land and Interests in Land.—Nothing in this section shall be construed to affect ownership, management, or other rights related to any non-Federal land or interests in land, except as provided in an agreement related to that land entered into by the landowner under subsection (c)(4)(B)(ii).

(e) Acquisition of Land and Interests in Land.—The appropriate Secretary may acquire land and interests in land for the purposes of the Trail only from willing owners.

(f) Map on File; Updated.—The Map shall be—

(1) kept on file at the appropriate offices of the Secretary of the Interior and the Secretary of Agriculture; and

(2) updated by the appropriate Secretary whenever trails are added to the Trail.

SEC. 202. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE III—MC LOUGHLIN HOUSE PRESERVATION

SEC. 301. DEFINITIONS.

For the purposes of this title; the following definitions shall apply:

(1) Association.—The term "Association" means the McLoughlin Memorial Association, an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code.

(2) City.—The term "City" means Oregon City, Oregon.

(3) Secretary.—The term "Secretary" means the Secretary of the Interior.

SEC. 302. FINDINGS.

Congress finds the following:

(1) On June 27, 1941, Acting Assistant Secretary of the Interior W.C. Mendenhall, under the authority granted the Secretary under section 2 of the Historic Sites, Buildings and Antiquities Act (16 U.S.C. 461 et seq.), established the McLoughlin Home National Historic Site located in the City.

(2) Since January 16, 1945, the site has been known as McLoughlin House National Historic Site.

(3) The McLoughlin House National Historic Site includes both the McLoughlin House and Barclay House, which are owned and managed by the Association.

(4) The McLoughlin House National Historic Site is located in a Charter Park on Oregon City Block 40, which is owned by the City.

(5) A cooperative agreement was made in 1941 among the Association, the City, and the United States, providing for the preservation and use of the McLoughlin House as a national historic site.

(6) The Association has had an exemplary and longstanding role in the stewardship of the McLoughlin House National Historic Site but is unable to continue that role.

(7) The McLoughlin House National Historic Site has a direct relationship with Fort Vancouver National Historic Site due to Dr. John McLoughlin's importance as the Chief Factor of the Hudson Bay Company's Fort Vancouver, the headquarters for the Hudson Bay Company's Columbia Department, and his subsequent role in the early history of the settlement of the Oregon Territory to the extent that he is known as the "Father of Oregon".

(8) The McLoughlin House National Historic Site has been an affiliated area of the National Park System and is worthy of recognition as part of the Fort Vancouver National Historic Site.

SEC. 303. BOUNDARY OF FORT VANCOUVER NATIONAL HISTORIC SITE.

In recognition of the Secretary's role and responsibilities since June 27, 1941, and in order to preserve the McLoughlin House National Historic Site, the Secretary is authorized to acquire the McLoughlin House, consisting of approximately 1 acre, as generally depicted on the map entitled "McLoughlin National Historic Site", numbered 007/80,000, and dated 12/01/01, as an addition to the Fort Vancouver National Historic Site. The map shall be on file and available for inspection in the appropriate offices of the National Park Service, Department of the Interior.

SEC. 304. ACQUSITION AND ADMINISTRATION.

(a) Acquisition.—The Secretary is authorized to acquire the McLoughlin House from willing owners only, by donation, purchase with donated or appropriated funds, or exchange, except that lands or interests in lands owned by the City may be acquired by donation only.

(b) Administration.—The Secretary shall administer the McLoughlin House as an addition to Fort Vancouver National Historic Site in accordance with the provisions of law generally applicable to units of the National Park System.

TTLE IV—PRESIDENTIAL HISTORIC SITE STUDY

SEC. 401. PRESIDENTIAL HISTORIC SITE STUDY.

(a) Study and Report.—Not later than 2 years after the date funds are made available, the Secretary of the Interior shall—

(1) carry out a study on the suitability and feasibility of designating the William Jefferson Clinton birthplace home located in Hope, Arkansas, as a national historic site; and

(2) submit to the Committee on Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report describing the findings, conclusions, and recommendations of the study.

(b) Requirements for Study.—Except with regard to deadline for completion provided in subsection (a), the study under subsection (a) shall be conducted in accordance with section 8(c) Public Law 91-383 (16 U.S.C. 1a-5(c)).

Mr. REID. Mr. President, I ask unanimous consent that the Senate disagree to the House amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CORRECTING THE ENROLLMENT OF S. 1843

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 159, submitted earlier today by Senators Bingaman and Murkowski; that the concurrent resolution be considered and agreed to and the motion to reconsider be laid upon the table, without intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 159) was agreed to, as follows:

S. CON. RES. 159

Resolved by the Senate (the House of Representatives concurring), That in the enrollment of the bill (S. 1843) To extend certain hydro-electric licenses in the State of Alaska the Secretary of the Senate is hereby authorized and directed, in the enrollment of the said bill, to make the following corrections, namely:

In subsection (c), delete "3 consecutive 2-year time periods." and insert "one 2-year time period.".

VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 591, H.R. 2385.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2385) to convey certain property to the city of St. George, Utah, in order to provide for the protection and preservation of certain rare paleontological resources on that property, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Energy and Natural Resources with amendments, as follows:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 2385

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Virgin River Dinosaur Footprint Preserve Act".

SEC. 2. VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.

[(a) AUTHORIZATION FOR GRANT TO PURCHASE FOOTPRINT PRESERVE.—As soon as is practicable after the date of the enactment of this Act, if the City agrees to the conditions set forth in subsection (b), the Secretary of the Interior may award to the City a grant equal to the lesser of $500,000 or the fair market value of up to 10 acres of land (and all related facilities and other appurtenances thereon) generally depicted on the map entitled "Proposed Virgin River Dinosaur Footprint Preserve", numbered 09/06/2001–A, for purchase of that property.]

(a) AUTHORIZATION FOR GRANT TO PURCHASE PRESERVE.—Of the funds appropriated in the section entitled "Land Acquisition" of the Fiscal Year 2002 Interior and Related Agencies Appropriations Act, Public Law 107–63, the Secretary of the Interior shall grant $500,000 to the City for—

(1) the purchase of up to 10 acres of land within the area generally depicted as the "Preserve Acquisition Area" on the map entitled "Map B" and dated May 9, 2002; and

(2) the preservation of such land and paleontological resources.

(b) CONDITIONS OF GRANT.—The grant under subsection (a) shall be made only after the City agrees to the following conditions:

(1) USE OF LAND.—The City shall use the Virgin River Dinosaur Footprint Preserve in a manner that accomplishes the following:

(A) Preserves and protects the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve.

(B) Provides opportunities for scientific research in a manner compatible with subparagraph (A).

(C) Provides the public with opportunities for educational activities in a manner compatible with subparagraph (A).

(2) REVERTER.—If at any time after the City acquires the Virgin River Dinosaur Footprint Preserve, the Secretary determines that the City is not substantially in compliance with the conditions described in paragraph (1), all right, title, and interest in and to the Virgin River Dinosaur Footprint Preserve shall immediately revert to the United States, with no further consideration on the part of the United States, and such property shall then be under the administrative jurisdiction of the Secretary of the Interior.

(3) CONDITIONS TO BE CONTAINED IN DEED.—If the City attempts to transfer title to the Virgin River Dinosaur Footprint Preserve (in whole or in part), the conditions set forth in this subsection shall transfer with such title and shall be enforceable against any subsequent owner of the Virgin River Dinosaur Footprint Preserve (in whole or in part).

(c) COOPERATIVE AGREEMENT AND ASSISTANCE.—

[(1) COOPERATIVE AGREEMENT.—The Secretary shall enter into a cooperative agreement with the City for the management of the Virgin River Dinosaur Footprint Preserve by the City.

(2)] *(1)* ASSISTANCE.—The Secretary may provide to the City—

(A) financial assistance, if the Secretary determines that such assistance is necessary for protection of the paleontological resources located within the exterior boundaries of the Virgin River Dinosaur Footprint Preserve; and

(B) technical assistance to assist the City in complying with subparagraphs (A) through (C) of subsection (b)(1).

[(3)] *(2)* ADDITIONAL GRANTS.—

(A) IN GENERAL.—In addition to funds made available under subsection (a) and paragraph (2) of this subsection, the Secretary may provide grants to the City to carry out its duties under the cooperative agreement entered into under paragraph (1).

(B) LIMITATION ON AMOUNT; REQUIRED NON-FEDERAL MATCH.—Grants under subparagraph (A) shall not exceed $500,000 and shall be provided only to the extent that the City matches the amount of such grants with non-Federal contributions (including in-kind contributions).

(d) MAP ON FILE.—The map shall be on file and available for public inspection in the appropriate offices of the Department of the Interior.

(e) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) CITY.—The term "City" means the city of St. George, Utah.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) VIRGIN RIVER DINOSAUR FOOTPRINT PRESERVE.—The term "Virgin River Dinosaur Footprint Preserve" means the property (and all facilities and other appurtenances thereon) described in subsection (a).

Mr. HATCH. Mr. President, I rise today to say a few words about S. 1497, the Virgin River Dinosaur Footprint Preserve Act and its companion measure in the House, H.R. 2385. This bill would convey certain property to the city of St. George, Utah, in order to provide for the protection and preservation of certain rare paleontological resources on that property.

This legislation would provide vital protections to one of our nation's most recent, and most intact pre-Jurassic paleontological discoveries. In February 2000, Sheldon Johnson of St. George, UT, began development preparations on his land when he uncovered one of the world's most significant collections of dinosaur tracks, tail draggings, and skin imprints in the surrounding rock. Without any advertising, the site has attracted many tens of thousands of visitors and the interest of some of the world's top paleontologists.

This was a fantastic discovery that has added important new insights into the Jurassic period. However, now that these prints have been uncovered, the fragile sandstone in which the impressions have been made is in jeopardy due to the heat and wind typical of the southern Utah climate. We must act quickly if these footprints from our past are to be preserved. This bill would authorize the Secretary of the Interior to purchase the land where the footprints and tail draggings are found and convey the property to the city of St. George. The city will work together with the property owners and Washington County to preserve and protect the area and the resources found there.

We owe a debt of gratitude to Sheldon and LaVerna Johnson who made this discovery on their land and have dedicated thousands of hours of their personal time and much of their own money to trying to preserve this site. They have done all they can to protect it, while at the same time opening up their land for visitors and scientists to view the new findings free of costs. They have given so much to this cause, but they cannot keep it up indefinitely. They desperately hope that the Government will step up and help carry the burden of managing this precious resource, and with passage of this legislation tonight we will provide them with the relief they deserve.

I thank Senators BINGAMAN and MURKOWSKI, the chairman and ranking member of the Senate Committee on Energy and Natural Resources, for their assistance in seeing this measure passed by Congress and sent to the President. I also thank Representative JAMES HANSEN, my good friend and the sponsor of the companion measure in the House for all he has done to make this legislation possible.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported amendments be withdrawn; that the bill be read the third time and passed; and that the motion to reconsider be laid upon the table, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The committee amendments were withdrawn.

The bill (H.R. 2385) was read the third time and passed.

Mr. REID. Mr. President, before we get to the next matter, let me express my appreciation to the Senator from Utah, Mr. BENNETT. He has been here all night. But for him, we would not have made the progress we have. All Senators should be very grateful for his weighing in on these delicate matters. I appreciate what the Senator from Utah has done to help us get to this point.

Mr. BENNETT. Mr. President, I thank the assistant majority leader. I wish to make it clear that without his leadership and cooperation, we would not be doing what we are doing. It takes two hands to clap. We were waving our hands uselessly in the air until the Senator from Nevada stepped in. I am very grateful to him.

TIMPANOGOS INTERAGENCY LAND EXCHANGE ACT

Mr. BENNETT. Mr. President, I ask that the Chair lay before the Senate a message from the House on S. 1240.

The ACTING PRESIDENT pro tempore laid before the Senate a message from the House as follows:

Resolved, That the bill from the Senate (S. 1240) entitled "An Act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—TIMPANOGOS INTERAGENCY LAND EXCHANGE

SEC. 101. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the facility that houses the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest can no longer properly serve the purpose of the facility;

(2) a fire destroyed the Timpanogos Cave National Monument Visitor Center and administrative office in 1991, and the temporary structure that is used for a visitor center cannot adequately serve the public; and

(3) combining the administrative office of the Pleasant Grove Ranger District with a new Timpanogos Cave National Monument visitor center and administrative office in one facility would—

(A) facilitate interagency coordination;

(B) serve the public better; and

(C) improve cost effectiveness.

(b) PURPOSES.—The purposes of this title are—

(1) to authorize the Secretary of Agriculture to acquire by exchange non-Federal land located in Highland, Utah as the site for an interagency administrative and visitor facility;

(2) to direct the Secretary of the Interior to construct an administrative and visitor facility on the non-Federal land acquired by the Secretary of Agriculture; and

(3) to direct the Secretary of Agriculture and the Secretary of the Interior to cooperate in the development, construction, operation, and maintenance of the facility.

SEC. 102. DEFINITIONS.

In this title:

(1) FACILITY.—The term "facility" means the facility constructed under section 106 to house—

(A) the administrative office of the Pleasant Grove Ranger District of the Uinta National Forest; and

(B) the visitor center and administrative office of the Timpanogos Cave National Monument.

(2) FEDERAL LAND.—The term "Federal land" means the parcels of land and improvements to the land in the Salt Lake Meridian comprising—

(A) approximately 237 acres located in T. 5 S., R. 3 E., sec. 13, lot 1, SW$^1/_4$, NE$^1/_4$, E$^1/_2$, NW$^1/_4$ and E$^1/_2$, SW$^1/_4$, as depicted on the map entitled "Long Hollow-Provo Canyon Parcel", dated March 12, 2001;

(B) approximately 0.18 acre located in T. 7 S., R. 2 E., sec. 12, NW$^1/_4$, as depicted on the map entitled "Provo Sign and Radio Shop", dated March 12, 2001;

(C) approximately 20 acres located in T. 3 S., R. 1 E., sec. 33, SE$^1/_4$, as depicted on the map entitled "Corner Canyon Parcel", dated March 12, 2001;

(D) approximately 0.18 acre located in T. 29 S., R. 7 W., sec. 15, S$^1/_2$, as depicted on the map entitled "Beaver Administrative Site", dated March 12, 2001;

(E) approximately 7.37 acres located in T. 7 S., R. 3 E., sec. 28, NE$^1/_4$, SW$^1/_4$, NE$^1/_4$, as depicted on the map entitled "Springville Parcel", dated March 12, 2001; and

(F) approximately 0.83 acre located in T. 5 S., R. 2 E., sec. 20, as depicted on the map entitled "Pleasant Grove Ranger District Parcel", dated March 12, 2001.

(3) NON-FEDERAL LAND.—The term "non-Federal land" means the parcel of land in the Salt Lake Meridian comprising approximately 37.42 acres located at approximately 4,400 West, 11,000 North (SR–92), Highland, Utah in T. 4 S., R. 2 E., sec. 31, NW$^1/_4$, as depicted on the map entitled "The Highland Property", dated March 12, 2001.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

SEC. 103. MAPS AND LEGAL DESCRIPTIONS.

(a) AVAILABILITY OF MAPS.—The maps described in paragraphs (2) and (3) of section 102 shall be on file and available for public inspection in the Office of the Chief of the Forest Service until the date on which the land depicted on the maps is exchanged under this title.

(b) TECHNICAL CORRECTIONS TO LEGAL DESCRIPTIONS.—The Secretary may correct minor errors in the legal descriptions in paragraphs (2) and (3) of section 102.

SEC. 104. EXCHANGE OF LAND FOR FACILITY SITE.

(a) IN GENERAL.—Subject to subsection (b), the Secretary may, under such terms and conditions as the Secretary may prescribe, convey by quitclaim deed all right, title, and interest of the United States in and to the Federal land in exchange for the conveyance of the non-Federal land.

(b) TITLE TO NON-FEDERAL LAND.—Before the land exchange takes place under subsection (a), the Secretary shall determine that title to the non-Federal land is acceptable based on the approval standards applicable to Federal land acquisitions.

(c) VALUATION OF NON-FEDERAL LAND.—

(1) DETERMINATION.—The fair market value of the land and the improvements on the land exchanged under this title shall be determined by an appraisal that—

(A) is approved by the Secretary; and

(B) conforms with the Federal appraisal standards, as defined in the publication entitled "Uniform Appraisal Standards for Federal Land Acquisitions".

(2) SEPARATE APPRAISALS.—

(A) IN GENERAL.—Each parcel of Federal land described in subparagraphs (A) through (F) of section 102(2) shall be appraised separately.

(B) INDIVIDUAL PROPERTY VALUES.—The property values of each parcel shall not be affected by the unit rule described in the Uniform Appraisal Standards for Federal Land Acquisitions.

(d) CASH EQUALIZATION.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)), the Secretary may, as the circumstances require, either make or accept a cash equalization payment in excess of 25 percent of the total value of the lands or interests transferred out of Federal ownership.

(e) ADMINISTRATION OF LAND ACQUISITION BY UNITED STATES.—

(1) BOUNDARY ADJUSTMENT.—

(A) IN GENERAL.—On acceptance of title by the Secretary—

(i) the non-Federal land conveyed to the United States shall become part of the Uinta National Forest; and

(ii) the boundaries of the national forest shall be adjusted to include the land.

(B) ALLOCATION OF LAND AND WATER CONSERVATION FUND MONEYS.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–099), the boundaries of the national forest, as adjusted under this section, shall be considered to be boundaries of the national forest as of January 1, 1965.

(2) APPLICABLE LAW.—Subject to valid existing rights, the Secretary shall manage any land acquired under this section in accordance with—

(A) the Act of March 1, 1911 (16 U.S.C. 480 et seq.) (commonly known as the "Weeks Act"); and

(B) other laws (including regulations) that apply to National Forest System land.

SEC. 105. DISPOSITION OF FUNDS.

(a) DEPOSIT.—The Secretary shall deposit any cash equalization funds received in the land exchange in the fund established under Public Law 90–171 (16 U.S.C. 484a) (commonly known as the "Sisk Act").

(b) USE OF FUNDS.—Funds deposited under subsection (a) shall be available to the Secretary, without further appropriation, for the acquisition of land and interests in land for administrative sites in the State of Utah and land for the National Forest System.

SEC. 106. CONSTRUCTION AND OPERATION OF FACILITY.

(a) CONSTRUCTION.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after funds are made available to carry out this title, the Secretary of the Interior shall construct, and bear responsibility for all costs of construction of, a facility and all necessary infrastructure on non-Federal land acquired under section 104.

(2) DESIGN AND SPECIFICATIONS.—Prior to construction, the design and specifications of the facility shall be approved by the Secretary and the Secretary of the Interior.

(b) OPERATION AND MAINTENANCE OF FACILITY.—The facility shall be occupied, operated, and maintained jointly by the Secretary (acting through the Chief of the Forest Service) and the Secretary of the Interior (acting through the Director of the National Park Service) under terms and conditions agreed to by the Secretary and the Secretary of the Interior.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title.

TITLE II—UTAH PUBLIC LANDS ARTIFACT PRESERVATION

SEC. 201. FINDINGS.

Congress finds that—

(1) the collection of the Utah Museum of Natural History in Salt Lake City, Utah, includes more than 1,000,000 archaeological, paleontological, zoological, geological, and botanical artifacts;

(2) the collection of items housed by the Museum contains artifacts from land managed by—

(A) the Bureau of Land Management;

(B) the Bureau of Reclamation;

(C) the National Park Service;

(D) the United States Fish and Wildlife Service; and

(E) the Forest Service;

(3) more than 75 percent of the Museum's collection was recovered from federally managed public land; and

(4) the Museum has been designated by the legislature of the State of Utah as the State museum of natural history.

SEC. 202. DEFINITIONS.

In this title:

(1) MUSEUM.—The term "Museum" means the University of Utah Museum of Natural History in Salt Lake City, Utah.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 203. ASSISTANCE FOR UNIVERSITY OF UTAH MUSEUM OF NATURAL HISTORY.

(a) ASSISTANCE FOR MUSEUM.—The Secretary shall make a grant to the University of Utah in Salt Lake City, Utah, to pay the Federal share of the costs of construction of a new facility for the Museum, including the design, planning, furnishing, and equipping of the Museum.

(b) GRANT REQUIREMENTS.—

(1) IN GENERAL.—To receive a grant under subsection (b), the Museum shall submit to the Secretary a proposal for the use of the grant.

(2) FEDERAL SHARE.—The Federal share of the costs described in subsection (a) shall not exceed 25 percent.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000, to remain available until expended.

TITLE III—SALT RIVER BAY NATIONAL HISTORICAL PARK AND ECOLOGICAL PRESERVE BOUNDARY ADJUSTMENT

SEC. 301. BOUNDARY ADJUSTMENT.

The first sentence of section 103(b) of the Salt River Bay National Historical Park and Ecological Preserve at St. Croix, Virgin Islands, Act of 1992 (16 U.S.C. 410tt–1(b)) is amended to read as follows: "The park shall consist of approximately 1015 acres of lands, waters, and interests in lands as generally depicted on the map entitled 'Salt River Bay National Historical Park and Ecological Preserve, St. Croix, U.S.V.I.', numbered 141/80002, and dated May 2, 2002.".

Mr. BENNETT. Mr. President, I ask unanimous consent that the Senate concur in the House amendment to the bill, and that the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that it be in order to consider en bloc the following measures: Calendar No. 577, H.R. 38; Calendar No. 437, H.R. 308; Calendar No. 606, H.R. 706; Calendar No. 587, H.R. 1712; Calendar No. 579, H.R. 1776; Calendar No. 580, H.R. 1814; Calendar No. 588, H.R. 1870; Calendar No. 589, H.R. 1906; Calendar No. 581, H.R. 1925; Calendar No. 612, H.R. 2099; Calendar No. 590, H.R. 2109; Calendar No. 607, H.R. 2115; Calendar No. 675, H.R. 2628; Calendar No. 676, H.R. 2818; Calendar No. 608, H.R. 2828; Calendar No. 677, H.R. 2990; Calendar No. 681, H.R. 3858; Calendar No. 592, H.R. 3048; Calendar No. 678, H.R. 3401; Calendar No. 682, H.R. 3909; Calendar No. 614, H.R. 3449; Calendar No. 684, H.R. 3954; Calendar No. 685, H.R. 4682; Calendar No. 687, H.R. 5125; Calendar No. 611, H.R. 4953; Calendar No. 613, H.R. 4638; Calendar No. 686, H.R. 5099. The following bills are at the desk: H.R. 3747, H.R. 5436, H.R. 4750, H.J. Res. 117, H.R. 4129, H.R. 4874 and H.R. 4944. I ask unanimous consent that H.R. 2937, Clark County shooting range, be discharged from the Energy Committee and the Senate proceed to its consideration; that the bills be read three times and passed en bloc; the motions to reconsider be laid upon the table en bloc; that the consideration of these measures appear separately in the RECORD, and that any statements relating thereto be printed in the RECORD, without further intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

HOMESTEAD NATIONAL MONUMENT OF AMERICA ADDITIONS ACT

The bill (H.R. 38) to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

GUAM WAR CLAIMS REVIEW COMMISSION ACT

The bill (H.R. 308) to establish the Guam War Claims Review Commission, was considered, ordered to a third reading, read the third time, and passed.

LEASE LOT CONVEYANCE ACT OF 2002

The bill (H.R. 706) to direct the Secretary of the Interior to convey certain properties in the vicinity of the Elephant Butte Reservoir and Caballo Reservoir, New Mexico, was considered, ordered to a third reading, read the third time, and passed.

ADJUSTMENTS TO THE BOUNDARY OF THE NATIONAL PARK OF AMERICAN SAMOA

The bill (H.R. 1712) to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

BUFFALO BAYOU NATIONAL HERITAGE AREA STUDY ACT

The bill (H.R. 1776) to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Buffalo Bayou National Heritage Area in west Houston, Texas, was considered, ordered to a third reading, read the third time, and passed.

METACOMET-MONADNOCK-MATTABESETT TRAIL STUDY ACT OF 2001

The bill (H.R. 1814) to amend the National Trails System Act to designate the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut for study for potential addition to the National Trails System, was considered, ordered to a third reading, read the third time, and passed.

FALLON RAIL FREIGHT LOADING FACILITY TRANSFER ACT

The bill (H.R. 1870) to provide for the sale of certain real property within the Newlands Project in Nevada, to the city of Fallon, Nevada, was considered, ordered to a third reading, read the third time, and passed.

PU'UHONUA O HONAUNAU NATIONAL PARK ADDITION ACT OF 2002

The bill (H.R. 1906) to amend the Act that established the Pu'uhonua O Honaunau National Historical Park to expand the boundaries of that park, was considered, ordered to a third reading, read the third time, and passed.

FEASIBILITY STUDY OF DESIGNATING THE WACO MAMMOTH SITE AS A UNIT OF THE NATIONAL PARK SYSTEM

The bill (H.R. 1925) to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

AMENDMENTS TO THE OMNIBUS PARKS AND PUBLIC LANDS MANAGEMENT ACT OF 1996

The bill (H.R. 2099) to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve, was considered, ordered to a third reading, read the third time, and passed.

A SPECIAL RESOURCE STUDY OF VIRGINIA KEY BEACH PARK IN BISCAYNE BAY, FLORIDA

The bill (H.R. 2109) to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System, was considered, ordered to a third reading, read the third time, and passed.

LAKEHAVEN, WASHINGTON, WATER RECLAMATION AND REUSE PROJECT

The bill (H.R. 2115) to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington, was considered, ordered to a third reading, read the third time, and passed.

MUSCLE SHOALS NATIONAL HERITAGE AREA STUDY ACT OF 2002

The bill (H.R. 2628) to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Muscle Shoals National Heritage Area in Alabama, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN LANDS WITHIN THE SAND MOUNTAIN WILDERNESS STUDY AREA IN THE STATE OF IDAHO

The bill (H.R. 2818) to authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971, was considered, ordered to a third reading, read the third time, and passed.

KLAMATH BASIN EMERGENCY OPERATION AND MAINTENANCE REFUND ACT OF 2001

The bill (H.R. 2828) to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

LOWER RIO GRANDE VALLEY WATER RESOURCES CONSERVATION AND IMPROVEMENT ACT OF 2002

The bill (H.R. 2990) to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

NEW RIVER GORGE BOUNDARY ACT OF 2002

The bill (H.R. 3858) to modify the boundaries of the New River Gorge National River, West Virginia, was considered, ordered to a third reading, read the third time, and passed.

RUSSIAN RIVER LAND ACT

The bill (H.R. 3048) to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska, was considered, ordered to a third reading, read the third time, and passed.

CALIFORNIA FIVE MILE REGIONAL LEARNING CENTER TRANSFER ACT

The bill (H.R. 3401) to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

GUNN McKAY NATURE PRESERVE ACT

The bill (H.R. 3909) to designate certain Federal lands in the State of Utah as the Gunn McKay Nature Preserve, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

REVISION OF THE BORDERS OF THE GEORGE WASHINGTON BIRTHPLACE NATIONAL MONUMENT

The bill (H.R. 3449) to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

CARIBBEAN NATIONAL FOREST WILD AND SCENIC RIVERS ACT OF 2002

The bill (H.R. 3954) to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

ALLEGHENY PORTAGE RAILROAD NATIONAL HISTORIC SITE BOUNDARY REVISION ACT

The bill (H.R. 4682) to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

CIVIL WAR BATTLEFIELD PRESERVATION ACT OF 2002

The bill (H.R. 5125) to amend the American Battlefield Protection Act of 1996 to authorize the Secretary of the Interior to establish a battlefield acquisition grant program, was considered, ordered to a third reading, read the third time, and passed.

GRANT OF A RIGHT-OF-WAY TO DESCHUTES AND CROOK COUNTIES IN THE STATE OF OREGON TO WEST BUTTE ROAD

The bill (H.R. 4953) to direct the Secretary of the Interior to grant Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road, was ordered to a third reading, read the third time, and passed.

REAUTHORIZATION OF THE MNI WICONI RURAL WATER SUPPLY PROJECT

The bill (H.R. 4638) to reauthorize the Mni Wiconi Rural Water Supply Project, was considered, ordered to a third reading, read the third time, and passed.

EXTENDING PERIOD OF AUTHORIZATION FOR INTERIOR SECRETARY TO IMPLEMENT CAPITAL CONSTRUCTION PROJECTS

The bill (H.R. 5099) to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins, was considered, ordered to a third reading, read the third time, and passed.

BAINBRIDGE ISLAND JAPANESE-AMERICAN MEMORIAL STUDY ACT OF 2002

The bill (H.R. 3747) to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System, was considered, ordered to a third reading, read the third time, and passed.

EXTENDING DEADLINE FOR COMMENCEMENT OF CONSTRUCTION OF HYDROELECTRIC PROJECT IN STATE OF OREGON

The bill (H.R. 5436) to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon, was considered, ordered to a third reading, read the third time, and passed.

BIG SUR WILDERNESS AND CONSERVATION ACT OF 2002

The bill (H.R. 4750) to designate certain lands in the State of California as components of the National Wilderness Preservation System, and for other purposes, was considered, ordered to a third reading, read the third time, and passed.

FORMER PRESIDENT JOHN ADAMS MEMORIAL

The resolution (H.J. Res. 117) approving the location of the commemorative work in the District of Columbia honoring former President John Adams, was considered, ordered to a third reading, read the third time, and passed.

CENTRAL UTAH PROJECT COMPLETION ACT

The bill (H.R. 4129) to amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment, was considered, ordered to a third reading, read the third time, and passed.

DISCLAIMER OF ANY FEDERAL INTEREST IN LANDS ADJACENT TO SPIRIT LAKE AND TWIN LAKES IN STATE OF IDAHO

The bill (H.R. 4874) to direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey, was considered, ordered to a third reading, read the third time, and passed.

CEDAR CREEK AND BELLE GROVE NATIONAL HISTORICAL PARK ACT

The bill (H.R. 4944) to designate the Cedar Creek and Belle Grove National Historical Park as a unit of the National Park System, was considered, ordered to a third reading, read the third time, and passed.

CONVEYANCE OF CERTAIN PUBLIC LAND IN CLARK COUNTY, NEVADA

The bill (H.R. 2937) to provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range, was considered, ordered to a third reading, read the third time, and passed.

Mr. REID. Mr. President, I would like to engage my friend, the chairman of the Energy and Natural Resources Committee, in a discussion regarding the Clark County Shooting Range bill, S. 1451. The chairman has been very helpful in moving this important legislation through the process and I appreciate and am grateful for his hard work. As we moved this bill through the committee process, the chairman made two constructive suggestions regarding how my bill might be improved. I believe that it would benefit the full Senate for us to review those issues briefly at this time.

Mr. BINGAMAN. I share the assistant majority leader's view that this bill would address an important need for a safe recreational shooting facility in southern Nevada and believe that S. 1451, which my committee reported favorably with amendment, is a good bill. The two primary concerns raised by many interested parties were that the original bill would have released land from wilderness study area status and that the parcel of land conveyed was possibly too large, and therefore the bill might set an unfortunate precedent on those two issues.

Mr. REID. As the chairman knows, we worked together on these two issues and developed a compromise solution that he, Senator MURKOWSKI, Senator ENSIGN, Congressman GIBBONS, Congresswoman BERKLEY, Clark County and I could all support. The compromise included conveying the full 2800 acres to Clark County but requiring that only the core of the area, 640 acres, be developed for facilities and that the remainder of the area remain as open space to serve as a valuable buffer around the range. This compromise if completely consistent with Clark County's intended use of the land because the county realizes the absolute necessity of having a substantial buffer around a shooting range. In fact, the county provided their plans for the facility, which embody the compromise.

As I have noted many times on the floor of the Senate, Clark County has nearly doubled in population from 770,000 to more than 1.4 million people since 1990. This growth has placed greater demands on public lands throughout Clark County for recreational activities such as hunting, fishing and target shooting. There are literally dozens, if not hundreds, of makeshift shooting ranges across Las Vegas Valley that pose extreme danger to nearby homes and our increasingly busy roads. This facility will provide a great public benefit by creating a safe centralized location for this important purpose. It will enhance public safety by reducing indiscriminate shooting. The need for this shooting range is crystal clear and I am grateful that the chairman has recognized the urgency associated with this issue.

In addition, I would like the RECORD to reflect that the issue of wilderness study area release is now a moot point because the wilderness study area in question was released earlier this month when President Bush signed the Clark County Conservation of Public Lands and Natural Resources Act into law. Public law 107-282 designated about 450,000 acres as wilderness and released 220,000 acres from wilderness study area consideration in Clark County. Having made this point, I would like to ask the chairman whether he shares my view that no precedent could be set on the issue of wilderness study area release given that there is no wilderness study area in existence?

Mr. BINGAMAN. I do share that view and appreciate the fact that wilderness study area release is no longer a concern in this legislation.

Mr. REID. I appreciate the chairman's concurrence on that point and his leadership on this and other public land related issues very much. We now face a dilemma. The very good Clark County Shooting Range bill that was earlier reported by the Senate Energy and Natural Resources Committee cannot pass this year because the House of Representatives has gone home for the year. However, the House passed a similar bill earlier this year. The substantive difference in the House bill is that it does not include the buffer requirement we put in the Senate version of the bill. Given that we agree that no wilderness study area precedents can be set here, and given that the county's plan for the range were used to create our buffer compromise. I hope the chairman might allow for the passage of the House version of this bill so that this important project can be started this year.

VIETNAM VETERANS MEMORIAL EDUCATION ACT

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed

to the consideration of Calendar No. 444 S. 281; that the Bingaman amendment which is at the desk be considered and agreed to; that the committee-reported amendment, as amended, be agreed to; the motion to reconsider by laid upon the table; and there be no intervening action or debate.

The ACTING PRESIDENT pro tempore. Is there an objection?

Mr. BENNETT. On behalf of several Senators on this side, I do object.

The ACTING PRESIDENT pro tempore. The objection is heard.

Mr. REID. I am disappointed. The morning is early but there will be no speeches.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar No. 1137, Air Force promotions, with the exception of COL Bruce E. Burda, 0432, and COL Stephen L. Lanning, 6225; Calendar Nos. 1180 through 1186, and the nominations placed on the Secretary's desk; that the nominations be confirmed en bloc, and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

AIR FORCE

The following named officers for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Colonel Christ T. Anzalone, 9968
Colonel Dana T. Atkins, 1173
Colonel Philip M. Breedlove, 5587
Colonel Bradley W. Butler, 1210
Colonel Robert E. Dehnert, Jr., 2210
Colonel Delwyn R. Eulberg, 8929
Colonel Maurice H. Forsyth, 5072
Colonel Patrick D. Gillett, Jr., 1889
Colonel Sandra A. Gregory, 5776
Colonel Gregory J. Ihde, 1040
Colonel Kevin J. Kennedy, 0042
Colonel Lyle M. Koenig, Jr., 2231
Colonel Ronald R. Ladnier, 6699
Colonel Erwin F. Lessel, III, 5416
Colonel John W. Maluda, 2572
Colonel Mark T. Matthews, 6697
Colonel Gary T. McCoy, 2911
Colonel Kimber L. McKenzie, 0844
Colonel Stephen J. Miller, 1561
Colonel Richard Y. Newton, III, 8008
Colonel Thomas J. Owen, 4009
Colonel Richard E. Perraut, Jr., 4091
Colonel Polly A. Peyer, 0565
Colonel Douglas L. Raaberg, 5158
Colonel Robertus C.N. Remkes, 8917
Colonel Eric J. Rosborg, 2128
Colonel Paul J. Selva, 5397
Colonel Mark E. Stearns, 2739
Colonel Thomas E. Stickford, 4263
Colonel Johnny A. Weida, 0541
Colonel Thomas B. Wright, 4649

DEPARTMENT OF DEFENSE

Arthur James Collingsworth, of California, to be a Member of the National Security Education Board for a term of four years.

AIR FORCE

The following named officers for appointment in the Reserve of the Air Force to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Richard C. Collins, 4411
Brigadier General Scott R. Nichols, 8603
Brigadier General David A. Robinson, 7497
Brigadier General Mark V. Rosenker, 1990
Brigadier General Charles E. Stenner, Jr., 3274
Brigadier General Thomas D. Taverney, 6191
Brigadier General Kathy E. Thomas, 0940

To be brigadier general

Colonel Ricardo Aponte, 0713
Colonel Frank J. Casserino, 3455
Colonel Charles D. Ethredge, 1223
Colonel Thomas M. Gisler, Jr., 1300
Colonel James W. Graves, 4813
Colonel John M. Howlett, 8450
Colonel Martin M. Mazick, 0371
Colonel Hanferd J. Moen, Jr., 4733
Colonel James M. Mungenast, 7850
Colonel Jack W. Ramsaur, II, 8374
Colonel David N. Senty, 6128
Colonel Bradley C. Young, 0584

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Arthur J. Lichte, 5483

ARMY

The following Army National Guard officers for appointment in the Reserve of the Army to the grades indicated under title 10, U.S.C., Section 12203:

To be brigadier general

Colonel Terry W. Saltsman, 7338

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Michael H. Sumrall, 4259

The following Army National Guard of the United States officers for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Daniel D. Densford, 0210
Brigadier General Daniel E. Long, Jr., 1267
Brigadier General Michael J. Squier, 8084
Brigadier General Roy M. Umbarger, 9266
Brigadier General Antonio J. Vicens-Gonzalez, 8687
Brigadier General Walter E. Zink, II, 8489

To be brigadier general

Colonel Norman E. Arflack, 1964
Colonel Jerry G. Beck, Jr., 8553
Colonel Raymond W. Carpenter, 7439
Colonel Herman M. Deener, 2720
Colonel Robert P. French, 1355
Colonel John T. Furlow, 1754
Colonel Charles L. Gable, 2112
Colonel Francis P. Gonzales, 1426
Colonel Dean E. Johnson, 0723
Colonel David A. Lewis, 0439
Colonel Thomas D. Mills, 4814
Colonel Vern T. Miyagi, 2805
Colonel Roque C. Nido Lanausse, 1486
Colonel J.W. Noles, 1201
Colonel Thomas R. Ragland, 6773
Colonel Terry L. Robinson, 1805
Colonel Charles G. Rodriguez, 8250
Colonel Charles D. Safley, 5588
Colonel Randall E. Sayre, 2290
Colonel Donald C. Storm, 7206
Colonel William H. Wade, 3027
Colonel Gregory L. Wayt, 4702
Colonel Merrel W. Yocum, 9183

NAVY

The following named officer for appointment in the United States Navy to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be vice admiral

Rear Adm. Stanley R. Szemborski, 8912

NOMINATIONS PLACED ON THE SECRETARY'S DESK

AIR FORCE

PN2276 Air Force nominations (2) beginning Branford J. McAllister, and ending Alice Smart, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2002.

PN2289 Air Force nominations of David G. Smith, which was received by the Senate and appeared in the Congressional Record of October 17, 2002.

ARMY

PN2294 Army nominations (2) beginning Tom R. Mackenzie, and ending Terrence D. Wright, which nominations were received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2295 Army nominations (759) beginning Stephen M. Ackman, and ending Joseph M. Zima, which nominations were received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2306 Army nominations (4) beginning William C. Cannon, and ending Charles F. Maguire, III, which nominations were received by the Senate and appeared in the Congressional Record of November 14, 2002.

NAVY

PN2277 Navy nominations (19) beginning Rowland E. McCoy, and ending Alan K. Wilmot, which nominations were received by the Senate and appeared in the Congressional Record of October 16, 2002.

PN2290 Navy nominations (459) beginning Rodney D. Abbott, and ending Bernerd C. Zwahlen, which nominations were received by the Senate and appeared in the Congressional Record of October 17, 2002.

PN2296 Navy nomination of Phillip K. Pall, which was received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2297 Navy nomination of Stephanie L. O'Neal, which was received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2298 Navy nomination of Thomas P. Rosdahl, which was received by the Senate and appeared in the Congressional Record of November 12, 2002.

PN2307 Navy nominations (34) beginning Robert D. Beal, and ending Steven J. Zaccari, which nominations were received by the Senate and appeared in the Congressional Record of November 14, 2002.

NOMINATIONS DISCHARGED

Mr. REID. I ask consent that the HELP Committee be discharged from further consideration of the following nominations, and the Senate proceed to their immediate consideration en bloc: Margaret Scarlett and David Donath to be members of the National Museum Services Board; Carmel Borders, William Hiller, Robin Morris, Jean Osborn, and Mark Yudof, to be members of the National Institute for Literacy Board; Michael Duffy to be a member of the Mine Safety and Health Review Commission; that these nominees be confirmed, and the motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

Margaret Scarlett, of Wyoming, to be a Member of the National Museum Services Board for a term expiring December 6, 2007.

David Donath, of Vermont, to be a Member of the National Museum Services Board for a term expiring December 6, 2004.

Carmel Borders, of Kentucky, to be a Member of the National Institute for Literacy Advisory Board for a term of three years.

William T. Hiller, of Ohio, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Robin Morris, of Georgia, to be a Member of the National Institute for Literacy Advisory Board for a term of one year.

Jean Osborn, of Illinois, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

Mark G. Yudof, of Minnesota, to be a Member of the National Institute for Literacy Advisory Board for a term of two years.

Michael F. Duffy, of the District of Columbia, to be a Member of the Federal Mine Safety and Health Review Commission for a term of six years expiring August 30, 2006.

Mr. REID. I ask consent that the Governmental Affairs Committee be discharged from further consideration of the following nominees, and the Senate proceed to their immediate consideration en bloc: Alejandro Sanchez, Andrew Saul, Gordon Whiting, to be members of the Federal Retirement Thrift Investment Board; that the nominees be confirmed, and the motion to reconsider be laid upon the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

Alejandro Modesto Sanchez, of Florida, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring October 11, 2006.

Andrew Saul, of New York, to be a Member of the Federal Retirement Thrift Investment Board for a term expiring September 25, 2004.

Gordon Whiting, of New York, to be a member of the Federal Retirement Thrift Investment Board of a term expiring September 25, 2006.

NOMINATION OF WILLIAM CAMPBELL TO BE ASSISTANT SECRETARY OF VETERANS AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent the Veterans Affairs Committee be discharged from the following nomination and the Senate proceed to its immediate consideration: The nomination of William Campbell to be Assistant Secretary of Veterans Affairs; that the nomination be confirmed, the motion to reconsider be laid upon the table, and any statements relating to Mr. Campbell be printed in the RECORD—in fact, Mr. President, any statements on any of the above nominees that I have just read to the Chair be printed in the RECORD, the President be immediately notified of the Senate's action on all the nominations, and the Senate return to legislative session.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

William H. Campbell, of Maryland, to be an Assistant Secretary of Veterans Affairs (Management).

LEGISLATIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will return to legislative session.

OMBUDSMAN REAUTHORIZATION ACT OF 2002

Mr. REID. I ask unanimous consent that the Senate proceed to Calendar No. 737, S. 606.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 606) to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Environment and Public Works, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 606

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Ombudsman Reauthorization Act of 2001".

[SEC. 2. OFFICE OF OMBUDSMAN.

[The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) is amended by striking section 2008 (42 U.S.C. 6917) and inserting the following:

["SEC. 2008. OFFICE OF OMBUDSMAN.

["(a) DEFINITIONS.—In this section:

["(1) ASSISTANT ADMINISTRATOR.—The term 'Assistant Administrator' means the Assistant Administrator for Solid Waste and Emergency Response of the Environmental Protection Agency.

["(2) OFFICE.—The term 'Office' means the Office of the Assistant Administrator for Solid Waste and Emergency Response of the Environmental Protection Agency.

["(3) OMBUDSMAN.—The term 'Ombudsman' means the director of the Office of Ombudsman established under subsection (b).

["(b) ESTABLISHMENT.—

["(1) IN GENERAL.—The Administrator shall establish within the Office an Office of Ombudsman, to be directed by an Ombudsman.

["(2) OVERSIGHT.—The Ombudsman shall report directly to the Administrator.

["(c) DUTIES.—The Ombudsman shall—

["(1) receive, and render assistance concerning, any complaint, grievance, or request for information submitted by any person relating to any program or requirement under this Act; and

["(2)(A) identify areas in which citizens have, and assist citizens in resolving, problems with the Office;

["(B) propose changes in the administrative practices of the Environmental Protection Agency to eliminate or, to the maximum extent practicable, mitigate those problems; and

["(C) conduct investigations, make findings of fact, and make nonbinding recommendations concerning those problems.

["(d) POWERS AND RESPONSIBILITIES.—In carrying out this section, the Ombudsman—

["(1) may, on receipt of a complaint or at the discretion of the Ombudsman, investigate any action of the Assistant Administrator without regard to the finality of the action;

["(2) may, under the authority of this section or section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(e)), examine any record or document of, and enter and inspect without notice any property under the administrative jurisdiction of, the Environmental Protection Agency;

["(3) in a case in which the Ombudsman experiences difficulty in gathering information pertaining to an investigation conducted by the Ombudsman, may request the Inspector General of the Environmental Protection Agency to subpoena any person to appear to give sworn testimony concerning, or to produce documentary or other evidence determined by the Ombudsman to be reasonably material to, the investigation;

["(4) may carry out and participate in, and cooperate with any person or agency involved in, any conference, inquiry on the record, public hearing on the record, meeting, or study that, as determined by the Ombudsman—

["(A) is reasonably material to an investigation conducted by the Ombudsman; or

["(B) may lead to an improvement in the performance of the functions of the Office;

["(5) shall maintain as confidential and privileged any and all communications concerning any matter pending, and the identities of any parties or witnesses appearing, before the Ombudsman; and

["(6) shall administer a budget for the Office of Ombudsman.

["(e) ADMINISTRATION.—

["(1) IN GENERAL.—The Ombudsman may—

["(A) appoint an Associate Ombudsman for each region of the Environmental Protection Agency; and

["(B) evaluate and carry out personnel actions (including hiring and dismissal) with respect to any employee of the Office of Ombudsman.

[“(2) Contact information.—The Ombudsman shall maintain, in each region of the Environmental Protection Agency, a telephone number, facsimile number, electronic mail address, and post office address for the Ombudsman that are different from the numbers and addresses of the regional office of the Environmental Protection Agency located in that region.

[“(3) Cooperation.—All Federal agencies shall—

[“(A) assist the Ombudsman in carrying out functions of the Ombudsman under this section; and

[“(B) promptly make available, in such format as may be determined by the Ombudsman, all requested information concerning—

[“(i) past or present agency waste management practices; and

[“(ii) past or present hazardous waste facilities owned, leased, or operated by the agency.

[“(4) Reports.—The Ombudsman shall, at least annually, publish in the Federal Register and submit to the Committee on Environment and Public Works of the Senate, the Committee on Energy and Commerce of the House of Representatives, the President, and, at the discretion of the Ombudsman, any other governmental agency, a report on the status of health and environmental concerns addressed in complaints and cases brought before the Ombudsman in the period of time covered by the report.

[“(f) Penalties.—Any person that willfully—

[“(1) obstructs or hinders the proper and lawful exercise of the powers of the Ombudsman; or

[“(2) misleads or attempts to mislead the Ombudsman in the course of an investigation;

shall be subject, at a minimum, to penalties under sections 1001 and 1505 of title 18, United States Code.

[“(g) Applicability.—

[“(1) In general.—This section—

[“(A) shall not limit any remedy or right of appeal; and

[“(B) may be carried out notwithstanding any provision of law to the contrary that provides that an agency action is final, not reviewable, or not subject to appeal.

[“(2) Effect on procedures for grievances, appeals, or administrative matters.—The establishment of the Office of Ombudsman shall not affect any procedure concerning grievances, appeals, or administrative matters under this Act or any other law (including regulations).

[“(h) Authorization of Appropriations.—

[“(1) In general.—There are authorized to be appropriated to carry out this section—

[“(A) $2,000,000 for each of fiscal years 2002 and 2003;

[“(B) $3,000,000 for each of fiscal years 2004 through 2006; and

[“(C) $4,000,000 for each of fiscal years 2007 through 2010.

[“(2) Separate line item.—In submitting the annual budget for the Federal Government to Congress, the President shall include a separate line item for the funding for the Office of Ombudsman.

[“(i) Termination.—The Office of Ombudsman shall cease to exist on the date that is 10 years after the date of enactment of the Ombudsman Reauthorization Act of 2001.”.]

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ombudsman Reauthorization Act of 2002”.

SEC. 2. OFFICE OF OMBUDSMAN.

Section 2008 of the Solid Waste Disposal Act (42 U.S.C. 6917) is amended to read as follows:

“SEC. 2008. OFFICE OF OMBUDSMAN.

“(a) Definitions.—In this section:

“(1) Agency.—The term ‘Agency’ means the Environmental Protection Agency.

“(2) Deputy ombudsman.—The term ‘Deputy Ombudsman’ means any individual appointed by the Ombudsman under subsection (e)(1)(A)(i).

“(3) Office.—The term ‘Office’ means the Office of the Ombudsman established by subsection (b)(1).

“(4) Ombudsman.—The term ‘Ombudsman’ means the director of the Office.

“(b) Establishment.—

“(1) In general.—There is established within the Agency an office to be known as the ‘Office of the Ombudsman’.

“(2) Oversight.—

“(A) In general.—The Office shall be an independent office within the Agency.

“(B) Structure.—To the maximum extent practicable, the structure of the Office shall conform to relevant professional guidelines, standards, and practices.

“(3) Head of office.—

“(A) Ombudsman.—The Office shall be headed by an Ombudsman, who shall—

“(i) be appointed by the President by and with the advice and consent of the Senate; and

“(ii) report directly to the Administrator.

“(B) Qualifications for and restrictions on employment.—A person appointed as Ombudsman—

“(i) shall have experience as an ombudsman in a Federal, State, or local government entity; and

“(ii) shall not have been an employee of the Agency at any time during the 1-year period before the date of appointment.

“(C) Term.—The Ombudsman—

“(i) shall serve for a term of 5 years; and

“(ii) may be reappointed for not more than 1 additional term.

“(D) Removal.—

“(i) In general.—The President may remove or suspend the Ombudsman from office only for neglect of duty or malfeasance in office.

“(ii) Communication to congress.—If the President removes or suspends the Ombudsman, the President shall communicate the reasons for the removal or suspension to Congress.

“(c) Duties.—The Ombudsman shall—

“(1) receive, and render assistance concerning, any complaint, grievance, or request for information submitted by any person relating to any program or requirement under—

“(A) this Act;

“(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.); or

“(C) any other program administered by the Office of Solid Waste and Emergency Response of the Agency; and

“(2) conduct investigations, make findings of fact, and make nonbinding recommendations to the Administrator concerning the programs and requirements described in paragraph (1).

“(d) Powers and Responsibilities.—In carrying out this section, the Ombudsman—

“(1) may investigate any action of the Agency without regard to the finality of the action;

“(2) may select appropriate matters for action by the Office;

“(3) may—

“(A) prescribe the methods by which complaints shall be made to, and received and addressed by, the Office;

“(B) determine the scope and manner of investigations made by the Office; and

“(C) determine the form, frequency, and distribution of conclusions and recommendations of the Office;

“(4) may request the Administrator to provide the Ombudsman notification, within a specified period of time, of any action taken on a recommendation of the Ombudsman;

“(5) may request, and shall be granted by any Federal agency or department, assistance and information that the Ombudsman determines to be necessary to carry out this section;

“(6) may examine any record of, and enter and inspect without notice any property under the administrative jurisdiction of—

“(A) the Agency; or

“(B) any other Federal agency or department involved in a matter under the administrative jurisdiction of the Office of Solid Waste and Emergency Response of the Agency;

“(7) may—

“(A) issue a subpoena to compel any person to appear to give sworn testimony concerning, or to produce documentary or other evidence determined by the Ombudsman to be reasonable in scope and relevant to, an investigation by the Office; and

“(B) seek enforcement of a subpoena issued under subparagraph (A) in a court of competent jurisdiction;

“(8) may carry out and participate in, and cooperate with any person or agency involved in, any conference, inquiry on the record, public hearing on the record, meeting, or study that, as determined by the Ombudsman—

“(A) is material to an investigation conducted by the Ombudsman; or

“(B) may lead to an improvement in the performance of the functions of the Agency;

“(9) may administer oaths and hold hearings in connection with any matter under investigation by the Office;

“(10) may engage in alternative dispute resolution, mediation, or any other informal process that the Ombudsman determines to be appropriate to carry out this section;

“(11) may communicate with any person, including Members of Congress, the press, and any person that submits a complaint, grievance, or request for information under subsection (c)(1); and

“(12) shall administer a budget for the Office.

“(e) Administration.—

“(1) In general.—The Ombudsman shall—

“(A)(i) appoint a Deputy Ombudsman for each region of the Agency; and

“(ii) hire such other assistants and employees as the Ombudsman determines to be necessary to carry out this section; and

“(B) supervise, evaluate, and carry out personnel actions (including hiring and dismissal) with respect to any employee of the Office.

“(2) Delegation of authority.—The Ombudsman may delegate to other employees of the Office any responsibility of the Ombudsman under this section except—

“(A) the power to delegate responsibility;

“(B) the power to issue subpoenas; and

“(C) the responsibility to make recommendations to the Administrator.

“(3) Contact information.—The Ombudsman shall maintain, in each region of the Agency, a telephone number, facsimile number, electronic mail address, and post office address for the Ombudsman that are different from the numbers and addresses of the regional office of the Agency located in that region.

“(4) Reports.—The Ombudsman—

“(A) shall, at least annually, publish in the Federal Register and submit to the Administrator, the President, the Committee on Environment and Public Works of the Senate, and the Committee on Energy and Commerce of the House of Representatives a report on the status of health and environmental concerns addressed in complaints and cases brought before the Ombudsman in the period of time covered by the report;

"(B) may issue reports, conclusions, or recommendations concerning any other matter under investigation by the Office;

"(C) shall solicit comments from the Agency concerning any matter under investigation by the Office; and

"(D) shall include any comments received by the Office in written reports, conclusions, and recommendations issued by the Office under this section.

"(f) PENALTIES.—An investigation conducted by the Ombudsman under this section constitutes—

"(1) a matter under section 1001 of title 18, United States Code; and

"(2) a proceeding under section 1505 of title 18, United States Code.

"(g) EMPLOYEE PROTECTION.—

"(1) IN GENERAL.—No employer may discharge any employee, or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment of the employee, because the employee (or any person acting at the request of the employee) complied with any provision of this section.

"(2) COMPLAINT.—Any employee that, in the opinion of the employee, is discharged or otherwise discriminated against by any person in violation of paragraph (1) may, not later than 180 days after the date on which the violation occurs, file a complaint in accordance with section 211 of the Energy Reorganization Act of 1974 (42 U.S.C. 5851).

"(h) APPLICABILITY.—

"(1) IN GENERAL.—This section—

"(A) does not limit any remedy or right of appeal; and

"(B) may be carried out notwithstanding any provision of law to the contrary that provides that an agency action is final, not reviewable, or not subject to appeal.

"(2) EFFECT ON PROCEDURES FOR GRIEVANCES, APPEALS, OR ADMINISTRATIVE MATTERS.—The establishment of the Office does not affect any procedure concerning grievances, appeals, or administrative matters under this Act or any other law (including regulations).

"(i) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There are authorized to be appropriated to carry out this section—

"(A) $3,000,000 for each of fiscal years 2003 and 2004;

"(B) $4,000,000 for each of fiscal years 2005 through 2008; and

"(C) $5,000,000 for each of fiscal years 2009 through 2012.

"(2) SEPARATE LINE ITEM.—In submitting the annual budget for the Federal Government to Congress, the President shall include a separate line item for the funding for the Office.".

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the bill, as amended, be read three times, passed, the motion to reconsider be laid on the table, and any statements be printed in the RECORD, with no intervening action or debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 606), as amended, was read the third time and passed.

AMENDING THE PUBLIC HEALTH SERVICE ACT WITH RESPECT TO SPECIAL DIABETES PROGRAMS FOR TYPE I DIABETES AND INDIANS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 5738.

The ACTING PRESIDENT pro tempore. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5738) to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid on the table.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The bill (H.R. 5738) was read the third time and passed.

Mr. REID. I also ask that any statements be printed in the RECORD.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDERS FOR WEDNESDAY, NOVEMBER 20, 2002

Mr. REID. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until today, November 20, at 10 a.m.; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and there be a period for morning business with Senators permitted to speak for up to 10 minutes each.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

PROGRAM

Mr. REID. There will be no rollcall votes today, or the rest of the year, we hope.

Again, Mr. President, before you bang the gavel, thank you very much for your patience and for waiting through all this for us.

The ACTING PRESIDENT pro tempore. It was my pleasure doing it.

ADJOURNMENT UNTIL 10 A.M. TODAY

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 12:45 a.m., adjourned until Wednesday, November 20, 2002, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 19, 2002:

DEPARTMENT OF JUSTICE

HUMBERTO S. GARCIA, OF PUERTO RICO, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF PUERTO RICO FOR THE TERM OF FOUR YEARS, VICE DANIEL F. LOPEZ ROMO, RESIGNED.

LEONARDO M. RAPADAS, OF GUAM, TO BE UNITED STATES ATTORNEY FOR THE DISTRICT OF THE GUAM AND CONCURRENTLY UNITED STATES ATTORNEY FOR THE DISTRICT OF THE NORTHERN MARIANA ISLANDS FOR THE TERM OF FOUR YEARS, VICE K. WILLIAM O'CONNOR, RESIGNED.

FEDERAL COMMUNICATIONS COMMISSION

ELLEN L. WEINTRAUB, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL ELECTION COMMISSION FOR A TERM EXPIRING APRIL 30, 2007, VICE KARL J. SANDSTROM, TERM EXPIRED.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 19, 2002:

DEPARTMENT OF VETERANS AFFAIRS

WILLIAM H. CAMPBELL, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (MANAGEMENT).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

MICHAEL F. DUFFY, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM OF SIX YEARS EXPIRING AUGUST 30, 2006.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

ALEJANDRO MODESTO SANCHEZ, OF FLORIDA, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING OCTOBER 11, 2006.

ANDREW SAUL, OF NEW YORK, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2004.

GORDON WHITING, OF NEW YORK, TO BE A MEMBER OF THE FEDERAL RETIREMENT THRIFT INVESTMENT BOARD FOR A TERM EXPIRING SEPTEMBER 25, 2006.

NATIONAL INSTITUTE FOR LITERACY

MARK G. YUDOF, OF MINNESOTA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF TWO YEARS.

NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD

CARMEL BORDERS, OF KENTUCKY, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF THREE YEARS.

WILLIAM T. HILLER, OF OHIO, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF ONE YEAR.

ROBIN MORRIS, OF GEORGIA, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF ONE YEAR.

JEAN OSBORN, OF ILLINOIS, TO BE A MEMBER OF THE NATIONAL INSTITUTE FOR LITERACY ADVISORY BOARD FOR A TERM OF TWO YEARS.

NATIONAL MUSEUM SERVICES BOARD

MARGARET SCARLETT, OF WYOMING, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2007.

DAVID DONATH, OF VERMONT, TO BE A MEMBER OF THE NATIONAL MUSEUM SERVICES BOARD FOR A TERM EXPIRING DECEMBER 6, 2004.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be brigadier general

COLONEL CHRIS T. ANZALONE
COLONEL DANA T. ATKINS
COLONEL PHILIP M. BREEDLOVE
COLONEL BRADLEY W. BUTLER
COLONEL ROBERT E. DEHNERT, JR.
COLONEL DELWYN R. EULBERG
COLONEL MAURICE H. FORSYTH
COLONEL PATRICK D. GILLETT, JR.
COLONEL SANDRA A. GREGORY
COLONEL GREGORY J. IHDE
COLONEL KEVIN J. KENNEDY
COLONEL LYLE M. KOENIG, JR.
COLONEL RONALD R. LADNIER
COLONEL ERWIN F. LESSEL III
COLONEL JOHN W. MALUDA
COLONEL MARK T. MATTHEWS
COLONEL GARY T. MCCOY

COLONEL KIMBER L. MCKENZIE
COLONEL STEPHEN J. MILLER
COLONEL RICHARD Y. NEWTON III
COLONEL THOMAS J. OWEN
COLONEL RICHARD E. PERRAUT. JR.
COLONEL POLLY A. PEYER
COLONEL DOUGLAS L. RAABERG
COLONEL ROBERTUS C. N. REMKES
COLONEL ERIC J. ROSBORG
COLONEL PAUL J. SELVA
COLONEL MARK E. STEARNS
COLONEL THOMAS E. STICKFORD
COLONEL JOHNNY A. WEIDA
COLONEL THOMAS B. WRIGHT

THE JUDICIARY

DENNIS W. SHEDD. OF SOUTH CAROLINA. TO BE UNITED STATES CIRCUIT JUDGE FOR THE FOURTH CIRCUIT.

DEPARTMENT OF DEFENSE

ARTHUR JAMES COLLINGSWORTH. OF CALIFORNIA. TO BE A MEMBER OF THE NATIONAL SECURITY EDUCATION BOARD FOR A TERM OF FOUR YEARS.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10. U.S.C.. SECTION 12203:

To be major general

BRIGADIER GENERAL RICHARD C. COLLINS
BRIGADIER GENERAL SCOTT R. NICHOLS
BRIGADIER GENERAL DAVID A. ROBINSON
BRIGADIER GENERAL MARK V. ROSENKER
BRIGADIER GENERAL CHARLES E. STENNER. JR.
BRIGADIER GENERAL THOMAS D. TAVERNEY
BRIGADIER GENERAL KATHY E. THOMAS

To be brigadier general

COLONEL RICARDO APONTE
COLONEL FRANK J. CASSERINO
COLONEL CHARLES D. ETHREDGE
COLONEL THOMAS M. GISLER. JR.
COLONEL JAMES W. GRAVES
COLONEL JOHN M. HOWLETT
COLONEL MARTIN M. MAZICK
COLONEL HANFERD J. MOEN. JR.
COLONEL JAMES M. MUNGENAST
COLONEL JACK W. RAMSAUR II
COLONEL DAVID N. SENTY
COLONEL BRADLEY C. YOUNG

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10. U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. ARTHUR J. LICHTE

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADES INDICATED UNDER TITLE 10. U.S.C.. SECTION 12203:

To be brigadier general

COLONEL TERRY W. SALTSMAN

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. MICHAEL H. SUMRALL

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10. U.S.C.. SECTION 12203:

To be major general

BRIGADIER GENERAL DANIEL D. DENSFORD
BRIGADIER GENERAL DANIEL E. LONG. JR.
BRIGADIER GENERAL MICHAEL J. SQUIER
BRIGADIER GENERAL ROY M. UMBARGER
BRIGADIER GENERAL ANTONIO J. VICENS-GONZALEZ
BRIGADIER GENERAL WALTER E. ZINK II

TO BE BRIGADIER GENERAL

COLONEL NORMAN E. ARFLACK
COLONEL JERRY G. BECK. JR.
COLONEL RAYMOND W. CARPENTER
COLONEL HERMAN M. DEENER
COLONEL ROBERT P. FRENCH
COLONEL JOHN T. FURLOW
COLONEL CHARLES L. GABLE
COLONEL FRANCIS P. GONZALES
COLONEL DEAN E. JOHNSON
COLONEL DAVID A. LEWIS
COLONEL THOMAS D. MILLS
COLONEL VERN T. MIYAGI
COLONEL ROQUE C. NIDO LANAUSSE
COLONEL J. W. NOLES
COLONEL THOMAS R. RAGLAND
COLONEL TERRY L. ROBINSON
COLONEL CHARLES G. RODRIGUEZ
COLONEL CHARLES D. SAFLEY
COLONEL RANDALL E. SAYRE
COLONEL DONALD C. STORM
COLONEL WILLIAM H. WADE
COLONEL GREGORY L. WAYT
COLONEL MERREL W. YOCUM

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10. U.S.C., SECTION 601:

To be vice admiral

REAR ADM. STANLEY R. SZEMBORSKI

AIR FORCE NOMINATIONS BEGINNING BRANFORD J. MCALLISTER AND ENDING ALICE SMART. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16. 2002.

AIR FORCE NOMINATION OF DAVID G. SMITH.

ARMY NOMINATIONS BEGINNING TOM R. MACKENZIE AND ENDING TERRENCE D. WRIGHT. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 12. 2002.

ARMY NOMINATIONS BEGINNING STEPHEN M. ACKMAN AND ENDING JOSEPH M. ZIMA. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 12. 2002.

ARMY NOMINATIONS BEGINNING WILLIAM C. CANNON AND ENDING CHARLES F. MAGUIRE III. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 14. 2002.

NAVY NOMINATIONS BEGINNING ROWLAND E MCCOY AND ENDING ALAN K. WILMOT. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 16. 2002.

NAVY NOMINATIONS BEGINNING RODNEY D. ABBOTT AND ENDING BERNERD C. ZWAHLEN. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 17. 2002.

NAVY NOMINATION OF PHILLIP K. PALL.

NAVY NOMINATION OF STEPHANIE L. O'NEAL.

NAVY NOMINATION OF THOMAS P. ROSDAHL.

NAVY NOMINATIONS BEGINNING ROBERT D. BEAL AND ENDING STEVEN J. ZACCARI. WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 14. 2002.

EXTENSIONS OF REMARKS

ESSAY BY RACHEL SPELLMAN

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to insert an essay by one of my constituents, Ms. Rachel Spellman, into the CONGRESSIONAL RECORD. Rachel's eloquent remarks regarding her struggle with cancer have been an inspiration to me and I believe that we all can benefit from her positive outlook and the thankfulness with which she greets each day. Therefore, Mr. Speaker, I would urge my colleagues to read this wonderful essay and join me in saluting Rachel for her strength in her battle with this disease.

I CAN BREATHE

(By Rachel Spellman)

You have cancer. Imagine hearing that. You have cancer. I was only two and didn't understand. Everyone has to go to the hospital everyday and get tested, pricked, poked and x-rayed, right? I hadn't the faintest idea how in danger my life was. I am glad I was so young and naive, so I didn't emotionally fall apart. But it does bother me that I cannot remember anything. Only little flashbacks and stories from my parents can evoke the slightest hint of a memory. I am fighting an emotional and sometimes a physical battle everyday. I learn to take one day at a time. I can do it. Just one day at a time.

Having lived with cancer has taught me many of life's hard lessons. I feel an immense appreciation for life itself. Just being alive. Now, eleven years in remission, I know how lucky I am and I am so very grateful for my second chance. My experience has taught me to believe in something stronger than myself. I learned to have hope and faith during hard times. One must slow down to notice the small things and how simply pure and wonderful they are. Even those little, annoying things you know you wouldn't have any other way.

The doctor called my parents three days early and he said to come in right away. It's not important. I had myelodysplasia, a malignant disease of the bone marrow cells. Chemotherapy and radiation were not enough. I needed a bone marrow transplant. Allyson, my sister, was a match. I was very lucky. It is very hard to find donors. The procedure hurt her more than it hurt me. I was in the hospital for about 4 months straight. The next year I was in, on and off, for follow up. I had an IV put in my chest to put meds, and sometimes food, through. I still have a scar on my neck and chest from it. I was on immunosuppressive drugs for 8 years, until I was 10. An endless list of pills and liquids to take everyday. I am now doing much better and only go to the hospital about every three months or so. It's very hard to listen to people tell me about their little cuts and bruises when I know the things that really do hurt.

I often feel alienated and different. "Friends" do not understand me, but I really shouldn't expect them to. That doesn't make it any easier. I am so different. Girls talk of their highlights and sloppily braid each other's hair. Looking in the mirror, I think about how great it would feel to pull my hair back into a ponytail and not have a wig fall off. Flowing. Like the little mermaid, her long hair dancing about her as she swims. Yeah, that's it, I want to be Ariel. It really would be great. In gym class the kids are sweeping past, I am unable to keep up. My skin is scarred. My hands are wrinkly. I am constantly being mistaken for 10 when actually being 14. The list could go on forever. But what hurts the most is not having a friend to talk with. No one ever takes me seriously. I often blame this lack of true companions on cancer. I find my favorite part of the day is coming home. I finally get to remove the things that I use to try to fit in and appear normal. Shut the front door, take off the heeled shoes, remove the itchy wig to reveal my short dull brown wisps, and slip into some comfy clothes that are more me. I feel like a player exiting the stage. Removing my costume, I shake off the character of the day. On stage, I must hide my true emotions and let this other character shine through. I get so good at it, I even fool myself.

However, the tears are real; that is irrefutable. That is when I know I have stopped pretending. Show's over. My mother, a strong and inspiring woman, has always been there for me, but this need to connect with peers is overwhelming. Sometimes, I feel guilty for my emotions. There are so many amazing things about life! What right do I have to feel like this? I am selfish. I'm alive, aren't I? Survivor guilt perhaps. My mother says its OK to be upset. I guess I believe her. Juggling these feelings and those of a regular teenager can get very nerve racking. I'm not sure of too much, but I know one thing. It'll take time. Just time.

One must remember that painful days will pass. Often they pass too soon. Waste not your time here; we live in a wonderful place. Smile. Take pleasure in the simple things and see the complicated ones as a challenge, a new journey. The little stresses of each day should be seen as a comedy of errors; enjoy your mistakes and remember to keep your life in perspective. Above all, love. Love simply the fact that you are here, and that when you awake each morning, you can breathe. For your breath might stagger occasionally, but you're still going. In. Out. In. Out. One day at a time. In. Out. In.

TRIBUTE TO DAVID LUCCHETTI

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. MATSUI. Mr. Speaker, I rise in tribute to David Lucchetti, one of Sacramento's most outstanding citizen leaders. David is retiring after many years of wonderful contributions to the Sacramento Neighborhood Housing Service Board of Trustees. As his friends and family gather to celebrate David's numerous achievements, I ask all of my colleagues to join with me in saluting one of Sacramento's most accomplished citizens.

David began his illustrious career in 1970 when he was hired by Anderson Lumber Company, a division of Pacific Coast Building Products, Inc. Through his trademark hard work and dedication, David was named the Chief Financial Officer for Pacific Coast Building Products in 1979. Under his leadership, Pacific Coast Building Products was awarded the prestigious "Best in the Business" awarded by the Sacremento Chamber of Commerce. In addition, the company was also recently recognized as one of the ten Most Admired Companies in the Sacramento area. Perhaps, most impressively, the company has maintained a regular presence on the influential Forbes 500 list under David's tenure. All in all, David has steadfastly represented the interests of Pacific Coast Building Products with great honor and results for the past three decades.

Aside from his contributions to Pacific Coast Building Products, David has also offered his valuable services to a number of worthy community organizations. David has been a long time member of the Big Brother/Big Sisters Foundation. In addition David has also been a member of the Sutter Club, California State University Sacramento, the Sacramento Business Advisory Board, and a Board of Trustee member to the Sacramento Regional Foundation and Sacramento Neighborhood Housing Service. David is also associated with Succeed Catholic Social Service.

It is not surprising that David has been widely recognized for his involvement in the community. In 1996, David was named by the Sacramento Diocese as the Distinguished Catholic School Graduate of the year. Earlier in 1993, David was appointed by Governor Pete Wilson to serve on the California Contractors State License Board. In 1997, David and his wife, Chris, were the proud recipients of the Philanthropist Couple Award in recognition for all their charitable work over the years.

Dave's unparalleled success in the boardroom and in the community truly makes him one of Sacramento's most accomplished and treasured citizens. His commitment to help others is a shining example to everyone who follows his leadership.

Mr. Speaker, as David Lucchetti's friends and family gather for his honorary luncheon, I am honored to pay tribute to one of Sacramento's most honorable residents. His successes are considerable, and it is a great honor for me to have the opportunity to pay tribute to his contributions. I ask all my colleagues to join with me in wishing David Lucchetti continued success in all his future endeavors.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

TRIBUTE TO THE HONORABLE SANDRA L. KOFFMAN

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. FARR of California. Mr. Speaker, I rise today to recognize a very special woman, the Honorable Sandra L. Koffman, the Mayor of Pacific Grove, California. Sandy, as she is known throughout town, has been a true leader in Pacific Grove and in the wider Monterey Bay region. As she steps down after four consecutive terms as Mayor, I want to take this time to honor her public service. I think it is particularly important that this House, at the pinnacle of American democracy, honor the fundamentally important role that local elected officials such as Mayor Kaufman play in the governance of our great nation. Local politics is the foundation on which our nation rests. Members of Congress simply stand on the shoulders of the Mayors, City Council members, County Supervisors, School Board Members, and the other local elected office holders who give so generously of their time to make our communities work. Sandy is just such a local official. She is the kind of leader who is the first to arrive, the last to leave, and is always there with persistence and energy to move Pacific Grove forward.

Sandy was born and raised in Chicago, Illinois. After college, Sandy made her way to California where she began a career in retailing in the Los Angeles area. Sandy and her husband Dan moved to Pacific Grove in 1990, where she immediately became active in the community, serving as a docent for the Monterey Bay Aquarium, cofounding Pacific Grove Eco-Corps in 1991 and the Pacific Grove Residents Association in 1993, and participating in the Pacific Grove Chamber of Commerce and many other local, national and international organizations. In 1994, the citizens of her adopted city elected Sandy their mayor.

Since her election as mayor, Sandy has contributed in numerous ways to the improvement of Pacific Grove, including protection of the environment, preservation of historic homes, and revitalization of the downtown business district. Sandy has led the City Council effectively through major projects, including a new Youth Center, restoration of historic City Hall and an addition to the Civic Center, approved plans for affordable housing for senior citizens, and a comprehensive sewer maintenance and improvement project.

Sandy has been a highly public, accessible and outgoing Mayor, spending countless hours with all segments of the community to build consensus and bridges of understanding, and has unfailingly conducted meetings with a skillful combination of cordiality and focus. She has participated actively in regional planning and policy-making as Pacific Grove's representative to the Fort Ord Reuse Authority and other organizations, and has worked closely and effectively with the other mayors on a wide range of countywide issues.

On behalf of this House I want to commend Mayor Koffman for her dedicated service and call on her to continue her good work on behalf of the people of Pacific Grove and the United States.

TRIBUTE TO ABBA EBAN

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. LANTOS. Mr. Speaker, I rise today to pay tribute to a fallen hero in the cause of peace, Mr. Abba Eban. In nearly a half-century of service as Israel's premier diplomat, Mr. Eban played a critical role in securing the future of his embattled nation and in defending democracy in the Middle East. News of his passing Sunday grieves all those who knew him and knew his historic work.

My wife and I had the honor of first meeting Abba Eban nearly four decades ago. Even at this early stage in his extraordinary career, he had distinguished himself as one of the most passionate, articulate and compelling voices on the world stage. In introducing President Harry S. Truman to Israel's future leaders, Mr. Eban helped forge a partnership between our two countries that has grown only stronger with the passage of time. Throughout Israel's struggle to survive, Abba Eban provided the words that emboldened the Israeli people and persuaded the world. Perhaps his finest moment came in 1967, when he addressed the United Nations in a heroic and spirited defense of Israel's right to exist. Israel's continued survival is the lasting legacy of his immortal words.

Abba Eban's Churchillian orations at the United Nations are the stuff of legend, capturing the spirit of a brave nation and captivating an anxious world. He instilled pride in all who shared his vision of a free and independent homeland for the Jewish people—and he earned the respect of all who did not. If the pen is mightier than the sword, then Abba Eban's eloquence was among the strongest weapons in Israel's arsenal. He personified his nation's fearless quest for peace.

Abba Eban was also a character the likes of whom the world may never again know. His brilliant intellect, cosmopolitan style and biting wit cast him as the consummate diplomat. He was the picture of professionalism. But behind this polished public persona was a human being who, like his countrymen, struggled to live in peace and with dignity.

Reflecting on the life of Abba Eban, we better understand that a nation's greatness is defined not by the strength of its arms or the extent of its wealth, but by the virtues of its people. Abba Eban was indeed a great and virtuous man, a most fitting emissary of a great and virtuous people. Let us commemorate his life by leading our own as he led his.

TRIBUTE TO THE HONORABLE TIM ROEMER

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. RAHALL. Mr. Speaker, I rise today to pay tribute to one of the most highly regarded members of the House of Representatives, the ranking member of the Subcommittee on Select Education, TIM ROEMER, from Indiana's Third District.

As David Broder, the esteemed Washington journalist wrote of TIM, he is "ending a singularly useful House career by retiring."

Throughout his 12 years as a member of the House, TIM has focused on important matters aimed at improving our way of life such as education and the AmeriCorps program. Likewise, he brought his considerable talents to bear as a member of the House Permanent Select Committee on Intelligence.

Most notably, his tenure here has been marked by his consistent willingness to put aside partisan differences in effort to find reasonable and worthwhile solutions.

I recently had the privilege of working with TIM on a matter that we both considered to be very important, the Adams Memorial, which will honor our second president, John Adams, and his wife, Abigail. As the ranking member of the Resources Committee, which passed the bill out, I'm proud to say that President Bush signed the bill into law last year. Similarly, just the other day, the House passed legislation approving the Secretary of the Interior's decision on placement of the memorial.

Mr. Speaker, TIM is the embodiment of the true civil servant who interrupts his career in order to serve his Nation. And when his service is complete, he simply chooses to return to private life as still a young man with great potential for even more achievement.

While we here will miss TIM and his valuable contributions, we wish him well as he returns to private life, and most importantly, to his wife and their children.

RECOGNIZING LIEUTENANT COLONEL GARY WOODWARD

HON. DAVID L. HOBSON

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. HOBSON. Mr. Speaker, I rise today in recognition of my constituent, Lieutenant Colonel Gary Woodward, U.S. Air Force Reserve, who will be retiring on November 30th of this year.

Col. Woodward began his service as a member of the Ohio Air National Guard, USAF Security Police (Air Police) and was a graduate of the first class of the ANG Academy of Military Sciences (NCO Academy) at the McGhee-Tyson Air Force Base in Knoxville, Tennessee.

He was commissioned a Second Lieutenant in 1972, and named Commander of the 178th Security Police unit at Springfield, Ohio. In 1974, Lt. Woodward's unit was mobilized to provide humanitarian support to the Xenia tornado disaster. Under his leadership, this unit was awarded the Air Force's Outstanding Unit Award, recognized for its excellent support to the Ministry of Defense in the United Kingdom concerning a number of successful European deployments, and also was recognized for its outstanding inspection ratings.

In 1993, Lt. Col. Woodward was promoted to his present grade and awarded the USAF

Commendation Medal. In 1995, he was recognized for his professionalism and outstanding support to the Space and Missile Center, Los Angeles AFB, and three years later the U.S. Secretary of Defense acknowledged Lt. Col. Woodward's leadership as the Project Officer for the National Defense Conference at Wright-Patterson AFB. Identified as mission critical and extremely valuable to the USAF, Lt. Col. Woodward was selected and approved to continue service beyond his retirement date.

During all of this, Lt. Col. Woodward had a successful, 25-year banking career and served on the Fairborn City Council. He and his wife, Diana, still reside in Fairborn, and are the proud parents of two daughters, Elizabeth and Melody.

As a former member of the Ohio Air National Guard, I am proud to come to the floor to recognize Lt. Col. Gary Woodward's service to his nation, his community and his family, and congratulate him on the occasion of his retirement.

RECOGNIZING THE HARTFORD PUBLIC LIBRARY

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today to pay tribute to the Hartford Public Library as one of only six recipients of this year's National Award for Museum and Library Service.

The Hartford Public Library's Chief Librarian, Ms. Louise Blalock, and the Board President, Mr. Paul Shipman, recently attended an awards ceremony at the White House during which First Lady Laura Bush presented them with the citation for their innovative efforts to expand the Library's services to the community. The Hartford Public Library received the Institute of Museum and Library Services (IMLS) award, in part, for developing community partners and innovative programs to address current educational, social, economic and environmental issues. Major partnerships developed by the Library include the Partnership Library, the Integrated Library Information and Management System and the Creating Readers program.

The National Award for Library Service was established in 2000 and is the only national award of its kind to recognize the public service record of America's libraries. The award is presented in conjunction with the National Award for Museum Services, which was established in 1994.

This year the Hartford Public Library has truly transformed the traditional meaning of a library with the development and installation of its "Community Information Database". The Hartford Public Library has responded directly to the needs of Hartford residents by compiling this database with such helpful information as employment opportunities, social services, and neighborhood council reports.

In addition to its model partnership with the Hartford Public System in which it has helped schools achieve curriculum goals for language development, the Library has forged a stronger relationship with the Hartford community this year by connecting all its residents to a distinguished collection of books, technology, social services, and community expertise.

Mr. Speaker, I urge my colleagues to join me in offering my most sincere congratulations to the Hartford Public Library for its exemplary service to Hartford and Connecticut's First Congressional District and for setting an example for innovation and excellence for libraries across the country.

TRIBUTE TO VALERIE DOMBROWSKI

HON. JANE HARMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Ms. HARMAN. Mr. Speaker, I rise today to pay tribute to the distinguished life and career of a constituent and community leader, Redondo Beach School Board Member Valerie Dombrowski, who passed away on November 11, 2002.

Valerie served the city of Redondo Beach as a dedicated school board member for twenty-five years. She was a tireless advocate for special and fine arts education. Among her accomplishments are the equalization of funding for girls' and boys' sports programs and the procurement of musical instruments for children who could not afford them.

Her dedication served the students in the community while gaining her respect from others who were impressed by her resolve to fight for causes she thought worthy. As a woman who always spoke her mind and asked the tough questions, she was the voice of the teachers, parents, and administrators in the district.

While being a matriarch of the Redondo Beach community, she was also a mother of eleven, grandmother of nineteen, and great-grandmother of one. Widowed in 1980, Valerie raised her children alone and ran the two family businesses. Her strength and leadership is an inspiration to us all.

In keeping with the spirit of Valerie's commitment to special education and fine arts education, her children have established the Valerie K. Dombrowski Scholarship Fund to help children with special needs and arts programs in Redondo Beach.

Mr. Speaker, I am honored to join Valerie's family and friends in commemorating the loss of an outstanding educator, mother, and community leader. Valerie's tireless efforts and unwavering dedication have touched the community. We will miss her dearly, but her spirit will continue to survive.

TRIBUTE TO MR. JACK COLWELL

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. ROEMER. Mr. Speaker, I rise today to pay tribute to a great American, an accomplished journalist, and an astute observer of politics, Mr. Jack Colwell of South Bend, Indiana. After nearly 40 years as the political writer for the South Bend Tribune, Mr. Colwell will soon be stepping down from that post. It is my great honor to have this opportunity to wish him well as he embarks on his well-deserved retirement.

In an age when political communication often generates more heat than light and political discourse is dominated by cynicism and spin, Mr. Colwell has set the standard for accuracy, fairness, and integrity in political journalism. The insights and observations found in his weekly column and regular news articles for the Tribune have inspired generations of readers to engage in the political process. As a longtime reader and frequent subject of Mr. Colwell's pieces, I have marveled at his ability to inform and entertain, report the facts while also providing the broader context of an issue, and share his knowledge with a characteristic modesty, humor, and respect for the political process.

Although Hoosiers now proudly claim him as one of their own, Mr. Colwell originally hails from Ottawa, Illinois. Upon graduation from the University of Illinois College of Journalism, he began his professional journalistic career at the Champaign-Urbana Courier. Later, Mr. Colwell honed his journalistic skills while serving our country in the United States Army as the editor for the Fifth Army newspaper. Upon completion of his service, he joined the South Bend Tribune as a night police reporter. In 1964, Mr. Colwell assumed the position of political reporter for the Tribune—a post he has held ever since.

Over the course of his 38 years covering politics, Mr. Colwell's relentless pursuit of political news led to coverage of every major politician in Indiana, 20 national political conventions, and too many local, state, and national elections to count. His distinguished career in journalism earned him numerous writing awards from the Hoosier State Press Association and the Indiana Associated Press Managing Editors.

In addition to his obligations to the South Bend Tribune, since 1988, Mr. Colwell has provided a forum for conversations between citizens and their elected officials as the host of a local public affairs television program. He also finds time to share the insights of his craft with the next generation of journalists as an adjunct associate professor of journalism at the University of Notre Dame.

Mr. Speaker, it is difficult to imagine following politics in Northern Indiana without the benefit of Jack Colwell's contributions. I believe that Jack Powers, the former managing editor of the South Bend Tribune, perhaps put it most succinctly when he said at the time of Mr. Colwell's induction into the Indiana Journalism Hall of Fame in 2000, "Jack Colwell is the greatest single journalist in the history of the community and the newspaper. He made us all look good. He still does." I join my constituents in thanking Jack for his years of service and wish him much success in his future endeavors.

TRIBUTE TO BETTY PERRY

HON. ROBERT T. MATSUI

OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 19, 2002

Mr. MATSUI. Mr. Speaker, today I rise to honor a friend with a noteworthy career in advocacy and public service. On November 19, 2002, the National Chapter of the Older Women's League will honor Betty Perry with the OWL Chapter Leader Award for her tireless work on behalf of OWL California. As her associates and friends gather to recognize her passionate work in the advocacy arena, I ask all of my colleagues to join with me in saluting one of Sacramento's outstanding citizens.

Born and raised in Sacramento, Betty was first exposed to the public arena when she often attended committee hearings and legislative sessions in the state capitol with her father. In 1948, Betty received her M.A. degree from U.C. Berkeley where she also earned her B.A. a few years earlier. In pursuit of a career in teaching and counseling, Betty returned home to Sacramento, where she began an almost 4 decade long career at Kit Carson Jr. High and McClatchy High School.

In 1984, shortly after her husband Calvin Perry passed away, Betty joined the Sacramento Capitol Chapter of OWL. What started out as a limited volunteer activity soon manifested into a full time volunteer position. Whether the task called for making phone calls or serving as chapter Secretary, Betty demonstrated her trademark commitment to excellence in all her duties. Betty would go on to serve every chapter office with distinction, including President, in 1993 and 1994. After a one-year stint as Co-President OWL California, Betty was ultimately elected to serve as statewide President in 1995.

As President, Betty remained a strong voice for older women by representing OWL on the Sacramento County Board of Supervisor's Task Force on Long Term Care. In 1997, she became OWL–CA's Education and Research Coordinator and following, Public Policy Director. Along with her work in public policy, Betty played an instrumental role in the coordination of the OWL–CA Mother's Day program. She aggressively advocates for legislation that benefits women and seniors in California. In 2001, she worked passionately on behalf of OWL to secure the passage of a resolution in the California State Senate that recognized the goals of OWL including, the staunch opposition of privatizing social security.

Despite a hectic schedule, her involvement in community service is not exclusive to OWL. She has been the co-chair of the local Breast Cancer Early Detection Program and works closely with the Congress of California Seniors, Gray Panthers, California Seniors Coalition, AARP, and the Consumer Federation of California, to protect and advance the interests of California citizens on a myriad of issues. She has worked on a variety of social causes promoting issues such as the California Patient Bill of Rights and reducing prescription drug prices for people on Medicare.

Her continuous leadership is a true testament to her devotion to help others. Her career as a social and political activist is commendable and I am pleased to acknowledge one of Sacramento's outstanding citizens. Mr. Speaker, as Betty Perry is honored with the OWL Chapter Leader award, I ask my colleagues to join with me in paying tribute to her numerous accomplishments.

TRIBUTE TO MR. RAYMOND F. DASMANN

HON. SAM FARR

OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 19, 2002

Mr. FARR of California. Mr. Speaker, I rise today to honor the life of Mr. Raymond F. Dasmann, a founder of international environmentalism and a tireless proponent of increased efforts for sustainability on a planet with limited resources. Mr. Dasmann, a UC Santa Cruz professor emeritus of ecology, passed away on November 5, 2002, and is survived by daughters Marlene, Sandra, and Lauren, five grandchildren; and one great-grandchild. His wife of 45 years, Elizabeth Sheldon, passed away in 1996.

Raymond was fascinated with our living Earth from an early age. His undergraduate education in biology was interrupted by World War II; he served in Australia and New Guinea. Upon his return he enrolled at UC Berkeley, where he studied zoology under the famed wildlife biologist Starker Leopold.

Mr. Dasmann began working as a conservation biologist in the 1950s, when the field was in its infancy. His early research documented threats to the environment from population growth and pollution. Raymond wrote over a dozen influential books in his lifetime, on subjects ranging from endangered species to the loss of irreplaceable wildlands to environmental decline. Mr. Dasmann's works were must-reads for national researchers concerned about the environment.

Raymond did pioneering work in the 1960s with the United Nations Educational Scientific, and Cultural Organization, where he helped launch the Man and the Biosphere program. During the 1970s he worked in Switzerland as a senior ecologist for the International Union for the Conservation of Nature.

Mr. Dasmann was recognized many times for his work. He was honored by the World Wildlife Society and the Smithsonian Institute. The prestigious Order of the Golden Ark, which recognizes internationally distinguished conservationists, honored Raymond in 1978. He became an elected fellow of the American Association for the Advancement of Science in 1984 and received the Distinguished Service Award from the Society for Conservation Biology in 1988. Mr. Speaker, it is my honor to recognize the life and achievements of Raymond Dasmann.

TRIBUTE TO JOHN LAFALCE

HON. NANCY PELOSI

OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 19, 2002

Ms. PELOSI. Mr. Speaker, I am proud to put in the CONGRESSIONAL RECORD the tremendous accomplishments of JOHN LAFALCE, who has served this body with such great distinction since 1974.

In 1999, JOHN steered the financial Services Act through Congress, which began the process of modernizing the financial services industry.

And this year, his magnificent leadership brought about tough, comprehensive investor protections that will help preserve pensions for years to come.

As this record attests, JOHN LAFALCE made a great deal of law during his outstanding career, without making a great deal of noise.

I wish JOHN and his family the very best, which is what he had given his fellow Americans day in and day out for nearly 30 years.

CONGRESSMAN JOHN J. LAFALCE

John J. LaFalce was first elected to the 94th Congress in 1974 and was re-elected to each succeeding Congress through the 107th, serving his Western New York congressional district for 28 years, from 1975–2002. He served as Chairman of the House Small Business Committee from 1987–1994, and as Ranking Democrat on the House Financial Services Committee from 1998–2002. He declined to seek re-election to the 108th Congress.

PERSONAL

John LaFalce was born in Buffalo, New York, on October 6, 1939. He graduated from Public School 49 (1953), Canisius High School (1957), Canisius College (1961), and Villanova University School of Law in 1964. From 1965 to 1967, Rep. LaFalce served in the United States Army during the Vietnam era, leaving active duty with the rank of Captain.

He returned from military service to practice law in Western New York with the law firm of Jaeckle, Fleischman and Mugel, and soon became active in public service. In 1970, he ran successfully for the New York State Senate, and in 1972 was elected to the State Assembly.

He is married to the former Patricia Fisher and they have one son, Martin, now a senior at Georgetown University.

CONGRESSIONAL SERVICE

In 1974, at the age of 35, Rep. LaFalce became only the second Democrat, and the first since 1912, to win election to what was then the 36th Congressional District of New York. During his career in the House of Representatives, he served on both the Committee on Small Business and the Committee on Banking, Finance and Urban Affairs (now the Committee on Financial Services). In January 1987, he was elected by the Democratic Caucus as Chairman of the Committee on Small Business, thus becoming the first member of his class (those elected in 1974) to chair a full, standing committee of the House. Following the change in control of Congress in 1994, he continued to play the key role as the Committee's Ranking Democrat. In February 1998, he was elected the Ranking Democrat on the Financial Services Committee and served in that capacity through 2002.

In Congressional Quarterly's Politics in America profile of Rep. LaFalce, he was characterized as "one of the smartest members of Congress." A Buffalo News article referred to him as "a workhorse, not a showhorse."

LEGISLATIVE ACHIEVEMENTS AND ACTIVITIES

As Ranking Democrat of the Banking Committee since 1998, Rep. LaFalce became the point man for the Clinton Administration on all financial economic issues, and consistently demonstrated his leadership by initiating, advocating and securing the enactment of numerous laws designed to increase consumer protection; expand housing and community development; increase competition to provide consumers the widest range of financial services at the lowest cost; ensure the safety, soundness and competitive strength of the banking system; and improve the efficacy and fairness of international development programs.

His leadership role was enlarged further in 2001, at the beginning of the 107th Congress, when the House Banking Committee became the House Financial Services Committee, with expanded jurisdiction that encompassed all three pillars of the U.S. financial system: banking, securities, and insurance. Since that change, Rep. LaFalce has played the key leadership role in developing and enacting new regulatory oversight and increased investor protections in the securities area, to restore market confidence after the corporate abuses revealed by Enron, Global Crossing, WorldCom and others.

Financial services

Financial Services Modernization (Gramm-Leach-Bliley)—For decades, Rep. LaFalce served as a leader in congressional efforts to modernize the Nation's complex financial services system, consistently advocating legislation that would eliminate the arbitrary barriers between commercial and investment banking. His dedication to modernizing the financial services system increased with his chairmanship of a special Task Force formed in 1989—The International Competitiveness of U.S. Financial Institutions. Concluding that the current system increased costs to consumers, denied them easy access to a full range of integrated services, impeded necessary diversification, and put U.S. institutions at a clear disadvantage vis-a-vis foreign competitors in a newly-global marketplace, he made enactment of financial modernization a top priority.

Early in 1999, working closely with the Clinton Treasury Department, Rep. LaFalce crafted bipartisan legislation that jumpstarted consideration of financial modernization by garnering Administration support, led by Treasury Secretary Robert Rubin, for the first time in the recent history of that debate. Working co-operatively with the Committee Chairman, and acting as the "point man" both for the Administration and House Democrats, he was able to fashion a revised bipartisan bill that ultimately served as the basis for committee passage of the legislation with a strong bipartisan vote of 51–8. That bill provided the basis for the bipartisan agreement that led to enactment of the Financial Services Act of 1999, referred to by The New York Times as "landmark legislation. . . . The pre-eminent legislative accomplishment of the year." The Associated Press referred to Rep. LaFalce's "leading role" in crafting the final compromise measure and National Journal's Congress Daily called him the Administration's "point man on financial issues."

For his leadership role, Rep. LaFalce, along with Senate Banking Committee Chairman Phil Gramm, House Banking Committee Chairman James Leach, and former Treasury Secretary Robert Rubin, was given the "American Financial Leadership Award" by the Financial Services Roundtable.

Federal Reserve Board and Banks—Over the years, Rep. LaFalce has worked closely with the various Chairmen of the Federal Reserve Board, the individual Board Members, and the heads of the various Federal Reserve Banks, particularly the New York Federal Reserve, on a variety of macro- and micro-economic, financial services, consumer and international issues. Most recently, he has worked closely with Chairman Alan Greenspan in an effort to pass important corporate netting legislation that would reduce systemic risk related to financial contracts; with New York Federal Reserve Bank President Bill McDonough, Vice-Chairman Roger Ferguson and Governors Susan Bies, Mark Olsen, and Ned Gramlich on the development of the Basel II Accord, on improving the Federal Reserve's regulatory oversight of predatory lending, and on unfair and deceptive trade practices.

In prior years, Rep. LaFalce worked closely with Federal Reserve Chairman Paul Volcker and New York Federal Reserve Bank President Gerald Corrigan on efforts to resolve the Third World debt crisis that was undermining Latin American economies. He also worked closely with the Federal Reserve leadership over many years to ensure the progressive implementation of the existing Glass-Steagall statute, and subsequently, to effectively implement the Glass-Steagall Act repeal contained in the Gramm-Leach-Bliley legislation.

New York City Bail-Out and Chrysler Loan Guarantee Program—In 1978, the Banking Committee played a central role in devising a loan guarantee program to address the economic difficulties and pending bankruptcy of New York City. Again in 1980, the Committee devised another loan guarantee program to secure the economic viability and continued existence of one of the country's major auto manufacturers and major employers, the Chrysler Corporation. Rep. LaFalce played a central role in the development of both loan guarantee programs. His key contributions, which became central elements in both legislative initiatives, were his insistence on "conditionality" to ensure that the government assistance was conditioned on changes that would ensure each recipient's independent viability in the longer term, and shared sacrifice by all parties in a position to benefit.

Corporate accountability and investor protection

Rep. LaFalce has been Congress's leading advocate for strong investor protections. In 2001, he played a prescient role in alerting the world to the warning signs that these problems were just around the corner. Long before Enron was front page news, in early 2001, he repeatedly warned that the earnings manipulation and deceptive accounting practices of large corporations in America threatened the very integrity of our capital markets. At the same time, he repeatedly expressed strong concerns that the significant number of financial restatements and investigations into earnings manipulation—by corporate officers, directors, and accountants, undetected by stock analysts—represented only the tip of the iceberg.

As the Buffalo News reported, "If the warning signals of two men in government had been heeded many months ago, the Enron disaster possibly could have been averted. One voice heard but not listened to was that of Arthur Levitt, the former chairman of the Securities and Exchange Commission. . . . A second figure who sounded a warning early on is our own Western New York Congressman, John J. LaFalce. The ranking member of the House Financial Services Committee, in a letter to his constituents in June 2001, wrote: "Investing has become more risky for Americans. Practices such as earnings manipulation by corporate management, unchecked by boards of directors or auditors, often create a misleading or false story of the financial position of the companies that you may invest in. In addition, stock analysts who recommend stocks often have conflicts of interest that compromise them."

LaFalce, elaborating on his concerns, added: "Since compensation for management and boards of directors is closely tied to companies' stock prices, the pressure on corporations to manipulate earnings can only increase. While auditors should be acting as watchdogs for shareholders, many have become dependent on consulting revenues from the companies they audit, creating a conflict that makes it difficult for them to stand up to their clients."

LaFalce's remarks, made many months before the Enron failure, are prophetic of the practices that have since come to light. LaFalce also stated in his newsletter that: "I believe we may have seen only the tip of the iceberg of accounting irregularities, and I have called for the Financial Services Committee to focus on accounting issues, which have such a profound effect on the integrity of our markets."

The colossal failures of Enron, WorldCom, Global Crossing and other firms, and the devastating impact on investors and on the working men and women of those companies, have justified LaFalce's concerns. At the same time, Rep. LaFalce has also worked with financial regulators and his colleagues to eliminate conflicts of interest by stock analysts, who in many cases hyped stocks in order to win and maintain investment banking business.

Corporate Accountability Act (Sarbanes-Oxley)—Rep. LaFalce was the prime mover of the sweeping corporate accounting reform legislation signed into law on July 25, 2002, marking the first step toward bringing about needed change to U.S. capital markets and restoring credibility to corporate America. The new Corporate Accountability Act largely parallels the original bill introduced by Rep. LaFalce in February 2002. That bill, the Comprehensive Investor Protection Act (HR 3818), was the first comprehensive legislative solution to bring substantial and systemic reform to capital markets that have been rocked by corporate bankruptcy scandals. The Senate bill subsequently introduced by Banking Committee Chairman Paul Sarbanes was modeled on the LaFalce bill, and its strong provisions remain the centerpiece of the new Corporate Accountability law. As former SEC Chief Accountant Lynn Turner said "while [lsqb]the Sarbanes-Oxley bill[rsqb] may not have the LaFalce name on it, it will have the LaFalce intent and heart behind it."

Rep. LaFalce was also widely praised by consumer, investor, and labor groups, and the House Democratic Leadership, for his leadership in bringing about these essential auditing reforms. AFL–CIO President John Sweeney praised his "courageous leadership" and said "I particularly want to thank Congressman LaFalce, who has really stood out these last few months as a leader ready to take on powerful Wall Street and big money interests on behalf of working families."

House Minority Leader Rep. Richard Gephardt said "The LaFalce approach does more than make cosmetic reform. It restores accountability to corporate America. . . . [lsqb]LaFalce has been[rsqb] a Patton-like General [lsqb]winning[rsqb] an unconditional surrender from opponents. . . . He has been a gold standard on this issue." House Minority Whip Rep. Nancy Pelosi said "kudos to Financial Services Ranking Member John LaFalce for a magnificent display of leadership

. . . in passing the LaFalce-Sarbanes corporate reform legislation."

New York Attorney General Eliot Spitzer said, "You should enact the LaFalce legislation." Both the Consumer Federation of America and U.S. Public Interest Group also commended Representative LaFalce "for proposing tough, far-reaching auditing reform."

SEC Oversight and Resources—In order to address widespread problems with our system of financial disclosure, Rep. LaFalce in early 2001 began calling for a significant increase, 200–300 percent, in the budget of the Securities and Exchange Commission (SEC) to strengthen its personnel, oversight, and enforcement. In early 2002, President Bush signed legislation to reduce the fees that American corporations pay to the SEC for transactions and registration of stock. The new law also included provisions that would authorize the SEC to pay its staff on a basis that is comparable to the other Federal financial regulatory agencies, potentially improving the ability of the SEC to attract and retain the highest quality staff.

Rep. LaFalce opposed the bill because of provisions that actually could have reduced the resources available to the SEC. He said of the legislation: "One of our greatest priorities is the critical need to ensure adequate government oversight of our securities markets. This legislation does nothing to ensure that the SEC has the additional resources it greatly needs to address the many significant issues investors face in these markets." In the June 2001 debate on the floor, prior to Enron, Rep. LaFalce said: "the SEC budget . . . should be beefed up at least 200 percent to 300 percent in order to protect the American investor . . . today's bill precludes the type of effective investment I believe we need."

Financial Institutions Reform, Recovery and Enforcement Act (The S&L Crisis)—Rep. LaFalce warned of the impending S&L crisis in the early 1980's and sought to address the inadequate regulation, supervision and funding that threatened the solvency of thrift institutions. As the Buffalo News reported, "Congressman John J. LaFalce, a member of the House Banking Committee, warned that deregulation of the thrifts had gone too far. . . . LaFalce worried that the thrifts' assets were simply thin air, buoyed by a ponzi scheme of overpriced acquisitions." He was a staunch critic of the legislation developed to address the crisis, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and ultimately opposed its enactment.

Throughout the 1980s, Rep. LaFalce consistently supported legislation that would have improved the examination and supervision regime governing thrift institutions and recapitalized the Federal Savings and Loan Insurance Corporation, which consistently had inadequate funding to resolve the problems of insolvent thrift institutions.

By 1989, a combination of years of inadequate regulation and supervision, and inadequate funding, had resulted in a crisis situation. In February 1989, the Bush Administration unveiled the broad outlines of a plan to borrow $50 billion to close down or sell more than 350 weak Savings and Loan institutions. The proposed FIRREA legislation, which evolved from congressional consideration of this broad plan, dramatically restructured federal regulation of thrifts and provided $50 billion over three years to close down or sell off hundreds of insolvent savings institutions.

While Rep. LaFalce voted for the bill in the House to move it forward with the hope of improving it in conference, he opposed the final legislation, believing it would be ineffective, overly restrictive, costly to taxpayers, and would have serious unintended consequences. He emphasized several problems with the legislation during debate on the bill. First, he noted that the Administration's estimates were based on a series of unreasonably rosy assumptions that resulted in a gross underestimation of the ultimate cost to the taxpayer. Had the enormity of the costs been better appreciated, he was convinced closer scrutiny might have been applied in determining how the bail-out would be structured and how the costs would be funded. He emphasized that, under the plan, it was only the taxpayers' obligation that was indeterminate, and that the structure of the program made the taxpayer the ultimate recourse for any increased financial burden beyond preliminary estimates. The cost of the bail-out was eventually hugely in excess of original estimates, and substantial additional funding was subsequently required.

Rep. LaFalce also believed that borrowing to pay for the bail-out unnecessarily increased the costs and unfairly passed those costs onto future generations. He argued that it was fiscally irresponsible to borrow to cover even present consumption, let alone the past consumption represented by thrift losses. He emphasized that borrowing the money would turn what was more likely to be a $130 billion problem into a $500 billion drain over the next several decades, imposing the problem on future generations and diverting funds from more pressing social needs.

Rep. LaFalce also objected to the fact that the states were held harmless from assuming any responsibility for the cost of the bail-out, even though the vast majority of the problem was attributable to state-chartered institutions operating, in many cases, under lax state regulation and supervision. It was his view that having federal taxpayers assume the entire burden for these problems was an abuse of the dual banking system and he called for greater regional equity in bearing the financial burden for the bail-out.

Rep. LaFalce also argued that the precipitous application of new capital standards made weak, but potentially, viable institutions into problem institutions, and made strong thrift institutions vulnerable. He believed that the structure of the legislation made it virtually impossible for potentially healthy thrifts that could form the core of a revitalized industry to survive. Many weak but viable institutions were in fact lost, and institutions became increasingly risk averse, contributing to a subsequent credit crunch that he had predicted.

Finally, Rep. LaFalce argued strongly during Committee consideration and subsequently that the suggested treatment of supervisory goodwill under the proposed legislation was a breach of contract that the government could not expect to engage in without the ultimate payment of damages. Thrifts had entered into contracts with their regulator which allowed them to count supervisory goodwill as capital under defined terms and conditions. The legislation would no longer permit such capital treatment.

As a practical matter, Rep. LaFalce argued that this would result in more thrift failures and a higher cost associated with resolution of the crisis. As a legal matter, Rep. LaFalce foresaw that litigation would ensue and that the government would ultimately be required to pay damages for breaking the contracts that governed the treatment of supervisory goodwill, again increasing the cost of the bail-out. His judgment and foresight was vindicated when the U.S. Supreme Court, in July 1996, in the case of United States v. Winstar Corporation, held that contracts were broken and the government was liable for damages.

In an effort to construct a more workable proposal, Rep. LaFalce advanced a number of amendments in the course of the legislative process. Those amendments, first of all, would have eliminated reliance on the borrowing which was unnecessarily increasing the overall cost of the bail-out; second, would have given weak, but viable, institutions better prospects of improving their situation, so they would not eventually have to be bailed out by the taxpayer; and third, would have required the states to make some reasonable contribution to the cost of the bail-out. Unfortunately, those amendments were not adopted.

Credit Union Membership—Rep. LaFalce recognized early in his congressional career the important role played by credit unions within a diversified financial services marketplace. Upon taking a leadership role in the Banking Committee, he provided an influential voice for permitting credit unions to serve a broader segment of American consumers, while also attempting to moderate the banking industry's competitive objections to an expanded credit union industry. In 1997, when it appeared that banker-initiated litigation would completely stall future credit union growth, he introduced legislative proposals designed to reopen opportunities for credit union membership and to address key competitive concerns expressed by the banks. This balanced proposal provided the framework for the Credit Union Membership Access Act of 1998, which was passed by Congress with huge majorities and signed by President Clinton within months of its formal introduction. The legislation provided a new framework for multiple-group credit unions and for community charter conversions that has significantly expanded credit union membership. Rep. LaFalce has continued to advocate legislative changes that offer new opportunities to expand credit union membership and services within the balanced framework of the 1998 Act.

His work on behalf of credit unions was recognized with special awards from the Credit Union National Association in 1999 and the New York Credit Union League in 1998, and a special career recognition award from the National Association of Federal Credit Unions in October, 2002.

Interstate Banking/Branching—Rep. LaFalce was one of the first advocates in Congress for repealing outdated federal prohibitions on interstate banking. In 1985, he introduced one of the first bills to authorize interstate branching by national banks, bank holding companies, and thrifts. The bill would have permitted a bank of one state to establish a branch in another state to the same extent as those of other states allowed interstate branching by state banks. His initial bill became the model for the landmark 1994 law, the Riegle-Neal Interstate Banking and Branching Efficiency Act, which repealed prohibitions on interstate banking, increased availability of credit to our communities nationwide, and led to the emergence of a more competitive, safer and sounder banking system.

Insurance—Rep. LaFalce recognized very early in his career that state-by-state regulation of the insurance industry severely limits the ability of the national government to respond to crises in the insurance industry that affect the national economy. The

1945 McCarran-Ferguson Act assured that insurance companies would remain under state regulation and that they would enjoy a limited exemption from antitrust laws.

The Act led to a situation in the 1970s and 1980s that caused businesses, particularly small firms, to have difficulty in obtaining product liability insurance. When the insurance was available, the premiums were very expensive. As Chairman of the Small Business Subcommittee on Capital, Investment and Business Opportunities, Rep. LaFalce led an extensive investigation into the product liability crisis. His Subcommittee determined that much of the blame for the crisis could be pinned on panic pricing by insurance companies that was left unchecked by most state regulators. The Subcommittee also found evidence that the antitrust exemption led to a lack of competition in the pricing of product liability insurance, and that a fairer Uniform Product Liability law would be far preferable to 50 separate state laws.

Rep. LaFalce introduced legislation to address the crisis through the establishment of a national insurance commission, which would have ensured that premiums for product liability and other types of insurance were reasonable and that policyholders were protected from unfair and deceptive practices of insurance companies. Rep. LaFalce's legislation would have limited McCarran-Ferguson by eliminating the industry's antitrust exemption, thereby curbing anti-competitive practices. He also worked with Professor Victor Schwartz to introduce in Congress the first Uniform Product Liability Act, a bill that was, unfortunately, then opposed by Republicans and the U.S. Chamber of Commerce.

Although the Commerce Committee never took up the legislation, persistent crisis in the insurance industry confirmed Rep. LaFalce's belief that the Federal Government must play a role in regulating an industry that is so vital to the national economy. Following the terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, the market for reinsurance for risks related to terrorism began to evaporate. Rep. LaFalce was among the first in Congress to call for the creation of a federal backstop for terrorism insurance. He believed that the lack of adequate and affordable terrorism insurance could slow reconstruction of New York City and weaken the nation's entire economy. The Federal Government was slow to respond to that crisis, in part, because there was no insurance expertise within the Executive Branch.

Rep. LaFalce also was one of the first in Congress to recognize that state regulation of the insurance industry increases costs for both insurance companies and consumers. This regulatory structure also creates inconsistent protections for consumers and regulatory requirements for companies because not all states can do a good job of protecting consumers from unfair and deceptive practices in the insurance industry. In February 2002, Rep. LaFalce introduced the Insurance Industry Modernization and Consumer Protection Act (IIMCPA), which provides insurance companies the option of a single federal insurance regulator rather than 50 state regulators. The IIMCPA would protect consumers by establishing for the first time national minimum standards to combat unfair and deceptive practices in the insurance industry.

Consumer protections

Rep. LaFalce has been a longstanding consumer and community advocate as reflected in his work on the landmark Financial Services Act of 1999 as well as on numerous other legislative initiatives during his career on the House Banking Committee.

He authored key provisions of the financial modernization that are designed to protect consumers against deceptive practices in the sales of insurance and investment products in a bank's lobby. At his insistence, the Financial Services Act of 1999 incorporates strong safeguard to (1) ensure that consumers are not confused about new financial products, the risk they carry, and whether or not they are insured; (2) prevent a bank from forcing its customers to purchase another product, such as an insurance policy, as a condition for receiving a loan; (3) ensure a consumer grievance process is put in place; and (4) require full disclosure of ATM surcharges.

Upon his retirement, the Consumer Federation of America, in a letter dated June 27, 2002, praised Rep. LaFalce for his effort on behalf of consumers: "No one in Congress has fought harder for everyday consumers and investors than John LaFalce. He combines a bedrock commitment to consumer protection with a savvy awareness of how to move important legislation through Congress in the face of special interest opposition."

Financial Privacy—In the area of financial privacy, it was legislation that Rep. LaFalce had introduced in 1998 and 1999 that laid the basis for the historic financial privacy protections that Congress included within the Financial Services Act. He led a bipartisan effort to craft provisions that provided the strongest consumer privacy protections ever enacted into law. Considering these efforts as only a first step in safeguarding consumer privacy, Rep. LaFalce joined with the Clinton Administration early in 2000 to introduce new legislation to further enhance these financial privacy protections, and he helped usher through the Banking Committee new legislation providing strong policy protections for consumer health and medical information.

Enhancing Access to Credit—Rep. LaFalce was a staunch defender of the Community Reinvestment Act (CRA) during numerous attempts to repeal or limit its mandate that financial institutions serve all segments of their community. He was instrumental in expanding the CRA within the context of the financial modernization legislation to require all banking institutions seeking new, non-banking activities to demonstrate a continuing commitment to meeting the financial services needs of low-income and minority communities. As a result of his efforts, the Financial Services Act ensure that the CRA, which requires that financial institutions meet local community needs, will remain of central importance in the new, evolving financial marketplace.

Rep. LaFalce also led the effort to incorporate many of the nation's "un-banked" low- and moderate-income individuals into the financial mainstream. His legislation, the First Accounts Act of 2000, became the basis for a pilot program initiated by the U.S. Treasury Department. The program is designed to help more than eight million low- and moderate-income people for whom the cost of checking or savings accounts are too high. Working in partnership with financial institutions, the U.S. Treasury helps these individuals gain access to basic, low-cost financial services, including ATM access and checking accounts. The First Accounts program will widen access for many Americans to the mainstream banking and credit system so that no family may be left behind.

Mortgage Servicing Rights and Protections—Rep. LaFalce authored the initial legislation that resulted in the 1990 amendments to improve consumer protections in the Real Estate Settlement Procedures Act (RESPA). Those improvements provide for advance notice to homeowners—now known as "LaFalce" notices—alerting them that their mortgage servicing is to be transferred to another financial institution. The notices also provide certain protections to consumers during the transfer, including assurance of the proper handling of monthly mortgage payments and prompt payment of insurance and tax obligations from escrow accounts.

Rep. LaFalce also was instrumental in securing enactment of "Mortgage Loan Consumer Protection Act" (H.R. 4818) in 1996 that granted consumers new rights, based on New York law, to cancel unnecessary and costly private mortgage insurance (PMI). In the 107th Congress, he also introduced legislation providing for comprehensive reform of RESPA's mortgage settlement procedures to help simplify the mortgage settlement process and further enhance protections for consumers.

Abusive Credit Card Practices—Rep. LaFalce led the effort in Congress to identify and address a growing number of abusive practices in connection with credit card solicitations and the management of credit card accounts. He first introduced the "Consumer Credit Card Protection Amendments" in 1999 to protect consumers against the most egregious practices common to most credit cards, including misleading "teaser" interest rate claims in card solicitations, inadequately disclosed late payment penalties and default interest rates, and penalties for paying card balances in full. A key provision of the bill also sought to prohibit issuing credit cards to minors without parental approval or evidence of means of repayment. The Lafalce bill served as the basis for Democratic efforts to add credit card reform proposals to a bankruptcy bill strongly favored by the credit card industry.

Press reports during 1999 and 2000 began to focus public attention on fraudulent schemes to withhold the posting of credit card payments to generate late fees and to trap vulnerable consumers in high-cost credit accounts with misleading "bait and switch" tactics. Rep. LaFalce responded by introducing the "Credit Card Predatory Practices Prevention Act" (H.R. 1060) in 2001 to require federal banking regulators to issue detailed regulations defining unfair and deceptive practices in credit card accounts. The bill proposed to expand the scope of the federal Truth in Lending Act to address abuses in the administration of credit card accounts as well as impose new restrictions on deceptive practices in credit card solicitations.

Unfair and Deceptive Credit Practices—from his work drafting legislative responses to predatory mortgage lending and abusive credit card practices, Rep. LaFalce discerned that federal law provided little, if any, protection for consumers against unfair or deceptive practices generally in credit transactions. A 1975 change in law exempted financial institutions from the general prohibition against unfair and deceptive business practices in the Federal Trade Commission Act. The Federal Reserve Board was given responsibility for issuing separate rules defining unfair and deceptive practices for regulated financial institutions, which it has failed to use. Beginning in 2000, Rep. LaFalce used the opportunity of Committee oversight hearings to challenge the Federal Reserve

Board for its continuing failure over a twenty-five year period to write comprehensive rules prohibiting unfair and deceptive credit practices. In a series of direct meetings and letter exchanges with Board Chairman Alan Greenspan, he continued to press the need for more specific prohibitions on unfair credit practices. The exchanges led to a change in Federal Reserve Board policy in June 2002 in which the Board acknowledged its authority to prohibit unfair practices by regulation and, in the absence of such regulations, that the banking regulatory agencies could act to prohibit unfair practices on a case-by-case basis. The change in policy provided support for enforcement actions by the Office of the Comptroller of the Currency against several credit card companies and new guidance on unfair and deceptive banking practices from the Federal Deposit Insurance Corporation.

Automobile Leasing Protections—Rep. LaFalce was the first Member of Congress to recognize automobile leasing as an important consumer transaction and an area of growing consumer abuse. Consumer unfamiliarity with the complex terms and cost factors of leases make them particularly vulnerable to manipulation and abuse. He joined with the Consumer Federation of American in drawing attention to the lack of clear and accurate cost information in auto lease advertising and in information provided by auto dealerships. In 1995, and again in succeeding Congresses, he introduced the "Consumer Automobile Lease Advertising Improvement Act" (H.R. 1056 in the 107th Congress) to provide uniform cost disclosures in lease advertisements, prevent abusive practices in connection with advertised lease offers, and require that all relevant information on available lease terms and manufacturer incentives be made available to consumers upon request. The bill sought to apply, for the first time, the traditional principle of the consumer's "right to know" to more complex auto lease transactions.

Economic and community revitalization

Rep. LaFalce has been a leader in economic revitalization and community development issues throughout his career in Congress, using his position on the Banking Committee to direct federal dollars to institutions that invest in economic development and job growth in distressed communities and to provide targeted assistance to those communities. He worked especially hard to assure that federal funds were available to assist needed housing and economic development efforts throughout Western New York.

Renewal Communities—Rep. LaFalce played a key role in creating and enacting into law Renewal Community legislation, which provides a broad range of investment tax incentives designed to spur economic development and create jobs in 40 Renewal Communities nationwide. He also played a critical role in having three of those 40 Renewal Communities designated locally—in Niagara Falls, Buffalo, and Rochester. In October 2002, the House adopted Rep. LaFalce's bill (HR 3100) to expand these renewal community areas to include those census tracts that declined economically over the past decade.

Urban Development Action Grants—In 1977, Rep. LaFalce co-authored legislation creating the federal Urban Development Action Grants (UDAG) program, which has targeted billions of dollars over the years for distressed cities to help spur private development and create jobs.

Community Development Block Grants[dash]Rep. LaFalce worked hard to assure the continuation of Community Development Block Grant (CDBG) funding for Buffalo, Rochester, Niagara Falls, Erie County and other jurisdictions, which they have used to revitalize downtown shopping areas, redevelop waterfront areas, create historic districts, develop industrial parks, and rehabilitate thousands of units of needed moderate-priced housing. He also was the driving force in changing the formulas to advantage other communities, largely in the Northeast.

Small business

During his time as Chairman of the House Small Business Committee (1987–1994), and as Ranking Member (1995–1998), Rep. LaFalce was an active, committed advocate for the needs and concerns of America's vital small business community. He worked to create and expand federal programs that provide loan guarantees for new and growing small businesses; direct federal loans to micro-enterprises; expand the authority of the Federal Home Loan Bank System to invest in economic development and small business projects; make loans more readily available to women entrepreneurs; provide technical and managerial assistance to new small businesses; and increase small business participation in federal procurement. Rep. LaFalce's long history of support for our nation's small businesses continued into his final term in Congress, when he worked to help small businesses recover from the September 11 terrorist attacks (see Terrorism Response, below).

Small Business Innovation & Research—As author of the Small Business Innovation Research (SBIR) program in 1982, Rep. LaFalce helped create thousands of jobs through development of new and innovative technology. This program calls on federal agencies to direct a portion of their research and development budgets to small businesses that use creative technology to solve problems. To date, the SBIR program has shifted more than two billion dollars in federal research and development funds to the nation's small high-tech firms. The leading small business magazine, INC., termed Rep. LaFalce's bill "the most important piece of small business legislation yet enacted in our lifetime."

In 1992, Rep. LaFalce incorporated a new initiative into this policy called the Small Business Technology Transfer program, which connects small firms with government and university research laboratories. The result is a weather of new research and technology with practical applications for business and industry.

Small Business Investment Companies—As a member and Chairman of the Committee on Small Business, Rep. LaFalce led the way in increasing the availability of capital and loans to small businesses. He authored the Small Business Equity Enhancement Act, enacted in 1992, which brought important reforms to the Small Business Investment Company program to help small businesses obtain financing for starting, maintaining and expanding operations. SBICs provide funding to small businesses equity investments (purchasing their stock) and debt (issuing loans).

As Ranking Member of the Financial Services Committee, Rep. LaFalce successfully led congressional efforts to persuade the Board of Governors of the Federal Reserve System to reconsider a regulatory proposal that would have imposed extremely burdensome capital requirements on bank-owned SBICs and that could have significantly decreased SBIC equity investments in small businesses.

Women Business Owners—As Chairman of the Small Business Committee, Rep. LaFalce took a special interest in the needs and concerns of the growing number of women small business entrepreneurs. He authored the Women's Business Ownership Act, which continues to successfully fulfill its purpose: to improve access to credit and provide other opportunities for women in today's marketplace. Rep. LaFalce subsequently authored the Women's Business Development Act which re-authorized and built upon the original landmark legislation. He also created the Interagency Committee on Women's Business Issues, to ensure that actions and policies of all federal agencies take women's business concerns into account. For his efforts, he was honored by the National Association of Women Business Owners as Congressional Advocate of the Year.

Tax Code Section 89 Repeal—Rep. LaFalce scored a major victory on behalf of small businesses in 1988 when he succeeded in his legislative effort to repeal the onerous provisions of Section 89 of the Tax Code relating to employee benefits. The newly enacted Section 89 required annual, complex data collection and record-keeping to ensure that employer-provided benefits meet certain criteria in order to retain their tax-exempt status. Its provisions were especially burdensome for small businesses and were causing many to drop all employee benefits to avoid Section 89's costly record-keeping requirements. For his successful efforts, Rep. LaFalce won nationwide acclaim from such diverse groups as the National Federation of Independent Business, the United States Chamber of Commerce, the National Association of Manufacturers, and a host of labor organizations.

Franchising—Rep. LaFalce is the leading authority in Congress on business franchising and the franchising industry. As Chairman of the House Committee on Small Business, he initiated what became a five-year Committee study of franchising practices, involving numerous hearings, staff studies and legislation. The Committee's activities constituted Congress's first comprehensive review of the economy's important franchising sector in more than 20 years.

Based on his initial hearings, Rep. LaFalce introduced the "Federal Franchise Disclosure and Consumer Protection Act" in 1992 to require public disclosure of all material facts about franchise business opportunities and provide investor protections against fraud and misrepresentation. Many provisions of the bill were later used by the Federal Trade Commission and the North American Securities Administrators Association to improve federal and state franchise disclosure forms. A second bill introduced in 1993, the "Federal Fair Franchise Practices Act," continues to be the primary legislation in Congress to prohibit unfair franchising practices and establish minimum standards of conduct in franchise relationships. Both bills have also served as models for many other legislative initiatives.

Rep. LaFalce's continuing efforts to identify and examine unfair franchising practices brought both immediate and long-term changes to franchising. It led to increased enforcement against fraudulent franchise schemes by the Federal Trade Commission. It prompted the International Franchise Association to announce a series of industry reforms, including an expanded industry Code of Ethics and the introduction of franchisees into the Association's membership. In addition, Rep. LaFalce was instrumental in encouraging the formation of new organizations to represent the interests of individual franchise business owners, including the American Association of Franchisees and Dealers and the American Franchisee Association.

Small Business Loan Programs—Rep. LaFalce has been a leader in the Congress in protecting government loan programs for small businesses. He consistently fought off attempts to scale back and scuttle the SBA's loan guarantee program which supports many billions of dollars annually in loans to small firms. He also sought innovative ways to increase lending to small businesses. In 1989, he proposed the establishment of a federally chartered private corporation to encourage long-term financing to small businesses ("Velda Sue"—HR 3179). This would create a secondary market for these loans—similar to the one created through Fannie Mae with housing loans—and would match investors with small businesses in need of long-term capital.

Small Business Development Centers—Rep. LaFalce has been a champion of the Small Business Development Center program, which is a cooperative effort of the private sector, the educational community and state, federal and local governments. The program enhances economic development by providing small businesses with management and technical assistance at no charge.

Rep. LaFalce authored legislation, enacted in 1990, that established the Central European Small Business Enterprise Development Commission, with the mandate to assist Poland, Hungary and the Czech and Slovak Federal Republic (now the Czech Republic and Slovakia) in developing self-sustaining systems of SBDCs to provide management and technical assistance to small business owners in those countries. The Commission established several SBDCs under the joint sponsorship of the United States Government and the governments of the host countries, with the host countries eventually assuming responsibility for funding the centers.

SBA Disaster Office in Niagara Falls—As Chairman of the Small Business Committee, Rep. LaFalce worked with the George H.W. Bush Administration to bring one of four Small Business Administration Disaster Area offices to the City of Niagara Falls in 1989. That office administers the SBA's Disaster Loan program for 13 states in the northeast. It employs about 125 people full-time, rising to 300 or more during peak periods. After 9-11, for example, the Niagara Falls office processed and administered more than $400 million in disaster assistance to business and individuals in New York City and metropolitan Washington, D.C. When the office sought to relocate out of Niagara County in 2002, Rep. LaFalce spearheaded a successful effort to keep the Disaster Office in downtown Niagara Falls.

White House Conference on Small Business—In order to establish a national, broad-based agenda and policy on behalf of small businesses that are so important to the nation's economy, Rep. LaFalce led the effort to convene a White House Conference on Small Business. Legislation he authored to mandate such a conference was enacted in October 1990, and the White House Conference was held in the spring of 1995. This gathering of more than 1,500 small businessmen and women gave them a unique opportunity to influence the course of government policymaking. The delegates were addressed by President Clinton, Vice President Gore, and prominent Members of Congress, including Rep. LaFalce. His message was simple: it is important that the voice of small business, as the engine of job creation in the United States, be heard loudly and clearly, and he promised to take the conferees' recommendations to the Congress in order to address their concerns.

Minority Business Set-Aside—In the 100th Congress, Rep. LaFalce successfully reformed the scandal-plagued SBA Minority Business Development program (Section 8a) which was riddled with fraud and abuse. His bill, the Business Opportunity Development Program, enacted in October 1988 (P.L. 100-656), ensured that the Capital Ownership Development Program and the Section 8(a) authority would be used exclusively to help develop small businesses, owned and controlled by socially and economically disadvantaged individuals, in order to enable them to compete on an equal basis in the mainstream of the American economy.

Housing

Rep. LaFalce used his position on the Financial Services Committee to fight for increased funding for key housing and community development programs, and to enact numerous housing initiatives designed to expand home-ownership, meet the challenges of providing affordable housing and services to a growing seniors population, and to address the problems of homelessness.

Elderly Housing—At the beginning of the 106th Congress, Rep. LaFalce introduced his comprehensive "Elderly Housing Quality Improvement Act" (HR 4817). The vast majority of these provisions were enacted into law by that Congress, including a $50 million initiative to convert affordable seniors' housing projects to assisted living facilities; a doubling of federal funding for service coordinators, which help seniors access community services and maintain their independence; and expanded funding for capital repair of affordable seniors' rental housing. The 106th Congress also approved legislation authored by Rep. LaFalce to make it easier for elderly homeowners to use reverse mortgages to purchase long-term care insurance.

Federal Home Loan Banks—Rep. LaFalce contributed significantly to the modernization of the Federal Home Loan Bank System, a nationwide cooperative of twelve regional banks formed in 1932 to improve the flow of long-term funds and liquidity into housing. In 1989, as part of FIRREA, he supported broadening its mission to include rural housing, affordable housing, and economic and community development. He was actively involved in improving federal oversight of the system through the establishment of a stronger, more independent federal regulator—the Federal Housing Finance Board—and by toughening capital and safety and soundness regulation. Throughout his career, Rep. LaFalce worked closely with the various home loan banks, particularly the Federal Home Loan Bank of New York, and their executives, financial institution members, and state, local and community organizations, to maximize the contribution to both housing and economic development.

Fannie Mae/Freddie Mac—A major factor contributing to record national homeownership rates is the ready availability of affordable mortgage loans offered by Fannie Mae and Freddie Mac. Fannie Mae and Freddie Mac are private companies, but are federally chartered and federally regulated.

Rep. LaFalce has constructively supported the important role of these two lenders in our mortgage markets in the face of congressional attacks, while at the same time supporting strong federal safety and soundness regulation and increased goals with respect to the percentage of mortgage loans made by Fannie and Freddie to low- and moderate-income families and under-served areas.

He successfully persuaded Fannie Mae to establish a partnership office in Buffalo and to commit $5 billion for new housing investments in the region, a figure which the office has greatly exceeded.

HOUSE Act—In the 106th Congress, Rep. LaFalce introduced the HOUSE Act, innovative legislation that authorizes one percent down payment FHA loans for teachers, police, and firefighters buying a home in their local school district or employing jurisdiction. He shepherded this bill through the House in 2000 and, though the bill died in conference as a result of opposition from Senate Republicans, it continues to gain widespread support and stands a good chance of enactment in the near future.

Homelessness—In 2000, Rep. LaFalce spearheaded an emergency funding initiative that restored rental assistance for tens of thousands of families nationwide (including 178 in Erie County, NY) who faced eviction and homelessness as a result of HUD cutting off funding. He subsequently took the lead in Congress on an initiative that resulted in action by the Appropriations Committee to provide a separate funding source for renewal of homeless rental assistance in order to prevent a recurrence of the funding cutoff experienced in 2000.

Environment

Superfund—The infamous Love Canal toxic waste scandal in Niagara County was the impetus for federal legislation to hold corporations liable to pay for the clean-up of hazardous waste sites across the country. Rep. LaFalce first discovered the problems at the Love Canal neighborhood of Niagara Falls in the summer of 1977, and immediately wrote to Douglas Costle, U.S. Environmental Protection Agency (EPA) Administrator, about the problem. He made the first of many personal inspections of Love Canal a few weeks later, and brought President Jimmy Carter, Governor Hugh Carey, Rep. Al Gore, and others to Western New York for on-site visits. Rep. LaFalce urged swift action on relocation of the residents and cleanup of the site. As a result, the following year President Carter declared a health emergency at Love Canal, paving the way for the relocation and cleanup.

In response to the events at Love Canal, Rep. LaFalce crafted and introduced the first Superfund legislation aimed at compensating victims and taxing polluters to pay for the cleanup of toxic wastes they generated. President Carter later submitted a scaled-down version of the LaFalce bill, and Congress subsequently approved it in December 1980.

In 1986, when the Superfund law was reauthorized, Rep. LaFalce drafted and successfully fought for an amendment that specifically targeted Love Canal, committing the Federal Government to purchase rental homes and commercial property in the Love Canal Emergency Declaration Area and to maintain property there, as well as to take the steps necessary to ensure that Love Canal was fully remediated and monitored for years to come.

In 1998, Rep. LaFalce was recognized for his efforts by the Center for Health, Environment and Justice, headed by former Love Canal activist Lois Gibbs, at an awards ceremony in Washington to mark the 20th anniversary of the emergency declaration at Love Canal.

Radioactive Waste Cleanups—Rep. LaFalce has been a national leader on the issue of cleaning up sites contaminated by Manhattan Project radioactive waste materials. During his years of service in Congress, he has helped secure hundreds of millions of dollars for the remediation of many such sites in Erie and Niagara Counties: Linde, Ashland I and II, and Seaway (all in Tonawanda), and the Niagara Falls Storage Site in Lewiston. Most recently, Rep. LaFalce urged the U.S. Army Corps of Engineers to investigate the possibility of including the former Simonds Saw and Steel plant in Lockport for remediation under the FUSRAP program.

Health Care

Rep. LaFalce has long been an outspoken leader in the ongoing debate on a variety of national health care issues, always insisting that adequate health care should be a basic right of citizenship, not a privilege of employment.

Expanding Health Care Coverage—Rep. LaFalce has long been an advocate for a universal coverage/single payer approach to solving America's health care crisis which leaves 40 million people uninsured. He has promoted legislation that would ensure access to affordable, high quality health care for everyone, regardless of employment, income, or health status. All Americans would be guaranteed health care coverage and would have complete freedom in their choice of providers. Rep. LaFalce proposed this plan not only to improve America's health care system, but to relieve businesses of the financial burden of paying for most of our health care coverage.

Diabetes—Rep. LaFalce has been a leading advocate for diabetes research and increased healthcare coverage for diabetes prevention and treatment programs. In 1997, he and his colleagues on the Congressional Diabetes Caucus convinced Congress to show their commitment to conquering diabetes with the creation of the Diabetes Research Working Group (DRWG), a panel of leading diabetes researchers appointed by the National Institutes of Health, to develop a comprehensive plan for the 21st Century for all NIH-funded diabetes research efforts, and to recommend future diabetes research initiatives. In 1999, Rep. LaFalce authored H. Res. 325, expressing the support of Congress for increased federal funding for diabetes research, awareness and early detection programs. The LaFalce resolution passed the House unanimously, 414–0.

Rep. LaFalce also worked closely with the National Office of the American Diabetes Association to protect coverage of Medical Nutrition Therapy (MNT) under Medicare for people with diabetes and to distinguish it from diabetes self-management training (DSMT), a separate, though complimentary, service integral to diabetes care. He was honored in 2000 and 2002 by the American Diabetes Association with its Valor Award in recognition of his continuing efforts to secure increased funding for diabetes research and "for his outstanding service to people with diabetes."

Multiple Sclerosis—Rep. LaFalce introduced the Multiple Sclerosis Treatment Act in 1997, and again in 2001, to provide for Medicare Part B (Supplementary Medical Insurance) coverage of certain self-administered beta interferons and other biologicals and drugs approved by the Federal Drug Administration for treatment of multiple sclerosis. In 1995, he was honored by the National Multiple Sclerosis Society as "Congressman of the Year" for his "deep personal appreciation and commitment to the needs of people with MS."

Sleep Disorders—Rep. LaFalce has been a leader in advocating increased public awareness of and research into sleep disorders, which affect nearly two-thirds of American adults. In 2001, he secured $125,000 in federal funds for a joint educational program coordinated between the University of Buffalo Medical School, Mount St. Mary's Hospital Sleep Disorder Center in Lewiston, and Millard Fillmore-Gates Hospital's Sleep Disorder Center in Buffalo. In 2001, Rep. LaFalce received the National Sleep Foundation's very first Public Policy Leadership Award as "Congressman of the Year" in recognition of his efforts to increase national attention to the problem of sleep disorders.

Respiratory Studies—Rep. LaFalce has long been concerned about the respiratory health of Western New Yorkers, and the effects of air pollution on respiratory disease and other illnesses. In 2001, he obtained $213,000 from the Centers for Disease Control's National Center for Environmental Health for Buffalo General's Center for Asthma and Environmental Exposure to conduct a study of the respiratory health of residents in neighborhoods adjacent to four international bridges: the Peace Bridge, the Rainbow Bridge, the Whirlpool Bridge and the Lewiston-Queenston Bridge.

The study was conducted to help determine to what extent, and in what ways, the health of local residents is adversely affected by bridge traffic. It will also help bring health concerns to the forefront of discussions about reducing congestion and improving traffic flow at each of the four bridges and border-crossings

Gambling

National Gambling Study Commission—Rep. LaFalce has been one of the House's leading activists on gambling issues. As Chairman of the Small Business Committee, he conducted a hearing in 1994 that documented the rise in business failures and other economic problems following the introduction of casino and river boat gambling in a number of U.S. communities. The hearing convinced him that local officials required more comprehensive information before considering high stakes gambling as an economic development strategy. He introduced the first legislation in Congress in 1994 calling for a special national commission to conduct a comprehensive study of all aspects of the gambling issue. His chief co-sponsor on the bill was Rep. Frank Wolf (R-VA). With the shift in control of the House in 1995, he joined with Rep. Wolf in introducing a bipartisan commission proposal that was enacted by Congress in 1996. The National Gambling Impact Study Commission began work in 1997 and submitted its detailed report to Congress in June, 1999. The Commission succeeded in taking one of the most difficult and divisive issues in America and producing an extremely detailed and thoughtful study with more than 70 recommendations for federal, state and tribal policy.

Gambling and Credit Cards—The National Gambling Impact Study Commission reported that problems associated with compulsive or pathological gambling had increased dramatically with the spread of high stakes gambling to more U.S. cities. It attributed part of the problem to the growing availability of cash and credit in and around gambling establishments and called for legislation to remove ATM, credit card and other electronic funds transfer devices from gambling areas. Within months of receiving the Commission's report, Rep. LaFalce introduced legislation to implement these important recommendations. The "Gambling ATM and Credit/Debit Card Reform Act of 1999" prohibited gambling establishment from placing credit card terminals, debit card point of sale devices or ATM machines within the immediate area of gambling activity. Its purpose was to minimize the possibility of financial institutions becoming unwitting accomplices in encouraging compulsive behavior.

Internet Gambling—The National Commission strongly reaffirmed the principle of state regulation of gambling, but made an important exception for Internet gambling. One of the Commission's few unanimous recommendations was a call for congressional action to restrict illegal Internet gambling, and specifically legislation to block credit card and other electronic payments that make on-line betting possible. Rep. LaFalce introduced the "Internet Gambling Payments Prohibition Act" in 2000 to implement the Commission's recommendation to prohibit all forms of payment for gambling bets over the Internet. This bill was merged with a similar proposal by Rep. Jim Leach (R-Iowa) in 2001 and provided the basis for the bipartisan "Leach-LaFalce Internet Gambling Enforcement Act" (HR 556) that was approved by the House by voice vote in October, 2002.

Trade and competitiveness

Can-Am Free Trade—Rep. LaFalce became the principal leader in Congress on the subject of free trade with Canada, our largest trading partner. He conducted several hearings on the issue and spoke continuously on its behalf, both in the U.S. and Canada. His efforts reached fruition with implementation of the historic U.S.-Canada Free Trade Agreement. It was a step Rep. LaFalce had been advocating since 1986, when he began his series of seven hearings on trade with Canada. In recognition of his work, President Reagan gave Rep. LaFalce a pen at the signing ceremony and chose Niagara Falls as the site of the National Conference on the Can-Am Free Trade Agreement. The U.S. sent Trade Representative Carla Hills, and Canada sent its Ambassador to the U.S., Derek Burney to join LaFalce as keynoters.

NAFTA—As leader in Congress for free—but fair—trade pacts with other nations, Rep. LaFalce was a leading opponent in 1993 of the proposed North American Free Trade Agreement with Mexico and Canada. He chaired a series of hearings in the Congress which exposed the potential difficulties of NAFTA for all three nations and continued to raise concerns about the effects the agreement would have on environmental, labor, and political standards in North America.

Rep. LaFalce argued at the time that the economies and political institutions in the United States and Mexico were far too different to allow for open markets between the two countries. He pointed to important political and judicial reforms, as well as basic labor and environmental protections, that were needed in Mexico before both countries could reasonably benefit from a trade agreement. He also highlighted the environmental blight and desperate economic and health conditions evident in the trade zones along Mexico's border, commonly known as maquiladoras.

Rep. LaFalce also pointed to the dangers of macroeconomic instability in Mexico in the context of the trade agreement, accurately predicting a major devaluation of the Mexican peso. The peso devaluation necessitated a massive financial bailout provided by the United States and the International Monetary Fund.

Industrial Policy Hearings—As Chairman of the Banking Committee's Subcommittee on Economic Stabilization, Rep. LaFalce led an unprecedented effort to examine the need for an industrial policy to enhance U.S. industrial competitiveness vis-a-vis our major trading partners. He held over 30 days of hearings on the subject with over 150 witnesses testifying before the Subcommittee. The witnesses represented all walks of life, including: representatives from all levels of government; the business community, including small firms and large corporations; labor leaders; the financial services industry; representatives from industries such as steel, autos, semiconductors, computers, and machine tools; academics; educator; scientists; economists; community and citizens groups; agricultural specialists; representatives of the military and the defense industry. The Buffalo News said these hearings, held over a four-year period "assembled this century's most complete record on the inter-workings of American manufacturing, monetary and trade policy."

In the course of these hearings in 1983, Rep. LaFalce first focused national attention on the economic growth strategies of many academics and other experts who would one day be household names: Laura D'Andrea Tyson, Ira Magaziner, Robert Reich, and a young governor from Arkansas arguing for innovative approaches to economic policy, Bill Clinton.

Rep. LaFalce introduced legislation to address these industrial competitiveness problems. His bill, H.R. 4360, created (1) a Council on Industrial Competitiveness to provide a forum for labor, business, government, academia, and public interest groups so that they could work cooperatively to develop a competitiveness strategy; (2) a Bank for Industrial Competitiveness to provide financial assistance for the restructuring of basic industries and for the capitalization of new and innovative products and/or technologies; and (3) a Federal Industrial Mortgage Association designed to improve the functioning of capital markets for small- and medium-sized businesses by increasing the availability of long-term capital. The bill was cosponsored by 103 House Members.

White House Conference on Productivity—As Chairman of the House Banking Committee's Subcommittee on Economic Stabilization, Rep. LaFalce aggressively tackled realistic ways to rectify the nation's dismal performance in those years in the areas of productivity and competitiveness. He worked on the productivity issue for years to focus the attention of the President, leaders of American labor and industry, and all Americans on the importance of increasing U.S. productivity for the nation's economic well-being. In 1982, as Chairman of a Small Business Subcommittee, he won enactment of legislation mandating a White House Conference on Productivity, which was held in the fall of 1983 with over 1,000 participants. Keynote speakers included President Reagan, Vice President Bush, the Secretaries of State, Commerce, Treasury, and Labor, and Rep. LaFalce.

Trade with China—Rep. LaFalce's support was instrumental in passage of legislation extending Permanent Normal Trade Relations (PNTR) with China in 2000. He was one of handful of senior Democrats whose support ultimately swayed other Members and led to passage of the historic legislation; his May 2000 speech in support of PNTR was widely cited and reprinted at the time of the debate. Rep. LaFalce argued that engaging with China economically would provide a powerful boost to pro-democracy forces within the country, contrasting the failure of U.S. policy toward Cuba with the benefits of a more open policy toward China. Rep. LaFalce also worked with congressional leaders to ensure that passage of PNTR came with adequate attention and protections in the areas of human rights and import surges.

Exchange Rates—Rep. LaFalce's concern over the destructive economic impact of currency crises and misaligned exchange rates led to legislative provisions in The Omnibus Trade and Competitiveness Act of 1988, which requires the U.S. Treasury to focus more closely on exchange rates and report to Congress semiannually on the performance of exchange rates. Since then, the Treasury Department has been writing and sending the "LaFalce Report" to Congress every six months on currency exchange rates and highlighting potential problems.

Currency Devaluation—Rep. LaFalce has been a leader in Congress on issues related to the performance of international currencies. He held hearings in 1993 on the probable devaluation of the Mexican peso, which occurred in 1994, and has been actively engaged in U.S. responses to currency crises globally over the past 20 years.

Regarding the Mexican peso devaluation, the late Washington Post columnist, Hobart Rowen, wrote in a February, 1995 column: "Rep. John J. LaFalce has a right to say, 'I told you so.' (LaFalce) predicted that peso devaluation was inevitable . . . and begged the Clinton administration to recognize that the North American Free Trade Agreement provided no method to coordinate the two countries' monetary policies. . . . If Clinton and his advisers had paid attention to LaFalce and his supporters, he might not now be engaged in an indefensible bailout of Wall Street investors, including major mutual fund managers who made greedy, high-yield gambles in Mexico after the passage of NAFTA."

Debt Relief—Rep. LaFalce authored the provision in the 1988 Trade Act that would have created an international mechanism to avoid sovereign debt defaults in the aftermath of the Latin American debt crises. Subsequent reluctance by the Reagan Administration ultimately blocked the implementation of the debt mechanism. Yet, nearly 15 years later, the International Monetary Fund introduced a similar proposal to address sovereign debt crises, this time in reaction to a string of debt crises during the 1990s and into 2001.

Ex-Im Bank—Rep. LaFalce was instrumental in the creation and passage of the Export-Import Bank Reauthorization Act of 2002. The Ex-Im Bank promotes U.S. exports to other countries and has been an engine of job creation in the nation's economy. His work on the 2002 legislation greatly expanded Ex-Im Bank's support for small business exporters, as well as women and minority-owned businesses. In July 2002, Rep. LaFalce was honored by the Coalition for Employment through Exports for his work on the Ex-Im Bank Reauthorization Act and was recognized as a leader in the Congress in promoting U.S. exports.

Northern Border

Throughout his career in Congress, Rep. LaFalce has worked tirelessly to strengthen the U.S.-Canada relationship. From meetings with Canadian Ambassadors to the United States and our nation's ambassadors to Canada, annual meetings of the Can-Am Interparliamentary conference, to frequent conversations with Canadian counterparts across the Niagara River and colleagues in the House and Senate, he has been a leader on every bilateral issue between our two countries that affect his congressional district:

Northern Border Caucus—Rep. LaFalce is the founding member and Chairman of the Congressional Northern Border Caucus, an officially recognized Congressional Member Organization consisting of Members representing the northern border states. The Caucus, which he founded in 1994 when the North American Free Trade Agreement (NAFTA) was implemented, deals with policy concerns and issues that affect U.S.-Canadian relations and the two nations' economic partnership.

The Caucus has worked to obtain increased funding for the U.S. Customs Service, Immigration and Naturalization Service, and the Border Patrol for activities along the Northern Border.

The Caucus was also a major force behind successfully postponing implementation of Section 110 of the 1996 Immigration Reform Act, which would have hampered trade and tourist traffic by imposing a cumbersome entry-exit documentation system. In addition, the Caucus has provided Members with numerous forums to discuss their concerns about the border with U.S. and Canadian officials.

In recognition of his leadership on U.S.-Canadian Border Issues, Rep. LaFalce was honored in 2002 by the Canadian/American Border Trade Alliance for his "many meaningful contributions to the improvement of U.S.-Canadian Trade, Transportation and Border Management."

Repeal of New Entry-Exit Implementation System, Section 110—The 1996 Immigration Reform Act directed the INS to implement a new entry-exit documentation system at points of entry along the nation's borders. Because of concerns about the harmful impact on trade and tourism that this would have on Western New York, repeal of Section 110 was the top legislative priority of local chambers of commerce in the Buffalo-Niagara region. Rep. LaFalce authored the legislation in 1997 to repeal the implementation of Section 110 and later negotiated a 30-month implementation delay just days before the original start date of September 30, 1998. But it remained clear that a delay could not sufficiently satisfy his concerns that the INS might develop an entry-exit system at the border that would prove disastrous to the people of New York and other northern border states. Throughout the spring of 2000, Rep. LaFalce negotiated with a bipartisan group of Members the "Section 110 Reform Act," a de facto repeal of this injurious provision. In June, 2000, the President signed the act into law and ended the threat to our border.

Commuter Students—In August 2002, Rep. LaFalce successfully persuaded the Bush Administration to reverse the INS decision to prevent part-time students from Canada and Mexico from commuting to classes at U.S. colleges and universities along the border. When the INS announced its sudden change of policy in May 2002, he immediately introduced legislation in Congress to ensure that Mexican and Canadian part-time students could continue to enroll in educational institutions across the border. As Chairman of the Congressional Northern Border Caucus, he also mobilized 30 of his colleagues and New York's two Senators to join in demanding an immediate reversal of the INS decision. On August 24, the Bush Administration relented and announced that the INS would reverse its previous decision so that part-time students would again be able to enroll in U.S. academic institutions.

NEXUS—NEXUS is an inspection program that allows pre-screened, low-risk travelers to be processed with little or no delay by U.S. and Canadian border officials. On April 29, 2002, Rep. LaFalce urged the INS and the Customs Service to select Buffalo for the next implementation of NEXUS. The agencies agreed. NEXUS enrollment centers opened in Buffalo in October, 2002, and will be operational at the Peace Bridge beginning in January, 2003. It will be expanded to the Lewiston-Queenstown Bridge and the Rainbow Bridge (and potentially the Whirlpool Bridge) by spring of 2003.

Niagara Bridges—Rep. LaFalce authored special legislation permitting the Niagara Falls Bridge Commission (NFBC) to move forward with $121 million in bridge improvements in 1991. Specifically, he worked to amend federal law to lift the interest rate cap on NFBC bonds and to make the interest on NFBC bonds tax-exempt. The changes allowed the NFBC to move forward with its plans to modernize and renovate the Rainbow, Whirlpool and Lewiston-Queenston bridges at a cost of $121 million.

In June, 2002, Rep. LaFalce helped bring $5.1 million in federal transportation grants to Western New York for upgrading and strengthening U.S.-Canadian border crossings to help keep pace with the growing number of trucks and passenger vehicles using those bridges each day.

Border Staffing Levels—With respect to staffing and infrastructure concerns along the Northern Border and in Western New York specifically, Rep. LaFalce has been the most active and vociferous Member in Congress. During the 106th Congress alone, in order to highlight the needs of the Niagara River bridges, he met with Raymond Kelly, Commissioner, U.S. Customs Service; Bob Trotter, Northern Border Coordinator, U.S. Customs Service; Elisabeth Bresee, Assistant Secretary (Enforcement), Treasury Department; Doris Meissner, Commissioner, U.S. Immigration and Naturalization Service; and Jack Lew, Director, Office of Management and Budget.

As a result of his efforts as co-chair of the Northern Border Caucus, the USA-PATRIOT Act, signed into law on October 26, 2001, included provisions to triple the authorization for staffing for the INS and the Customs Service for the Northern Border. As a result, the FY02 appropriations bill included funding for 348 new INS border ports-of-entry inspectors, an additional $55.8 million for additional INS inspectors and support staff on the Northern Border, and at least 142 Border Patrol agents at the Northern Border. In addition, the Customs Service received funding for more than 300 Customs officials at the Northern Border. Finally, $2.3 million to support 100 National Guard troops for three months to enhance security and expedite U.S. Customs Service checks at U.S.-Canadian ports of entry was also appropriated for FY02.

International financial issues

Rep. LaFalce distinguished himself throughout his career for his leadership on international financial; trade, and development issues. His work in these areas reflects both his moral sense and mastery of complex financial and economic issues. His ability to meld the cause of social justice with an understanding of global markets has made him a uniquely effective advocate and policymaker in areas such as debt relief for poor countries and the resolution of international financial crises.

The Multilateral Development Banks and the International Monetary Fund—Rep. LaFalce has been a leader in crafting U.S. policy in the Multilateral Development Banks and the International Monetary Fund (IMF). As the Senior Democrat on the House Banking Committee, he helped craft landmark reforms in the IMF and the World Bank during the 1990s, bringing more transparency and accountability to the institutions and focusing their missions to bring greater effectiveness in achieving global economic development and poverty reduction.

Rep. LaFalce also co-authored the bill creating the European Bank for Reconstruction and Development (EBRD). This regional multilateral development bank was established in 1991 when communism was crumbling in central and eastern Europe and ex-soviet countries needed support to nurture a new private sector in a democratic environment. Through his travels in the region after the fall of communism, Rep. LaFalce recognized the need for a private sector development institutions and worked aggressively in the Congress to authorize creation of the EBRD. Today the EBRD is helping to build market economies and democracies in 27 countries from central Europe to central Asia.

Third World Debt Relief—During 2000, Rep. LaFalce fought hard and successfully to pass historic legislation on international debt relief. Although few believed that legislation could be enacted to cancel the oppressive debts of highly indebted poor countries, he joined with the Chairman of the House Banking Committee to introduce H.R. 1095, the Debt Relief for Poverty Reduction Act of 1999. In 2000, Rep. LaFalce's efforts were instrumental in securing $435 million for debt relief in the FY 2001 Foreign Operations Appropriations Act.

In helping to make the debt relief initiative a reality, Rep. LaFalce worked closely with the Episcopal Church, the Catholic Church, and relief groups like Oxfam. For his leadership on debt relief and his humanitarian work in Congress, Rep. LaFalce was honored by both Bread for the World and Oxfam America, two major global anti-poverty organizations.

Debt-for-Equity/Environment—Rep. LaFalce was a leader in the Congress in addressing the Latin American debt crisis of the 1980s. He fought for language in the 1988 Trade Act that would have created an international mechanism to address debt problems. President Reagan vetoed an earlier version of the Trade Act, in part over opposition to the LaFalce debt plan. As signed into law, the debt language in the 1988 Trade Act was substantially weakened due to the Reagan Administration's influence.

Rep. LaFalce also promoted innovative debt relief strategies such as debt for equity and debt for environment "swaps," which provided debt relief for developing countries while also ensuring sound economic and environmental policies in these countries. After traveling to post-communist Central and Eastern Europe, Rep. LaFalce introduced legislation in 1990 directing the Secretary of the Treasury to negotiate for the establishment within the European Bank for Reconstruction and Development of: (1) an Environmental Trust Fund to make loans available at concessional interest rates for environmental protection projects; and (2) requirements for environmental impact assessments of all proposed operations with potential environmental impacts. The legislation also authorized the President to permit Central European countries (defined for purposes of this Act as Czechoslovakia, Hungary, Poland, and Yugoslavia) with emerging market economies to pay debt owed to the United States into local currency trust accounts to be used for environmental protection and economic development projects.

Brady Plan—Rep. LaFalce long argued for a new regime for Third World debt restructuring, beginning during the time James Baker was Secretary of the Treasury. He was delighted when Nicholas Brady was appointed Treasury Secretary by President Reagan and called Rep. LaFalce to his office to discuss debt restructuring. Rep. LaFalce had authored an op-ed on the subject in the September/October 1988 issue of The International Economy, in which he urged the new Treasury Secretary to ignore the advice of his predecessor Baker on Third World Debt relief. The Administration subsequently adopted Rep. LaFalce's recommendations to devise and implement a new regime for debt restructuring, which came to be known as the "Brady Plan." In arguing for the importance of debt forgiveness tied to sound policy reform in poor countries, Rep. LaFalce would help lay the groundwork for the landmark Heavily Indebted Poor Country Initiative a decade later.

AIDS Trust Fund—Rep. LaFalce was instrumental in passage of legislation in 2000 to create an international trust fund in support of efforts to eradicate AIDS, tuberculosis, and malaria globally. The fund will use public and private contributions to assist poor countries in implementing programs to address these devastating diseases. So far, financial commitments to the fund from donor countries and private institutions have exceeded $1.5 billion.

Human Rights and International Finance—Rep. LaFalce has been a leading voice for the cause of human rights across the globe. As Chairman of the House Small Business Committee, Rep. LaFalce was actively engaged in promoting human rights in Mexico, meeting with key human rights activists such as Jorge Castaneda. He convened hearings to examine the mistreatment of activists by the Mexican government. Concern about human rights abuses in Mexico contributed to his decision to oppose the North American Free Trade Agreement.

As Ranking Democrat on the former House Banking Committee, Rep. LaFalce won enactment of landmark human rights provisions contained in authorizing legislation for the IMF, the World Bank, and the regional development banks, as well as in legislation to forgive debt in poor countries. As a result of these provisions, all government-sponsored international financial institutions are now required to incorporate human rights considerations into their oppositions, and debt relief is only provided countries with acceptable human rights records. Rep. LaFalce was also successful in creating a commission to monitor human rights in China as part of legislation authorizing permanent normal trade relations.

In 2000, Rep. LaFalce led congressional efforts to ratify a new International Labor Organization Convention on abusive child labor. Rep. LaFalce stood at President Clinton's side as he signed the ratification legislation into law in Seattle.

Privatization—In the midst of rapid economic change in the former communist countries during the 1990s, Rep. LaFalce became a leading proponent for the view that privatization of state-owned industries, while often necessary, needed to be implemented in the context of sound regulatory regimes. He believed that the architects and proponents of privatization schemes, both in the post-communist countries and in institutions like the IMF and World Bank, were exclusively focused on the efficiencies achieved through privatization, paying no attention to equity concerns. Without adequate anticorruption measures, protections for workers, and small business owners and investors, Rep. LaFalce argued that rapid privatization could ultimately leave the countries in worse shape. He spoke out against "nomenklatura" privatization in Russia and "patron" privatization in Mexico, first as Chairman of the Small Business Committee in 1994 and later during hearings in the House Banking Committee.

Rep. LaFalce's concern that reckless privatization programs were being supported through U.S. foreign aid and through the international financial institutions (IFIs) led him to introduce privatization provisions in authorizing legislation for the IFIs in 2001. His concern was confirmed recently by analysis released by the International Monetary fund, which indicated that failed privatization efforts during the 1990s were the result of inadequate regulatory oversight. Reflecting Rep. LaFalce's earlier statements, the IMF study suggested that the IFIs were too quick to support rapid privatization without adequate regulation.

Terrorism response

Rep. LaFalce authored several key bills to address the impacts of the September 11th terrorist attacks on our nation. He authored key sections of the anti-terrorist "PATRIOT Act," primarily those dealing with money laundering. He played a leading role in House passage of legislation to provide for continued insurance coverage against terrorist attacks. And he worked with the Bush Administration to secure disaster assistance for small businesses.

The USA PATRIOT Act—In the wake of the September 11, 2001 terrorist attacks, Rep. LaFalce called on President Bush to take bold steps in the international arena to support enactment of tougher anti-money laundering laws here at home. He called for the passage of an anti-money laundering bill he had worked closely with the Clinton Administration and Sen. John Kerry (D–MA) to introduce during the 106th Congress. Rep. LaFalce successfully shepherded his legislation into law in the 107th Congress. The legislation he authored was incorporated as a separate title in the landmark USA PATRIOT Act (PL 107–56), a comprehensive law intended to bolster the U.S. government's ability to fight terrorism. Rep. LaFalce's legislation represented the PATRIOT Act's "financial war on terrorism" component.

His legislation provided the United States with new tools to combat money laundering threats from overseas, and to prevent the use of the domestic financial system by money launderers, terrorists, and corrupt foreign officials. The bill specifically addressed the abuse of offshore secrecy havens by criminals and terrorists who seek to launder their illicit monetary gains. By strengthening the Treasury Secretary's ability to curb terrorists' abuse of offshore secret accounts, the legislation authored by Rep. LaFalce should help immensely to dismantle existing terrorists' financial networks—a key battle in the global war on terrorism.

The law provides the Treasury Secretary with the authority and discretion to address specific money laundering infractions, which U.S. law enforcement agencies could not do under the previous legal regime. That regime offered limited options for law enforcement: the Treasury Secretary could either issue informational advisories to U.S. financial institutions about specific offshore jurisdictions or take the more extreme approach of invoking sweeping and often disruptive economic sanctions. The new law allows the Secretary to identify specific overseas financial institutions as engaging in money laundering and to prevent U.S. institutions from doing business with such institutions.

Rep. LaFalce's legislation provided the Treasury Secretary new discretionary authority, which can be invoked under certain select circumstances. For example, the Secretary could use this authority if he or she were to identify an area of "primary money laundering concern" offshore. If invoked by the Treasury Secretary, this discretionary tool would only apply to the overseas activities of U.S. financial institutions, not domestic activities. The approach taken in the LaFalce legislation offers the kind of regulatory flexibility, which did not exist previously, needed to tackle a fast-moving and remarkably adaptable class of criminals, particularly terrorists. More recently, various provisions in the legislation have been successfully used by U.S. law enforcement officials in their efforts to track down the sources of funding for Al-Qaeda and other terrorist organizations.

Small Business Relief—In the immediate aftermath of September 11th, Rep. LaFalce introduced legislation to help small businesses impacted by the terrorist attacks. The "Terrorist Disaster Relief for Small Business Act" addresses the economic hardships of small businesses who are suffering ripple effects from the September 11th attacks. Just weeks after Rep. LaFalce's introduction of the bill, the Bush Administration undertook regulatory changes to make more small businesses eligible for disaster assistance. The Administration's action expanded eligibility for loans to disaster-impacted businesses at interest rates as low as 4 percent, and for terms of up to 30 years. The Bush Administration has indicated that it plans to allocate funds in the FY 2002 budget to leverage approximately $1 billion in new Small Business Administration disaster loans.

Victory Bonds—Following the September 11th terrorist attacks, Rep. LaFalce received numerous calls from his constituents about how they could help in the recovery efforts, and how they could show their support against international terrorists. Rep. LaFalce heeded these calls by immediately introducing legislation to authorize the issuance of special "Victory" savings bonds. The effort was modeled on a proud tradition in America that dates back to the Second World War, when government bond sales generated over $200 billion to fund the war effort. Recently, the U.S. Treasury responded by re-designating its current series EE savings bonds as "Patriot Bonds." This move is intended to encourage Americans to contribute to the government's anti-terrorism campaign.

Terrorism Reinsurance—Rep. LaFalce played a leading role in the House's passage of legislation that would provide for the continuation of insurance coverage against terrorist attacks, which was in danger of disappearing, or being too costly, after September 11th. Agreement has been reached on the bill and the conference report should be approved in November.

Islam Resolution/Imam Guest Chaplain—Rep. LaFalce has always been a strong advocate for freedom of religious expression in America. In the aftermath of September 11, he grew increasingly concerned that this precious freedom might be compromised, particularly with respect to Muslims, out of fear and in the name of "defense against terrorism." In November 2001, Rep. LaFalce introduced H. Res. 280, a resolution recognizing Islam as one of the great religions of the world and commending Muslims on their faith, particularly during the Islamic holy month of Ramadan. At Rep. LaFalce's request, the U.S. House of Representatives marked the commencement of Ramadan for the very first time, when, with the concurrence of Speaker Dennis Hastert, he arranged an invitation to Muslim Chaplain at Georgetown University, Imam Yahya Hendi, to offer the opening prayer before the U.S. House of Representatives.

Italian-American heritage

Rep. LaFalce is one of our nation's leading Italian-Americans. Over the years, he has been showered with honors for his leadership, his integrity, and his dedication to those he serves.

Italian-American Heritage Award—Rep. LaFalce received the "Italian Heritage Award" from the Italian Heritage and Culture Club of Western New York. The club then renamed the award the "JOHN J. LaFALCE Italian Heritage Award" for future recipients.

Delegation Dean—As the most senior Italian-American serving in the U.S. Congress, Rep. LaFalce was the Dean of the Italian-American Congressional Delegation. In 2001, he led a fact-finding trip to Italy sponsored by the National Italian-American Foundation (NIAF), the leading advocacy group for Americans of Italian descent. The LaFalce/NIAF delegation traveled to Rome, the Vatican and the southern region of Calabria.

In the village of Marcedusa, in the Province of Catanzaro, in the Region of Calabria, Rep. LaFalce was made an honorary citizen of both Marcedusa and Calabria. His paternal grandparents—Giovanni LaFalce and Concetta Mancuso—came from Calabria, were married and lived in Marcedusa (population 500), before emigrating to the United States. While he appreciated his honorary citizenship, he especially prized the gift of a bottle of olive oil made from the olives of the trees planted and nourished by his grandfather.

The pastor of St. Andrea the Apostle Church in Marcedusa, where Rep. LaFalce's grandparents were married, showed him a statue of the Blessed Virgin Mary that was bought by his grandparents and donated to the Church in gratitude for the blessings they had received in America and in appreciation to the people of Marcedusa who had given them their roots.

Order of Merit—Rep. LaFalce received Italy's highest rank of decoration, the Order of Merit, from Italian Ambassador to the U.S. Boris Biancheri. The Ambassador journeyed to Western New York to make the presentation, awarded for Rep. LaFalce's accomplishments as a leading Italian-American. The award named him a Knight-Commander of the Order of Merit of the Republic of Italy, or "Commendatore," that country's highest civilian honor.

Caucus/conference participation

U.S.-Canada Inter-Parliamentary Group—Rep. LaFalce has been an active member of the United states—Canada Inter-Parliamentary Group. The group meets annually to create a network among Canadian and American legislators to discuss issues of mutual interest in the areas of Trade and Economic Issues, International Relations, and Transborder Issues.

Congressional Study Group on Germany—Rep. LaFalce has long been a member of the Congressional Study Group on Germany; in 1999 he served as vice chair, and in 2000 as chairman. The group meets once a year alternating between Germany and the U.S. In 2000, when Rep. LaFalce was chairman, the members of the German Bundestag came to the annual conference in Niagara Falls, New York.

Argentina Task Force—In 2002, Rep. LaFalce was asked by the Inter-American Dialogue to co-chair an elite group of policymakers charged with offering recommendations to resolve Argentina's economic crisis. Rep. LaFalce co-chairs the task force with Ambassador Carla Hills. In his appointment as co-chair, Rep. LaFalce was recognized for his leadership on international debt issues and his expertise in Latin America.

Bilderberg Conference—Rep. LaFalce was the only Member of the U.S. House of Representatives to participate as a member of the fiftieth meeting of the Bilderberg Conference, held in Virginia from May 30th—June 2nd 2002. The Bilderberg Meeting gathered 115 of the world's most influential leaders from 20 countries to discuss a variety of national and international issues. Participants included leaders of government, business, and academia, such as Henry Kissinger, David Rockefeller, Donald Rumsfeld, Larry Summers, Carla Hills, Alan Greenspan, Fannie Mae Chairman Franklin Raines, World Bank President James Wolfensohn, DaimlerChrysler Chairman Jurgen Schrempp, and Deutsche Bank Chairman Hilmar Kopper. The next meeting of the Bilderberg Conference will be in May, 2003 in Versailles.

Diabetes Caucus—Rep. LaFalce is Co-Vice Chair and a founding member of the Congressional Diabetes Caucus, one of the largest and most influential congressional organizations. Founded in 1995, the Diabetes Caucus strives to increase the awareness of diabetes in Congress and to promote greater research into diabetes and diabetes-related complications. Due to Rep. LaFalce and the influence of the Caucus, Congress established the Diabetes Working Group to advise the NIH on research needs and priorities. Most recently, in October, 2002, Rep. LaFalce and his colleagues in the Caucus introduced the Pancreatic Islet Cell Transplantation Act to help advance islet cell transplantation, the most exciting advance in diabetes research since the discovery of insulin in 1921. Rep. LaFalce and the Caucus have secured millions in federal funding for Medicare coverage of diabetes education and supplies, research and treatment initiatives through the National Institutes of Health, the Departments of Health and Human Services, Veterans Administration, Indian Health Service and the Agriculture Cooperative Extension Service.

Sampling of honors and awards

Honorary Doctorates—Rep. LaFalce has received four honorary degrees from universities that awarded him for his public service, his integrity, and his leadership.

In 1991, the Villanova University School of Law recognized him with an Honorary Doctor of Laws degree. In 1990, Canisius College awarded Rep. LaFalce an honorary Doctor of Humane Letters degree for his “Extraordinary leadership as a Member of Congress and champion of the citizens of Western New York.”

St. John's University awarded him an honorary Doctor of Laws degree in 1989, emphasizing in their commendation that Rep. LaFalce proves that “public service in a democracy can be the most noble of professions.”

Niagara University also awarded him an honorary Doctor of Laws in 1979. The Niagara University citation read in part: “...Three qualities emerge as best describing the man: honesty, energy and conviction. His honesty is attested by the estimation that he knows who he is, whom he represents, and what he is doing in Congress. His energy is realized in the extent and diversity of his involvement and legislative efforts...as well as his thoroughness, his dogged determination to see a matter through to its completion. His conviction is demonstrated by a creed which avows: regardless of which side of the aisle it originated, 'Truth is truth, Justice will out, and the Law must be upheld'.”

Homeownership Alliance—the “Homeownership Hero” award was presented to Rep. LaFalce by the Homeownership Alliance to recognize his “outstanding contribution to the expansion of homeownership opportunities for all Americans.” 2002

Financial Services Roundtable—Rep. LaFalce was honored by the Financial Services roundtable with its “American Financial Leadership Award” for “his superb leadership . . . in reforming the financial services industry which is so vital to the economy of our state and nation.” 2000

National Association of Federal Credit Unions—A special career recognition award was given to Rep. LaFalce by the National Association of Federal Credit Unions “for being a champion for federal credit unions and their members for more than twenty-five years.” 2002

Oxfam International & Bread for the World—For his successful humanitarian work in Congress on behalf of debt relief for the world's poor, Rep. LaFalce was honored by Oxfam International and Bread for the World, two global anti-poverty organizations, “for helping break the cycle of poverty.” 1999

National Association of Realtors—Rep. LaFalce was awarded the National Association of Realtors' “Legislative Leadership Award” in the 106th Congress “In appreciation for his outstanding leadership in supporting legislation to help families achieve the American dream of homeownership.”

Center for Health, Environment and Justice—On the 20th anniversary of the Love Canal crisis in his district, Rep. LaFalce was honored “for his significant role in assisting residents to obtain justice” and for his “tireless efforts to move various agencies at all levels of government that was above and beyond the call of duty.” 1998

New York Credit Union—Rep. LaFalce was awarded the “Freedom of Consumer Choice Award” by the New York Credit Union Campaign for Consumer Choice “for actively defending the rights of consumers to choose their financial institutions and for protecting the future of America's credit unions.” 1998

Small Business Council of America—In recognition of his work as Chairman of the Small Business Committee, where he wrote laws creating hundreds of thousands of jobs in the small business sector, Rep. LaFalce received the “Congressional Award” from the Small Business Council of America, which read in part: “when others trample asunder the rights and best interests of small business, he steps forward and moves mountains.”

Associated General Contractors (NY State Chapter)—In 1975, Rep. LaFalce had the distinction of being the first of the newly-elected Members to have a bill he authored signed into law. That bill preserved and created more than one-million construction jobs—300,000 in New York State alone. For his work, the New York State Chapter of the Associated General Contractors honored Rep. LaFalce with its annual “Man of the Year” award.

American Diabetes Association—As Chairman and Vice-Chairman of the House Diabetes Caucus, Rep. LaFalce was honored twice by the American Diabetes Association with its Valor Award in recognition of his continuing efforts to secure increased funding for diabetes research and “for his outstanding service to people with diabetes.” 2000, 2002

National Multiple Sclerosis Society—Rep. LaFalce was honored as “Congressman of the Year” by the National MS Society for his “deep personal appreciation and commitment to the needs of people with MS who have lost access to breakthrough treatments because they are dependent on Medicare reimbursements.” 1995

National Sleep Foundation—The National Sleep Foundation awarded Rep. LaFalce its very first Public Policy Leadership Award in 2001 for his efforts in bringing the problem of sleep disorders to the nation's attention. He secured $125,000 in federal funds for a sleep disorder educational program to be conducted jointly by the University at Buffalo Medical School, Mount St. Mary's Hospital Sleep Disorder Center in Lewiston, and Millard Fillmore-Gates Hospital's Sleep Disorder Center in Buffalo.

National Association of Women Business Owners—Rep. LaFalce received the “Congressional Advocate of the Year” award from the National Association of Women Business Owners for his work in enacting the Women's Business Ownership Act, which expanded federal assistance programs to businesses owned by women.

New York State Association of Renewal and Housing Officials, Inc.—Rep. LaFalce was recognized by the NYSARHO “for his outstanding contributions to national housing and community development programs while serving as a member of the House Subcommittee on Housing and Community Development and in appreciation for his cooperation with the committees, officers, and members of this Association.”

New York State Realtors—Rep. LaFalce was honored by the New York Realtors for his “consistent contributions to the development of the community by participation in civic affairs and by leadership and dedication to making America better.”

Housing Agencies of New York State—Rep. LaFalce received the New York state Housing Agencies' Housing award “in recognition of and appreciation of your continued support of those programs which provide housing opportunities for low and moderate income people in the United States.”

H.R. 4664

SPEECH OF

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. HALL of Texas. Mr. Speaker, I rise in support of the National Science Foundation Authorization Act, H.R. 4664, which provides a 5-year reauthorization for the National Science Foundation's research and education programs.

The bill represents a bipartisan effort to provide the level of resources necessary to sustain the important work of the National

Science Foundation in science and engineering research and education.

I want to congratulate Research Subcommittee Chairman SMITH and Ranking Democratic Member EDDIE BERNICE JOHNSON for their efforts to craft the bill. I also want to thank Science Committee Chairman BOEHLERT for his leadership and for working closely with this side of the aisle in developing the bill.

NSF is our premier agency for support of basic research at academic institutions in the physical sciences and the non-medical biological sciences, in mathematics, and in engineering. Basic research discoveries launch new industries that bring returns to the economy far exceeding the original public investment.

In fact, over the past 50 years, half of U.S. economic productivity can be attributed to technological innovation and the science that has supported it. Unfortunately, the simple truth is that during the 1990s we under invested in the fields of science that NSF supports.

A recent report from the National Academy of Sciences provides specific examples that make this case. The report shows that between 1993 and 1999 federal research support at academic institutions fell by 14 percent in mathematics, by 7 percent in physics, by 2 percent in chemistry, and by 12 percent in electrical engineering.

Inadequate funding for basic research in such important fields imposes a price on society, because new ideas are lost that would otherwise underpin future technological advances.

Of even more importance, anemic funding of academic science and engineering research reduces the numbers of new young scientists and engineers, who constitute the essential element necessary to ensure the nation's future economic strength and security.

H.R. 4664 authorizes funding growth for NSF of 15 percent per year for 5 years, bringing the total authorization level to $9.8 billion by the final year. This follows the funding path to double NSF's budget over 5 years, as was proposed by Rep. EDDIE BERNICE JOHNSON in the NSF authorization bill she introduced, and I cosponsored, last year.

The funding growth proposed by H.R. 4664 will enable the Foundation to expand its investments in cutting-edge research initiatives and shore up its core research programs.

In particular, this new funding will enable NSF to increase average grant size and duration, as well as increase the number of new awards. Due to budget constraints, NSF now declines more than $1 billion dollars worth of research applications each year that receive merit review scores as high or higher than the average score for funded applications.

The funding authorized by H.R. 4664 will also begin to address the growing imbalance in federal support for fundamental research in the physical sciences and engineering relative to the biomedical fields. This is a serious matter because, for any field of science, progress is dependent on advances made in other fields. As pointed out by the past director of the National Institutes of Health, Nobel Laureate Harold Varmus, most of the revolutionary changes that have occurred in biology and medicine are rooted in new methods that, in turn, are usually rooted in fundamental discoveries in many different fields.

For the past half-decade, we have been very free in our support of biomedical research. I consider that to be a very good thing for all of our people. However, investing too narrowly in medical fields without investing in all the other sciences—sciences that contribute to the base of knowledge necessary for medical breakthroughs—will lead to a slowdown in medical progress in the long run.

H.R. 4664 will provide the resources needed by NSF to support multidisciplinary research initiatives in such areas as nanotechnology, information technology, and the mathematical sciences. It will allow construction of new national user facilities for astronomers, computational scientists, earth and atmospheric scientists, and life scientists.

And equally important, the bill institutes new programs to strengthen science and math education in the schools and to train the scientists and engineers the nation needs for the future. Without a constant infusion of well-trained, talented young people into technically challenging fields, our country would lose its edge on the rest of the world.

H.R. 4664 incorporates many provisions from the National Mathematics and Science Partnerships Act that passed the House earlier this year. These important provisions are designed to bring more support to our K–12 science and math teachers, their students, and their schools. The overall goal is to help our children become much more proficient in science and math, and I am confident that the programs authorized by this bill will do just that.

I would particularly like to highlight some programs incorporated in H.R. 4664 that originated in H.R. 1693, a science education bill I introduced with many of my Democratic colleagues from the Science Committee. These include research to explore ways to effectively use educational technologies in the classroom and programs to encourage and support women and minorities in pursuing careers in science and engineering.

H.R. 4664 also includes substantial provisions from the Undergraduate Science, Mathematics, Engineering and Technology Education Improvement Act, H.R. 3130, that authorize several programs at the National Science Foundation to strengthen undergraduate education in these fields of study. Basically, these programs will help increase the numbers of students graduating in science, math and engineering and will help improve the quality of undergraduate science education.

The undergraduate educational programs build on existing NSF programs that have proven their effectiveness, such as Research Experiences for Undergraduates. Similarly, the bill will provide support for the expansion of successful, small-scale undergraduate education reform activities that some colleges and universities have been engaged in.

H.R. 4664 is an important bill that will help ensure the nation maintains a vigorous basic research enterprise, which is an essential component for a strong economy and for national security. And equally important, it will help educate the next generation of scientists and engineers, the essential ingredient in ensuring the nation's technological strength.

Mr. Speaker, I commend this measure to my colleagues and ask for their support for its passage by the House.

H.R. 4664

SPEECH OF

HON. EDDIE BERNICE JOHNSON

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I want to thank Chairman BOEHLERT, Ranking Member HALL, and Chairman SMITH for working with me in a bipartisan manner on this important piece of legislation that makes a strong statement about our commitment to invest in America's future. I would also like to extend my appreciation to Senator KENNEDY, Senator HOLLINGS, Senator GREGG, and Senator BOND in the other body.

As Ranking Member of the House Science Research Subcommittee, I am pleased to say that this is truly an historic piece of legislation for science policy in the United States. The conference report of H.R. 4664 begins the process of doubling NSF's budget, which was the goal of H.R. 1472, the NSF authorization bill I introduced in April of 2001. I introduced H.R. 1472 because I strongly believe that investing in basic science, math, and engineering research is essential to the future economic prosperity and global competitiveness of our country. Many of today's scientific breakthroughs in medicine, consumer electronics, homeland security and other technical fields are the direct result of investments made in basic research decades ago.

To appreciate the importance of NSF to scientists in America, consider some facts. NSF provides 23 percent of basic research funding at academic institutions and as much as 72 percent and 78 percent of the research in critical areas such as mathematics and science. Yet despite its importance to key sectors of our nation's economy, NSF previously had to decline more than $1 billion worth of high quality research proposals each year due to insufficient funds. With the passage of today's conference report, that situation has begun to change. The increase is applied equally to research and education programs, and specific funding authorizations are made for the focused research initiatives in some of the most promising frontiers of science, such as information technology and nanoscale science and engineering. The bill also makes a number of improvements in the way major research projects are funded, the transparency of the agency, and the coordination with other federal research agencies.

NSF also plays a leading role in educating our youth in the math and sciences and training the scientists and engineers of tomorrow, and the agency is working to ensure that tomorrow's high-tech workers reflect the diversity of America. This legislation includes a number of important initiatives that will improve upon science education in the United States. With Senator KENNEDY's help, H.R. 4664 includes portions of H.R. 1660, the Mathematics and Science Proficiency Partnership Act I introduced in May of 2001 to help secondary schools leverage private sector funds for math, science, and engineering scholarships. The Technology Talent Act of 2002, H.R. 3130, is also included in the NSF reauthorization. This initiative will increase the number of students studying and receiving associate's or bachelor's degrees in established or emerging fields within science, mathematics, engineering, and technology. It also establishes specific grant programs in these fields at Historically Black Colleges and Universities and enables eligible nonprofit organizations to work with NSF and public-private consortia to improve science and math education. My home state of Texas has an excellent track record of these innovative partnerships.

I am also pleased that the conference report of H.R. 4664 includes the text of H.R. 2051, the Regional Plant Genome and Gene Research Expression Act Chairman SMITH and I developed together and that passed the House in May of 2002. The legislation establishes competitive, merit based grants to eligible entities to conduct basic research on crops that can be grown in the developing world. The research supported by these grants will help scientists discover innovative solutions to some of the developing world's most intractable problems, such as hunger, malnutrition, and disease. An important feature of this authorization is that U.S. scientists are required to partner with their colleagues in developing nations, which will help develop the scientific capacity of developing nations and stimulate the free flow of ideas, which is so essential to the progress of science.

If we want future Americans to enjoy the pace of progress that we are blessed with today, it is imperative that we bolster funding for our nation's premier basic research agency, the National Science Foundation. H.R. 4664 is a step in the direction of making that dream possible. The legislation that passed last week provides our nation's premier science research agency with the resources it needs to continue and improve upon its excellent track record and authorizes a number of important science policy initiatives. I urge the President to sign H.R. 4664 into law, and I look forward to working with my colleagues on both sides of the aisle in both chambers to ensure that NSF is fully funded under these new authorization levels.

H.R. 3609

SPEECH OF

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. YOUNG of Alaska. Mr. Speaker, with the passage of H.R. 3609 pipeline safety legislation, Congress has completed a critical step in improving the safety and reliability of the nation's interstate natural gas pipeline system. The Office of Pipeline Safety (OPS), within the Department of Transportation has principal responsibility for developing, applying, and enforcing the pipeline safety rules that enhances the safety of the nation's pipelines and protects the public.

OPS is required to enforce these rules without regard to market conditions or commercial considerations. It must diligently seek to promote safety above any competing objectives. Among the most important of existing pipeline safety rules is the requirement that natural gas pipelines not exceed maximum allowable operating pressure, or MAOP. A pipeline's MAOP is established on the basis of engineering principles, testing, historical operations, and experience. Pipeline operators who exceed MAOP violate the Department of Transportation's pipeline safety regulations and may be fined for such violations.

No agency other than OPS should be allowed to re-interpret or water down pipeline safety regulations based on its view of market or commercial concerns. Allowing any other agency to usurp OPS's function will undermine the hard work the Congress has completed to enhance pipeline safety and minimize the risks of pipeline ruptures that may cause serious injury and death.

H.R. 4664

SPEECH OF

HON. JOHN B. LARSON

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I rise today in support of the National Science Foundation Authorization Act, H.R. 4664, passed by the House on November 14, 2002, a bill which doubles funding for one of the most efficient and essential agencies of the Federal government, the National Science Foundation. In particular, I am proud to support this bill because it contains two provisions I authored, both of which will address growing needs in our educational system, our workforce and the economy.

The first provision will have a positive impact on our educational system's ability to integrate cutting edge technology into the classroom instruction of advanced disciplines at the primary and secondary education levels and which will, therefore, improve the educational opportunities of America's students. The second provision will address a growing problem in our nation's workforce: fewer and fewer Americans are seeking degrees in the scientific and technical fields as demand grows and more jobs go unfilled. Both provisions will improve the nation's capacity to maintain an innovative edge in technical fields, which is the backbone of America's prosperous economic system.

The first provision is simple: it tasks the National Science Foundation to identify the best educational practices to provide educators and policy makers with tools for using existing and evolving Internet technology more effectively as a part of the nation's educational strategy. It does this by tasking NSF to study:

(1) The current status of high-speed, large bandwidth capacity access to all public elementary and secondary schools and libraries in the United States;

(2) How high-speed, large bandwidth capacity access to the Internet to such schools and libraries can be effectively utilized within each school and library;

(3) The effect that specific or regional circumstances may have on the ability of such institutions to acquire high-speed, large bandwidth capacity access to achieve universal connectivity as an effective tool in the education process; and

(4) Present various options and recommendations for the entities responsible for elementary and secondary education to address the challenges and issues identified in the report.

In essence, in order to prepare our public schools for the 21st century, we must reexamine how our children's education is delivered into the classrooms. The provision would provide our schools with the best data available from some of the nation's top researchers to help schools enter the 21st century by assisting them to establish effective educational pipelines—broadband pipelines—through which we can supply the energy necessary to fuel the new digital economy.

The second provision is, essentially, a bill I co-authored and introduced with Science Committee Chairman, SHERWOOD BOEHLERT, the Tech Talent Act, H.R. 3130. That bill's main provision, which made it into the NSF Authorization bill, consists of a new effort to address the tech worker shortage by establishing a competitive grant program at the National Science Foundation that rewards universities and community colleges that pledge to increase the number of U.S. citizens or permanent residents obtaining degrees in science, math, engineering and technology (SMET) fields.

It is no secret that America has long recognized that its long-term strength and security, and its ability to recover and sustain high levels of economic growth, depends on maintaining its edge in scientific achievement and technological innovation. Biomedical advances have permitted us to live longer, healthier, and more productively. Advances in agricultural technology have permitted us to be able to feed more and healthier people at a cheaper cost. The information revolution can be seen today in the advanced instruments schools are using to instruct our children and in the vast information resources that are opened up as a result of the linkages created by a networked global society. Our children today can grow up to know, see, and read more, be more diverse, and have more options in their lives for learning and growing. Other emerging technologies—such as nanotechnology—have untold potential to make our lives more exciting, secure, prosperous, and challenging.

Many countries also recognize this and they, therefore, focus their industrial, economic, and security policies on the nurturing and diffusion of technological advancement through all levels of society in a deliberate fashion. Countries that follow this path of nurturing innovation focus a lot of their efforts into recruiting and training the very best engineers and scientists, ensuring that a pipeline which pumps talented and imaginative minds and skills is connected to the needs of the country's socio-economic and security enterprise.

Yet here in this country, this pipeline is broken, threatening the competitive edge we enjoy in the business of technological innovation. Fewer and fewer Americans are getting degrees in scientific and technical fields—even as the demand grows. For example, the number of bachelors degrees awarded in math, computer science, and electrical engineering has fallen 35 percent and 39 percent respectively from their peaks in 1987, at a time when total BA degrees have increased. The number of graduate degrees in those fields has either fallen noticeably or stayed flat. And only about half of all engineering doctoral degrees granted in the U.S. are earned by Americans.

The nation has dealt with this crisis in the recent past by expanding the H1B Visa program to let more foreign residents with science and engineering degrees enter the country. But the H1B program was never intended to be more than an interim solution. The long-term solution has to be ensuring that more Americans get into these fields. The Tech Talent provision included in this bill represents a new effort aimed at producing just such people.

It always pays to be mindful of the fact—especially in the wake of the September 11 events—that there is a strong and tight linkage between our national security and the level of science and technology proficiency in America. Our strength and leadership in the world is based on the might of our defense, strength of our economy, and the quality of our education system. Without any one of these three components the global preeminence of the nation suffers.

In the House Science Committee room there is an inscription: Where there is no vision, the people perish. To remain a strong nation, we must ensure that the single most important element that keeps us dynamic, innovative, prosperous, and secure—and therefore mighty—is there for us: our students, teachers, researchers, engineers, scientists, and technologists. In short, we need more people with vision. The provisions I authored and the underlying legislation will address the deficiencies in our ability to replenish our workforce with visionary individuals and I urge President Bush to sign this legislation.

TRIBUTE TO JERRY ENOMOTO

HON. ROBERT T. MATSUI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. MATSUI. Mr. Speaker, today I rise to honor a friend with a remarkable career in law enforcement and criminal justice. To say that Jerry Enomoto has been a trailblazer in American law enforcement would only begin to skim the surface of the extraordinary contributions that he has made to our communities over the years. After 45 remarkable years of outstanding public service, Jerry recently retired from the post of United States Marshal for the Eastern District of California. As his friends, family, and colleagues gather to celebrate Jerry's illustrious career, I ask all of my colleagues to join me in saluting this outstanding citizen of Sacramento.

Jerry Enomoto, a second generation Japanese American, was born in San Francisco. His education at the prestigious Lowell High School in San Francisco was abruptly interrupted by the wartime hysteria against Japanese Americans in the 1940s. Undeterred by the experience, Jerry remained dedicated to his studies and graduated as a valedictorian of his high school class while interned at the Tule Lake War Recreation Center. After his release, Jerry started his career in public service by serving a successful stint in the United States Army. Upon completion of his military commitment, Jerry returned to California to pursue a college education. Using his trademark dedication and determination, Jerry would ultimately receive his Bachelors and Masters degrees from the University of California in Berkeley.

Jerry has earned a number of "firsts" in his distinguished career. In recognition of his outstanding service to the California Department of Corrections, Jerry was tapped by Governor Reagan to become the first Asian Pacific American to serve as a state prison warden. A few years later, as Director of Corrections, Jerry would become the first Asian Pacific American to manage a state department in California history. Seven years ago, Jerry secured the greatest honor of his unparalleled career when he became the first Asian Pacific American appointed as a United States Marshal.

As United States Marshal for the Eastern District of California, Jerry worked tirelessly to bring together local, state, and federal law enforcement agencies and improve the communities that cover the thirty-four inland county district that stretches from Bakersfield to the Oregon border. Under Jerry's leadership, the Eastern District of California received the Volunteer and Community Services Award from the Attorney General in 2000. Jerry's commitment to improve the lives of his fellow citizens is not exclusive to strictly law enforcement. Jerry remains one of the preeminent civil rights activists in the region. Jerry was twice elected to the distinguished post of National President of the Japanese American Citizen League (JACL). As the National Chair of the Legislative Education Committee of the JACL, Jerry played an instrumental role in spearheading the successful lobby for the passage of the Civil Liberties Act of 1987, an act which authorized redress for the internment of Japanese Americans during World War II. For his efforts, Jerry was the recipient of the JACL's highest award, "Japanese American of the Biennium" in 1992.

Until today, Jerry and his wife, Dorothy, remain active in community affairs. Whether it is through their participation in the Greater Sacramento Area Hate Crimes Task Force, or their intimate involvement in organizing the annual Dr. Martin Luther King, Jr. dinner, Jerry and Dorothy are still steadfastly committed to make Sacramento a better place for people from all different walks of life.

Mr. Speaker, as Jerry's friends, family, and colleagues gather to celebrate his great career, I am honored to pay tribute to one of Sacramento's most honorable citizens. Jerry's continuous leadership is a true testament to public service. If a template for leadership could be made, it would surely bear the resemblance of my dear friend, Jerry Enomoto. Although his career in law enforcement may be over, his involvement in community service is, fortunate for us, far from over. I ask all of my colleagues to join with me in wishing Jerry Enomoto continued success in all his future endeavors.

HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. MCCOLLUM. Mr. Speaker, I rise today to oppose H.R. 5005, legislation to create a Department of Homeland Security.

Like all Americans, I stand with the President and my colleagues in Congress determined to win the war against terrorism and to make our country more secure. Regrettably, I do not believe this bill will significantly enhance the safety of the American people, but I believe it will disrupt the balance of power between the executive and legislative branches of the federal government as defined by the Constitution.

Never has a member of the executive branch, in times of peace or war, ever had the vast authority granted in this legislation to unilaterally authorize the expenditure of federal resources without consultation with the Congress. This is the excessive power granted to the new Secretary of the Department of Homeland Security. I am concerned this excessive power will obstruct the legitimate role of Congress to provide the appropriate level of oversight and accountability in the war on terrorism.

I also remain absolutely opposed to terms in this bill that allow airline pilots to carry guns in the cockpit without proper testing to address safety concerns, indefinitely postpones the deadline for deployment of explosive detection devices at our nation's airports, and limits the legal liability for certain anti-terrorism products certified by the new department. I am disappointed these provisions were included in the final legislation.

I remain committed to a strong and effective defense of America's interests. The American people must have confidence that terrorism will be defeated through vigilant cooperation between our nation's defense and intelligence apparatus, as well as all essential federal, state and local agencies.

If done properly, a Department of Homeland Security could increase efficiency and coordination between key agencies needed to protect us against future terrorist attacks. Unfortunately, the legislation falls short of this important goal.

We must do all we can to ensure the safety of the American people from the threat of terrorism. I look forward to working with my colleagues in Congress and the Administration on this important challenge.

H.R. 5738

SPEECH OF

HON. DIANA DeGETTE

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Ms. DEGETTE. Mr. Speaker, I rise today in support of H.R. 5738. Passage of this bill will continue to fund important Type 1 diabetes research programs and additional treatment and prevention programs for American Indians and Alaska Natives through the Indian Health Service.

Mr. Speaker, passage of this bill could not have come at a more critical time. Juvenile diabetes has a dramatic impact on the lives and families of those affected. Diabetes also places a significant strain on our health care system, costing the nation more than $100 billion annually and accounting for one in four Medicare dollars. Individuals with juvenile diabetes and their families are full of hope, however, due to recent scientific advances that show real promise for curing this disease. But federal support for such research must be increased to continue this progress.

The Special Diabetes Program for Type 1 funding provided in this bill will be used to continue progress in this area. The additional funding will help develop and clinically test methods that will render the need for insulin obsolete. Clinical trials are underway involving the transplantation of insulin producing cells into individuals with juvenile diabetes. The procedure, known as the Edmonton Protocol, has provided success for the approximately 80 percent of the patients who have received these transplants as they have been cured of juvenile diabetes and no longer require insulin injections. As of Janaury 2002, there were 68 islet transplantation centers around the world. The increased dollars provided in this measure would help researchers replicate and expand upon this success.

With regard to American Indians and Alaska Natives, this population has a much heavier disease burden than the general population. This includes a higher death rate from a variety of diseases, including diabetes, than other Americans. Type 2 adult-onset diabetes is a particular problem, with 12.2% of American Indians those over 19 years old suffering from the disease.

Special Diabetes Program funding for American Indians and Alaska Natives has given tribes the ability to focus diabetes prevention and treatment activities where they can make the biggest difference—at the local level. There are approximately 318 diabetes prevention and treatment programs serving American Indians and Alaska Natives as a result of program.

This funding will make a big difference in reducing the incidence of diabetes in the community.

Mr. Speaker, I would like to thank the Juvenile Diabetes Research Foundation, the National Indian Health Board and the National Congress of American Indians and their member tribes, and the entire staffs of these organizations for their tireless efforts in working to get this bill passed.

Mr. Speaker, we have won several victories in improving health care for people with diabetes. Passage of H.R. 5738 ensures another victory for people with diabetes. It also moves us one step closer to our goal of finding a cure.

IN HONOR OF LEWIS GOLDSTEIN

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. ENGEL. Mr. Speaker, I rise today to honor Lew Goldstein, who I have known for more years than I can count. Lew has been a dedicated public servant for more than 30 years, whether serving as a local Democratic party committee member of working the New York City School system.

Lew was born and raised in the Bronx. Born to Leo and Gertrude Goldstein on April 1, 1943, his first twelve years were spent in the Highbridge section of the Bronx. After that he lived on the Grand Concourse and then moved to the Pelham Parkway section of the Bronx. He now resides in the Pelham Bay section of the Bronx.

Lew's first year as a teacher was spent at PS 100 in Harlem. After that he served as a teacher and an administrator in the Bronx. He has dedicated his professional life to ensuring that the children of New York have a better life. For more than ten years, he has focused his efforts on placing children with special needs in the best and most appropriate learning environment. Even after retiring in August he continued to serve the educational needs of the young by going to work part time for Supreme Evaluations and Starting Point Services for Children.

Lew has been involved politically since the mid 1960s. His first elected position was as a delegate to the 1968 National Convention in Chicago. He was originally committed to Senator Robert F. Kennedy. Lew has been an active member of the NYS Democratic Committee to which he was first elected to that position in 1970.

Lew has been active in fighting for the gay, lesbian, bisexual, transgender community. He is the only openly gay elected official from the Bronx. Lew is an active member of congregation Beth Simchat Torah, the largest Gay and Lesbian synagogue in the country.

Mr. Speaker, Lew Goldstein has made the Bronx proud. However, I am quite certain that he will continue to use his energy and determination to continue to make the Bronx an even greater place to live. Lew ski certainly one of a kind, and it has been a privilege and pleasure to call him a good friend for so many years.

H.R. 5005—CREATION OF A DEPARTMENT OF HOMELAND SECURITY

SPEECH OF

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mrs. MALONEY of New York. Mr. Speaker, I rise in strong support of H.R. 5005, the Homeland Security Act of 2002.

As a New Yorker, I know all too well the importance of a secure homeland. On September 11th, my constituents and I witnessed firsthand the devastation caused by terrorist attacks and we understand the urgent need to find new ways to improve the nation's safety. Because of this, in July, I felt it was my duty to vote for H.R. 5005, the House version of the Homeland Security legislation and I will do so again today.

H.R. 5005, the bill currently before us, creates a permanent, cabinet-level Department of Homeland Security, headed by a Secretary of Homeland Security who shall be appointed by the President, with the consent of the Senate. As stated by my colleagues, the legislation consolidates 22 federal agencies into one new Department responsible for intelligence analysis and dissemination, science and technology, border and transportation security, and emergency preparedness and response.

I had hoped that the conference committee would have corrected a number of flaws in the House bill. I appreciate that H.R. 5005 is slightly better on worker protections, however, I am still very concerned that the final product includes troubling provisions that weaken civil service protections for the new Department's employees, undermines Freedom of Information Act compliance, and disregards the need for accountability for corporation by giving blanket immunity to companies that produce anti-terrorist devices.

Yet, we have to do everything we can to prevent a tragedy like 9/11. We have to make sure we can respond as quickly as possible to future attacks. The Homeland Security Act will help us reduce our vulnerability to terrorism and ensure that the nation becomes better prepared.

Securing our homeland must be made a priority. I urge my colleagues to support H.R. 5005.

RECOGNIZING THE HARVEY A. JONES ENGINEERING COMPANY'S 150 YEARS OF BUSINESS EXCELLENCE

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Ms. McCARTHY of Missouri. Mr. Speaker, I rise today to recognize the accomplishments of Mr. Robert H. Jones and his ascendants. Mr. Robert Jones is the fourth generation family member to lead the Harvey A. Jones Engineering Company as president in the historic region of Independence, Missouri.

The company celebrates its 150th anniversary this year serving our community through the surveying and engineering services it offers to our local businesses and city infrastructure. I salute the remarkable longevity of the company in creating jobs and providing robust economic development throughout our local counties and communities in Missouri and Kansas. The Harvey A. Jones Engineering Company is an outstanding example of the significant contributions that small business makes to our economy.

In 1849, Martin O. Jones came from New York to found his company. The patriarch of the Jones family was appointed Jackson County Surveyor by Missouri Governor Sterling Price and was hired by the United States government in 1874 to survey the Santa Fe Trail from Fort Leavenworth, Kansas to Fort Union, New Mexico.

Martin's son, Robert H. Jones, later directed the family business and in 1919 was appointed City Engineer for the City of Independence. His son, Harvey A. Jones took over the position of City Engineer when his father retired in 1943. Harvey A. Jones, a prestigious civic leader was also appointed as City Engineer for the cities of Sugar Creek, Buckner, Lee's Summit, Raytown, Grandview, and Blue Springs. He was also the first Chairman of the Missouri Water Pollution Board.

Throughout its illustrious development, the Harvey A. Jones Engineering Company was instrumental in building the Little Blue Valley Sewer District covering 225 square miles, widening the Noland Road, as well as constructing the Harry S. Truman Sports Complex.

Robert H. Jones now directs the company and continues the tradition his great grandfather began. Under his leadership, the company is now a leader in using advanced computerized instruments in hazardous waste remediation projects, subdivision planning, and commercial developments.

I wish to congratulate the Harvey A. Jones Engineering Company, its fourth generation president, Mr. Robert H. Jones, and all of its employees, on this meaningful anniversary. Our community is grateful and looks forward to the company's continued growth and success.

PAKISTAN'S NUCLEAR EXCHANGE WITH NORTH KOREA

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. PALLONE. Mr. Speaker, I would like to express my grave concern regarding Pakistan's transfer of equipment to support North Korea's covert nuclear weapons program.

Mr. Speaker, I am outraged that North Korea has violated its commitment to the United States, established in a 1994 accord, to freeze its nuclear program. According to reports by your administration, North Korea has in fact been secretly building a program to enrich uranium since the late 1990's.

What I find appalling is that this nuclear program that the United States worked tirelessly to halt, was in fact sustained through the assistance of Pakistan. Not only did the transfer of critical equipment from Pakistan to North Korea take place around 1997, in addition, this relationship has continued even after President Musharraf seized power by force in 1999. Lastly, Pakistan is thought to have provided technology up to even three months ago—I find this particularly outrageous.

The Bush administration has declined to openly discuss Pakistan's involvement in this crucial situation with North Korea. Although the administration seems to have evidence pointing to Pakistan's direct involvement, I see no punitive measures taking place because Pakistan is a U.S. ally in the war on terrorism. In fact, Pakistan has received over one billion dollars' worth of direct and indirect assistance from the U.S. since September 11, 2001. I find it incredible that the U.S. has provided virtually all the assistance President Musharraf has requested, yet at the same time, Pakistan still continues to consort with North Korea by exchanging nuclear equipment for missiles.

Mr. Speaker, I sent a letter to President Bush last month urging the administration to conduct a full investigation of Pakistan's role in providing North Korea with nuclear information and equipment. We must fully investigate President Musharraf's relationship with North Korea since his military coup in 1999, and even more important, to what extent this relationship between the two nations continued after September 11, 2001. To this day, I have not received a response to my request.

In addition, I requested that the administration take immediate steps to ban all military sales to Pakistan and to reimpose Symington sanctions on Pakistan for assisting a foreign nuclear weapons program. Lastly, I urged the administration to also take similar steps and ban any future arms sales they have with Pakistan. I have not received a response to these requests either, however, it seems clear that the administration is opposed to imposing any corrective measures on Pakistan.

Mr. Speaker, I am reiterating these requests that I had previously made to the administration because I think it is important for us to understand that Pakistan should not be exempted of its responsibility in colluding with North Korea over a nuclear weapons program. This situation poses a direct threat to our allies in Asia and to our safety in the United States.

Since the administration is not inclined to recognize the severity of Pakistan's relationship with North Korea, an "axis of evil", and since the administration is not willing to use its authority to reimpose the Symington Sanctions, I will introduce legislation early in the 108th Congress to sanction Pakistan for delivering nuclear enrichment equipment without international safeguards as determined by the Symington Amendment of 1976.

Mr. Speaker, we must show Pakistan that their promise to help us in our war on terrorism cannot be an empty promise. They cannot have it both ways and until President Musharraf learns this lesson we must reinstate the Symington Sanctions to protect our allies in Asia and our own nation.

TRIBUTE TO NORMAN T. SCHINDLER

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. LANTOS. Mr. Speaker, I invite my colleagues to join me in paying tribute to Norman T. Schindler who will celebrate his 100th birthday tomorrow—November 20. It is an extremely noteworthy event to mark the centennial of Norman's birth, but it is more important—and deserving of attention at any age—to acknowledge his remarkable record of public service.

Norman Schindler was the son of a successful Austrian father and a regal Romanian mother, who left Europe to find a new life in the United States. Although he faced great challenges in his new country, his timely departure for America may have saved his life because he avoided the horrors of the Holocaust which took the lives of 6 million of his fellow Jews in Austria and elsewhere in Europe, including many of his own family.

Mr. Speaker, Mr. Schindler's life in many ways was the America dream—he began as an industrious eight-year-old selling fresh eggs and delivering packages on the streets of New York City during the era of horse-drawn carriages. His ambition and hard work led him to found the Nortex and Schindler companies, which were headquartered on the 43rd floor of the Empire State Building. He married his wonderful wife Fran, and they have enjoyed a happy 45 years together.

His family and business success is matched by an enviable record of public service. Just two years after the end of the Second World War, his family received notification from the Government of Austria that they were heirs to property in the city of Vienna. In memory of the members of his family who were victims of the Holocaust, the family directed that the property be turned over the city for use as a park.

In 1962 he established the first corporate day care and nursery facility in the United States for the children of working mothers at his manufacturing plant in Fall River, Massachusetts. Norman Schindler has been a leader in a number of areas, particularly since he and Fran established their home in Florida. He served as president of the South Florida Humane Society for fifteen years, was treasurer of the Papanicolou Cancer Research Center (now the Sylvester Cancer Center) for seven years, was a founder of the Juvenile Diabetes Foundation of Miami Beach, on the board of the Hebrew Academy of Miami Beach, and became a "Grand Donor" to the Miami Beach Alzheimers Foundation.

Mr. Speaker, I invite my colleagues to join me in paying tribute to Norman T. Schindler for his exemplary public service on the occasion of the centennial of his birth.

TRIBUTE TO THE HONORABLE SONNY CALLAHAN

HON. NICK J. RAHALL II

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. RAHALL. Mr. Speaker, I am pleased to rise in tribute and express my appreciation and affection for my colleague and friend from Alabama, SONNY CALLAHAN.

SONNY has traveled a career path from the ranks of the small businessman to serving in the Alabama legislature to ultimately representing Alabama's First District for the past 18 years in the United States Congress.

From his work first as Chairman of the House Appropriations subcommittee on foreign operations, and then more recently as Chairman of the subcommittee on energy and water development, SONNY has been unfailingly equitable in his consideration of members' appropriations requests.

Now, in stepping down from the lofty positions he has served with such distinction, he will have more time for his family, his grandchildren, and his friends back home.

We will miss SONNY's friendly manner, his thoughtfulness, and his affability.

But our loss in SONNY's retirement is certainly a clear gain for SONNY's family and the folks of southwest Alabama to whom he now returns.

RECOGNIZING THE RECIPIENTS OF THE RING LARDNER AWARD FOR EXCELLENCE IN SPORTS JOURNALISM

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. DAVIS of Illinois. Mr. Speaker, the Chicago Athletic Association (CAA) was one of the nation's first sports clubs to be created when it was formed in 1890. It was ready for business—and sports—when it opened its doors to athletes and sports fans, just in time for the World's Fair Columbia Exposition in 1893. Amos Alonzo Stagg, Avery Brundage, William Wrigley and Ring Lardner were among the scores of sports celebrities who have called the CAA their second home. William Wrigley even took the club's logo for the use of his new baseball team. Today, that team is known as the Chicago Cubs.

While dozens of awards programs exist for athletes, there are few programs that recognize excellence in sports journalism. The leadership of CAA has decided to create a special award for excellence in sports journalism, in honor of Ring Lardner, premier sports reporter and writer. The inaugural recipients of the new Ring Lardner Award were chosen by a distinguished panel, including: Mike Houlihan, Lardner Award creator, Chicago Sun-Times; Mike Conklin, Chicago Tribune; Rick Kogan, Chicago Tribune; Mike Mulligan, Chicago Sun-Times; Don Pierson, Chicago Tribune; Norman Potash, WBBM–TV (CBS); Jennifer Weigel, WLS–RADIO; Susan Prather, founder of the Chicago Sports Hall of Fame; and William T. Darnton, immediate past president of the CAA.

The recipients of the inaugural Ring Lardner Award are:

In the broadcast category, NFL Host and play-by-play Announcer Greg Gumbel, CBS Sports;

In the print category, former Chicago Sun-Times Columnist and Sports Editor Ray Sons; and

In the posthumous award for both print and broadcast, former Chicago Daily News Sports Reporter, Chicago Sun-Times Columnist and WBBM–TV Sports Director Tim Weigel.

The award ceremony is being held Thursday evening, November 21, 2002, at the Chicago Athletic Association, and is benefiting Maryville Academy for abused children. The profession of sports journalism lost a gifted reported in Tim Weigel last year. His award is especially poignant, because his daughter, Jennifer Weigel, is serving as Master of Ceremonies for the award ceremony, and his widow, Vicki Truax, will accept the posthumous award.

Congratulations to the leadership and members of the Chicago Athletic Association for creating and establishing this award, to Ring Lardner's great-nephew, Rex, for his support and cooperation, and to the recipients.

RECOGNITION OF ACCOMPLISHMENTS OF LYNDA VAN DEVANTER BUCKLEY

HON. LANE EVANS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. EVANS. Mr. Speaker, I rise to recognize Lynda Van DeVanter Buckley, the author of "Home Before Morning: Story of an Army Nurse in Vietnam", who passed away after a long-time illness last week. Lynda served in Vietnam 1969–70 at 71st Evacuation Hospital in Pleiku. I had the good fortune to know Lynda from her testimony to the House Committee on Veterans Affairs and from her long-standing advocacy as a very early member of the Vietnam Veterans as America. Like so many in the veterans' community, I felt a tremendous loss upon hearing that Lynda had left us after her long and courageous struggle.

As a friend, a Vietnam era veteran and life-time member of Vietnam Veterans of America, I remember Lynda's perseverance, her indomitable spirit and her humanity. As a then-junior Member of the House Committee on Veterans Affairs she helped shape my views on policy for Vietnam veterans—particularly on women veterans' issues, and the health effects of Agent Orange on veterans and their children. Even in her illness, Lynda continued to fight for her daughter, Molly, whose conditions Lynda suspected were related to her own exposure to Agent Orange.

"Home Before Morning: Story of an Army Nurse in Vietnam" became a clarion call to women Vietnam veterans. It reminded them that they were not alone in their struggles and gave voice to the problems and concerns of both this particular group of Vietnam veterans and the entire generation. So many of the preeminent leaders in this community have been affected by her character and her courage. I know her fight lives on in them.

My good friend, Dr. Linda Spoonster Schwartz, a Vietnam nurse who is also a Vietnam Veterans of America member, had this to say about Lynda's life which speaks volumes of the loss we all sense in her passing:

"She was our first Sister. I say that because she took her own Odyssey and put it in print. Her struggle was very much like our own. We began to see we were not alone . . . . Her words came like thunderbolts to part the curtain of anonymity, demoralization and released the years of quiet turmoil suffered by many women who served in Vietnam and during the Vietnam era . . . . She became the Elder Statesman, supporting, advising, and nurturing a new team to continue her work. She taught us how to share, how to disagree without demeaning each other. Mostly she understood with a deep sense of reckoning which never wavered from her vision . . . . She created a voice for women veterans and all past, present and to come are the beneficiary of her legacy."

Lynda will be missed by many, but her commitment and contributions will endure. Yes, Lynda will be missed, but never forgotten.

PAYING TRIBUTE TO THE CAPITAL AREA MICHIGAN WORKS!

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to pay tribute to the Capital Area Michigan Works! for their receipt of an exemplary service provider award from the U.S. Department of Labor. This award was presented at the U.S. Department of Labor's annual Salute to Veterans on November 13, 2002.

Mr. Speaker, the Capital Area Michigan Works! is part of a regional consortium of local governments that provide workforce development services. The exemplary service provider award was presented to only nine organizations and individuals for their outstanding efforts in providing employment and training services to veterans.

Therefore, Mr. Speaker, I ask my colleagues to join me in congratulating the Capital Area Michigan Works! for their distinguished service to America's veterans. Furthermore, I would also ask my colleagues to join me in extending our thanks to the Capital Area Michigan Works! for their service to our community.

TRIBUTE TO REVEREND DR. ALICIA BROADOUS-DUNCAN

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. BERMAN. Mr. Speaker, I am honored to pay tribute to my good friend and one of the most active, passionate and hard-working advocates for older Americans I have ever known, Reverend Dr. Alicia Broadous-Duncan. This year Reverend Alicia will be 65 years old and the Northeast Valley Multipurpose Senior Center will recognize her dedicated service as their Director by having a birthday celebration in her honor.

I have known Reverend Alicia for many years and I have watched with great admiration the tireless and energetic work that she has given to the North Valley Multipurpose Senior Center. Her energy is astounding. The depth of her concern for the center and her genuine love for humanity has made the center into a warm and welcoming environment. No matter how busy, Rev. Alicia's first priority is to provide help and guidance to those in need.

Rev. Alicia has done outstanding work during her years of dedicated service to the community. For example, she served on the Chaplaincy Services Advisory Board of Holy Cross Hospital and was a member of the City of Los Angeles Human Relations Commission.

Reverend Broadous-Duncan has made significant contributions to education and children's causes. Recently, she served on the Board of Directors for Calvary Christian School and played an integral part in Hathaway Children's Village Outreach Services. She has displayed exemplary leadership in Christian service. For example, she was the Founder and Executive Minister of Adonai Covenant Ministries and also an Associate Minister for Calvary Baptist Church in Pacoima. She is extremely devoted to her community.

Among the greatest achievements in Rev. Alicia's life are her seven outstanding children she has raised during her 43-year marriage to Lonnie T. Duncan, and among the great pleasures in her life now are her 17 grandchildren and 3 great-grandchildren.

Reverend Alicia Broadous-Duncan has positively affected the lives of so many, and I join the Northeast Valley Multipurpose Senior Center in wishing her a very happy birthday. It is my distinct pleasure to ask my colleagues to join me in saluting Reverend Alicia Broadous-Duncan.

TRIBUTE TO CONGRESSWOMAN PATSY TAKEMOTO MINK

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Ms. MILLENDER-McDONALD. Mr. Speaker, we gather today to highlight the legacy of one of the most distinguished and honorable Members of this august body, my colleague and friend—Congresswoman Patsy Takemoto Mink.

Though Patsy made it to one of the highest elected offices in the land, she never lost the common touch. Patsy was a champion of the dispossessed; the downtrodden; the disenfranchised; the forgotten; she was the people's representative. She was a mentor to many of us in Congress. As the co-chair to the Congressional Caucus for Women's Issues, she helped me many times to redirect my course if barriers were placed in front of me! But that was vintage Patsy. She was always able to redirect her course if barriers were placed before her. Having been denied entrance to medical school, she chose the legal profession; and was the first Japanese woman to pass the bar in Hawaii. As I received the call of Patsy passing by my daughter Valerie, I was saddened only for a short time, because I began to recall all the fond memories we had together as a source of strength.

We must all draw on those memories. We must celebrate the life of our dear friend Patsy and remember how her 24 years of distinguished services shaped the lives of those who had social impediments, economic inequality and educational restrictions. The passage of the landmark Title IX legislation, which opened doors that had been closed to girls in the athletic programs at schools around this Nation, will be a lasting memory of how tenaciously she fought to improve the lives of girls for generations to come.

In a career that began before territorial Hawaii became a state in 1959, Patsy Mink, with authority, wit and clear perspective, became one of the best-known women politicians in the United States, and the first woman of color elected to Congress. Patsy challenged us all! She challenged us with the question, "Does it matter whether women are involved in politics?" Her career speaks volumes to that question and her accomplishments exemplify the answer. Decisions are being made at the national level that will determine the quality of our lives into the next generation.

Patsy Takemoto Mink—by crossing our paths—has given us the leadership tools to advance the agenda for the common good. Thank you Patsy! Mr. Speaker, on behalf of many women and Asian American organizations, I would like to submit to the CONGRESSIONAL RECORD, the following statements that highlight the life and legacy of Congresswoman Patsy Takemoto Mink.

TRIBUTE TO CONGRESSWOMAN PATSY MINK

REMARKS OF KAREN K. NARASAKI, PRESIDENT AND EXECUTIVE DIRECTOR, NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM

I believe that Patsy is looking down on us today and smiling at the beautiful mosaic of faces. It is fitting that this memorial has brought together so many strands of her work—organizations and congressional leaders who advocate on behalf of women, civil rights, immigrants, workers, children and the poor have all come together to celebrate her life.

The Asian American and Pacific Islander community misses her greatly. She served as a role model and an inspiration for so many of us. She forged a path that made it possible for Japanese American women like me and other women of color to pursue our dreams and aspirations. She taught us that it was possible to obtain great stature without having to be physically tall, by defying the stereotypes that too often become barriers for Asian American women who come from cultures where women were expected to be seen and not heard. She was a feminist before being a feminist was cool and she remained one her whole life.

The other day, my niece in third grade ran for student body secretary. I asked my sister to tell her that when she was ready to run for Congress, I would work on her campaign. Julia asked my sister to tell me that she intended to be the first woman president and didn't see any reason to start with Congress. This is one of Patsy's greatest legacies—because of her life and work it is possible today for a young Japanese American girl to believe she can be president.

Like many others in this room, I can still hear her voice gently and not-so-gently pushing us to challenge authority and popular opinion and fight fiercely for those most vulnerable in our communities. She was a tough task master who was never one to suffer fools gladly and she asked a lot of her talented and loyal staff, but never more than she asked of herself.

I remember her call for fairness for immigrants and families in poverty when she voted against the tide on harsh welfare reform legislation. I hear the echoes of her passionate speeches on the floor of the House about the need to invest in quality education for all and job training that would allow working families a living wage and access to health care. Because she was never one to toot her own horn, people visiting Washington would be surprised when I told them to try to catch one of her speeches because she was one of the last of the great orators. She was always about the work—always focused on the people she served.

Robert F. Kennedy once said, "each time a man stands up for an ideal or acts to improve the lot of others or strikes out against injustice he sends forth a tiny ripple of hope. . . ." When Patsy stood up, she sent out tidal waves of hope and the lives of all Americans are the better because of her.

REMARKS OF DR. JANE SMITH

Thank you. I am Jane Smith, the Chief Executive Officer of Business and Professional Women/USA.

I join the many Members of Congress and other representatives from the women's community here today because Congresswoman Mink and BPW share a very long history. The Congresswoman was a member of BPW for at least four decades. But Congresswoman Mink was not simply an affiliate member. She truly epitomized what BPW considers its greatest strength—the grassroots member.

Congresswoman Mink attended the meetings of her local BPW organization regularly and even cast votes in BPW's leadership elections. She spoke at our annual policy conference many times, sharing her insight on the ins and outs of what was happening here on Capitol Hill. In fact, each year before BPW's policy conference she would call her BPW contacts in Hawaii to find out who would be attending the conference and when the BPW members arrived in Washington she took them all out to lunch.

One of my favorite stories about the Congresswoman took place about six years ago when BPW's leadership was asked to testify in front of the House Education and Workforce Committee about increasing the minimum wage. A number of BPW members, who were also small business owners, presented testimony and at the conclusion of the hearing Congresswoman Mink said that the hearing was her proudest day as a BPW member.

In 1998, the BPW Foundation awarded Congresswoman Mink a Women Mean Business Award and BPW's political arm—BPW/PAC—has endorsed her for Congress every time she ran. BPW has honored Congresswoman Mink because she was a grassroots member who exhibited incredible leadership and vision. In the words of BPW's past National President and BPW/Hawaii member—Leslie Wilkins, "We have lost one of our greatest mentors. My only solace is the legacy she has left behind. She has inspired countless women—and men—to go forward with her work."

REMARKS OF BERNICE R. SANDLER, SENIOR SCHOLAR, WOMEN'S RESEARCH AND EDUCATION INSTITUTE

Title IX was easily passed because hardly anyone recognized the enormous changes it would require, and because it was hidden away in the Education Amendments of 1972. It passed easily because two women laid the groundwork for it in the House Committee on Education and Labor, one, Rep. Edith Green who introduced the bill and shepherded it through the Congress, and Rep. Patsy Mink. They were the only two women on the committee with 32 men. But together, they forged a revolution.

Of course after Title IX was passed, people found out what it would do. Between 1974 and 1977 there were at least 10 bills introduced to weaken Title IX, and Patsy Mink was in the forefront defending Title IX. If supporting Title IX and other women's issues were all she had done, it would have been enough. But she didn't stop there.

Let me start by telling you about Arlene Horowitz, then a secretary on the Hill who came to me about an idea for a Congressional bill in 1971, before Title IX was even passed. She asked: Why not have a bill so that the government will fund materials for teachers and others about women and girls to counter the effects of sex role stereotyping? I thought Arlene was crazy and—no one in their right mind in Congress would ever support such a bill. Arlene, fortunately did not listen to me. She went to other women who were also skeptical, and then to Patsy Mink. Patsy Mink did not think Arlene was crazy. She gave us the go ahead and so the Women's Educational Equity Act, affectionately known as WEEA, was born.

Even while we worked on the drafting of the bill, many of us still thought it wouldn't pass but that if hearings were held, maybe it would send a message to publishers to begin publishing such materials on their own. In 1973, Patsy Mink held hearings and convinced Senator Mondale to do the same in the Senate, and in 1974 the bill passed.

Just like Title IX WEEA was hidden away in another bill, the Elementary and Secondary Education Act. Patsy Mink knew her politics.

As the mother of the Women's Educational Equity Act, she started a program that has developed hundreds of all kinds of resources for educators and other concerned about the education of women and girls. Yesterday I looked through the catalogue of the Educational Development Center which publishes and disseminates WEEA materials. In addition to materials such as 600 Strategies That Really Work to Increase Girls Participation in Sciences, Mathematics and Computers, there were materials about working with immigrant girls, Native American women and girls, Latina women and girls, materials about women of the South, about Cuban American Women, single sex education, a resource manual for single mothers, materials for working with disabled girls and yes, even materials for providing equity for boys. All of these materials have had an enormous impact on not only on teachers but on so many the children and women in our educational institutions. Patsy Mink leaves us a legacy—not only the legacy of defending Title IX but one which enriched Title IX. She gave us the educational tools to deal with the effects of sex discimination and indeed to prevent sex discrimination from occurring in the first place. Thank you, thank you, Patsy. You have made a lasting difference.

REMARKS FROM THE EVERY MOTHER IS A WORKING MOTHER NETWORK

Grassroots women suffered a great loss with the passing of Congresswoman Patsy Mink. Herself a woman of color, she stood for us, she stood with us, and she stood as one of us and we wonder now who will be our voice on the Hill. We are proud to have known Congresswoman Mink, to have worked with her and to have her encourage us. The last time we saw her was at a Congressional briefing we held in June of this year on valuing the work of caregivers in welfare policy. We invited her to the briefing because we wanted to honor her for her unswerving insistence that the work of mothers and other caregivers be valued. She told us that we should not be honoring her, that instead she should be thanking us for our work in the face of all odds.

You must understand we were not a typical beltway crowd. We were a rather rag tag multiracial group of mothers and grandmothers on welfare, some of us with disabilities, some with our grandchildren in tow, who along with other caregivers had gathered our pennies and traveled to DC to press our case from cities on the West and East Coasts, as well as the Mid-West. We are women who are studied but not listened to, spoken about but not given an opportunity to speak for ourselves. But her tone to us was one of respect. She spoke to us as a sister, as a friend, as people to whom she was accountable. Many of us who heard her at our briefing speak with such truth, conviction and clarity were moved to tears.

From South Central LA to inner city Philadelphia, grassroots women in our network were devastated by the news of Congresswoman Mink's passing and devastated further by her passing being treated in much of the mainstream media as merely a passing event. She touched the lives of those living daily the impact of welfare "reform:": those of us on the bottom taking care of children and other loved ones. To her colleagues on the Hill, we hope she will always be a shining example of principle, commitment, integrity and compassion from which you can draw courage. To advocates we hope you will not forget her message. EMWM honors Representative Patsy Mink, her spirit; her courage in the face of sexism, racism and ageism is one that will continue to inspire us, and lives on in us in our daily work for justice. Congresswoman Mink, you honored us, and we now in return are honoring you. Our deepest condolences to Wendy and other loved ones you have left behind.

REMARKS BY KIM GANDY, PRESIDENT AND THE MEMBERS OF THE NATIONAL ORGANIZATION FOR WOMEN.

The world lost one of its greatest citizens on September 28 with the death of Hawaii Congresswoman Patsy Mink. Girls and women also lost one of the most valiant and steadfast champions. Every woman today who is enjoying the fruits of her education and job opportunities, and every girl who has a chance to play sports in school, owes a nod of thanks to Mink who unremittingly and dauntlessly challenged old stereotypes about "women's place" and helped engineer the steady progress for women over the last four decades—parallel to Mink's career in politics.

Patsy Mink stood up and showed up for girls and women, often outnumbered and sometimes outmaneuvered. But she persisted, cajoled, humored and demanded of her colleagues that Congress attend to the business of over half its constituents. Among many accomplishments, she was a leader in shepherding the passage of Title IX in 1972 to promote educational equity. One of only two women ever to receive this honor, Patsy Mink was named a NOW Woman of Vision in June, 2002, in a ceremony honoring the 30th anniversary of Title IX. In celebrating her life we must rededicate ourselves to protecting her legacy by preventing the current efforts to dismantle this landmark legislation.

In the last decade of her political leadership, Patsy Mink was a vigorous advocate on behalf of poor families. Faced with the bipartisan tidal wave that pounded poor women, insisting that they "get to work", Mink worked tirelessly to promote policies that truly addressed the realities of poverty and last year garnered substantial support in the House of Representatives for her legislation to provide additional education and skills that would support true self-sufficiency.

Patsy Mink will always be remembered with love and respect and gratitude. She was our champion—a tireless advocate and a hero to women and girls everywhere.

TRIBUTE TO CONGRESSWOMAN PATSY TAKEMOTO MINK

HON. NEIL ABERCROMBIE

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. ABERCROMBIE. Mr. Speaker, I would like to submit to the appropriate CONGRESSIONAL RECORD, the following statements on Congresswoman Patsy Takemoto Mink.

ON THE PASSING OF THE HONORABLE PATSY TAKEMOTO MINK

(Statement of Jacqueline Woods, Executive Director, American Association of University Women, October 1, 2002)

On behalf of the 150,000 members of the American Association of University Women (AAUW), we express our profound sadness at the loss of Congresswoman Patsy Takemoto Mink. Congresswoman Mink was a true pioneer in breaking down barriers in education and the workplace for women and girls, and ensuring that the rights of all Americans are advanced and protected. Mrs. Mink often said that her greatest accomplishments was passage of Title IX of the Education Amendments of 1972. AAUW will continue to ensure that Title IX is protected in order to carry on Congresswoman Mink's legacy so that future generations can enjoy full access to all aspects of education. AAUW's mission is to promote equity for all women and girls, lifelong education, and positive societal change. Congresswoman Mink's lifetime commitment to these issues has made it possible for AAUW's mission to be realized in so many areas that have touched the lives of countless numbers of women and families. AAUW's long-term relationship with Congresswoman Mink included her membership with the Hilo Branch of AAUW of Hawaii and that partnership was maintained throughout her stellar career and lifetime. It was an honor and pleasure to work with Congresswoman Mink to promote educational equity for all women and girls, and we will continue in these efforts in her honor and in her honor and in her memory.

IRENE NATIVIDAD OF WOMEN VOTE PATSY MINK TRIBUTE

For anyone who still asks "What difference does a woman make in public office?" just tell them about Patsy Mink. She was the force behind that one bill that created an earthquake in women's and girls' lives. Whenever I see a little girls soccer team playing on the weekend, or hear about a great woman basketball player, or about another women's team winning Olympic Gold, or the predominance of women students at all levels of higher education, I think of how much we owed to her. She changed American Women and Girls' lives forever.

I have been to many women sports events, when women athletes invoke with knowing familiarity Title IX (They even know the number) and I came away impressed that they knew their debt to this piece of legislation that the average person does not know. Yet, I regretted that they did not know their debt to an Asian American Women Legislator who crafted the language that made their athletic or educational lives possible. There are women leaders who did not know of Patsy's role in this piece of legislation. There are Asian American who don't know of Patsy's great gift to all Americans, whether female or male.

But that is not their fault. Patsy Mink was an original. She was extremely effective but not self-promoting. She seemed slight and small, but she possessed a spine of steel, as anyone who ever worked with her on a bill would know. She seemed so polite and self-effacing, but she was full of determination and passion. I told her one time how I loved to watched people's reactions when she speaks. They see this tiny woman and out springs from her mouth this great big voice and this electric presentation. She said "There's value in being underestimated. We surprise them each time."

I was proud to have had Patsy Mink as one of my political mothers, along with Bella Abzug and Shirley Chisholm. When I first came to Washington many years ago, Bella gave me a piece of advice: "Honey, just watch Patsy. She'll show you how to get things done." And indeed she has. Bella loved Patsy and she thought the world of her and her work.

In this town full of statutes and buildings to commemorate men's achievements, it is important for us here in the room to remember not to let our heroines leave us without acknowledging their great work while they're still with us.

[lsqb]Dialogue on Diversity, October 16, 2002[rsqb]

REPRESENTATIVE PATSY MINK—A TRIBUTE

(Ma. Cristina Caballero, President, Dialogue on Diversity)

Dialogue on Diversity counted Patsy Mink a friend, supporter, and inspirer. With our organizational goal of advancing a creative dialogue among women of America's and the world's many diverse ethnic and cultural communities, we found a natural ally and kindred spirit in Rep. Mink, and an energizing source of encouragement and counsel in her ideas and passions as they had evolved over a long and illustrious career in public service.

It was our great honor to present to Patsy Mink the Diversity Award as part of Dialogue on Diversity's Public Policy/Legislative Forum of 1997. Rep. Xavier Becerra, who presented the award, recalled his own first days in the Congress. He had been brought under heavy pressure to vote against a measure that his good conscience told him was proper public policy. Rep. Mink came to him and asked: Are you going to cave on your first day in Congress? No more needed to be said. Conscience won on that occasion, and it was the powerful moral and political presence of Patsy Mink that ensured it did. We were delighted to welcome Rep. Mink to our conferences and forums on several occasions, She generously give her precious time and attentive counsel, and brought her ever persuasive and heartening message to her hearers.

Patsy Mink was a person of passionate energies and of great vitality of intellect as she busied herself with the wide range of issues concerning women, minorities, and others among the often forgotten and disadvantaged in every corner of the Republic. To reflect on her career and her friendship is to call forth a great many memories of the battles and achievements in the civic life of America in the last quarter of the twentieth century, and to focus on her figure, the untiring champion of those in American society who most needed her aid. It is therefore hard to realize that she is gone from our arena of action. Her example has its own vitality, of course, which persists in her many colleagues and admirers, and in a nation of friends.

TRIBUTE BY MARCIA GREENBERGER AND NANCY DUFF CAMPBELL, NATIONAL WOMEN'S LAW CENTER, TO CONGRESSWOMEN PATSY T. MINK

The National Women's Law Center is celebrating its 30th anniversary this year, along with Title IX.

So, from the Center's very beginning, we have known of and been grateful for the work of Congresswoman Patsy Mink. Title IX has been one of the most important laws ever enacted to expand young women's horizons and transform their lives. In the Center's efforts since its founding to ensure that Title IX is enforced, we have relied on Patsy Mink's ringing words in the floor debates on Title IX's sweeping purposes and its broad reach. Her words have been especially powerful in court cases we have brought to secure strong interpretations of Title IX's reach and effectiveness. The Center has called on her wisdom and leadership to keep Title IX strong in Congress and in the court of public opinion as well—up to the very time she became ill this summer.

Make no mistake—Title IX is under attack, and her willingness to speak up and speak out was essential. On the occasion of the National Women's Law Center's 30th Anniversary Dinner this November 13, 2002, we will honor Congresswoman Mink for all she did to make and keep Title IX strong, as well as for the battles she waged, in which the Center has joined, to fight poverty and to create real support systems for women and families most in need.

Of course, her legislative accomplishments and leadership are remarkable, and have enriched our nation and the world. But, she also gave of herself for the National Women's Law Center. She served on the Board of the National Women's Law Center at a key juncture in its history, and even gave the Center its name. She exhorted us as advocates to always persevere, but never set for us a higher standard than the one she followed for herself. She taught us to never give up, and never give in to the status quo of unfairness and inequity. And she supported us and was always there to fight with us and lend us her expertise.

She has made such a difference, and will into the future. She will live on, we hope, in the work that we do and the work of so many others with whom we join. We are proud to count among our colleagues her daughter Gwendolyn Mink, a professor of Women's Studies at Smith College, whose scholarship and activism—like her mother's public service—have focused on ways to improve the lives of the least fortunate women and children in our society. As Patsy Mink well knew, and often said, our children are our future. May we not only hold that thought, but continue to act on it.

[lsqb]Asian Pacific American Institute for Congressional Studies, October 16, 2002[rsqb]

REMEMBERING PATSY MINK

(Daphne Kwok, Executive Director)

Thank you so much Congresswoman Millender-McDonald for the invitation to participate today. I would like to begin by saying to Patsy Mink's former and current staff members a very big thank you for all of their work that they did for the national Asian Pacific American community all of these years. We greatly appreciated the commitment you had to all of our needs and for helping to advance the Asian Pacific American agenda.

How will the Asian Pacific American community remember Congresswoman Patsy Mink? We will remember her as:

The tireless advocate who always voted her conscience—from fighting for justice for 2000 Asian Pacific American cannery workers of the Wards Cove Packing Co. left out of the Civil Rights Act of 1991 to voting against campaign finance reform because of a provision that would deny legal permanent residents the right to contribute to political campaigns.

The fighter who was always ready to make a verbal statement or a symbolic statement on the issues that she was so passionate about. How can we ever forget the image a few years ago of the Reverend Jesse Jackson and a mass group of Members and advocates flooding a House Committee mark-up session on an anti-affirmative action bill. The overwhelming support against the bill caused the chairman to cancel the mark-up. The group then marched over to the Senate side. And guess who was standing next to Rev. Jackson and standing just as tall as him? Patsy!

Or the time that we were at the Lincoln Memorial on a blistery cold winter day for a press conference demanding that Bill Lann Lee receive a Senate vote for his nomination as Assistant Attorney General for Civil Rights. Who was there all bundled up in big wool coat, scarf, hat, gloves with her fiery oratory keeping us warm as she ignited the flames within us of this unfairness? Patsy!

But most especially, we will remember Patsy for the generous time she carved out from her jam packed schedule to always graciously meet with and inspire Asian Pacific American elected officials, Asian Pacific American student interns, Asian Pacific American community leaders, and the Asian Pacific American grassroots community sending them home with pearls of wisdom and a charge to do good for others and to serve this nation.

This is how the Asian Pacific American community will forever remember the incredibly vibrant Congresswoman from Hawaii—Patsy T. Mink.

TRIBUTE TO OFFICER GLEN KIRKLAND

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. TOWNS. Mr. Speaker, I rise today to honor Officer Glen Kirkland for his significant contributions in making his community and society a better and safer place to live. Officer Kirkland has always been a beacon in the community with his ability to serve as a conscientious and honorable role model for many youth in the community.

Officer Kirkland was born on March 27, 1955 in Brooklyn, New York to Ruthel and David Fredrick and has five siblings, two sisters and three brothers. During his formative years, he attended Brooklyn public schools. Officer Kirkland began serving his community at an early age; during his teen years he was involved with the Faith, Hope and Charity Community Center. At this community center, Officer Kirkland was involved in projects that kept him off the streets and helped him secure summer employment.

Glen Kirkland became a New York City Police Officer in 1980. During his career as a police officer he has had various assignments dealing with the youth of the community. At the 75th Precinct, Officer Kirkland became the Youth Officer and Union Delegate for the Guardians organization. He has received numerous certificates, awards and plaques from the local community, state and federal entities for his efforts in working with youth.

Officer Kirkland is known not only as a trendsetter on his parole beat but also as a neighbor and family man. On more than one occasion, during the winter snows, he would shovel his sidewalk as well as his neighbors. He is a loving son, brother, devoted husband and father. He is the type of man you can call on at any hour of the day or night for assistance and he will be there.

Mr. Speaker, I ask my colleagues to join me in honoring Officer Glen Kirkland for his leadership specifically with youth and the many other contributions to his community. His endeavors and accomplishments deserve our praise and appreciation.

TRIBUTE TO GARRY BROWN

HON. RICHARD E. NEAL

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. NEAL of Massachusetts. Mr. Speaker, it is an honor for me to bestow a special recognition to Garry Brown, chief Boston Red Sox writer and standout sportswriter for the past 52 years. Let me just say, there is no finer baseball writer in America. Gary Brown was recently awarded the top honors in sports writing during the annual New England Associated Press News Executives Association award presentations which were held in Ogunquit, Maine.

In commenting on Brown's first place award, the judges noted that "his columns had good starts and even stronger endings. This is column writing the way it should be." Garry has successfully tackled various topics in his columns from the New York City terror attacks to racism. There is no doubt that he is a talented and gifted writer and the people of New England have enjoyed his writing over the last half century.

I am personally a fan of his columns and have read them for many years. So today, I wish to personally congratulate Garry Brown on his first place award and for his outstanding achievement in sports writing. Surely, he has created a dynamic legacy in New England.

LABOR VIOLATIONS UNDERMINE U.S.-ECUADOR TRADE RELATIONSHIP

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. GEORGE MILLER of California. Mr. Speaker, on October 29, the United States Trade Representative (USTR) recommended to the White House that Ecuador be designated a beneficiary country under the Andean Trade Promotion and Drug Eradication Act (ATPDEA). The White House issued a proclamation adopting the recommendation on October 31, one day before trade ministers met for a summit in Quito, Ecuador.

The United States has once again chosen to extend special trading benefits to Ecuador despite blatant and rampant violations of worker rights in that country's banana industry.

Our Administration had a golden opportunity to promote democratic ideals abroad by placing universal labor rights above economic self-interest. It should have withheld trade benefits until Ecuador proved it was serious about eradicating child labor on its plantations, improving the hostile climate toward the right to organize, and bringing to justice those who attacked striking workers in February and May.

In February 2002, hoodlums attacked striking workers on a banana plantation in the middle of the night. Soon thereafter, Human Rights Watch released a damning report which documented a long litany of labor abuses on Ecuadorian banana plantations. As concerned members of the International Worker Rights Caucus, we sent down staffers to investigate the situation. They were given few helpful answers.

On September 23, we wrote to USTR Ambassador Zoellick and made the case that Ecuador did not deserve renewed trading benefits. Throughout the summer, the Ecuadorian government and much of the banana industry had continued to dismiss conclusions reached in the Human Rights Watch Report. It had become clear that the case of the attacked workers was nowhere near resolution. In short, the Ecuadorian government had shown little enthusiasm for instituting necessary labor reforms to keep trade beneficiary status.

USTR took our letter and its recommendations seriously by conferring renewed trading benefits on Colombia, Peru, and Bolivia but withholding Ecuador's cause for further review. The recent decision to go ahead and renew Ecuador's status is dependent upon Ecuador fulfilling certain medium-term conditions at a later date.

We believe those conditions would be satisfied earlier if our country held Ecuador to the labor standards that U.S. trading agreements demand. The truth is that Ecuador sells more bananas to the U.S. than it does to any other country. It enjoys a beneficial trading arrangement that is contingent upon a respect for basic human rights. It should be held accountable.

We have included the September 23 letter we sent to the USTR. Under each of our recommendations, we have included an update of what the Ecuadorian government has done on this concern. We hope these measures will have been fully adopted by Ecuador when USTR revisits the issue in the future. Until then, we will continue to support rights for workers in Ecuador and elsewhere.

Robert B. Zoellick,
Ambassador, United States Trade Representative, Washington, DC.

DEAR AMBASSADOR ZOELLICK: As you know, in order for countries to be eligible under the Andean Trade Promotion and Drug Eradication Act (ATPDEA), they must provide for internationally recognized worker rights. We are writing to express our concern that Ecuador has not met this criteria. We are particularly concerned about abuses in the banana sector.

Ecuador does not effectively enforce its laws governing the worst forms of child labor in its banana sector nor do the minimal penalties for violating those laws effectively deter employers from employing children in hazardous conditions. In Ecuador's banana sector, harmful child labor is widespread, children work long hours, are exposed to toxic pesticides, use sharp tools, haul heavy loads of bananas, lack sanitary water and access to restroom facilities, and, in a few cases, experience sexual harassment. Although the government of Ecuador and the Ecuadorian banana industry have recently pledged to take steps to address the problem, the promised steps are insufficient, as they fail to address adequately the problem of ineffective enforcement of child labor laws and inadequate sanctions for their violation.

Ecuadorian laws intended to protect freedom of association are seriously deficient. Employers who fire workers for organizing are not required to reinstate the workers and, if caught, usually pay only a minimal fine. Employers are not prohibited from interfering with unionization efforts or attempting to control workers' organizations. And legal loopholes allow employers to string together short-term contracts to create a vulnerable "permanent temporary" workforce. Subcontracted workers, also used widely in the sector, lack job stability and can only bargain collectively with their subcontractors, not with the companies that actually control their employment terms. These factors create a climate of fear among banana workers in Ecuador and have largely prevented them from organizing, resulting in a banana worker union affiliation rate of roughly 1 percent, far lower than that of Colombia or any Central American banana-exporting country.

Despite all the impediments to organizing, in February 2002, workers on the Los Alamos banana plantations, owned by the Noboa Corporation, began the first serious banana worker organizing drive in Ecuador in over five years. The Los Alamos workers, whose three unions were recognized by the Ministry of Labor in April and who began a legal strike on May 6 in an effort to get their employers to engage in good-faith negotiations, have been the victims of alleged anti-union dismissals; anti-union violence, including shootings on May 16; government failure to investigate the violence and prosecute the perpetrators; employer interference with Special Committees representing the workers before government-convened arbitration panels; and the unlawful use of strikebreakers. If the Los Alamos workers' right to organize is not fully protected, other banana workers will likely be deterred from organizing for fear of suffering similar consequences, creating a chilling effect on the exercising of fundamental worker rights. labor abuses in Ecuador's banana sector were extensively documented earlier this year in Human Rights Watch's report, Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador's Banana Plantations, and have also been widely reported in U.S. and foreign media, including the New York Times, Washington Post, Financial Times, and Economist.

Because Ecuador has failed to fulfill its commitments to eliminate the worst forms of child labor and to protect workers' right to organize, the country should be denied ATPDEA designation until benchmarks addressing the enforcement of child labor laws and the abuses suffered by Los Alamos workers are met. We urge the United States Trade Representative (USTR) to send a delegation to Ecuador to verify compliance with the benchmarks. If the benchmarks are met, ATPDEA designation should be granted on a provisional basis for six months, on the condition that reforms to bring labor laws into compliance with international standards be made within that time frame.

We also recommend that Ecuador be asked to take the following measures to address urgent labor rights problems prior to ATPDEA designation:

THE LOS ALAMOS CASE

Undertake a comprehensive investigation of the violence against the striking banana workers and effectively prosecute those responsible, including any parties who may have hired the perpetrators.

Not only was this condition not fulfilled prior to granting Ecuador ATPDEA beneficiary status, but Ecuador committed to the United States only, generally, that it would continue to investigate and take further action in the Los Alamos case, failing to address specifically any of the very serious concerns, detailed below, with regards to the investigation undertaken.

At approximately 2:00 a.m. on May 16, 2002, some two hundred armed individuals attacked striking workers on Los Alamos, looting their homes, beating many of them, and shooting at least one. Around 6:00 p.m. that same day, the armed men allegedly shot eight more workers and a policeman. In October 2002, Ecuador concluded a sorely inadequate investigation of this case. According to a report by the prosecutor handling the case, only sixteen of the assailants were charged with any crime. The events of 2:00 a.m. were never investigated. No attempt was made to identify who hired the armed individuals, nor were any workers interviewed. The investigation examined only the case of the injured policeman, mentioning only that a local newspaper had reported that one worker was also shot. The Los Alamos case is now before a criminal judge, Even if the case proceeds to trial, as the prosecutor has requested, and further investigation is undertaken at that stage, the trial will focus solely on the incidents and charges set forth in the prosecutor's report, which forms the basis for the case. Thus, unless another case is opened and a new investigation undertaken, those who may have contracted the roughly two hundred perpetrators of the violence and all but sixteen of the perpetrators will enjoy impunity, and the sixteen accused will face charges for only a fraction of the illegal activities of May 16, also enjoying impunity with respect to the others.

Investigate whether replacement workers were hired illegally and whether employers attempted to place workers' Special Committees under employer control, violating the right of workers' associations to function free of employer interference. If so determined, these violations should cease and the employers should face appropriate penalties, adequate to deter future abuses. This condition was also not fulfilled prior to granting Ecuador ATPDEA beneficiary status, and, instead, Ecuador committed to the United States, generally that it would establish a "high level commission" to investigate this and other issues related to the Los Alamos case and report back to the United States with findings and recommendations for improvements. Ecuador did not, however, commit that this "high level commission" nor any other government body would punish the employers if guilty of violating Ecuadorian law governing the use of replacement workers or if guilty of violating workers' right to freedom of association by interfering with workers' organizations.

CHILD LABOR

Designate, as required by Ecuadorian law, at least one labor inspector for children in each province-a total of twenty-two inspectors-and provide them with sufficient resources to effectively implement child labor laws. These inspectors should be in addition to, not in lieu of, existing labor inspectors.

Ecuador's Minister of Labor issued a decree addressing enforcement of child labor laws that blatantly fails to meet this condition. On October 4, 2002, Ecuador's Minister of Labor decreed a new "System for the Inspection and Monitoring of Child Labor." However, this initiative is insufficient to address the country's egregious failure to enforce its child labor laws. The new system does not provide for new labor inspectors, but explicitly states that existing inspectors charged with enforcing other labor laws shall be shifted to this new bureaucracy. Furthermore, although the decree states that the Ministry of Labor will ensure that the system is provided with sufficient financial and human resources to complete its functions, there is no guarantee that additional funding will be provided to the Ministry of labor for these purposes.

Ecuador has committed to the United States, generally, to improve enforcement of child labor laws and comply with International labor Organization (ILO) convention 182 concerning the prohibition and Immediate Elimination of the Worst Forms of Child Labor. Ecuador did not specifically commit, however, to fully fund the system created to uphold these commitments nor to address that system's significant inadequacies.

Ecuador should be required to commit, prior to ATPDEA designation, to make the following labor law reforms within six months, as a condition for continued designation:

Increase the penalty for violating child labor laws and require a portion of punitive fine to be dedicated to the rehabilitation of displaced child workers.

Explicitly prohibit employers from interfering in the establishment or functioning of workers' organizations and attempting to dominate or control workers' organizations.

Require reinstatement of workers fired for engaging in union activity and payment of lost wages during the period when they were wrongfully dismissed.

Prohibit explicitly employer failure to hire workers due to organizing activity and establish adequate penalties to deter employers from engaging in this or other anti-union discrimination.

Allow subcontracted workers to organize and bargain collectively with the person or company for whose benefit work is realized if that person or company has the power to dictate workers' terms and conditions of employment.

Reduce the minimum number of workers required to form a union.

Ecuador has not explicitly made any of these commitments. Instead, Ecuador committed to look seriously at the consistency of its labor laws with ILO obligations. This falls significantly short of promising to submit labor law reforms to congress to address specifically the areas, highlighted above, in which Ecuadorian labor laws fail to meet international standards on freedom of association and child labor.

Ecuador also agreed to send seven labor rights-related international law instruments to its congress for future ratification. Of these seven, however, two- the U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and ILO Convention 138, the Minimum Age Convention-were already ratified by Ecuador. One- the Inter-American Convention on the Elimination of All Forms of Discrimination for Reasons of Gender and Age-does not even exist. Therefore, only four of the instruments could, in practice, be submitted for ratification, none of which address the concerns highlighted above.

After these essential measures have been taken and reforms adopted, Ecuador should be required to commit to continuing to reform labor legislation and improve labor law enforcement until internationally recognized worker rights are fully respected throughout the country.

We thank you for your consideration of this very important matter and would be happy to discuss it with you further. We look forward to your response.

Sincerely,

GEORGE MILLER,
Member of Congress.
JANICE D. SCHAKOWSKY,
Member of Congress.

ABORTION AND BREAST CANCER

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. SMITH of New Jersey. Mr. Speaker, I rise to submit a letter from 28 Members of Congress, and an enclosure from the National Physicians Center for Family Resources, requesting that the National Cancer Institute correct scientific inaccuracies in their Fact Sheet on the link between abortion and breast cancer. I commend the National Cancer Institute for the steps they have already taken to revisit their fact sheet and I look forward to a scientifically accurate fact sheet in the near future.

CONGRESS OF THE UNITED STATES,
Washington, DC, June 7, 2002.

Hon. TOMMY THOMPSON,
Secretary of Health and Human Services, Department of Health and Human Services, Hubert Humphrey Building, Washington, DC

DEAR SECRETARY THOMPSON: We write to request a review of the National Cancer Institute (NCI) fact sheet FS #35.3, labeled "Abortion and Breast Cancer." As we work together to make sure the American public has the most accurate and up to date information on health risks, especially related to the serious disease of breast cancer, we wanted to specifically ask for a review of the official NCI information on the link between abortion and breast cancer. Even though this fact sheet was updated March 6th of this year, we believe it is scientifically inaccurate and misleading to the public.

Even though, to date, 28 out of 37 scientific studies worldwide, and 13 out of 15 in the United States show a positive association between abortion and breast cancer risk, the NCI fact sheet on this topic emphatically states "The current body of scientific evidence suggests that women who have had either induced or spontaneous abortions have the same risk as other women for developing breast cancer." This glossing over of the weight of published scientific evidence does not provide the public with the information they deserve.

Furthermore, it seems inappropriate for the NCI to rely so heavily on one study to support its claims regarding abortion and breast cancer. The NCI fact sheet relies on Melbye et al., 1997, although that study contains many significant flaws. In particular the Melbye study: misclassified 60,000 women as not having abortions when, in fact, the women did undergo an abortion; included medical records that did not consistently record a history of abortion; and, included over 350,000 women who were generally too young to be diagnosed with breast cancer because their ages were twenty five years of age and younger. We believe NCI has given this flawed study too much weight and that the entire body of evidence needs to revisited as soon as possible.

We respectfully request that the fact sheet be reevaluated for accuracy and bias and that it be removed from the Department website until that review is completed. We thank you for your attention to this important health issue and to our concerns about the NCI fact sheet on the link between abortion and breast cancer.

Sincerely,

Christopher Smith; Joseph R. Pitts; John Shadegg; W. Todd Akin; Joe Wilson; Robert B. Aderholt; Walter B. Jones; Sue Myrick; Milissa A. Hart; Sam Johnson; Roscoe G. Bartlett; Todd Tiahrt; Pete Hoekstra; Bob Schaffer; Mike Pence; Gil Gutknecht; Van Hilleary; Henry E. Brown, Jr.; Jim Ryun; Barbara Cubin; Dave Weldon; Jim DeMint; John Sullivan; Mark Souder; John N. Hostettler; JoAnn Davis; Ernest Istook; Cliff Stearns.

NATIONAL CANCER INSTITUTE FACT SHEET ANALYSIS, THE ABORTION—BREAST CANCER CONNECTION (ABC LINK), NATIONAL PHYSICIANS CENTER FOR FAMILY RESOURCES (NPC), APRIL, 2002

Overall tone of denial of abc link: ". . . it appears that there is no overall association between spontaneous or induced abortion and breast cancer risk, . . .", even though, to date, 28 out of 37 studies worldwide and 13 out of 15 in the U.S. report a positive association.

Confusion of induced and spontaneous abortion: These two terms appear together repeatedly, as if they are equivalent. Never is the proper equation of spontaneous abortion and miscarriage made; in fact, the word miscarriage never appears. Yet paradoxically, the "inability to separate induced from spontaneous abortions" is offered as a criticism of earlier studies on the abc link.

Misrepresentation of the published medical literature on the abc link:

(a) A key study on American women which relied on prospective medical records (Howe et al., 1989), and which found a significant abc link (overall RR = 1.9), is not cited at all, even though much more weight is given to data "from studies that collected data on abortion history before the breast cancers occurred", and even though it is presented as a weakness that "Most of the early studies relied on self-reports of induced abortion".

(b) The study specifically funded by the NCI to examine the abc link (Daling et al., 1994), which study reported a significant overall link (RR = 1.5) and much higher risks for teenagers (RR = 2.5) and actually reported "RR = [squ]" for teenagers with any family history of breast cancer, is not cited at all.

(c) The only comprehensive review and meta-analysis on the abc link (Brind et al., 1996), which reported a positive association in 18 out of 23 studies worldwide (9 out of 10 in the US), is not cited at all.

Reliance on flawed studies which do not show an abc link, merely because they are based on prospective data, namely:

(a) the study by Melbye et al., 1997, even though it misclassified 60,000 abortion-positive women as abortion negative, used breast cancer records which antedated abortion records, and included over 350,000 women under age 25, among other flaws;

(b) the study by Goldacre et al., 2001, even though it misclassified over 90 percent of the abortion-positive women in the study as abortion-negative;

(c) the null studies by Newcomb and Mandelson (2000) and Lazovich (2000), even though both are so small (23 and 26 patients with induced abortion, respectively) and of such low statistical power that neither could even detect a RR as low as 1.5 with statistical significance.

Inclusion of inaccurate statements, i.e.:

(a) "In three of the (four) studies, information was based on medical records than on the woman's self-report;". In fact, this is true of only two (i.e., Goldacre and Newcomb & Mandelson) of the four studies referred to.

(b) "The strength of this study (Melbye 1997) include . . . the ability to account for breast cancer risk factors that may differ between those women who have had abortions and those who have not,". In fact, the lack of such data on potential confounders was a weakness of the Melbye study, which only adjusted for age and age at first term pregnancy. Most studies also adjust for age at menarche, age at menopause, etc.

(c) "Most of the early studies necessarily relied on self-reports of induced abortion, which have been shown to differ between breast cancer patients and other women." In fact, the opposite is true. Even the only study cited on the fact sheet which examined this question reported: "The authors' data do not suggest that controls are more reluctant to report a history of induced abortion than are women with breast cancer."

Disguising the established breast cancer risk factor that is directly affected by abortion in a substantial proportion of abortion patients, i.e.: "Well established breast cancer risk factors include . . . a late age at the time of the first birth of a full-term baby". Abortion, which, in childless girls and women, necessarily delays the first full-term pregnancy, is not mentioned at all in this context.

CONFERENCE REPORT ON S. 1214, MARITIME TRANSPORTATION SECURITY ACT OF 2002

SPEECH OF

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2001

Mr. HORN. Mr. Speaker, I rise today in support of S. 1214, the Port and Maritime Security Act of 2002 Conference Report. As many of you know, I have been privileged to represent the Ports of Los Angeles and Long Beach for the past 10 years. Each day these ports receive cargo from points around the globe. The San Pedro Bay port complex is the third largest seaport in the world. These ports are responsible for over 30 percent of all U.S. waterborne trade with an estimated value of $162 billion a year. The bulk of these imports arrive in 20- or 40-foot containers aboard some of the world's largest cargo ships. Additionally, our ports handle millions of cruise passengers annually. Insuring the safety of containers and passengers entering and exiting the ports of this country is a daunting task. Currently, only about 2 percent of the shipping containers entering the country are inspected. This simply will not do. Passing this comprehensive port security legislation will insure that more containers are inspected and that our ports are properly protected.

I am particularly pleased that Section 203 of this legislation incorporates a bill that I introduced in the 106th Congress. This section authorizes the Secretary of Transportation to make grants to the American Merchant Marine Veterans Memorial Committee to construct an addition to the American Merchant Marine Memorial Wall of Honor in San Pedro, California. Thus far, the Committee has already raised well over $500,000 to begin construction on the second phase of this memorial. Plans for the addition to the memorial call for panels to list the names of those who died while serving in the U.S. Merchant Marine.

Since 1775, the maritime community has played a critical role in gaining and preserving American freedom. The Merchant Marine served as our first Navy and defeated the British Navy in our fight for independence. We owe much to the brave mariners past and present who have served in the Merchant Marine. The American Merchant Marine Memorial Wall of Honor located in San Pedro, California, is a symbol of the debt we own those who have served so bravely.

Many of my colleagues will remember how the Merchant Marine secured its place in American history during the Second World War. During that conflict, the 250,000 men and women in the U.S. merchant fleet made enormous contributions to the eventual winning of the war, keeping the lifeline of freedom open to our troops overseas and to our allies. This fleet was truly the "Fourth Arm of Defense" as it was called by President Franklin D. Roosevelt and other military leaders.

The members of the U.S. Merchant Marine faced danger from submarines, mines, armed raiders, destroyers, aircraft, "kamikaze," and the elements. At least 6,800 mariners were killed at sea and more than 11,000 were wounded at sea. Of those injured, at least 1,100 later died from their wounds. More than 600 men and women were taken prisoner by our enemies. In fact, one in 32 mariners serving aboard merchant ships in the Second World War died in the line of duty, suffering a greater percentage of war-related deaths than all other U.S. services.

Since that time, the U.S. Merchant Marine has continued to serve our nation, promoting freedom and meeting the high ideals of its past members. It is fitting to honor the past and present members of the U.S. Merchant Marine. This is why I introduced legislation in the previous Congress that would provide additional federal funding for the memorial wall in San Pedro. Twice the House has approved legislation authorizing funds for this worthy memorial, today I am pleased that the House and Senate are moving to approve this authorization in the port security conference report.

Throughout the development of the conference report, I have sought to provide the greater protection for ports and the communities that surround them against terrorist attacks. I am pleased that the conferees have included port security grants and research and development grants that will encourage the development and use of state-of-the-art technology. Like the conferees, I believe it is important to encourage the private sector to continually advance the state of the art as a means of enhancing detection capabilities and thus enhancing deterrence over time.

When he is reviewing project proposals and awarding grants, I encourage the Secretary of Transportation to give preference to those projects that incorporate technologies that are capable of automatically detecting shielded nuclear weapons, liquid and other explosives, and chemical and biological agents weapons in fully loaded cargo containers without the need for humans to open the containers to manually inspect them. Based on testimony received by the Congress, it would appear that pulsed fast neutron technology is capable today of meeting this need. As a result, I hope that this technology and other technologies will be identified, developed, and installed in our ports as part of the ongoing process of enhancing port security through this legislation.

Long Beach State's Center for the Commercial Deployment of Transportation Technologies (CCDoTT) has been developing maritime technology for many years, and has recently turned their attention to port security technology as well. In the FY03 Defense Appropriations bill CCDoTT was granted $4.3 million for continuation of their important work to develop more efficient cargo handling in ports, high-speed ship designs, and port security research. This funding will allow the center to continue assessing cargo inspection technologies that can help meet the needs of agencies such as the U.S. Customs Service and the Coast Guard.

Section 70107 of the accompanying report authorizes an additional $15 million for fiscal years 2003 through 2008 for research and development grants for port security. I am pleased that report language for the Port and Maritime Security Act of 2002 particularly notes the importance of the research being done at Long Beach State's Center for the Commercial Deployment of Transportation Technologies. This language encourages the Secretary of Transportation and the Secretary of Defense to obligate any current and prior year appropriations under the continuing cooperative agreement. The Center is sponsored by the U.S. Maritime Administration and U.S. Department of Defense and I am certain it will continue to provide invaluable research for America's maritime interests. Again, I am pleased with, and strongly support, this timely port security legislation.

PROJECT 19

HON. MARY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mrs. BONO. Mr. Speaker, I rise today to recognize the brave American civilians who volunteered to assist our allies in the fight against an enemy that was threatening democracy for the entire world. These patriotic Americans chose to enter World War II to participate in a mission referred to as Project 19.

In the fall of 1941, prior to the attack on Pearl Harbor, President Franklin D. Roosevelt met with British Prime Minister Winston Churchill to discuss the United States assisting Britain in its battle with Hitler's Reich.

President Roosevelt responded by authorizing a secret Air Depot to be established and operated by American civilian volunteers in Eritrea, East Africa under the direction of Douglas Aircraft Company. Due to the fact that the U.S. had not yet entered the war and for obvious diplomatic reasons, Project 19 was classified as "secret."

The goal of the volunteers, also referred to as "Tech Reps" and "Feather Merchants," was to assemble P–40's and repair hundreds of worn out and damaged allied aircraft, first for the Royal Air Force (RAF), and after America entered the conflict, B–24's and B–17's for the United States Army Air Corps. When this group of freedom loving Americans first began their volunteer mission, they helped the RAF repair planes that had been damaged during horrific battles. When the secret mission was terminated, many volunteers joined the military to fight alongside our allies and some of them gave the ultimate sacrifice, their lives.

Many lives have been affected by the sacrifice these valiant men made and I believe the time has come to recognize these heroes who volunteered their services and their lives to their country and its allies.

Mr. Speaker, as long as our Nation is served by men and women who place the defense of freedom above their personal safety and well being our Nation will endure. The men of Project 19 served with pride and distinction, and deserve the recognition of our Nation and this Congress.

THANKING MY CONGRESSIONAL STAFF

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. GEKAS. Mr. Speaker, the end of a congressional career brings about many emotions. Over the last twenty years I have happily spent representing the fine people of the 17th Congressional District of Pennsylvania I have had the pleasure of working with thousands of constituents, local, state and federal officials, and many former and current distinguished members of the U.S. House of Representatives and the U.S. Senate. To all of them I say, thanks for working with me towards a better America.

And, of course, every Member of Congress works with many, many competent staff, from the staff in their own personal offices to the Committee and Subcommittee staff and the leadership and floor staff. It has often been said that without staff where would this institution be? And I concur with that statement, for without the many fine staff with whom I have had good fortune to work, I and other Members of Congress of the United States would be far worse off. While I cannot mention all the fine staff who have worked with me over the years, let me at least mention the current personal and subcommittee staffers who have endeavored to achieve our common goals and to whom I give my hearty thanks and wish them well in their future careers.

In my Harrisburg district office, Arlene Eckels, my long-time personal secretary who has worked for me since the early days in the Pennsylvania State Senate and to whom I wish a happy and much deserved retirement; Tom Templeton, my hardworking district director, who so ably kept my entire district staff working smoothly; Suzanne Stoll, an old friend and superb caseworker; Paul Giannaris, whose ability to handle INS problems has made him invaluable; and Tim Vollrath, a recently returned former employee whose military and veterans help has been superb. In our Lebanon Office, Reg Nyman has been the voice of Lebanon for these many years, and his excellent knowledge and service will be missed. And in our Elizabethtown office, Susan Melendez has kept our Lancaster County constituents well served by her kind and efficient manner. Over the last twenty years my district office staff has handled hundreds of thousands of phone calls and constituent casework requests. A superb record by a superb staff.

My Washington office staff have proven themselves time and time again, regularly going beyond the call of duty. (The tally of my hundreds of legislative measures, nearly 30 Public Laws, thousands of office meetings and countless committee and other initiatives over the years speaks truth to that assertion.) First, on my personal staff, Patrick Sheehan, my Counsel and Legislative Director, has been a dynamic and intelligent thinker and leader, who offered sage advice on immigration, military and veterans affairs; Greg Herman, my Senior Legislative Counsel kept pace with my many Judiciary and legislative demands especially bankruptcy reform and appropriations (as I would expect from a Palmyra, PA native); Becky Smith, my office manager and health legislative assistant, kept my schedule and personal affairs humming along smoothly and ably managed my most favorite of projects, the Congressional Biomedical Research Caucus of which I was founder and Co-Chairman; David Greineder, who did a multitude of duties as my talented systems manager, legislative correspondent and Legislative Assistant covering education and labor issues; Bill Tighe, another LC and Legislative Assistant whose insights into the Agriculture and Natural Resources needs of Pennsylvania and the district were more than invaluable, they were accurate; Mike Shields, my recent press secretary extraordinaire, who did an excellent job under difficult situations; and, of course, Alan Cagnoli, my long time Chief of Staff from Hershey, PA, a superb leader of the office and jack-of-all-trades who kept the office running and productive no matter what the crisis.

My Judiciary Subcommittee on Immigration, Border Security and Claims, of which I was Chairman, was ably staffed by George Fishman, Lora Ries, Art Arthur, Cynthia Blackston and Emily Sanders, as well as Brian

Zimmer of the Full Committee staff. They handled the extremely important legislation necessitated by the new domestic and international threats we now face. Their assistance to me during the challenges of this year is impossible to measure. The House of Representatives has much to look forward to with their continued work.

And last but not least, is the Subcommittee on Commercial and Administrative Law, of which I was a member this last Congress but on which I served as Chairman from 1994–2000. On this subcommittee we dealt with the hundreds of regulatory reform issues developed by the Republican Majority through the Contract With America and following initiatives. My major Bankruptcy Reform measure began with me in this subcommittee; Administrative Law Judges; Legal Services Reform; the Federal Agency Compliance Act; The Regulatory Fair Warning Act; Executive Orders; Internet Tax reform; the Federal Arbitration Act; Interstate Compacts; the Independent Counsel Act; and many, many other topics. While bankruptcy reform took center stage, there was no end to the amount of topics and work my staff and I pursued. For this I thank them, the current and former staffers of the subcommittee, for all their exceptional work: Chief Counsel Ray Smietanka, who has worked with me as a chief committee counsel since I came to the 98th Congress in 1983; Susan-Jensen Conklin, whose superb work on bankruptcy reform got us where we are today; Rob Tracci, formerly of the Subcommittee, was an invaluable source of assistance; and all the other members of the CAL staff who have helped this Member of Congress over the many productive years. I thank them all for their work to the Nation and me.

To all I have mentioned, and those who I have regrettably not, please accept my sincere thanks for making my tenure in the United States House of Representatives a productive and pleasant one. Any current Member of Congress or Committee would be well served by the high-quality staff with whom it has been my pleasure to work over these many years.

THE HONORABLE TIM ROEMER

HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. BUYER. Mr. Speaker, I rise to show my appreciation for the distinguished member from Indiana's Third District. For the past twelve years, Congressman TIM ROEMER has served the people of Northcentral Indiana with a steadfast commitment and dedication to their needs.

A Hoosier, born and bred, TIM ROEMER came to Washington, D.C. to represent the fundamental Indiana values of strong faith in God and an unwavering duty to country and to family. As a member of Congress and a father of four, he has been a strong advocate for trying to make the House of Representatives more family-friendly.

As a member of the Committee on Education and the Workforce, he has worked tirelessly to improve our children's education from Head Start all the way to the college-level, supporting public school choice and making college education more affordable for all Americans.

I want to thank Congressman TIM ROEMER for his hard work on behalf of the Third District, the State of Indiana and the country. I wish him, his wife Sally and their four children—Patrick Hunter, Matthew Bennett, Sarah Kathryn and Grace Elizabeth, all the best in the future.

PERSONAL EXPLANATION

HON. LOUISE McINTOSH SLAUGHTER

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Ms. SLAUGHTER. Mr. Speaker, I was unable to be present for rollcall votes 483 and 484. Had I been present, I would have voted "aye" on rollcall vote 483, and "no" on rollcall vote 484.

TRIBUTE TO THE L.A. FREE CLINIC

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. WAXMAN. Mr. Speaker, I rise today to pay tribute to the Los Angeles Free Clinic. L.A. Free Clinic, a tremendous and vital health care resource which is celebrating its 35th anniversary this year. The L.A. Free Clinic has become a true beacon of light in our ever uncertain health care system in Los Angeles. It is synonymous with quality and accessible health care for the homeless, the uninsured and under-insured, the working poor and runaway and high-risk youth.

The L.A. Free Clinic came into being during the summer of 1967 when a small group of volunteers opened a storefront clinic on Fairfax Avenue to serve the thousands of "flower children" who were living in the streets and parks that summer. They crowded the clinic with an array of health issues, and the crowds have been coming ever since. Today, the clinic is a sophisticated but accessible string of three separate sites serving 100,000 patients annually. As the longest continuously running free clinic in our Nation, the L.A. Free Clinic serves as a remarkable model.

Its mission is to serve as a community-based clinic which identifies the health care and social service needs of under-served populations. It develops comprehensive resources and quality programs to meet those needs and provides the services free of charge and free of judgement in a caring environment.

The clinic's most important mission is to provide health care to those who can not or will not receive care elsewhere. The L.A. Free Clinic believes that health and human services are a right and not a privilege.

The clinic offers a wide range of primary care and specialty care for the entire family. In addition, the clinic houses broad and important social services to treat the whole patient. It has a domestic violence advocate available to recognize and work with patients who are victims of domestic violence. There is also a legal clinic on site to assist with a variety of issues such as immigration and child custody. There are case managers and mental health professionals at the ready to treat any number of concerns that patients may present when they come to the clinic.

Part of what makes the L.A. Free Clinic so successful is its more than 500 volunteers who eagerly answer phones, translate diagnoses, speak at health fairs and organize fundraisers. The clinic's board is equally dedicated and impressive, still represented by some original founders. The L.A. Free Clinic is also lucky to have a number of support organizations without which it could not function. They include Friends of the L.A. Free Clinic, New Friends of the L.A. Free Clinic and L.A. Free Clinic Auxiliary.

It has been my distinct privilege to represent and support the L.A. Free Clinic for much of its existence. The residents of Los Angeles and our health care system owe the L.A. Free Clinic a great debt of gratitude and we will continue to rely on its superb service and caring. We are looking forward to the next 35 years to come.

I ask all of my colleagues to join me in wishing the L.A. Free Clinic a very heartfelt and happy 35th anniversary.

A TRIBUTE TO REPRESENTATIVE TODD SALIMAN

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. UDALL of Colorado. Mr. Speaker, I rise today to honor State Representative Todd Saliman for his exemplary public service in the Colorado General Assembly from 1995 through 2003. I would like to thank him in this forum, not only for his service to my state, but also for the example he has shown to young people all across America, that public service is not contingent on one's seniority.

A native of Littleton, Colorado, Todd studied at the Unversite de Savoie in Chambery, France and graduated in 1989 from the University of Colorado in Boulder. He worked on the U.S. Senate campaign for Josie Heath and the Boulder County Field organization in 1990, the Local Open Space Sales Tax in 1993, the Executive Committees of the State and County Democratic parties for many years, and the Rocky Flats Local Impacts Initiative from 1991 to 1994.

In 1994, Todd was elected to represent House District 11 in north Boulder and was one of the youngest members in the history of the Colorado General Assembly. His constituents overwhelmingly approved of his service and returned him to office by over 70% of the vote in every subsequent election. In the Legislature, he quickly earned the affection and respect of his colleagues on both sides of the aisle for his intelligence, good judgment, and keen analysis on a wide range of issues. Todd was a member of the Joint Budget and Appropriations Committees overseeing the state's

$13 billion budget. He provided thoughtful and skilled bipartisan leadership in the areas of budget policy, taxes, health care, higher education, children's issues and the environment. He served successfully on such diverse committees as Finance, State Affairs, Local Government and Transportation, and he co-chaired the Kid's Caucus. He was valued as an experienced voice on substantive policy issues when working on the Governor's 1996 Health Care Task Force and the 1997 Old Age Pension Plan Committee.

From 1997 to 1999, I had the good fortune to be Todd's junior colleague in the State House of Representatives. I appreciated Todd's generosity and loyalty, his professionalism and his code of ethics. He has been unswerving in his commitment to policies that serve the environment, the education and the health of people, and principles of integrity and fairness. An important part of his legislative focus has been responsible growth management and environmental preservation.

He has been especially effective in his support for early intervention and prevention for children at risk of abuse and neglect and for improving our public education by reducing class size and fully funding public education. He has been honored as Legislator of the Year by the Colorado Association of Nonprofit Organizations, the American Academy of Pediatrics, the Colorado Behavioral Health Care Council, the University of Colorado Health Sciences Center, the Community Health Network, the University of Colorado at Boulder, the Colorado Social Legislation Committee, the Colorado Community Center Boards, and the Sierra Club. Last year, he was honored for his distinguished service by the Colorado Children's Campaign. During his tenure as an elected official, Todd was also the Development Director for the People's Clinic and a policy consultant with the Bell Policy Center.

I ask my colleagues to join with me in expressing our gratitude to Representative Saliman for his example of idealistic public service and the many contributions he has made to the people of Colorado. My family and I wish him, his wife, Michelle, and their son, Max, good health and happiness in their future together.

HONORING DR. TOM[Aacute]S ARCINIEGA

HON. CALVIN M. DOOLEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. DOOLEY of California. Mr. Speaker, I rise today to recognize Dr. Tom[aacute]s Arciniega, who has served my community for 20 years as the President of California State University, Bakersfield. During his tenure, Dr. Arciniega has played an important role in developing CSU Bakersfield into an institution that offers outstanding educational, professional and athletic programs in the Central Valley.

Dr. Tom[aacute]s Arciniega has served as the President of CSU Bakersfield since 1983. During his first year, 3,383 students were enrolled and Arciniega oversaw a $16.7 million budget. Since then, the budget has increased to more than $60 million and the school annually enrolls more than 7,700 students. During his tenure, 13,568 students have earned baccalaureate degrees and 3,692 have earned master's degrees from CSU Bakersfield.

Dr. Arciniega's commitment to improving the educational opportunities at CSU Bakersfield was vital to the University being accepted into the prestigious California State University system in 1987. In 1998 he was successful in creating a Master's of Social Work program, meeting a long-time community need. Dr. Arciniega has become a recognized leader among Kern County educators for his involvement as the chairman of a local teacher education committee, which aims to develop better teachers for the future.

In addition, Dr. Arciniega has provided a boost to the professional development of CSU Bakersfield. In 1990, the University hosted its first annual Bakersfield Business Conference, which was attended by over 10,000 participants. A year later, the Bakersfield Business Conference drew 12,500 participants. In 2000, CSU Bakersfield celebrated its 30th anniversary and concluded the year long Cornerstone Campaign that raised more than $12 million, making it the most successful fundraising efforts in Kern County history.

Under Dr. Arciniega's leadership, CSU Bakersfield also developed an athletics program that has been successful competing on the national level while promoting gender equity. In 1993, CSU Bakersfield pledged to achieve gender equity in athletics and in 1998 they reached their goal of providing greater opportunities for women student-athletes. The athletic program was so successful in the 1997–1998 school year that they were presented with the Sears Cup for the best NCAA Division II athletic program in the nation. In addition, the Men's Basketball team won the NCAA Division II National championship in 1993 and 1994.

Mr. Speaker, I ask my colleagues to join me today in congratulating Dr. Tom[aacute]s Arciniega for his contributions to the Bakersfield community as the President of California State University, Bakersfield for the past 20 years.

TRIBUTE TO THOMAS J. KELLY

HON. ROBERT A. BRADY

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. BRADY of Pennsylvania. Mr. Speaker, I rise to honor the accomplishments of my friend and brother in the labor movement, Mr. Thomas J. Kelly. Mr. Kelly has been honored by our fellow Philadelphians for his unyielding role as a driving force within Philadelphia's powerful labor movement for over a quarter of a century.

As a prime example of successful labor leadership that exemplifies this "Union Town", he has served as President and Business Manager of Sheet Metal Workers' Local Union 19 from 1979 to 2002. He recently accepted an appointment to serve as the General Secretary-Treasurer of the Sheet Metal Workers' International Association in Washington, D.C.

Mr. Kelly began his apprenticeship with Local 19 in 1965 at the age of 19. He went on to become a business agent and finally was elected to Local 19's top position which he has held for eight consecutive terms. Under his stewardship, union membership has grown to over 4,000, development has increased with the construction of the multi-million dollar Administrative Building, the adjacent state-of-the-art Training Center, and the highly successful Penn's Landing Caterers, and Mr. Kelly was instrumental in negotiations for a historic gambling casino enterprise.

He has been recognized for many achievements and held numerous union leadership roles; however, he cherishes most the plaque received from Local 19's rank and file membership, which cites him ". . . for leading the Union with Courage, Wisdom, and Tenacity."

Married to Linda, Tom's family includes his three children, Susan Tympel, Thomas Jr., and Kathleen and one grandchild, Lauren Tympel. I am quite sure Tom's entire family is very proud of his numerous accomplishments.

It is a privilege to recognize a person whose leadership and commitment to community has enriched the lives of countless individuals. I ask you and my other distinguished colleagues to join me in commending Mr. Kelly for his lifetime of service and dedication to Pennsylvania's First Congressional District.

ELIZABETH BELL LAYTON PEEK, MOTHER OF REVEREND V. LONNIE PEEK, JR., MEMORIALIZED IN DETROIT, MICHIGAN

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 19, 2002

Mr. CONYERS. Mr. Speaker, on November 19, 2002, the mother of Reverend V. Lonnie Peek was memorialized at Greater Christ Baptist Church, whose renowned pastor is Reverend James Perkins.

Mrs. Peek was an activist, writer and deeply religious person greatly admired in her community and throughout metropolitan Detroit. She raised and had a strong influence on her son, Reverend Peek.

The following excerpts from her writings capture the style, wit and philosophy of this amazing 20th century African American woman. We are proud of her contributions and she will be sorely missed.

> Elizabeth Bell Layton Peek is my name and I was born on March 27, 1921 in Northport, Alabama as the 7th child of Willie Cunningham Layton and Vonnie Layton. Back then life was simple and strong family values were the keys that bind us together. I was the "twinkle in my father's eye" so I didn't have to work the cotton fields, and besides I was kind of skinny. So I became mother's helper—not in the kitchen . . . my job was ironing the clothes for the family.
>
> Education was a vital part of our life, and we worked hard to be good students. A very good speller, I won the "Spelling B" and father showed his pride by telling everyone I could pick a bale of cotton faster than anyone he knew. Daddy died when I was 15. This event forcefully made us not only endure but excel at what my father taught us about survival and family. The older children quickly

took on the responsibility of the younger ones—my brother Mack was my provider. Mack always bought me the best of clothes and because of his generosity I out-dressed everyone in the family.

I had a special bond with my brother Vonnie, who would sneak me out of the house to go dancing; I loved to dance, we could really "cut a rug" together. Vonnie had a friend that I met named Vassie who played on the football team. Boy, was he something!! Vonnie would help us to see each other, because I was not allowed to date. Vassie later became my husband . . . the love of my life. On January 8, 1939 we eloped, and were married by Vassie's pastor Rev. Harvey. On our wedding night I went back home to sleep without Vassie. The word got out the next day and my younger sister Jessie Ray came home and told mother "Lizzie B (that's what they called me) had married that gray haired Vassie Peek." He was really something!!

Soon Vassie decided that the only way to make a good life for us was to move to Detroit. Vassie started out for Detroit, but stopped in Asbury Park, New Jersey to work temporarily. He immediately joined Mt. Pisgal Baptist Church and became the surrogate son to two families, the Sims and the Griffins. He decided to stay and sent for me soon after.

I was a homemaker, who was accused by her friends of always staying home "shaking the pots and pans." My kitchen was the gathering place for all my friends. Everyday I had a hot meal ready for Vassie—a meat, starch, and "fresh" vegetables, along with hot homemade bread . . . everyday!!

To this Alabama girl Asbury Park was the "big city." Two of my brothers later joined us in New Jersey, Vonnie and Mack, and you know what, I was the only female in my family to ever leave home. One weekend we decided to really do it up big since we were only 45 miles from New York City, we decided to go to this club called Smalls Paradise in Harlem. We stayed at the ritzy St. Theresa Hotel, and woke up with bed bugs all over our bodies.

After moving to Detroit and applying for social security I found out that I was a whole year younger than I thought! Throughout my married life, Vassie liked to brag about being 10 years older than me, but little did he know he was 11 years older.

I now reside with Lonnie and my "other daughter" Eunice, his wife, who helps me to get ready and takes me to church with them.

I am blessed to have had two wonderful sons-in-law, the late Chuck Russell, who could always make me laugh and Freddy Haynes who I love to cheat while playing Chinese checkers.

Lonnie has given me my two oldest grandchildren: Monique, who resides in Los Angeles and Lonnie III, of Detroit. Patty has given me three grandchildren: Chalaze, Charles III and Chavin all of Detroit. Debbie has given me my youngest grandchild Abeni, who lives in Dallas. I am a great grandmother of 4: Choree, Chambel, Charli and Chad-Elizabeth.

I am blessed. My family and friends truly loves me and I love them. I am loved and pampered in two states. I spend part of the year in Detroit under the watchful eye of Lonnie and Patty, and the other part in Dallas with the boss of the family, Debbie.

I hope you have enjoyed these little stories of my life. It's always good to remember our unique link to the past . . . I treasure mine. The world is moving so rapidly, and I know we must move with it. I am bringing my "values" with me as I go forward from day-to-day.

Today I am blessed to have all of you celebrate my 80th birthday before I leave for Dallas on tomorrow. Make sure you all give me a big hug and at least 80 kisses and prayers!!!

SENATE—*Wednesday, November 20, 2002*

The Senate met at 10 a.m. and was called to order by the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, Sovereign of history, benefactor of the blessings this Nation has enjoyed, and ultimate judge of the work of this Senate, we praise You for Your guidance and care. You give us beginnings and conclusions to phases of our work. Historians will write human evaluations of what we think we have accomplished, but You will have the final word about what has been achieved for the good of America. In these past weeks there have been disagreements, heated debate, and the bittersweet mixture of defeats and victories of legislative life. But thank You for those times when debate led to deeper truth and compromise to the blending of aspects for a greater solution. Help us to forgive and forget any memories of strained relationships or debilitating differences.

Now, as the Senators return to their States, renew those who are weary, reinforce those who are anxious, and rejuvenate those who need a second wind to press on for Your honor and glory. We praise You for the privilege of living in this Republic and for the opportunity to serve You in public office. You are our Lord and Saviour. Amen.

PLEDGE OF ALLEGIANCE

The Honorable DANIEL K. AKAKA led the Pledge of Allegiance, as follows:

> I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. BYRD).

The legislative clerk read the following letter:

> U.S. SENATE,
> PRESIDENT PRO TEMPORE,
> *Washington, DC, November 20, 2002.*
>
> *To the Senate:*
>
> Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable DANIEL K. AKAKA, a Senator from the State of Hawaii, to perform the duties of the Chair.
>
> ROBERT C. BYRD,
> *President pro tempore.*

Mr. AKAKA thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE ACTING MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The Senator from Nevada, Mr. REID, is recognized.

SCHEDULE

Mr. REID. Mr. President, the Chair will shortly announce that we will be in a period of morning business with Senators allowed to speak therein for up to 10 minutes each. I am sure some of those speeches will be extended for more than 10 minutes for various reasons.

We worked until this morning completing the Senate's business. The poor staff has had little rest. We hope to not be in for a long period of time today. We are going to come back, as indicated, rejuvenated next year. But I am sure most of us are looking forward to the brief respite we are going to have. There will be no rollcall votes today.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business for the transaction of morning business with Senators permitted to speak therein for up to 10 minutes each.

The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I ask unanimous consent to speak for as long as I might consume.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SERVING IN THE U.S. SENATE

Mr. HUTCHINSON. Mr. President, let me begin by thanking you for presiding this morning, for your leadership in the Senate, and for the friendship I think you epitomize when friendships are created, that grow and take root, and that bloom in the Senate. I am proud to call you a friend.

Let me say at the very outset that it has been an enormous privilege serving for the last 6 years in this great body.

I want to express my gratitude this morning, in the few minutes that I am going to take, to a number of individuals who mean a lot to me and my service in the Senate.

I want to begin by expressing my gratitude to my wife Randi, who has been a great fellow mate, an encourager, a partner, and, most of all, my best friend. I am so appreciative to have her here this morning. I wanted to express that.

I also want to thank Chaplain Ogilvie. I appreciate so much his prayer this morning, and his prayers every day—and more than the prayers that he offers for the Senate, the prayers that he offers for our country. But I am especially grateful for his friendship and for his spiritual counsel that he offers to other Members. He is going to be greatly missed in this institution, and I think the country is going to miss his service here.

While we all understand that he is making the right decision, he is going to be sorely missed. As I look back on the last 6 years, I thank you, Lloyd, for the many hours that you gave to me in counsel and encouragement. And I am very appreciative and very grateful.

I also want to express my appreciation to people in the State of Arkansas—the great State of Arkansas, all 2.7 million of them. I thank my staff—not 2.7 million, but it seems like it sometimes.

I want to thank the people of Arkansas. I am forever grateful to them for allowing me the privilege of serving them in the Senate. Of course, those who are familiar with the State of Arkansas know that it is a very diverse and very beautiful State from a physical standpoint, but it is also very different as you go to the various parts of it. I hail from northwest Arkansas. I come from the Ozark Hills—being a State legislator for 8 years, representing a small district in northwest Arkansas, being elected to Congress from the Third District, and coming to the Senate and serving the entire State of Arkansas has been an enormously gratifying experience. I have learned that not only are the people wonderful and great in those hills of northwest Arkansas, but also the people of the delta with their very different culture and very different background from the Ozark Hills are wonderful people with tremendous values who love this country of ours as much as my native area in the northwest; or the opportunity to represent the one real urban area of Arkansas, Little Rock, our capital city. To be able to represent every area and every region of the State has been an enormously enriching experience—to work not only for the Ozark Hills but for the Mississippi Delta, and our many vast areas.

I discovered the cultural diversity of my State, and I discovered that there

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

are great and wonderful people in every section of Arkansas.

It has been an experience that has far surpassed my wildest dreams and my greatest ambitions.

I thank the people of Arkansas for letting me walk in the footsteps of some great predecessors such as J.W. Fulbright, John McClellan, or the individual whose portrait hangs just outside the Senate Chamber, Joe T. Robinson.

I thank the people of Arkansas.

I also want to thank my colleagues. What a great group—that I believe is dedicated to doing what they believe is right for America.

I served for 4 years in the House of Representatives. Oftentimes down in the House we would usually good-naturedly make fun of the Senate. So when I was elected to the Senate, I recall a number of them coming up and saying: We hope you enjoy your time down at the retirement home at the other end of the Capitol. That was, of course, the kind of outlook that we had down there; that this was the place where nothing got done, and everyone was a little older and a little slower down there. The rambunctiousness and sometimes wild passions that characterized the debate in the House were not as evident in the Senate. But it is not a retirement home. People work immensely hard in this body.

But one of the things that has impressed me more the last 6 years is, in fact, the Senate works just as our Founding Fathers had planned for it to work; that of which Madison said, the popular passions would be cooled and tempered by the deliberative debates in the Senate.

So though sometimes we are frustrated and sometimes we call the Senate dysfunctional, the reality, in my mind, is, it works, and it works just as it is supposed to work, and as it continues to work.

That is one of the great miracles of our experiment in a republican form of Government. It is that this bicameral legislature and our three branches of Government operate just as our Founding Fathers envisioned they would: to check one another's power, to be a check on an over-concentration of power, and to ensure there would be a body such as the Senate, with such continuity that popular passions and emotions, overreactions at times, would be tempered by the debate that would take place in this body.

But it is a very hard-working group. My colleagues work harder than most people in the country ever realize. It always used to irritate me, during the August recess, to go back to the State and have people ask me how the month-long vacation was going. So here is this image, I guess, that will always be there. But I know, as anybody who has gotten very close to the workings of the Senate, that this is a very hard-working group. Edgar Guest put it this way: "He has found real greatness—who does his task from day to day and meets whatever comes his way." That is what I have tried to do these past 6 years. And that is what my colleagues do every day.

I found among my colleagues courage. Courage, in my mind, is facing a choice in which there is a clear right and a clear wrong, and in which choosing the right involves a price, involves a cost, involves something, a consequence, and the willingness to go ahead and make the right choice in spite of the fact there is going to be a price to pay.

Maybe we don't see it as often as we would always like in the Senate, but I have seen over the last 6 years on numerous occasions where my colleagues knew in their heart what was the right thing to do, or at least as they understood to the best of God's revelation to them and God's light to them what was right and wrong, and they—in spite of what might be a political risk or other risk—were willing to take a courageous stand and make a courageous decision.

And then, I am thankful for my colleagues' friendship. The old adage in Washington is: If you want a friend, buy a dog. My experience in the Senate disproves that. My experience is, that is not really true, that there are real and genuine friendships that develop and grow in this body.

I mentioned, at the beginning of my remarks, DANNY AKAKA. I think Senator AKAKA epitomizes the kinds of friendships that cross party lines, cross the aisle, and that are genuine on a human basis and on a human level, and that has immensely impressed me: that amidst important debates about life-and-death issues, war and peace, and votes that impact millions of Americans, and, indeed, impact the entire world—that in the midst of those kinds of debates, there are relationships that transcend, and the very personal needs of friends take precedence and are there. So I am grateful for those friendships that have taken root and have grown and have blossomed in my own life.

And then I am very grateful, as I look back over the past 6 years, for some very special staff people.

I remember, after President Bush was elected, I was invited to the first bill signing. It was the bill—well, the bill is not important. I went over, and it was in the Roosevelt Room. A couple of things struck me: One was there was a handful of chairs that had been set up, so it was a very humble kind of signing ceremony. The President walked into the room, and he said: "Now, the chairs are for the staff. The Members can stand." And he kind of chuckled, and then he said: "Because I know who really does the work on legislation."

He was right, recognizing that it is the staff who makes this place operate. It is the staff who keeps the gears and machinery of Government operating and working. It is the staff who was here late last night and is back in here early this morning. And their contributions, I think, are often overlooked.

I just want to thank my personal staff for their great work these past 6 years; and a few people I want to mention by name. To my right is my chief of staff, Todd Deatherage. I have just a handful on my staff who have served with me a decade, my entire time in Washington—my 4 years in the House and one term in the Senate—and Todd is one of those who goes back the full 10 years.

He served as my district director when I was in the House, and when I came to the Senate, he took his family, uprooted them, and moved them to Washington, and has served as my chief of staff in the Senate.

So how do you sum up a decade in a few sentences? You cannot. That is the conclusion I came to.

But, Todd, I appreciate so much your loyalty. I appreciate the wisdom you have brought to the office. I appreciate your hard work. And I appreciate, most of all, your friendship.

Todd is, as are most of us in the Hutchinson Senate office, a great devotee and admirer of Ronald Reagan, and no one more so than my chief of staff because every year, on Ronald Reagan's birthday, we would have this celebration in our office, celebrating Ronald Reagan's birthday.

But it was Todd's self-assumed role to remind us that birthday was coming, and he would send out the e-mails. And Todd—I don't know if he actually baked the birthday cake—but he assured there was a birthday cake brought to the office, and we would have a little party honoring Ronald Reagan.

On Ronald Reagan's last birthday, he sent the e-mail out, and with the e-mails he included one of Ronald Reagan's famous speeches: "A Time For Choosing." "A Time For Choosing" was the 1964 speech that really was the launching pad for Ronald Reagan's national political career. Of course, Barry Goldwater was the nominee of the Republican party. I was 14 years old, living in Springdale, AR, and I remember sitting in front of the black-and-white television in Springdale, watching Ronald Reagan address the Nation in the speech "A Time For Choosing," known to most conservatives as simply "The Speech." That was the speech that led to his run for the Governorship of California and ultimately the Presidency.

So Todd, in sending out the announcement about the Ronald Reagan birthday, included the speech "A Time for Choosing" with a little postscript: "You might want to read this speech because this speech had a big impact on our boss's life and thinking." And it did.

Todd, as I express my appreciation to you today, one of your roles in our office was to be a reminder of first principles. Every office needs somebody who will be the reminder of first principles, and to be a reminder to all of us as to why we got into this in the first place.

In fact, in 1984, when I first made my run for State representative, that speech, that treatise, that conservative manifesto, reminding us of what our view of Government is, and what our view of man is, and what the relationship of our Government should be to our society—those first principles are important, and they are important to me and important for us to remember.

Todd, thank you for being the one to remind us of that time and time again.

I thank my deputy chief of staff, Lisa Goeas. Lisa has been with me also for 10 years. She was one of the first hires I made when I was elected to Congress. I hired her as a scheduler, and right out of college. Of course, the big impediment—I am sure I am going to offend Californians—but the big impediment was, as I looked at her résumé, I saw that she was a graduate of Berkeley.

I had nothing against Berkeley, but as I scanned it, she could see the double take I took. I said: "Lisa, you to know I am a conservative. I want you to be comfortable," I said. But she has been such an asset in the office. She went from scheduler to legislative assistant in the House, and then worked in the 1996 campaign so tirelessly, in the Senate race in which I became the first Republican the State of Arkansas ever elected to the U.S. Senate by popular election—she worked so very hard in that—and then she has become deputy chief of staff. She is gifted. She is incredibly industrious. She is bright. She is blessed with a great personality. And most of all, she is loyal, and she is a great friend.

Nothing, to me, speaks more about Lisa than her involvement in the Cornerstone School in the District of Columbia. The Cornerstone School is a private Christian school that was started by a group of Hill staffers. They looked around the District, and they said: There are children who ought to have an opportunity to go to a Christian school and whose parents cannot afford it, or they don't have the opportunity, or there is no such school. These staffers set out on their own to start this school. They did so several years ago. I am not sure what the enrollment is, but it has grown.

Lisa has poured herself into that school and raising money for it, providing scholarships for it, getting sponsors for the children, and to ensure not only their financial support, the tuition, but also to spend time and to be mentors, tutors for the children. I think that says a lot about her heart. Beyond being bright and industrious and energetic and all of the rest of the skills she brings to the office, she brings a great heart as well.

I thank especially Nora Breidenbach, as well, for her 10 years of service. She has been with me ever since I came to Congress. She has headed up the entire constituent service operation. She has a kind of quiet efficiency. I always knew that if there was a problem that needed solving, Nora was the one who could solve it. She is also a great manager of people. She has gone through a lot of trials of her own during the last decade, but she always knew how to draw the best, not only from her own life but from those whom she was supervising. She brought the best from everyone who worked with her and for her.

Also, I say a special thanks to Fay Ott, my office manager; Cortney Brown, my scheduler—every one of these staffers deserves a speech about them—Kate Hull, who has done such a wonderful job as my LA and is now working on the subcommittee staff, who shepherded through legislation that benefits thousands and thousands of nurses; Andrea Allen, who is my state director in Arkansas, a very wonderful human being, very great state director; Susan Carter, who has been with me for years, left and came back, who heads up projects; and Jim Hirni, my legislative director. I said last night, at one of our many farewell parties, that I think not only is he the best legislative director on the Hill, but going through a tough re-election campaign, no one had a better LD, to keep the shop going, but much more than that: to be there for me with encouragement, strength, and help.

To all of my staff I say thanks. To me they are much more than staff. My DC staff consists of Nora Breidenbach, Joycelyn Belcher, Josh Benoit, Cortney Brown, Tim Chapman, Todd Deatherage, Jim Dohoney, Amy Gibson, Colonel Jim Garrison, Lisa Goeas, Michael Hilburg, Jim Hirni, Kyle Hicks, Kate Hull, Rebekah Hutton, Sally Lee-Kerns, Conan Krueger, David Manns, Chris Miller, Robbie Minnich, Tim Moore, Misty Murphey, D.J. O'Brien, Fay Ott, Brydon Ross, Marc Scheessele, Ben Sheldon, Brad Tashenberg, Dan Weaver, Jennie Wingad, Michael Zehr. My state staff consists of Andrea Allen, Carrie Bartholomew, Susan Carter, Jim Case, LaDana Emerson, Leslie Garman, Tammie Hall, Jared Haney, Ruby Henderson, Sarah Jones, Mitchell Lowe, Clint Reed, Julie Reynolds, Spencer Sessions, Jerry Sherrod, Don Travis, Kellie Wall, John Youngblood.

They are much more than just staff. They are truly friends. As my colleagues have become good friends to me, so my staff are much more than employees, much more than service to the people of Arkansas. They are very good friends to me.

I ran across this Henry Van Dyke quote on friendship. I would like to end my remarks this morning by quoting him:

> With such a comrade, such a friend, I fain would walk through journey's end, through summer sunshine, winter rain, and then? Farewell, we shall meet again.

I thank the Chair for the opportunity to give these farewell remarks from this Senator. I thank my colleagues for the great honor it has been to serve with them these past 6 years.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Before the Senator from Arkansas leaves the floor, let me extend my appreciation for all of his kind deeds toward me. We have worked together on concurrent receipts and a number of other issues. The State of Arkansas, in sending the Hutchinson brothers to Washington, really sent two quality people. I have worked with both of them. I didn't always agree with them politically, but as far as their being temperamentally, socially, so kind and considerate, thoughtful, is concerned, both of them are outstanding gentlemen. I look forward to working with both of them in the future.

BOB SMITH

Mr. REID. Let me say to my friend from New Hampshire, for whom I have the greatest affection, the Senator from New Hampshire and I worked together for one very difficult year when he was cochairman of the MIA-POW Committee. He, along with Senator KERRY, led us in that most important study. I developed a great amount of knowledge of Senator SMITH during that year.

Our friendship, even though it budded there at the time of the MIA-POW Committee, really came to fruition when we were asked by our two party leaders to lead the Ethics Committee. During those years, we worked on some very difficult issues. Senator SMITH I found to be a gentleman, a scholar. He has very good staff. He has the institutional awareness that he is very firm, very strict, but yet very fair. That is what the Ethics Committee needs.

As I indicated, I developed a friendship with BOB SMITH. I am terribly disappointed that he is not going to be here next year. I wish I could express in a better way, a more meaningful way, how deep my feelings are toward BOB SMITH and how much I will miss him. I hope the stars are aligned appropriately sometime in the future that he can again return to public service.

UNANIMOUS CONSENT REQUEST—S. 3180

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed

to the consideration of a bill at the desk to amend the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program; that this bill be read a third time, passed, and the motion to reconsider be laid on the table, with no intervening action or debate; and that any statements related thereto be printed in the RECORD.

This legislation is so important. What it does is it amends the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, so-called SCHIP.

This is a program that virtually every Governor of the 50 States badly needs. This is one of the reasons the States, with rare exception, are spending in the red.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. SMITH of New Hampshire. Mr. President, on behalf of the leadership at this time, I have to object.

The ACTING PRESIDENT pro tempore. Objection is heard.

The Senator from New Hampshire is recognized.

APPRECIATION OF SENATOR REID

Mr. SMITH of New Hampshire. Mr. President, I want to say to my friend from Nevada before he leaves the floor, what an absolute privilege and honor it has been for me to serve with him in the U.S. Senate. He is an example of bipartisanship and friendship, which I will always treasure. We have had private conversations about many issues here and while serving on the Ethics Committee, which is kind of like purgatory.

I will never forget you, Senator REID, and I very much am going to miss you. I hope I will get a chance to see you from time to time as the years go by.

NATIONAL DEFENSE

Mr. SMITH of New Hampshire. Mr. President, when I came to the Senate in 1991, we were faced with Saddam Hussein and Iraq. Actually, my first speech on the floor was about Iraq and the war and the fact that we had to make a very difficult vote.

As I leave the Senate, here we are still facing—12 years later—Saddam Hussein and an imminent war with Iraq. So there is some irony there, I guess.

Before I make some closing remarks about my tenure here and leaving the Senate, I want to make a few remarks about something that I think has been somewhat ignored over the past several years in this body and, indeed, in the country, and that is the future of space and how space will help us to protect our national security and also not only our national security but just the pure science of space and the fascination with space and what we will find as we continue the exploration of space.

I hope the 21st century will be the one that takes us into space to help protect our Nation and, indeed, perhaps the world. I believe whoever controls space will control peace here on earth.

I made these statements several years ago and got some negative editorials for it. I was called spaceman by one of the more, if you will, "prominent" newspapers in my State. As Harry Truman said, "If you can't stand the heat, get out of the kitchen." Sometimes a price is to be paid for leadership. I believe if they can say about me that I was one of the folks here that promoted space and the good things that can come to our Nation as a result of space—if I can be remembered for that—I would be very happy.

I want to draw my colleagues' attention to our Nation's future security in space. In 1998, I delivered a speech at the Fletcher School of Law and Diplomacy at Tufts University on November 18, just 4 years ago. In that speech, I spoke about the challenge of space power. I labeled space the "permanent frontier." Some say it is the "final frontier." It is not final, it is permanent.

That is the fascinating part about space. I remember looking at the stars as a kid and thinking this goes on forever. It is a permanent frontier. There is no limit to how far we can go in the exploration of space.

When I came to the House in 1985, I served on the Space Subcommittee of the Science and Technology Committee until my election to the Senate in 1990. I had the pleasure of being in Congress during the Reagan administration. I remember with pride and emotion President Reagan's firm leadership and his commitment to rebuilding our military after years of neglect. He, too, offered a promise of space power, with his visionary Strategic Defense Initiative. Despite tremendous opposition and ridicule, with cynics and critics calling SDI "star wars," his vision is being fulfilled today. It was a vision.

The ABM Treaty is on the waste heap of history, where it belongs. Mutual assured destruction has been exposed for the sham that it was, and we are moving toward deployment of a robust, multilayered ballistic missile defense system and toward providing the American people the protection they need from the growing and imminent threat of ballistic missiles in the hands of rogue states such as North Korea, Iran, Iraq, and others.

We stand now at a very uncertain time—perhaps on the brink of a greatly expanded war on terrorism. And while we try to find and eliminate terrorists and their cells, we are at risk in our cities, in the heartland, of more devastating terrorist attacks. In the heartland of our country, never before have we felt threatened like this.

None of us wish to be at war. I have served in war. I don't want to be in war. But we are in a state of war. I enlisted to serve in the Navy in Vietnam. I know what the horrors of war bring. But if this Nation has to go to war with Iraq, or anywhere else, to ensure our liberty, to ensure our freedom, to ensure that our lives are free of the threats of aggressive, dangerous dictators and the global terrorist network, I will support our President and I will support our troops, whether or not I am in the Senate.

All of my efforts in national security over my career in the House and Senate have been focused on ensuring that our troops—the men and women who put the uniform on and defend us every day—are well organized, trained, and equipped for war. Nothing less than that is satisfactory. If we are going to show the world that we are strong and we are prepared for war, few would choose the risky path of challenging us, and that is the message we must send.

The task of organizing, training, and equipping our forces is not a one-time effort; it is a continuously evolving challenge that must be attended with the same aggressiveness and unyielding commitment that our warfighters apply on the battlefield. The threats we face are constantly changing, as we saw on September 11, and our approach to warfighting must change as well.

As we have so vividly demonstrated in our prosecution of the global war on terrorism, we now have to protect our cities in our own homeland—our own buildings, the very buildings where we are sitting now.

My colleagues, I say to you, as I leave, that it is our job as leaders representing this great Nation to make sure our military is properly organized, trained, and equipped to meet its future challenges, and nothing we do here is more important.

In the early years of this Nation, we relied on the power of our Army and our Navy. In the early years of the last century, we saw the emergence of air power—which was also criticized when it first started—that has dominated our initial application of force in recent conflicts. But times are changing. The threats we face are changing.

GEN Chuck Horner, commander of our troops in Desert Storm, said after the conflict that we have witnessed the first space war—that was in 1991, tanks and troops navigating flawlessly through a featureless desert. That was the war against Iraq in 1991. Unprecedented intelligence; advance warning of incoming missiles; bombs dropped precisely on targets; command, control, and communications synchronizing a military scattered across a vast theater of war in the Middle

East—all of these contributions were made possible by the use of space systems in 1991.

Had we not had those space systems and had we not had control, or had Iraq had control, the whole outcome may have been different.

This was not a real space war that General Horner was referring to. There were no shots fired in space. What we witnessed was an awakening to the enormous benefits that space systems provide our military. It is important to remember that we are not the only witnesses. The world and our potential adversaries watched us and learned from our prosecution of that war and every conflict since.

Like General Horner, General Krulak, former Marine Commandant, and a soldier greatly respected by me and by his marines and fellow officers, said that "between 2015 and 2025, we have an opportunity to put a fleet on another sea. And that sea is space."

That is a very far-reaching and visionary statement, Mr. President, from a great American, Chuck Krulak.

Our troops deserve every advantage we can give them. We ought to lay up at night thinking about what advantages we can give these men and women. If we are to preserve our current space advantage, then we must protect our space systems from any attack and deny our adversaries that same use of space. We must maintain space control. We also must do more than maintain the current status quo. Space offers our warfighters so much more; a space-based radar that tracks enemy movements behind the lines without risking air crews, a space plane that can project force anywhere on earth in 45 minutes or less, a low orbit space plane, new ways of looking for new threats. I fought to save that space plane, and it was cut during the 8 years of the Clinton administration.

The space plane, I believe, is beginning to receive the attention it deserves within the hierarchy of the Air Force Space Command.

The MSP, the military space plan, could access virtually all orbits and with specific upper-stage systems could help protect our extensive and vital space-based assets. This plan could provide platforms to support potential air, sea, and ground operations through its intelligence, surveillance, and reconnaissance sensor paylcads while also providing potential precision long-range strike capability without putting men and women in uniform in harm's way—a tremendous asset to our arsenal. Yet it has been slowed down; it was cut. We now need to bring it back.

As we look even further into the future, visionaries see capabilities—this is always what I like to talk about, what the future will bring. It is fun to hear these visionaries talk, but in the future we are going to see capabilities like special operations troops delivered rapidly from one location to another through space and lasers, destroying targets instantaneously deep inside the enemy's territory. When the missile is fired, we blow it up with a laser over their territory, not ours.

Not only do these visions offer fast and effective military action, they offer the possibility of putting fewer men and women forward deployed with their lives at risk.

We cannot forget we must invest today to develop these and all the other capabilities if they are to be available for our future fighting men and women.

In 1999, with the support of my colleagues, I chartered the Space Commission to make recommendations to reorganize Government to better deliver the military space capabilities this Nation needs for the future. That Commission brought together this Nation's best defense and space leaders.

One of them was Donald Rumsfeld. He led the group just before he became our current Secretary of Defense. I would like to believe he was selected in part because he did such an outstanding job with the Space Commission—I hope that is one of the reasons why President Bush selected him as Secretary of Defense—and earlier with the Ballistic Missile Threat Commission.

Secretary Rumsfeld and his fellow commissioners found that future space warfare is a "virtual certainty," and that we had better be prepared for it. The Space Commission's report warned about the ominous possibility of a "space Pearl Harbor." It called for protecting satellites essential for military operations and developing space weapons to deter attacks in or from space and to defend against attacks if they occur.

The U.S. is now heavily dependent upon satellites with hundreds in orbit serving commercial as well as military uses. We are more dependent on space than any other nation in the world. Think about your cell phone. Were it not for space, you would not be using it.

In 1998, a Galaxy IV satellite malfunctioned. It shut down 80 percent of U.S. pagers and video feeds for cable and broadcast transmissions. It took weeks to restore service. In 2000, the U.S. lost all information from satellites for 3 hours when computers in ground stations malfunctioned. These incidents served to show how critical space has become to us.

The Space Commission recognized space weapons to deter attacks from space would be essential because we cannot protect satellites adequately without weapons in space. Remember that. Let me repeat it: We cannot protect our satellites in space without weapons in space. A weapon in space does not have to be an offensive weapon; it can be a defensive weapon.

The resulting space management reorganization stemming from the work of the Space Commission is nearly complete. The various stakeholders have decided which of the Space Commission's recommendations it will implement and how. Frankly, though, I am still skeptical that the changes that have been made will be effective in delivering the space capabilities this Nation needs.

Over the course of the last year, we have discovered that most of our current space programs are "broken," severely underfunded, and behind schedule, and that is not good. I am not naive, and I do not blame the recent reforms for the current problems. However, I am not convinced the reforms that have been implemented are capable of making the tough choices that both, A, fix the problems with our current space programs and, B, keep us aggressively pressing forward with developing new technologies and capabilities we need for the future.

When we won the war in the Persian Gulf in 1991, it was with highly sophisticated weapons. Somebody 20, 30 years ago had the vision to build them. They did not crawl under a rock and say: That is just too far in the future; we are not going to deal with it—precision bombs and precision ordnance. Somebody had to think about it. Somebody had to put it on the drawing board. Somebody had to pay for it and build it.

If the Air Force cannot or will not step up to its responsibilities as the executive agent for military space, then Congress must do it, as the space commissioners noted, and create a separate space force to become that strong advocate. I have spoken of the need for the Air Force to build a dedicated space warfare cadre of younger space-trained officers and to stop assigning nonspace officers to lead space billets in space organizations. I predict that early in this 21st century, there will be a space force just as there now is an Air Force. There will be a space force.

For far too long, the Air Force's space institutions and commands have been led by officers not specializing in space. That must change if we are to move into this space era.

I have been a long-time advocate for the potential of national security space on the Hill. I know being an advocate for space is not easy. Believe me, I know. I have been ridiculed for it. These capabilities are complex, and they are not cheap, although I believe space power ultimately could be more cost-effective than some of our legacy systems.

I have also learned that some of the needed space capabilities, such as the Kinetic Energy Antisatellite or KE ASAT Program, can take longer than a career in Congress to deploy. Today we are only a modest amount of funding short of being ready to flight-test KE

ASAT, one of our near-term space control programs.

KE ASAT offers the promise of complete space control at minimal cost to the taxpayers and delivers the essential 4 Ds—i.e., the ability to disrupt, degrade, deny, and destroy—required to deal with the enemy threat.

The old Soviet Union built a co-orbital satellite killer that it tested in space at least 20 times and which was operational with Soviet strategic forces for a decade. China is reportedly developing a hunter-killer microsatellite that would attach itself to an adversary's satellite and destroy it. Imagine the disruption that could cause us both militarily and commercially. We must be ready to protect against the deployment and use of such systems.

We cannot shy away from, nor shortchange, our commitment to transform our military for the future. This is our challenge.

I have carried the space banner through many tough fights, including the line-item veto by President Clinton of our emerging space power programs. Missile defense has survived, KE ASAT has survived, and the space plane, too. But these programs need ongoing commitment and funds toward deployment and real security for our Nation and our service men and women. They need to be reviewed at the highest levels of DOD, by the Secretary, by Under Secretaries Aldridge and Teets, and by the Secretary's trusted aide who served at the Space Commission as its Director, now at PA&E, Steve Cambone.

Some of my friends have asked why I focused on space since there is not a strong space constituency in my home State of New Hampshire. I beg to differ. There is a major constituency in New Hampshire that demands a strong, cost-effective national defense. In fact, I would argue that same constituency stretches all across America—a constituency that supports our military every day, not just during trying times.

If it is the right thing to do, whether you have a constituency in your State for it, we are here to lead. We are here to lead this Nation.

New Hampshire also is proud of its high-tech industry. New Hampshire is also the State that sent astronaut Alan Shepard and Christa McAuliffe to participate in the National Space Program. Christa lost her life aboard the Challenger in 1986. Both of them had "the right stuff," and they created a surge of enthusiasm for space exploration.

As I prepare to leave the Senate, I look around and ask myself: Who is going to pick up the space banner I have carried? Who will advocate today for the needs of our future fighting men and women in space?

Forty years ago, and spurred in part by the shock of the Soviet success with Sputnik in 1957, President Kennedy challenged the Nation to look into space. He criticized Republicans—the Eisenhower administration—in fact, for letting the Russians get ahead in space. President Kennedy recognized even in those early days of space exploration the criticality of space that General Horner witnessed in Desert Storm.

President Kennedy told us the Nation that controls space will come to dominate the world. In a speech to Rice University in 1962, John F. Kennedy said the following:

> The exploration of space will go ahead, whether we join in it or not. And it is one of the great adventures of all time, and no nation which expects to be the leader of other nations can expect to stay behind in this race for space.
>
> We mean to lead it, for the eyes of the world now look into space, to the moon and to the planets beyond; and we have vowed that we shall not see it governed by a hostile flag of conquest, but by a banner of freedom and peace.

That was well said by a Democrat President. He was absolutely right.

Who do you want to control the satellites in space? Who do you want to control what goes on in space: Communist China, Iraq, North Korea, Libya, or the United States of America?

The day before his assassination, President Kennedy spoke at a dedication of the Aerospace Medical Health Center at Brooks Air Force Base in Texas, and he noted:

> This Nation has tossed its cap across the wall of space and we have no choice but to follow it.

What a great visionary President Kennedy was on this issue. Leveraging space to ensure our freedom and to protect our allies is not a partisan issue. It is our moral obligation, pure and simple, just like it was to respond to the attacks of the Japanese and the Germans during World War II. It was our moral obligation to stop the killing by the Nazis, to stop the Bataan death marches, to stop the tyranny and the aggression. It is now our moral obligation to protect this Nation from the threat from space.

In his now famous speech at the Citadel, candidate George W. Bush said:

> We need to skip a generation of technology.

And in space,

> We must be able to protect our network of satellites essential to the flow of our commerce and the defense of our country.

He called for a new spirit of innovation and recognized the fact that many officers express impatience with the prevalent bureaucratic mindset that frustrates—and, I would argue, fails to reward—creativity.

We must reward creativity. George Bush called for a culture of command where change is welcomed and rewarded, not dreaded. To do that, we need to break with the past, get out of the box, put in charge people who are visionaries, who are ready to fulfill the President's and the Secretary of Defense's vision, to fulfill Ronald Reagan's vision for peace using space for peace. Even President Reagan, the hard-core conservative, offered to provide to the Soviet Union the technology to bring peace to the world if that was what it took.

As we stand now on the brink of an expanded war with Iraq, I ask myself whether we have provided our sons and daughters, husbands, wives, fathers, mothers, sisters, brothers, all the best technology that this country has to help them accomplish their mission quickly and bring them home safely. Have we? I do not think we have, with all due respect. We have the opportunity to do it if we will think about it now.

I think we can do better. I believe this body has the vision, the expertise, the knowledge, and the good people in it to ensure that we organize, train, and equip our military for the future, a future that leverages the full potential of space that we have only begun to realize. But we must exercise stringent oversight. We must serve as the catalyst to push a grudging—and it is a grudging—bureaucracy and military industrial complex into fulfilling that potential.

Bureaucracies are not innovative. They basically exist. They do not like change. We need to give them change. We need to impose it upon them.

President Reagan, speaking to the Young Astronauts program in 1986, told the participants that they were on "the edge of our known world, standing on the shores of the infinite."

What a statement: We are standing on the edge of our known world, on the shores of the infinite.

He called for them to touch the mystery of God's universe and to set sail across its waters into the most noble adventure of all. President Reagan achieved because he dreamed, because he motivated and he inspired. He understood that Americans, by nature, are dynamic people. They are good people. The change they bring is for the good, for the best of America, and that is all he worked on—for excellence, to rise to the challenge, the shining city on the hill, undaunted by threats, and with hope and optimism. That was President Reagan, following the words of President Kennedy.

Through enormous sacrifice, America has preserved her own freedom and freed millions around the world. We go to far off countries, serve in combat, die on fields in countries we have never heard of, day in and day out, year after year. As leaders in Congress, we are committed to preserving these freedoms for future generations, but to achieve that goal we must reach into space with gusto for its science, for its mystery, for the security it can offer us.

Control of space is more than a new mission to consider funding, it is our moral legacy. Moving into space is our next manifest destiny. It is our chance to create sanctity and security for centuries to come. It is our chance to do it. As I leave the Senate, I want to inspire my colleagues to pick up that cause because it is the right thing to do.

SENATE SERVICE

I know there are others who wish to speak, but I am going to take a couple of minutes, because I am leaving the Senate, and close on a few personal thoughts. I do respect my good friend, Senator SESSIONS. I will be only a few minutes.

I remember when I came down to the floor to sign the book in December of 1990. Senator BYRD was there, as he always is, and he watched as I signed 1,794. He said: Senator SMITH, you are the new Senator from New Hampshire. You want to remember there are tens of millions of people—I will never forget this—who have been part of the United States of America since 1776, and you are 1 of only 1,794 to have served in the Senate.

I will never forget it, and I never have. Senator BYRD is one of the finest people to ever walked on to this floor. I admire him greatly. It has been an honor and privilege to serve with him, but it has been a great honor to serve the people of New Hampshire for 18 years, 12 in the Senate and 6 in the House. It has been an extraordinary privilege to occupy this desk, the desk of Daniel Webster, for 9 years.

There is a very interesting story about this desk. Actually, Daniel Webster represented Massachusetts in the Senate, although he was from New Hampshire. He was a New Hampshire native. So when Senator KENNEDY, TED KENNEDY, gave up the desk to take his brother John's desk, the desk became a free spirit, and Senator Norris Cotton passed a resolution in the Senate that the Webster desk will forever more belong to the senior Senator from the State of New Hampshire. That is a long time, forever more. So nobody else is going to get it.

I have etched my name in the drawer, from Webster coming down through those great people who occupied this seat, down to where I have etched my name. It is a reminder, as I sit at this desk—these desks open from the top like so. There are very few desks in this Chamber that do not open that way, and one is Daniel Webster's because he did not want to pay to have it done because it cost too much money. It cost $5 to $10 in those days, and he said taxpayers should not have to pay for that, so it just has a drawer in it. Webster was a frugal person. He was also a great orator.

Next to Webster's desk is the desk of Jefferson Davis, which is now occupied by Senator COCHRAN of Mississippi. I am reminded of the great speech Jefferson Davis gave with so much emotion that he left the Senate to go back to his home State of Mississippi during the Civil War.

There is so much history in this Chamber. One of the things you do when you are leaving the Senate, you take time to smell the roses a little bit and you look around. President Reagan said history is a ribbon, always unfurling.

History is a journey. Every one of us, Senator SESSIONS, Senator INOUYE, my great friend who now occupies the chair, they are all part of history. It is unfurling as we stand. What we say today is a memory tomorrow. Life is nothing but memories. But we have a chance to make part of that history, to chart that course, for America, 1 of 100 people to do it at any given time in American history.

I have learned more about friendship, patriotism, and loyalty in the last 18 years while a Member of Congress, from people in my State, my family, the Senate, so many wonderful people, good friends, than I could ever have imagined.

Senator REID indicated a few moments ago he was sorry I did not win, but I am reminded of Theodore Roosevelt who won and lost his share of elections. This is a great quote for you young people. Think about it because you are going to be facing challenges. All the pages who are sitting here, you are going to win some and you are going to lose some. You will have great disappointments and you will have great successes. That is what life is. It is a heck of a lot more fun to win than it is to lose. I speak from experience on that.

Teddy Roosevelt said: Far better it is to dare mighty things, even though checkered by failure, than to take rank with those poor spirits who neither enjoy much nor suffer much because they live in the gray twilight that knows not victory or defeat.

You can't succeed if you are afraid to fail. You have to fight the fight. You have to fight for the cause. The cause will go on. People will depart the stage. Webster departed; Lincoln departed; many people have departed the stage of running the United States of America—or even the world, Churchill—but others must step up. Maybe they don't step up quite at the level of the ones who are following but they step up.

That is why America must go on. I want 500 years from now the Senator from Alabama—Senator THURMOND might be here—but Senator SESSIONS and I won't—I want those two Senators from New Hampshire and Alabama to be here on this floor in this great country, still the free country it is, having good debates just as we have done so many times.

There are so many things one gets the opportunity to do as a Senator. What I have enjoyed the most is helping people, constituent service, working every day with people in the State. Somebody lost their medal that they deserved from World War II or perhaps they are trying to get a child from another country. We do these things every day. That is what I enjoy the most. That is what I will miss the most. I remember a young man who had leukemia. He was dying. He called my office and said his dream was to see a space launch at Cape Canaveral. He could not afford to go and he was very sick. I made it happen and arranged with NASA to have him go and see the space launch. He came back home and died. It is little things such as that. We did not ask for any press on it. Those are the things that I will remember.

When you say you are a strong conservative—and people want to lock you in as somebody who does not care or who is not compassionate—I like to help people who sometimes cannot help themselves. Captain McVeigh, the Navy captain of the U.S.S. *Indianapolis*, who was wronged, who eventually committed suicide because of a terrible ordeal he went through where he was unfairly blamed for the loss of his ship, we cleared his name, thanks to the help of Senator JOHN WARNER, the chairman of the Armed Services Committee.

Fighting so many issues—the POW/MIA, dealing with families of those people; serving as the chairman of the Ethics Committee, in the Senate, chosen by all of you to have that high honor—I could go on and on—chairing the Environment and Public Works Committee.

I believe I came here on principle. My motto was Jimmy Stewart's in the movie "Mr. Smith Goes To Washington." He went to right a wrong. They were going to flood some Boy Scout camp with a big dam. He came down and stopped it. That kind of ambition and enthusiasm and concern about your fellow man is what I brought here. I came with principle.

I came here to Congress under Ronald Reagan. I am a Reagan Republican. I am leaving the Congress a Reagan Republican—a Republican who stands on his platform, who runs on that platform, not away from the platform. And, yes, that includes the right-to-life, that includes the right to protect the second amendment, that includes cutting taxes and spending and living within your means, helping our veterans, a strong national defense. That is what it means. That is our platform. I don't run from it. I don't run from it here in the Senate; I never have. That may be one of the reasons why I am leaving—involuntarily.

A friend of mine, Mel Thompson, the former Governor of New Hampshire, said you stand for something or you stand for nothing. I can proudly say I have tried to stand up for what I believe in while I have been here.

It has been a great honor, the highest honor of my life, to be here, to serve here, to make the friends I have made here. I will never, ever forget it.

I say thank you in closing to several members of my staff. I know some have come onto the floor today since it is my last speech, unless I come back again—you never know. I appreciate them, and I ask unanimous consent that a list of my staff, both on the Environment and Public Works Committee and my personal staff, be printed in the RECORD to honor their service to our country.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ENVIRONMENT AND PUBLIC WORKS SMITH STAFF

David Conover, Chris Hessler, Martin Hall, Alex Johnson, Melinda Cross, Chelsea Maxwell, Angelina Giancarlo, Kristy Rose, Erin Hass, Genevieve Erny, Paul Jensen, Suzanne Matwyshen-Gillen, Michele Nellenbach, James Qualters, Megan Stanley, Nathan Richmond, Patricia Doerr, and Emma Dabson.

Mr. SMITH of New Hampshire. I single out three or four people. My chief of staff, Pat Petty, who is no longer my chief of staff, but who served me for about 15 years, I recognize his service to the Senate, to the country. My current chief of staff, Dino Carluccio, who started in my office as basically an intern and went off to Europe to study in Italy sent me a note saying: You need me in your office. And I remember saying to my current chief, my chief of staff at the time, anybody who has that much self-confidence we ought to hire. We did. Now he is the chief of staff. He worked his way up in the true sense of the word. He is a great American.

Lisa Harrison worked for one of my opponents in my primary, the first primary, the first time I won in 1984. She was working for the other guy, but I liked her. I thought she had a good personality, she was smart, and she was one of the few people on the other campaigns who said hello to me when I walked into the room. She got a job and has been with me for 18 years and is one of the best communication directors in the Senate.

Ed Corrigan, my legislative director, has been with me for 10 years, a real conservative, committed guy. He knows the rules of the Senate, inside and out, a great American, great patriot.

And Dave Conover, who is my chief of staff at the Environment and Public Works Committee, has done an outstanding job there. We had a great run for a year and a half. We preserved the Everglades and passed brownfields and MTBE legislation and other bills to make our air, land, water, and our wildlife habitat cleaner.

I am proud to have served with them all. I had two people in my State staff, Dorothy Vatize and Marti Jones, who have served with me for 18 years, all 18 years I have been here. One is retiring and the other is leaving to do other things.

It has been an honor to serve here—again, the highest honor of my life. I will never forget it. I am not sure what comes next, but as has been said many times, Chaplain Lloyd Ogilvie has said it a number of times to me, God closes one door and he opens another. He did close one, I am sure of that. The other one is not yet open, but we will find it.

Having mentioned the chaplain, there is no finer person in the entire world than Lloyd Ogilvie. He is one of the most Christian men and such an inspiration to all of us in the Senate, a friendship I will have with me forever.

I say thank you to all my colleagues and friends and others I have made here, and thank you to the people of New Hampshire for allowing me the privilege of serving you in this body and in the House of Representatives for 18 years.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican leader.

SENATOR ROBERT C. SMITH

Mr. LOTT. Mr. President, before Senator SMITH leaves the floor, I would like to say a few words about our colleague and my good friend.

First, I thank Senator SMITH for his service to New Hampshire and to our country and also thank him for his friendship and support over the years. We have been friends. We have been supporters of each other.

I can remember many occasions when I was in leadership roles—which he supported me for—I went to him and asked for his help and sometimes it was not even an issue on which it was easy for him to be supportive. Sometimes it affected my own State. Sometimes it affected the country. But I don't remember a time—when it was the right thing to do—when I asked for his help for our country, or even for my State, that he didn't come through and stand with me. I appreciate that very much.

Sometimes the people who help you the most get the least credit, get the least participation in the spoils, so to speak. And sometimes you just forget to say thank you. Sometimes I am guilty of that.

In the last 2 weeks, I have been in such a euphoric mood, I am calling people, all the way back to my fourth grade teacher, to thank them. I am in a very grateful and humble mood. I think I should say that to my friend from New Hampshire, too. I haven't sidled up to him enough and said: You are a good Senator and you are a good friend and thank you for all the good work that you have done. But I believe that and I mean it.

Mr. SMITH of New Hampshire. I thank the Senator.

Mr. LOTT. I won't ever forget it. I wish you and Mary Jo happiness and success. I believe you will have it. I believe you will find that life after the Senate can be quite nice. In fact, I get a little agitated sometimes when I run into our former colleagues who are now ambassadors and businessmen and businesswomen. They are making money. They are rested and they are tanned and they have new suits and new ties.

Wait a minute, why didn't you look this way when you were in the Senate?

They say: Hey, it's not too bad out there in the real world.

This is a tough job. There are a lot of demands, a lot of things you want to do for your constituents. I know you will find a way to be a productive citizen and will be able to do some things with your family and wife and children you didn't have the opportunity to do before. I certainly hope for that. We look forward to staying in touch with you. We will think about you and say a prayer for you along the way.

I want to particularly note your service to our country on the Armed Services Committee on defense issues. Once again, I know some stories about Senator BOB SMITH that a lot of others don't know, things that you did on that committee for a weapons system or for a project. It didn't necessarily affect your State, but it was right for our country. You deserve credit for that.

You did do some good things for the environment. A lot of people say: Oh, Republicans, you know, they are not going to do anything about clean air, clean water, environmental cleanup. In fact, that is not true. But we want to do it with common sense. Senator SMITH did some good things in that position he held on the Environment and Public Works Committee as chairman—and when you were in the minority, too.

You have done good work for your State—an interesting State; a great State, I think. Sometimes they show great wisdom. Other times, you know, you wonder about it—kind of like my own constituency, how they vote. But I think you have reflected them quite well and reflected credit on them.

I said some things about you last Thursday night at an event that you weren't able to attend, but I want to respond to your comments here today. As I said for others, you can leave here and know that you fought the good fight, you finished the race in good fashion, and you have been a good and true servant for your people and for your country.

Mr. SMITH of New Hampshire. Senator LOTT, if you would yield for just a second, I thank you for your friendship and your leadership. I am glad to see you back in the majority. I know you will make good use of it.

I will miss not being here to help you, but I will be rooting for you on the outside, as you know.

You did mention family. I think it is important for all of us to reflect and understand, without my wife Mary Jo and my daughter, Jennifer, and my sons, Bobby and Jason—without their support over the years, it would not have been possible. You know how difficult this job is, living in a fishbowl. We all have our families to thank, so I want to pay a special tribute to my family for supporting me all these years and loving me and still loving me after all of this.

I thank you again, leader, for your remarks.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER (Mr. Carper). The Senator from Alabama.

Mr. SESSIONS. Mr. President, I want to share with you my admiration for Bob Smith. I think it was Phil Gramm who repeated recently what he said not long after Paul Coverdell's death: If you love somebody, you ought to tell them you love them. Sometimes you are too late.

I love Bob Smith. I so respect what he stands for. He stood for the future. He has been an historian. He knows the past. He has called on our military to transform itself, to meet the new challenges in the world. He has understood, with great clarity, that we do need control in space. That was a remarkable address that all of us ought to take to heart about the future this Nation has in space.

I remember at one of our Armed Services Committee hearings, Secretary Rumsfeld was up for confirmation and was asked, critically: Well, you don't mean we are going to have war in space, do you, Mr. Rumsfeld?

Without hesitation he said: We have had war on the ground, we have had war on the water, we have had war in the air—and, yes, we are going to have war in space, and we need to be prepared to win it.

One of the great technological advances we have is the ability to control space. That enables us to control the battlefield. Senator Smith has absolutely been the strongest advocate in this Senate, and probably maybe in the House, for the vision that we have to prepare ourselves to be able to maintain domination in space. He did it for one reason—because he cares about our men and women in uniform. He wants them to be able to prevail on the battlefield. He does not want them to be subject to attacks controlled by enemy space power; to have our men and women in uniform suffer. Everything he has done in the committee has been so focused on strengthening and bettering the lives of our men and women in uniform.

He mentioned the POWs. He has absolutely been the strongest advocate in the Senate, consistently—in committee, when no public and no press is there—always pushing for the families and the lives of our prisoners of war. I think it has been a remarkable commitment in that one area in which I have seen him lead.

I was on the EPW Committee when Senator Smith wrote the brownfields legislation. It was good legislation and we should have passed it. I was naive and I was stunned that we couldn't get that passed. I guess it was the trial lawyers because it eliminated all the money we are spending on lawsuits and focused it on cleaning up instead of litigation. The litigation lobby ended up blocking the bill. I know it must have been a great frustration to Senator Smith who worked so hard on a bill that would have been tremendously beneficial to the environment.

My perspective here is this: There has not been a Senator who has more purity of purpose, more fidelity of commitment to the values that make America great. He loves this country. As an historian himself, he understands this country and its greatness. He has felt an obligation, while in this body, to do everything he can to further and strengthen the country that he believes in so greatly. He has never been part of the "blame America first" crowd. He has believed in the validity of the American dream and the positive impact of America on the world. He was here during the collapse of the Soviet Union, the fall of the wall, and I will tell you one thing: Bob Smith was on the side of freedom every step of the way.

He recognized the "evil empire" was evil. He did not appreciate it. He valued our values, and he fought for them. I know that must have been a special time for him and the man he admired so much, Ronald Reagan.

He stood for the elimination of partial-birth abortion, a most horrible procedure. When he first raised that here in this body, people were offended that he would talk about such things. But as the years went by, the vote grew and people began to realize just how right he was, and just how horrible that procedure was. We had, virtually—we had a substantial majority vote the last time we voted on it, not quite making it law, but we had a big step in that direction. That was a courageous thing. Even the AMA has come around to agreement with Senator Smith, the American Medical Association.

So it is a pleasure for me to be here today to share a few words about a man with whom I have worked closely, who I have admired, who has the courage to stand for his convictions—but always in the way of a gentleman, always not acting in a way that would offend, but standing for what he believes in and for America. Senator Smith, we appreciate your service, and God bless you.

The PRESIDING OFFICER. The majority leader.

SENATE TRADITION

Mr. DASCHLE. Mr. President, this is the final day of the 107th Congress. As Senate tradition has it, it is the day that is normally reserved for passage of resolutions that express genuine sentiment and reflect what we hope will be a comity that can be part of the environment as we begin the new session of the 108th Congress. So I will propound a series of unanimous consent requests to address these resolutions, beginning with S. Res. 361.

TENDERING THE THANKS OF THE SENATE TO THE VICE PRESIDENT

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 361 submitted earlier today by the majority leader and the Republican leader.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

> A resolution (S. Res. 361) tendering the thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the resolution be agreed to, and that the motion to reconsider be laid upon the table, without any intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 361) was agreed to.

The resolution reads as follows:

S. Res. 361

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Richard B. Cheney, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Seventh Congress.

TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 362, submitted earlier today by the majority and Republican leaders.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

> A resolution (S. Res. 362) tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the resolution be agreed to, and that the motion to reconsider be laid upon the table, without intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 362) was agreed to.

The resolution reads as follows:

S. RES. 362

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Seventh Congress.

Mr. DASCHLE. Mr. President, I will have more to say about this later on. But I think it is important to note we had two President pro tempores of the Senate in the 107th Congress—Senator STROM THURMOND, who will be retiring, and Senator ROBERT C. BYRD, who will certainly not be retiring.

I want to acknowledge the deep affection this body holds for both men. Last night, Senator THURMOND made his final comments on the floor, and, spontaneously, Senators broke out in applause.

This morning as I read the New York Times, on the front page was a colored picture of the current President pro tempore and a very laudatory article about his contributions to the debate on homeland defense.

In their own way, both Senators have left indelible marks on this body. Their leadership, their stature, and their extraordinary contributions are not only appreciated, but I would say revered.

I personally want to express my heartfelt thanks to both leaders for all they have done and for all they have meant to the Members of this body, especially during the 107th Congress.

EXEMPLARY LEADERSHIP OF THE REPUBLICAN LEADER

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 363 submitted earlier today by the majority leader.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 363) to commend the exemplary leadership of the Republican Leader.

There being no objection, the Senate proceeded to consider the resolution.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the resolution be agreed to, and that the motion to reconsider be laid upon the table without intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 363) was agreed to.

The resolution reads as follows:

S. RES. 363

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Republican Leader, the Senator from Mississippi, the Honorable Trent Lott, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 107th Congress.

The PRESIDING OFFICER. The Republican leader.

EXEMPLARY LEADERSHIP OF THE MAJORITY LEADER

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 364 submitted earlier today by the Republican leader.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 364) to commend the exemplary leadership of the Majority Leader.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be agreed to, and that the motion to reconsider be laid upon the table, without intervening action.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 364) was agreed to.

The resolution reads as follows:

S. RES. 364

Resolved, that the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from South Dakota, the Honorable Thomas A. Daschle, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 107th Congress.

Mr. LOTT. Mr. President, if I could inquire of the majority leader, would it be appropriate at this point for me to perhaps respond to some of the resolutions and have a few remarks before I yield the floor back to him to do whatever he would like to do in terms of concluding his remarks today?

Mr. DASCHLE. Mr. President, by all means. I will probably be coming back to the floor because I have an engagement at 11:30. But I will be happy to defer to the Republican leader for whatever remarks he would make at this time.

Mr. LOTT. Just briefly, Mr. President, with regard to the resolutions we have just passed, I want to add my specific expression of appreciation for our Vice President, Vice President CHENEY. He is a long-time friend. He understands the institution of Congress. He has proven to be a very active Vice President and, obviously, a good and valued adviser to our President. But we all actually have a special affinity for this Vice President because we think he does understand the Congress as an institution, and I think he has been very positive in the way he has dealt with us. I just wanted that to be on the RECORD.

I thank Senator BYRD for his performance as our President pro tempore, for his making us think about the history and the traditions of this institution, for his sometimes unbelievable speeches about history, and for his great quotes from memory of poetry and famous statements by statesmen and politicians. It is a very interesting thing to watch and listen to him.

Of course, the one and the only centenarian, Senator STROM THURMOND, has done so much for his State and for his country.

I just want to put on the RECORD at this point also that in his service in the Senate he has cast 16,348 votes. He was here last night until the last vote was cast.

We are going to celebrate his 100th birthday with several events December 1.

He will be one of the legends that will be long remembered in this institution and by our country.

Let me say to Senator DASCHLE, I have enjoyed working beside him throughout this historic Congress and over the years. Sometimes we sit down and visit more often than a lot of people would think or realize. We certainly have a very strong personal relationship—one the media seems to miss. And that is just as well, probably, because if people really knew the kind of friendship we have and what we talk about, it would either hurt him or me—or both of us, or our colleagues. But that is as it should be. This is the Senate. We must find a way to work together.

As I said on the floor yesterday, how we produce legislation is quite often messy and not pretty, but our forefathers designed this to be a body that could be moved only by unanimous consent or consensus. Sometimes it takes days, sometimes it takes weeks, and sometimes it takes months—just like last night. After all the fussing, the fighting, the squabbling, the amending, and positioning and all that went into it, when we voted on the Homeland Security Department Bill, the vote was 90 to 9. We actually scratch our heads and say, Why all that thunder and lightning and then that result?

Well, that is a part of the process. Quite often that happens in the Senate, because along the way you have made changes. You have reconsidered other people's positions. But in the end it is quite often that a bill will pass by a wide margin.

We have been through changes in leadership positions. The process to consider the removal of President of the United States who had been impeached by the other body, and now this historic 107th Congress.

We should not go off quietly into the night without giving some recognition and some credit to what we have done in this Congress.

We started over with a 50–50 split—somewhat historic in its own right. There had been 50–50 splits before, or even splits before. I have gone back and studied how those things were handled. They were handled not too well a lot of times. In fact, in one Congress I think it took them 4 or 5 months before they ever agreed on the rules to proceed.

There was some criticism of me and our caucus, and probably of Senator DASCHLE and his caucus, with the agreement we came up with for this 50–50 split. If we had to do it over again, we probably would do it somewhat differently, or we would have done a few more things than we were actually able to agree on. But we did come to an agreement. We did move the session forward, and we produced some historic results during that period when we were evenly divided.

At the beginning of the year, Senator DASCHLE actually was the majority leader for 17 days. He could have tried to take advantage of it. He could have tried some things that would have been infuriating to my side, or that wouldn't have been good for the Senate or the country. But he didn't do that. He did do some things, but they weren't done in a way that was taken advantage of in that interim period. Then I became majority leader again in the 107th Congress for about 5 months or so. Then I was back in the minority; Senator DASCHLE is back as majority leader.

We were sort of getting used to our sea legs under this new arrangement in the latter part of June and July. We probably had not gotten our sea legs yet, and then came September 11. We had not planned on that, and we were stunned by it, the institution, as individuals, our staffs. Not only did America come under attack in New York and the Pentagon, and with plans to attack other places, we had the anthrax situation that put Senator DASCHLE's staff in a very difficult, dangerous position. All of us were affected by that.

A lot of Senators rose to the occasion. The leadership, our officers rose to the occasion. I will talk more later about the service of our Sergeant at Arms, General Lenhardt, and the Secretary of the Senate, Jeri Thomson. They were under enormous pressure, and they were dealing with a totally different situation than we had ever experienced. We were the pilot project. We did not want to be, but we were.

How did we clean the Hart Building? How did Senators get their work done? Well, they wound up in other Senators' offices. They wound up in my office upstairs. They were all over the place. We did what we had to do.

Also, I believe those events united this body in a way that was very positive, and this country in ways that we are still experiencing. But we did find a way to speak with one voice, to pull up our courage, to continue to do our job.

Those ugly, tragic events of that day gave us a period of unity and production that I have not seen since I have been in Congress. We passed bill after bill after bill to deal with the tragedy—from aviation security, to make sure our airlines did not go out of business; the PATRIOT Act—I will not enumerate all the things we did do. We did it working together across the aisle, across the Capitol, and with the administration in many instances.

I have said here on the floor before, an interesting thing happened: The American people's approval of our conduct went to the highest in history. I don't know what the highest level was, but at least in the high seventies. Why was that? Because they saw us working together in a nonpartisan way to do what was right for our country. And when we got back closer to doing business as usual, those numbers sort of drifted back down.

I think maybe during this period we are going to be out we ought to meditate and think a little bit about how we did in September and October and November of 2001, what we did not do sometimes in 2002, and see if there is a way we can, once again, come together and work together more often.

So there have been bumps and potholes and there have been disagreements and there have been huge battles over prescription drugs and energy legislation and homeland security and a lot of others, but more often than not, we did get a result. We found a way to get it done.

It takes an interminable amount of patience to be majority leader. Senator DASCHLE exhibited that patience, sometimes to the consternation, I know, perhaps, of his own colleagues in his own caucus. But that is the way it has to be done.

So now we close out this historic period. We have had an election. We will be coming back in January with 11 new faces in the Senate and new leadership in the majority. I will have that opportunity again, God be willing, that we have of swearing in on January 7. We will need to find a way to work together again. I believe we will.

Senator DASCHLE, when he became majority leader, stood in that place and pledged to me, and to the Senate, that he would work with us, and he would be fair in his dealings. I think he has kept that commitment. I make the same pledge to him. I have learned some lessons being in the minority and being in the majority and being back and forth. It is a humbling experience. I think you learn that you have to do some things differently. I hope I will do them better. And I will need his help. So I believe we will find a way to work together for the best interests of this institution and for our country.

I thank the many people associated with this Chamber, too.

As I said to Senator SMITH, it is far too often we forget to thank the people who make this place work: the people who turn on the lights, the policemen who work to keep us and our constituents and our staffs safe, the elevator operators, the custodians, the pages. All of these people who work in this Chamber and in this building are an important part of getting our job done. So to you all, I express my appreciation on behalf of myself and the Senate because you do a great job.

With that, I would just like to conclude by wishing everyone a safe, happy holiday season. We need this respite. In the end, faith and family are more important even than what happens here.

Now we will have a chance to spend some time thinking about those things and being with the ones we love the most. I look forward to returning in January. I look forward to seeing all of my colleagues as we begin the work that needs to be done for a stronger and freer America and peace in the world.

I yield the floor.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. Mr. President, I indicated I will return to the floor in a short while. But while he is here, let me thank the distinguished Republican leader for his generous words. He spoke for both of us in recounting what we have experienced over the course of the last 2 years.

This has been an extraordinarily eventful 107th Congress. He did not mention, but I know he could have gone on to include the war in Afghanistan, extraordinary challenges on Wall Street, amazing things on the war on terror that we have confronted, breakfasts with the President as we attempted to confront these challenges one by one in a bipartisan way.

So this has been extraordinarily eventful. You have to go back a long ways—a half a century—to find a time when power shifted within one Congress from one party to the other. I told him at the time—and I have since reiterated to him—how impressed I was in the way with which in our relationship he accepted that transfer of power. I hope I can be equally as magnanimous, and I hope to demonstrate that that will be the case beginning in January.

He and I have developed a relationship that is built on a great deal of experience. And from that experience comes trust and affection.

He also did not mention a great moment in both of our lives: when we became grandfathers. That has been a special treasure for both of us. And we have shared those moments about family and about grandchildren, as we have experienced them for the first time.

So I look forward to working again very closely with him in yet another role. I hope that it can be even more productive. I hope that we both can learn lessons from this experience. I hope that we both can send a message to the American people that we mean to govern well, and, as I tell people sometimes, it is difficult to legislate, recognizing that with 240 million people in the same room, we have to reach a consensus about issues as challenging as homeland security. We will continue to do that with our colleagues, and with the best intentions, recognizing the expectations of the American people.

So I thank him again for his courtesies, his friendship, and the leadership he has shown, and express to him, in the most heartfelt way, how much I look forward to working with him again.

Mr. President, I have one final resolution, and that is the adjournment resolution.

PROVIDING FOR THE SINE DIE ADJOURNMENT OF THE ONE HUNDRED SEVENTH CONGRESS, SECOND SESSION

Mr. DASCHLE. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Con. Res. 160, submitted earlier; that the concurrent resolution be considered and agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The concurrent resolution (S. Con. Res. 160) was agreed to, as follows:

S. CON. RES. 160

Resolved by the Senate (the House of Representatives concurring), That when the Senate adjourns at the close of business on any day from Wednesday, November 20, 2002 through Saturday, November 23, 2002, or from Monday, November 25, 2002 through Wednesday, November 27, 2002, or on a motion offered pursuant to this concurrent resolution by its Majority Leader, or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House of Representatives adjourns on any legislative day through the remainder of the second session of the One Hundred Seventh Congress on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

Ms. COLLINS. Mr. President, I oppose this adjournment resolution. While I am eager to return home to Maine, there is critical unfinished business here in Washington. We should not adjourn prior to passing a prescription drug benefit for our seniors as well as legislation to remedy inadequate Medicare reimbursements that are jeopardizing the viability of our home health agencies, rural hospitals, and nursing homes. Cuts in Medicare are also discouraging physicians from accepting Medicare patients.

These health care problems should be solved now, not delayed until next year. Medicare reimbursements must be adequate to cover the costs borne by health care providers in caring for our seniors and disabled citizens. And our elderly have already waited too long for prescription drug coverage.

Finally, we should have given final approval to legislation authored by Senators NELSON, SMITH, ROCKEFELLER, and myself to increate Medicaid rates to provide fiscal relief to the States and to prevent cuts in health care for low-income families.

Mr. DASCHLE. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

DIETARY SUPPLEMENTS

Mr. DURBIN. Mr. President, I have come to the Chamber this morning to address an issue, which is familiar to many Americans but one on which they may not know the details, the important life-or-death information.

Yesterday, a Federal court in Birmingham, AL, found for four plaintiffs and against a company known as Metabolife International of San Diego and awarded the four plaintiffs $4.1 million for strokes, heart attacks suffered by the plaintiffs as a result of ephedra diet pills. These diet pills and Metabolife are pretty well known across America. You can hardly go into a drugstore, gas station or a convenience store and not run into this little familiar container, Metabolife 356, "an herbal formula to enhance your diet and provide energy." Unfortunately, this apparently innocent looking product has caused a great deal of physical injury and death.

I received today from my State of Illinois, near my hometown of Springfield, a report from the Logan County coroner, Chuck Fricke, a report on the sad death of a young man named Sean Riggins, a 16-year-old who died on September 3 of this year. Sean Riggins was the picture of health, a high school football player and wrestler. He was the apple of his parents' eye. He was just an all-around good kid. But he wanted to get ready for the game, and he wanted to be prepared. He wanted to do his best.

Someone told Sean Riggins that one of the best ways to be a better athlete was to go down to the local convenience store or the local gas station and buy a product known as Yellow Jacket—I hold it in my hand, an herbal dietary supplement for extreme energy—so he would be ready for the big game. He took that herbal supplement called Yellow Jacket that contained the same ephedra as Metabolife's product. His heart started racing, and he died.

The coroner did an autopsy, which I will ask be included in the RECORD. He said he was an otherwise very healthy young man, just a young boy, 16 years old, healthy, an athlete. He took this herbal supplement, and he died.

Let's just pause a moment to raise some questions many Americans may not even consider. When you go into a drugstore, or any store, and you see for sale an over-the-counter drug or something like an herbal dietary supplement, do you assume that the Federal Government has investigated this drug, that they have taken a look at it to decide whether it is safe and effective as advertised? Most people would assume that.

Frankly, throughout history—at least for since 1938—we have created standards in America where the Food and Drug Administration basically requires companies that want to sell drugs over the counter or by prescription to prove that the drugs are safe and to prove that they are effective. If you can't prove that in clinical trials, you can't sell that drug in America.

That is pretty simple. It is something we take for granted, but it is something we should not take for granted.

In 1994, Congress passed the Dietary Supplement Health and Education Act, which changed the law when it came to certain products. It said when it came to dietary supplements, nutritional supplements, they did not have to meet that same test of safety and efficacy before going to market. Instead, they could claim what they wanted to. They could put the product on the market, and the law was rather unclear as to what obligation they had beyond that.

Frankly, the Food and Drug Administration and the Government of the United States have failed American families, have failed American consumers when it comes to nutrition supplements and dietary supplements because, as we have found with these supplements containing ephedra, deadly combinations of chemicals are being sold to children and to unsuspecting adults across America without any Government intervention.

Rarely does our Government step in. The Federal Trade Commission will step in when they believe the advertised claims for some of the products are not true. They will bring an action. Occasionally, the Food and Drug Administration, when prodded by Congress, will go after the manufacturer of these Yellow Jackets because they are marketed as "an alternative street drug." But when it comes to the basic responsibility of our Government to American consumers, the system fails for ordinary consumers. We expect consumers to be a chemist, to have a degree in biology, to understand the impact of a drug on their body, because we are not going to take on that responsibility for them as a government to make sure only safe products are sold.

In this case, when it comes to dietary supplements and nutritional supplements, our Government is absent without leave. We are in a situation where people across America, unsuspecting, believe they are helping themselves to reduce their weight, to avoid obesity, to be healthier individuals by taking dietary supplements which are, instead, dangerous to their health.

Let me make one thing very clear: I got up this morning and took my vitamin. I do that every day. I don't believe I should have a prescription or need one to fill a vitamin. That is a basic choice I have made. A multivitamin, vitamin C—whatever it happens to be—that is my decision. And it should be. But when it comes to these combinations of drugs and dietary supplements, we are talking about something more complicated and more potentially dangerous than vitamin C or a multivitamin. We are talking about a combination of chemicals being sold to the American people which is dangerous and can possibly kill.

How can I say that these are dangerous? Because these ephedra compounds contain caffeine and other stimulants. Why is that important? Because ephedra, in and of itself, gets your body moving faster and your heart pumping, and caffeine does the same thing. Sean Riggins died because of that—a 16-year-old boy died because he took this Yellow Jacket pill and washed it down with Mountain Dew, a soft drink containing caffeine. Put all that together, and this poor young man's life was snuffed out by a product that was sold over the counter.

Incidentally, are there warning labels on the Yellow Jackets for those high school kids who want to consider the danger that might be associated with taking these pills? Yes. You have to strip the label off the bottle, and you will find it written in faded print on the back. I am sure that 15- and 16-year-old kids are not stopping to read this fine print to decide whether or not it is a danger.

Just this last week, I drove from Chicago to Springfield. I stopped at a gasoline station halfway to fill up in Pontiac. I went in and, lo and behold, Yellow Jackets were for sale right there in front. And you don't have to buy a big bottle. You can buy them for a buck and a half and get three or four of them.

I went to a junior high school in my hometown of Springfield, and I asked the students there: Has anybody ever heard of Yellow Jackets, ephedra? Yes. Over half the kids did. These were eighth graders.

So I would say to parents across America who think, as I do, that drugs are a serious problem, here is a drug for sale that can kill your son or daughter. They know about it, and you don't.

We know now that it is dangerous. We have to do something about it.

Let me tell you what I have done. I have had two hearings as chairman of the Governmental Affairs Subcommittee on Oversight of Government Management to look into this particular issue. To my knowledge, it is the first public hearing held on so-called dietary supplements and nutrition supplements since it was passed. The information which came out is startling. Take a look at this chart. Ephedra is far more deadly and dangerous than most dietary supplements. Of all the adverse events reported to FDA for dietary supplements, 60 percent of the deaths were for ephedra products; 81 percent of the strokes were for ephedra products; 68 percent of the myocardial infarctions, heart attacks were for ephedra products. These are serious consequences from an over-the-counter drug unregulated by the Government, such as Metabolife.

Dietary supplements adverse events are disproportionately for ephedra. Ephedra adverse events occur when people get sick after taking one of these supplements and they call the company and say: What happened? There is something wrong here.

Look at this. In terms of the percentage that are directly related to ephedra, over 40 percent in the year 2001. Then we asked the company. First Metabolife said: We really haven't received many adverse events that are worth noting. And then we started pushing them a little harder, saying we want to get all the information, to find out what they have received. Because of a case filed in court, they disclosed over 14,000 adverse event reports—something they kind of overlooked. Yesterday, they said, yes, we skipped another 1,400 or 1,500 or so. We will send those to you as well. What do we find in the adverse reports on Metabolife and other companies that are being gathered on ephedra?

Here I have an example of one of their adverse event reports. It looks like a doodle pad. This is not a formal report, where you would note that a product for sale in America has caused adverse events, serious health problems for American citizens. If you go through this whole thing that was disclosed by Metabolife, at the bottom it says "mild stroke." This person said: I took your pill and had a mild stroke. What is wrong with your product?

They are not even disclosing these things until they are forced to go to court. Here we have a 25-year-old person who had a stroke as a result of taking ephedra diet supplements. The information is very clear. That information was so compelling that this court yesterday in Alabama did what our Federal Government hasn't done. This court in Alabama, and a jury, listened to the evidence on these dietary supplements and said that this company is guilty of selling a dangerous product, endangering the lives of individuals, and entered a verdict of $4 million against Metabolife.

There are people on the floor—you will hear this for the next several months—who will argue we should be closing the courthouse doors to this type of lawsuit, that we should not allow people to go to court to recover against companies that are literally endangering their lives. They will talk about plaintiff trial lawyers, and contingency fees, and so forth. But the fact is, were it not for the court system and the attorneys going into court representing people like these four in Alabama, nothing would be done to stop these companies like Metabolife from selling deadly products.

Something else you might find interesting. The two-week trial, according to this press report, was notable for one bizarre twist—Metabolife's president and cofounder, Michael Ellis, refused to have his deposition taken or to answer questions posed by the plaintiff's attorneys, asserting his fifth amendment right. The judge allowed the plaintiff's attorneys to question an empty chair. The attorneys asked question after damaging question to which the judge replied on Ellis' behalf that Ellis, president of Metabolife, was asserting his fifth amendment right not to incriminate himself.

According to the attorney, it made a damning impression. The guy didn't even have the gumption to defend his product and he took the fifth on the safety of the product. What product? This one, Metabolife 356, which you can find for sale all over America.

Now, what we have to do is acknowledge there is a Government responsibility here with the Department of Health and Human Services, as well as the FDA. I contacted Secretary Tommy Thompson after these hearings and after it became clear these dangerous products are being sold across America, endangering the lives of children and unsuspecting people all across America, and that the Federal Government and the FDA failed miserably in their responsibility to protect American consumers.

I wrote Secretary Thompson on August 6 and I said to him in the opening sentence:

> The danger associated with dietary supplements containing ephedra has become well documented. I believe our Government has a special responsibility to make an immediate determination on whether they pose a hazard to the American consumers. It is within your authority to take the step and suspend the

sales of these supplements until their safety is clearly and scientifically established.

I have spoken to Secretary Thompson about this on three separate occasions. We have exchanged correspondence. I have been in contact with people in his agency and in the FDA, and I stand to report today that nothing has been done, short of raiding the offices of the company that makes Yellow Jackets, to find out if they violated the law. The Secretary and FDA have refused to acknowledge the danger of this product, refused to take action to protect American consumers. I am calling on Secretary Thompson today, and I will continue to call on him to take the action necessary to protect American consumers. There is absolutely no other recourse we can consider.

Is this a radical suggestion, that we would ban the sale of products containing ephedra? No, it is not. Let me be more specific. On January 9 of this year, Canada—the Canadian health authority, known as Health Canada—banned the sale of many of these products in Canada. Why? When we elicited testimony from them, from the consumer group in Canada, they said the evidence was compelling and overwhelming that these drugs, when sold as nutrition supplements, were killing Canadian citizens. So in January they banned the sale of the product, like Metabolife, in Canada.

Within weeks, the American Medical Association sent an appeal to the FDA to do exactly the same thing in the United States—ban the sale of these products to protect Americans. But nothing has been done.

Let me tell you something else that is curious. I don't know that this has ever happened in the history of this country. Over 20 different States have enacted their own State laws restricting the sale of products containing ephedra.

Think about that for a second. It is usually the Federal Government that shows the leadership when it comes to protecting people against dangerous drugs and substances sold. In this case, exactly the opposite is the case; the States have seen the adverse consequences, the States understand the danger, and the States are moving ahead of the Federal Government. How bad is this, that our States are leading when it comes to national health standards, and the Federal Government is silent? And why?

I think there are two reasons. First, this industry—the dietary supplementary industry—is a big political player. When I called for this hearing on ephedra products, and particularly Metabolife, to investigate these adverse event reports and the cases that were showing up in court, I will tell you this: In 20 years of service on Capitol Hill, I have never faced more political pressure in my life. I have taken on the big tobacco companies and other pretty big players. On this one, all of a sudden, my colleagues were saying: Dick, are you sure you want to have a hearing about Metabolife? Do you realize what a big political player they are and this industry is? Do you realize how good they have been to our party? Do you realize this person and that person is associated with them?

I thought to myself, what in the world have I gotten into here? What I thought was a common investigation has become a big political deal. I went ahead with it, and I am glad I did. Frankly, the evidence that came out of there was overwhelming.

Do you know that in exchanges at military bases across America, the Armed Services have banned the sale of these same products that are being sold in convenience stores, gas stations, and drugstores across America to children and unsuspecting people? There is a ban on military bases because they know that service men and women using them for energy, or to lose weight, have had terrible health consequences.

The evidence continues to mount. Incidentally, these are the same products that have been banned by major sports organizations. Athletes cannot take these products containing ephedra, legally, if they want to participate in the Olympics, or professional football or collegiate athletics.

So you have the accumulated evidence about the danger of this product, and our Government fails to act. Why? It is because of the political clout of this industry and, secondly, the bureaucracy. The bureaucracy in this town moves so slowly that, frankly, the American people should stand up and object in the most strenuous terms. To think we have waited some 8 years for regulations to come out of the FDA about dietary and nutritional supplements. To think that the people who want to sell Metabolife, or want to sell these Yellow Jackets, can put ingredients on the back of these bottles that, frankly, don't mean a thing to anybody—even a chemist, unless you are really into herbal medicine. Cola nut extract? What will that do? I guess it is loaded with caffeine, which with ephedra, is going to cause danger. And here is ginseng, so forth and so on. You can read these and you might say the average consumer would not have a clue as to what they are putting into their body.

Did I mention that in 1983 the FDA banned the sale of any combination of ephedrine and caffeine? You cannot buy an over-the-counter drug legally that contains ephedrine and caffeine. That has been the case for 19 years.

But do not worry you can still go out to the gas station and buy them as a dietary supplement such as Yellow Jackets or Metabolife. They have it all in there. How is that possible? We ban the sale of the product in drug stores, and yet we let it be sold to children in gas stations as dietary supplements. And that is a fact.

If you take a look at the number of organizations that have banned this, not just Canada, and not just the recommendation of the American Medical Association, and not just over 20 States that have restricted its sales, but major sports organizations, you come to the inescapable conclusion that this is a dangerous product, and yet it is sold to Americans. The Food and Drug Administration sits on its hands doing very little.

What is at issue, I am afraid, is now a growing philosophy that we hear from this administration of "let the market work this out." The market worked it out for Sean Riggins, a 16-year-old high school football player, who lost his life because the marketplace would not restrict the sale of the product.

Recently, I attended a high school reunion. I will not put on the record which one it was, but believe me, I am getting up there. I ran into a friend of mine who sells products in gas stations in California. I talked to him about these Yellow Jackets and ephedra. He said that is the biggest moneymaker in gas stations. It has a 100-percent markup.

He said: There is nothing else I sell in the gas station that is as profitable as these Yellow Jackets. There is nothing like it. This is a big winner. That is why we put it at the cash register.

I said: Are you worried about the impact this will have on kids?

He said: If this was dangerous, the Government would take it off the market.

We know it is dangerous, and this Government, under the Clinton administration, as well as under the Bush administration, has failed to take the necessary action to regulate the sale of this product to make certain this product is safe and effective for American consumers and if unsafe to take it off the market.

I call on Secretary Thompson today—and I will continue to—to take action to protect Americans. Do not allow another boy to die in another town in America. Do not let some unsuspecting 12, 13, 14 or 15-year-old lose his or her life because we failed to act, because we are cowered by the political muscle of groups like Metabolife because we are afraid we would somehow be meddling in the marketplace if we came in and told the consumers the truth about the danger of this drug and the fact it is not safe.

It is time for Secretary Thompson and the Food and Drug Administration to accept their responsibility. To do less is to endanger the lives of unsuspecting Americans. I call on those who are in the business of running drugstores, gas stations, and convenience stores to have a conscience.

Take these products from the front of the cash register and at least put them on the back counter, if not take them out completely. Make certain that kids cannot get their hands on them and misuse them; so they cannot get a buzz on them with the beer they managed to get their hands on or a caffeinated soda or cannot take them before a football game and end up dead like this poor young man in Lincoln, IL.

This is, I believe, a moral imperative. I am hopeful that those across America who understand how valuable the lives of our children are and how important it is for our Government to stand up and protect American citizens will do something and do it quickly.

I ask unanimous consent that the material to which I referred be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LOGAN COUNTY CORONER,
Lincoln, IL, October 9, 2002.

Hon. RICHARD DURBIN,
Dirkson Senate Building,
Washington, DC.

DEAR SENATOR DURBIN: It is with great pleasure and honor to have testified on the ill effects of Ephedrine, Yellow Jackets and their related cousins on October 8 at your committee hearing.

Your knowledge and presentation allowed the Riggins and myself to be more at ease, if that is possible, in telling Sean's story. Your genuine concern for your constituents championing a just cause even before our tragedy was very apparent.

After landing in Bloomington, Illinois we were made aware of the FDA's move on NVE by Peoria's Channel 31, and the Bloomington Pantagraph. We can only hope our message is received by parents, students, teammates, and the general public before another individual is stricken.

Your staff of Anne Marie Murphy, Joe Shoemaker, Brian and Erica were extremely helpful, courteous and professional. We can't thank you enough.

We held Sean's inquest at 3:00 p.m. today in Lincoln.

We will be ever vigilant on this cause. Please feel free to contact us if you ever need further statements.

Sincerely,

CHARLES W. FRICKE,
Logan County Coroner.
KEVIN AND DEBRA RIGGINS.

The PRESIDING OFFICER (Mrs. LINCOLN). The Senator from Alabama.

Mr. SESSIONS. Madam President, I think Senator DORGAN has left and will be returning. He was going to ask unanimous consent that he speak after I do. I believe he made a decision not to do that at this time.

TRIBUTE TO SENATOR JESSE HELMS

Mr. SESSIONS. Madam President, I rise to pay tribute to a great American and friend, Senator JESSE HELMS. I speak with mixed emotions. I am happy to see that after a long and distinguished career, he will have more time with his wife Dot, his beloved wife of 60 years, as well as enjoying time with his children and grandchildren, but I know a man of this nature and capacity is impossible to replace.

In the words of the Weekly Standard, Executive Editor Fred Barnes wrote not too long ago:

> His unflinching devotion to conservative principles has made him a powerful figure. He is oblivious to the buzz, the chatter, the gossip of the press and polls and the permanent establishment. He is totally inner directed. He cares little for details or process, but when someone clashes with his conservative views, he steps up no matter how unpopular that makes him. He wins some, he loses some, but he is always a player who can be reckoned with even when he is acting alone.

I remember one such occasion when Senator HELMS was acting alone in his outspoken criticism of the United Nations. He refused to approve payment of U.N. dues until their lavish, bloated, and unwieldy bureaucracy—actually corrupt bureaucracy—was reformed. It went on for some time.

They said he wanted to destroy the United Nations, and he said he wanted reform. As chairman of the Foreign Relations Committee, he was able to hold that legislation up, and he stayed firm. The mainstream media and activists chastised him. They tried to mock him, but he knew there were great problems at the U.N., and he would not give in until it was improved. It should be told that in the end, the United Nations gave in. Reforms that will make the United Nations a better, more honest, effective, and viable organization were passed, and the money was released.

I do not want to attempt to catalog Senator HELMS' accomplishments. His record speaks well to that. It is quite clear others have spoken of them in the last few days. People on both sides of the aisle have talked about his remarkable service in this Senate. It does seem to me that he has an unusual tenacity, an unusual commitment to principle.

Even when it might appear that he loses, sometimes he wins. For example, even though he was unable to block the Chemical Weapons Convention, which he did oppose, he did win 28 of the 33 concessions or amendments or changes in that treaty that he had asked for, making it a much better treaty in the end.

Senator HELMS' career, of course, should not be focused entirely on foreign policy, although he was a leader in that area. As an Eagle Scout myself, I really appreciated him standing up for the Boy Scouts. He was quite eloquent in these issues that came up several years ago.

In the article I mentioned earlier by Fred Barnes, it concludes by asking if JESSE HELMS can be replaced. Barnes' conclusion is similar to mine: That is a task that is "probably more than we can hope for."

I have tried to think about what makes him special, and here are a few thoughts of mine. Others may disagree. Maybe this Senator would disagree, but I believe his leaving this body is a significant event, and perhaps we should think about what has made him unique in his service.

First, I believe Senator HELMS is a provincial patriot. He really admired Margaret Thatcher. I have heard him talk about her. It was remarked that Margaret Thatcher was a provincial, that she was a daughter of a shop owner, and she had inculcated in her youth all the classical values of England. That is what we have in JESSE HELMS. He has never been a part of the urbane crowd, the radical sheik crowd. He knows it, and they know it. It galled them that he could not be intimidated by an editorial in the New York Times or the Washington Post or some such event.

He is a man of faith, a Baptist. He comes from the soil of North Carolina, and he is proud of it. He prefers the affection and commendation of those in his province over those in the great salons where the masters of the universe operate. In fact, he respects the people of his beloved State and deeply shares their values. That is what he fought for every day.

The cynical, rootless left, the politically correct, those without principles, those who do not believe in truth, those who do not comprehend the greatness of America were not for him.

Indeed, he saw them as the problem. And, at their core, these folks understood that, too. They knew his disagreement with their actions was deep and honest. Try as they might, it would not go away.

I think some may have hated him for it, but JESSE HELMS did not hate. He absolutely does not hate. He only wants to do the right thing for America because he values America over politics and because he is courageous in his stand for principle, and he often would not be moved. The left never understood it. Some thought he hated them, but he does not. He loved them. He loves America. He wants a better life for all Americans.

The truth is that Senator HELMS is the most kind and considerate person. His soft-spoken ways are known by all. His modesty and unassuming manner are plain for all to see. His wonderful wife Dot shares those same qualities and is loved by all who know her. He is a true Christian gentleman in the southern style—courtly, gracious, quick of wit, and firm in friendships. He is a most remarkable person, exceedingly intelligent, well read. No one here can turn a phrase better than JESSE HELMS.

When he has been wrong or slow to understand, he has admitted it. His conversion to advocacy for a much stronger role of the United States in the fight against AIDS in Africa is a very recent example. He even apologized for being slow to understand the moral significance of that tragedy in Africa.

Finally, the career of Senator HELMS cannot be discussed without remarking on the critical role he played in enabling the focus of democracy, free enterprise, and faith to triumph over the godless totalitarian forces of communism. He was a constant cold warrior. He saw the evil in the "evil empire," and his drive to overcome it never slackened. He was relentless, even when undergoing attacks from the so-called opinion leaders of America. It certainly was not those opinion leaders and pundits who won the cold war. They blew hot and cold—mostly cold—on U.S. policies. But the people in the provinces knew. They knew there could be no compromise with freedom and communism, and fortunately those people had a strong, able, and true voice in JESSE HELMS. He stayed the course. The Soviet Union collapsed.

There were many close calls in that struggle and many highlights in the battle of the cold war. One of those critical moments came when Senator HELMS came to believe in Ronald Reagan and his view of the role of the United States in this struggle. JESSE worked hard, at a critical point in Reagan's campaign, to produce a great victory in North Carolina that gave him the nomination and went on to allow him to be President. I have heard him speak about that moment.

Together, they persevered. The "evil empire" collapsed, and the victory was won. That was a partnership of no small note. It was a partnership of historic importance.

Senator HELMS, we appreciate you. You played a critical role in the struggle for freedom. We thank you for your courage and consistency. American freedom is in your debt, and we are obliged for your service.

I yield the floor.

TRIBUTE TO DEPARTING SENATORS

Mr. CORZINE. Madam President, I rise today to say a simple thank you to a number of my retiring colleagues, good people who have done good things to serve the citizens of their States but, more importantly, serve our Nation.

I particularly mention MAX CLELAND and JEAN CARNAHAN, who are exceptional and special people. They are heroic in their own way, as the term is truly defined. The courage and optimism they have shown in their lives strengthened mine. The grace they brought to their service in the Senate, to their States and the Nation, is truly remarkable.

MAX CLELAND does not need extensive description to know that he is a patriot, one who cares about America, worked hard to voice support for veterans and supports working people across this country.

I worked with him closely on the economic plans we thought would stimulate the economy. He is a remarkable winner. He came into New Jersey and helped me as I was a fledgling, aspiring Senator. He took me into worlds I had not known, and I truly will miss him, as will all of us in the Senate.

JEAN CARNAHAN is my desk mate on my right, No. 96 out of 100, me being 97. We sat together, laughed together, worked together, learned together. She showed me how to be a little bit better at being a Senator than I might otherwise be. She is an inspiration. In her own life, she dealt with tragedy and turned it into opportunity. A remarkable woman who truly cared about the people of Missouri and this Nation, she brought great grace to everything she did.

MAX CLELAND and JEAN CARNAHAN are an inspiration to the lives of all of us now and as we go forward. So I congratulate them in their service and celebrate their lives.

From a different perspective, less personal because I have worked less frequently with them and certainly have a different partisan perspective, but I commend their service and respectfully congratulate STROM THURMOND, BOB SMITH, JESSE HELMS, and TIM HUTCHINSON. They are remarkable people in their own right. Certainly, Strom Thurmond is someone with whom it is an honor to be in the Senate, to see the courage he brought every day to his service in the Senate while I was here, but to the Nation in general.

For years, BOB SMITH, his great leadership on the environment I saw firsthand as a member of the Environment and Public Works Committee.

I thank JESSE HELMS and TIM HUTCHINSON for their service. Each has been a major contributor to America's political life and the deliberations in this great body.

So, again, a simple thank you.

Finally, maybe most importantly, I want to say a few words about my colleague, my political mentor and my friend, BOB TORRICELLI. Let me begin by saying most certainly that, like Senator TORRICELLI himself, I was deeply disappointed in his admitted errors of judgment. The subsequent reprimand by the Ethics Committee was a most unfortunate blemish on a career and life of extraordinary service, certainly to the people of New Jersey and I believe to the Nation.

In the fullness of time, we all are judged not always by one event in our lives; we are judged by the complete contribution we make or we do not make. Senator TORRICELLI is one who has made many contributions to individuals, to my State, and to the Nation. It is remarkable, frankly, that his whole adult life has been dedicated to public service, stretching 20 years in elected office and probably 25, 26 years from his early days in college.

He was a part of the political environment and public service, starting as a deputy legislative counsel for New Jersey's Gov. Brendan Byrne—I think that actually means he was his driver—but he was an important part of one of the most successful administrations and leadership of the State of New Jersey. A great man, Governor Byrne, gave Senator TORRICELLI his start.

Then he worked in the Carter White House with Vice President Mondale as a senior staff person, one who was close to many of the important issues in foreign affairs and domestic policy on which the Vice President worked.

In 1982, he was elected to the House of Representatives and served there for 14 years, a strong, constant voice, a representative of New Jersey. He worked on matters relating to transportation systems, environmental issues, concerns about our educational system, public housing, all those things that make a big difference to the most densely populated State in the Nation—in the most densely populated county in our Nation.

Senator TORRICELLI built an unimpeachable career in the House of Representatives and used that as a platform to be elected to the Senate in 1996—always, always a tough fighter, tough elections, tough fighter for the issues he believed in, and particularly a tough fighter for New Jersey.

Together we have been able to have a very positive and constructive dialog with the White House, with five judges appointed to district courts, all as a package. This is a very important contribution to our judicial system, one where high-quality people agree to work. We were pleased to work together to respond to the tragedy of September 11 and the 691 families in New Jersey who lost a loved one, with regard to working on the funds, to assure tax deductibility for families was allowed, making sure the New York-New Jersey metropolitan region was properly or appropriately supported with financial resources. BOB TORRICELLI was a fighter for that.

He was a fighter for making sure we resisted domestic violence in the home, provided more housing for battered women, pushed to take guns away from wife beaters and child abusers, fought for middle-class tax relief.

Senator TORRICELLI and I did not always agree on some of the proposals. Some, we did. He certainly made a major contribution in our most recent tax relief proposal that the President and the Senate and others came to include, the college tuition tax deductibility, which he fought for, which was included, expanding deductions for student loans, a tax credit for lifetime loan. All these are major contributions that will live long beyond a term in the Senate.

He was a strong advocate for those suffering from Lou Gehrig's disease, eliminating restrictive Medicare rules with regard to that. On foreign relations issues, he was a constant and ever-present voice to make sure American foreign policy was broadly attentive to human rights and making sure America's interests were represented not only in meaningful defense terms but that we were involved in carrying a strong posture with regard to the values in which we believe in the Nation.

Finally, we cannot talk about Senator TORRICELLI's efforts without his strong political advocacy and representation of the need to make sure we have a strong two-party system in this country, with a voice, that ideas are openly debated, and the public has a choice. He certainly was most effective in leading the Democratic Senatorial Campaign Committee, but most importantly, in representing the view that we need to have a debate about ideas.

It is with a sad sense, from my perspective as a close friend and someone who cares about another human being, that I congratulate him on service and thank him for all he has done personally. But most importantly, for the people of New Jersey, the people of this country, I thank him for his service to all for those 27 years.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Madam President, I say to my colleague from New Jersey, that is the most appropriate way to speak with regard to our party colleagues, those two magical words understood by every American: Thank you. If I may, I take that as my keynote and, likewise, make a few comments.

UNANIMOUS AGREEMENT—H.R. 695

Mr. CORZINE. If the Senator will yield for a unanimous consent request, Madam President, I ask unanimous consent, notwithstanding passage of H.R. 695, it be in order for the Senate amendment to be corrected as follows: On page 57, line 9, insert a "$" before "10,000,000."

The PRESIDING OFFICER. Without objection, it is so ordered.

FAREWELL TO DEPARTING SENATORS

Mr. WARNER. Madam President, this is a moment we look upon with mixed emotions: Yes, thank you for the service of these wonderful men and women and sadness of their departure; but to have the opportunity to say a word or two about the legacy they leave.

This is the most extraordinary legislative body in the entire world. People have often asked me, When did you decide you were going to become a U.S. Senator or try for the Senate? I suppose I have never been able to give an adequate answer. But it is a privilege that few have. For those who do succeed, what a rich reward this service is. It has been for me, and I am now concluding my 24th year. In January, I will start a quarter of a century of service in the Senate. That hardly compares with my distinguished colleague from West Virginia, Mr. BYRD, who has been here these many years, but a quarter of a century is a good start. I am privileged now that my State has reelected me for a fifth term.

But it has been with the help of my family, my immediate family. I shared breakfast with my eldest daughter. We talked about the years I have been in public service and the opportunity I now have to continue in that public service. It has been a burden at times on the family but one which any family would do, as every family here of those privileged to serve in this Chamber look upon that as a great reward.

I start with those colleagues who have served with me on the Senate Armed Services Committee and with my dear friend, Senator THURMOND. I remember so well when I was Secretary of the Navy and I would come up before the Armed Services Committee at various times, of course, in connection with budget requests, but at other times I was called on the carpet pretty thoroughly by Senator THURMOND during the war in Vietnam. I served 5 years and 4 months as the Navy Secretary. He used to question me. As the hearing ended, he would pull me over and say: Why don't you think about coming to the Senate someday? I owe Senator THURMOND a debt of gratitude for instilling in me the thoughts that eventually led to my election to the Senate.

Senator THURMOND has touched every life with whom he has served in this Chamber these many years. He has touched mine very deeply. He was sort of like the older brother I never had. There is not a Senator here who, from time to time, does not quietly go and talk to the elder statesmen in the Senate about problems they have. I have certainly shared many conversations with Senator THURMOND.

Both sides of the aisle, Senator John Stennis, Senator Scoop Jackson, Senator Barry Goldwater—he sat right over here—Senator John Tower. It has been an enormous benefit to me to serve with, really, these giants of the Senate and those who served on the Armed Services Committee.

I was ranking on the committee for many years, and then, in a very courteous manner, Senator THURMOND came to me one day and said he really wanted to cap off his career serving as the head of the Armed Services Committee. So he succeeded me as ranking and then eventually became chairman of the committee.

Even though he had the title and I had stepped down as ranking and so forth, I worked with him very closely and learned a great deal. And still, this last moment, last night, after he delivered his memorable few final remarks to this body, we visited quietly together in the hallway.

Yes, STROM THURMOND, I thank you. I thank you for all you have done for me and for all you have done for America.

Tom Brokaw has written about the greatest generation, those who served in World War II. STROM THURMOND has had the most extraordinary of service. I remember one time he called me up and he said: John, the President has invited me to go with him to the D-Day beaches. It was the 40th anniversary. It was the thinking of President Reagan at that time, very wisely, that many of those veterans would not live to see the 50th anniversary. So Strom embarked for the beaches of Normandy on the 40th.

Howard Cannon, Democrat from Nevada, went with us. Howard Cannon had gone in on D-Day in a glider.

Lowell Weicker went with us. I remember his father had been Chief of the Air Force Intelligence, 8th Air Force, Army Air Corps. So there were just the four of us who went.

STROM THURMOND was assigned a helicopter right behind the President's helicopter and perhaps one with the Secret Service. We traveled up and down the Normandy beaches for 2 days, visiting almost every single site where our troops were involved. I just remember it so well. I remember one Member of the House of Representatives who joined us, beckoned to Senator THURMOND to come over, a Congressman from Florida. I will put his name in the RECORD.

He said: Look, STROM, I can see the indentation where I dug my foxhole.

Sure enough, there was the beach and an indentation was there. He was consumed with emotion; STROM likewise. I remember these two men embraced on that spot.

There were other veterans, many of them there, who had participated in D-Day. I always respectfully kept a distance, a pace or two behind STROM THURMOND, who was a Major General in the National Guard, as he was greeted warmly, and likewise shared moments, deep thought with those veterans who had been there on that historic moment in American history. How well I remember that trip.

How well I always remember STROM THURMOND and what he has done for America and what he did for this humble Senator. I served at the very end of World War II in the Navy, just in the training command, getting ready for our overseas assignments when, God bless America, the war ended. I was privileged to be a very minor part of the generation of STROM THURMOND.

Also on our committee was TIM HUTCHINSON. TIM was a fighter then. He is a fighter now. He stood over there on the floor last night, and we talked a bit together. His spirits are high. He lost in a tough, competitive race. But he reflected on those achievements he was able to provide for the men and women of the Armed Forces as the chairman of the personnel subcommittee, when I was chairman of the committee, and then as ranking.

Concurrent receipts is a very difficult issue, one that had to be addressed by the Congress. The distinguished Senator from Nevada, Senator REID, and Senator HUTCHINSON, Senator SMITH, BOB SMITH, also a Member of the Armed Services Committee—I will speak about him momentarily. Senator LEVIN and I joined that triumvirate and finally we had what I call a measure of success on that issue.

It seemed to be irresolvable, irresolvable for many years that the committee addressed this issue. But finally we established a beachhead and, while it is not satisfactory to all, it is nevertheless a beachhead for the first time in the history of the doctrine of concurrent receipts, which goes back 100 years. It is not easy to set aside 100 years of history to establish the beachhead we did.

Tim was in the forefront in that. He also joined in the leadership when we put TRICARE For Life through. Those who serve in the Armed Forces of the United States always remember some of the circumstances when they came in and all the promises that were made when putting on that uniform. Particularly those who became careerists and spent 20-plus years in, they always felt they were entitled to assisted care and medical care and treatment for themselves and their families, which they were, in large measure, promised through the years.

Put aside all of the legalities, nevertheless, to me it was a moral commitment of this country, to provide that care. TIM HUTCHINSON joined me. I was then chairman. We were able to put that into law such that that care now and for the indefinite future—so long as I am here, I will fight to preserve it—will be made available to those career individuals.

Pay raises—all types of things the personnel committee is responsible for; again, the GI bill and other things. But I conclude with TIM on one remark. The Commandant of the Marine Corps approached me the other day just to give me a little update. The retention, particularly in the officer corps of the United States Marine Corps, is at the highest it has ever been in living memory. That comes about through many factors but the principal factor is the knowledge and the feeling—whether it is in the Marine Corps, the Navy, the Army or the Air Force—that the Congress of the United States stands there to help these individuals, and just to treat them fairly with regard to their pay and benefits and the needs of their families.

TIM HUTCHINSON, I salute you. You did a marvelous job to care for the men and women of the Armed Forces.

We also had JEAN CARNAHAN serving on the committee. I remember so well that she fought hard for the FA–18, a modern naval aircraft. Here is this really extraordinary figure who bore the brunt of such tragedy, to quickly come to the Senate of the United States and assume not only the mantle of a Senator with the burdens of the office, under those tragic circumstances—I would say on her committee she performed very well. We were proud to have her.

She was very gentle, a bit soft-spoken, but tenacious. So I wish that member of our committee well as she departs.

MAX CLELAND: MAX also was on the personnel committee, chairman and ranking. MAX was a fighter. MAX bears the scars of war and those are the scars of really a tenacious fighter. He carried that same measure of courage and tenacity here to his duties in the Senate. He fought hard for the GI bill. He fought hard for the F–22. That is our modern high altitude fighter. It has gone through a lot of trials and tough times, but it looks as if it is going to make it. In the next 20 to 25 years, that aircraft, at those high altitudes, with the ability to interdict any aircraft comparable in the world and have distinct technological advantages, and hopefully pilot advantages—it can provide the security of the airspace for the other elements of our military below that airspace, whether they be on land or on the sea.

Those familiar with warfare know if you do not have the space secure, those beneath the airspace are in constant peril.

Thank you, MAX, for the GI bill, for end-strength adjustments. He recognized the stress being put on the men and women of the Armed Forces today and their families and deployment. He fought hard to see that those end strengths were in law, written such that the appropriate Chiefs of Staff and the other civilians in the Pentagon could make the adjustments necessary to better care for the men and women of the Armed Forces.

MAX also has a very special place in my heart because, as I mentioned earlier, I was privileged to be Under Secretary and Secretary of the Navy for 5 years during Vietnam. I visited Vietnam a number of times. I visited the aid stations where the wounded were brought straight from the field of battle.

It is hard for people to realize, but those of us who were in the Pentagon in charge of the military service during that period would sit down each week and write some weeks 50, 60, and some weeks hundreds of letters to the families who lost their loved ones in the battles of Vietnam. You don't forget that.

Each day that I was privileged to see this fine, strong American veteran brought back those memories for me in that period of history. As I look back on it now, it was a period where perhaps we should have seen earlier on in that conflict a different way to proceed to try to preserve the integrity of the Government of South Vietnam before it fell. But that I will save for another day.

MAX, I wish you well.

Of course, MAX did another thing to this old Senator from Virginia. He announced last night that he was going to get married. I think that leaves me now as the only bachelor in the Senate. FRED THOMPSON, of whom I will speak now, bailed out on me. And now MAX has bailed out on me. I am all alone in that category.

FRED THOMPSON: I remember there was a very successful advertisement years ago. I can't remember it clearly, but it sort of characterizes FRED THOMPSON. When he speaks, people listen. This is a man who has a remarkable presence—not only a commanding physical presence but an equally commanding strength of mind. And when he spoke, we listened, whether it was here on the floor or within our caucuses or listening to his speeches or when presiding over the Government Operations Committee. People listened reverently as Senator THOMPSON spoke.

He also had a remarkable sense of humility. Those who have traveled through the Hollywood scene—some of which I have known in my lifetime—often do not have a sense of humility. But FRED has. His capstone, I suppose, was last night when I believe the vote was 90 to 7 for the homeland defense bill about which he felt very strongly.

I think America will look back, and hopefully will look at a successful piece of legislation to add to the bastion of defenses with which we must now defend this Nation.

FRED, we thank you for your work on that and wish you well with your young bride.

PHIL GRAMM: Few people realize it, but when we passed new highway trust fund legislation some years ago in 1996, I was privileged at that time to be chairman of the subcommittee of the Environment and Public Works Committee that was charged with the principal responsibility of drafting the provisions of that historic piece of legislation which enabled each and every State to get a minimum of 90 cents return on those tax dollars paid by citizens of those States and visitors when they pumped a gallon of gas.

We had a very inequitable and unfair system of donor States and donee States. The State of Virginia was a donor in that we only got 78 or 79 cents back, and the remainder of the Virginia drivers' Federal taxes went to other States. There were some other States such as Massachusetts that got over a dollar, for what reason I have never been clear on. But PHIL went back and examined the tax structures supporting the highway trust fund.

President Clinton had put another 5-cent tax on and split it between the highway trust fund and the general trust fund. PHIL, as a member of the Finance Committee, got that reversed. All 5 cents went to the highway trust fund. Otherwise, the 50 States—I emphasize that—50 States could not have gotten a substantial increase in those dollars necessary for roads and bridges and other infrastructure measures to facilitate transportation.

That, to me, is one of Phil's most significant accomplishments. He worked with us on the Environment and Public Works Committee and the transportation committees of the House and Senate to ensure that America got an equal and fair distribution of those highway trust fund moneys.

Of course, PHIL will always be remembered for his wit and for his wisdom—brilliant in both but equally controllable in both of those attributes. I say they are attributes. He is ever quick with the turn of a phrase, or a very insightful path to take to resolve a problem. Many times he stood up in our caucus to say this is a piece of legislation which I believe should take this course, and our leadership often followed that advice.

We will miss you, PHIL. But we will remember you, and we will remember you, as you say, with love and affection. Those are the words that he used so often. Of course, he, along with FRED THOMPSON, was one of the principal architects of the homeland defense bill. And I am confident that will in due course be a landmark piece of legislation that will serve this country well.

Lastly, I speak of my colleague BOB SMITH. BOB and I are friends based on our loyalty and indebtedness to the U.S. Navy. BOB's father was a very distinguished Naval officer in World War II. He fought in the Navy, and he fought through a number of combat situations in the Pacific to come home. And then his extraordinary capabilities in aviation enabled him to become a test pilot. That is sort of the ultimate desire of aviators—to become a test pilot to begin to push the frontiers of aviation and develop those aircraft for successive generations to combat the enemies that are lurking against this country.

BOB's father had not been home from World War II but a few months when he was testing a plane that malfunctioned and he lost his life. BOB was robbed of his father at a very early age. He carried that thought with him—as he does today—with complete reverence to what his father did in the Navy. BOB served in the Navy himself during Vietnam. So the Navy has a very strong bond between us.

I remember when he fought so hard right here on the floor—originally, I didn't think it was a good idea, but I eventually decided to join him in going back to reexamine the circumstances of the USS *Indianapolis*. That was a remarkable chapter in Naval history. It was a magnificent heavy cruiser. It was the last ship sunk by enemy action. I could be wrong on some minor vessels, but the last capital ship sunk by an enemy action. A Japanese submarine sank that ship as it was making its way back to the Pacific theater to take up its position once again. It had been out there earlier in the Pacific. This was another tour, positioned with our fleet, when, in moonlight—the captain was asleep—that ship took a torpedo and went down.

A great many of the crew were lost when she went down. But a number survived and floated aimlessly in the oceans, suffering from the deprivation of water and intense sunlight. Sharks actually came in and physically devoured and maimed a number of those crewmen.

The Navy search for that ship will always be one of controversy, but eventually a destroyer came alongside and found them.

I remember very well an officer on that destroyer was a proud Virginian, Graham Claytor, who eventually became Secretary of the Navy. He followed me by a few years in the Navy secretariat. And he told me, firsthand, about the appalling sight of those men who had been at sea some several days, suffering extraordinary deprivation.

The captain was held accountable, court-martialed, and although it dwindled off in a certain way—it pretty well drummed up—BOB felt that the captain had not received the full measure of justice to which he was entitled. He fought on the floor of the Senate, and eventually the Senate voted to, in large measure, restore—although the captain was long since dead—the equities, the recognition that he is entitled to for his heroism on that ship.

So to this sailor, to this Vietnam veteran, who is so proud of the Navy, and who fought so hard when he was chairman of the Strategic Subcommittee in the Senate on missile defense—BOB, to this day, feels very strongly, as do I, to have this Nation have a workable, early deployable, limited missile defense system. BOB fought hard for that.

Every Senator cherishes the opportunity to provide for their State's National Park Systems.

FRANK, I thank you for helping me, over your many years in the Senate, to make additions to Virginia's Park System.

In particular, those initiatives, some of first legal impression, to make private land available for viewing and study by the ever growing number of visitors interested in the civil war.

Thank you, FRANK, for also being a "Paul Revere" on the need for a national energy policy and the increasing need to free America from the bondage of reliance on imported energy.

We wish you and your wife good fortune as you are "elevated" to the Governorship of Alaska.

So I again summarize simply by saying to my colleagues, thank you for all you did for this humble Member of the Senate. I wish each of you well in your next chapter of distinguished careers. We shall remember you here, one and all, in the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I know that there is another Senator here, the Senator from North Dakota, who wishes to get recognition. I was told the Senator from Maine wished to get recognition, Senator COLLINS. She is not here?

I will not detain my colleague from North Dakota long. And I did not say I would, but I certainly meant to—I think of gentlemen as being very special people, and I intended, as a gentleman, to yield to the lady from Maine first.

Mr. DORGAN. Madam President, will the Senator from West Virginia yield?

Mr. BYRD. Yes.

WISHING SENATOR ROBERT C. BYRD A HAPPY 85TH BIRTHDAY

Mr. DORGAN. Madam President, let me observe, if no one has, as of yet, it is the 85th birthday today of our colleague from West Virginia, Senator BYRD.

I gave him a note a few moments ago, not only wishing him a happy birthday but, on this last day of this Congress, saying to him how much all of us appreciate the fact he has given so many years of public service to our country.

I pointed out—if I might just continue for a moment—in a note to him that as I read the book about John Adams by David McCullough, John Adams seemed, as they were trying to create this country, to write to Abigail, plaintively asking: Where will the leadership come from? Who will emerge as the leaders of our great country?

As they put this country together, of course, the leaders were there. John Adams said: There is only us—George Washington, Mason, Madison, Ben Franklin, and so on.

For over 2 centuries, the question before this democracy has been: Where will the leadership come from? Where will the leadership emerge? This country has been enormously blessed by having leaders emerge throughout its history. A significant part of that history here in the Senate has been blessed with the leadership of one Senator ROBERT BYRD. So today, on his 85th birthday, let me join his colleagues in wishing him, on behalf of a grateful Nation, a hearty, happy 85th birthday, and many more.

Mr. WARNER. Madam President, will the Senator yield so I can join in those well-deserved accolades?

Mr. BYRD. Madam President, I yield to the Senator from Virginia.

Mr. WARNER. I thank my colleague.

Madam President, I am very heartened by that news of the Senator's 85th birthday. I proudly have attained 75, and I am hopeful I can someday stand here at 85, to not just stand but pursue my duties as a Senator, if that case may be, with just half the vigor and strength of mind as displayed by our esteemed colleague from West Virginia, for whom I share the greatest affection, as he well knows.

We have adjoining States. There is a little line drawn between certain areas which at one time was all Virginia. Nevertheless, we have people so much alike in their needs. I often work with my colleague to meet those needs. I thank him very much for this opportunity.

I thank my colleague and wish him well, he and his lovely wife.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I deeply thank my colleague from North Dakota for bringing this matter to the attention of the Senate. I thank my friend from Virginia for what he has just said.

With respect to my birthday, I shall have more to say about that later. But let me say, at this moment, I have listened to the distinguished Senator from Virginia extol the virtues of Senators who are leaving.

The Senator from Virginia is a gentleman. I have always felt that of him. Being from the State of Virginia, he certainly exemplifies that title: A gentleman. I have always thought that about most men from Virginia.

Let me say, with reference to something that the distinguished Senator from Virginia said a moment ago—he spoke, I believe, about his daughter. He spoke glowingly about his daughter. That struck a note in my memory.

It was on July 11, 1804, that a duel took place at Weehawken, NJ—a most fateful duel at a time in our history when many fateful duels were fought.

On this occasion, Alexander Hamilton, who was only 30 years of age at the time of the Philadelphia Convention—the Constitutional Convention, in which he, Alexander Hamilton, took part—he was only 30 at that time. Madison was 36. Franklin was 81. Jonathan Dayton, whose relative, whose kinsman, sits from time to time in that chair before the Senate—the kinsman of whom I am thinking is named MARK DAYTON, a Senator from the State of Minnesota—that kinsman of MARK DAYTON was named Jonathan Dayton. He was the youngest man at the Convention, 26 years of age, Charles Pinckney of South Carolina was 28 or 29. But Dayton was the youngest man at the Convention. Hamilton was 30.

Hamilton sat at that Convention. Hamilton went on to fight this terrible duel, and he was mortally wounded in that duel on July 11, one week following July 4. In that day and time there were no anaesthetics; the marvels of medicine had not come along as we know them. Of course, Harvey, that great Englishman, had discovered the circulation of the blood. He had discovered how the blood circulates through the veins and arteries. That was his theory.

But now back to this awful night of July 11. There with his seven children about his bed and his weeping wife, the little children weeping throughout that awful night of pain when the blood from the wound gathered in his stomach. There he lay. The next day, that great man Hamilton died, on July 12.

The man who was the Vice President of the United States, Aaron Burr, was the man who won that duel—Aaron Burr, Vice President of the United States. I have often referred to him as the great enigma, Aaron Burr.

I remember he said when he left the Senate, when he walked out of the door of the Old Senate Chamber, down the hall here, for the last time, he said to his fellow Senators: This house is a sanctuary, a citadel of law, of order, and of liberty. And it is here, it is here, here if anywhere, in this exalted refuge will resistance be made to the storms of political frenzy and the silent arts of corruption. And if the Constitution be destined ever to be at the sacrilegious hands of the demagogue or the usurper, it will be witnessed on this floor—meaning the death of the Constitution—if it be destined ever to succumb to the sacrilegious hands of the demagogue or the usurper, may God avert, its expiring agonies will be witnessed on this floor.

Now, why do I refer to Aaron Burr at this moment? Aaron Burr had a daughter. And the Virginia Senator's words about his daughter brought this to my mind. Aaron Burr had a daughter. Aaron Burr went on to go over to West Virginia to connive with an Irishman over there who lived in the area of Parkersburg. The Irishman's name was Blennerhassett. There is an island over there named Blennerhassett Island. And Aaron Burr talked with Blennerhassett, this wealthy Irishman, about setting up an empire in the Southwest.

In any event, Aaron Burr was arrested and brought to trial. And Thomas Jefferson, his mortal enemy, had a great deal to do with that trial. But that is a bit here and a bit there.

What I am remembering especially about Aaron Burr is he had a daughter. Here was this man who had killed Alexander Hamilton. He was a murderer. He intended to kill; no doubt in anybody's mind, he meant to kill Hamilton. Hamilton did not intend to shoot to kill in that duel. Hamilton intended, it is widely believed, to fire into the air, not to kill Burr. But Burr intended to kill, and Burr did kill Alexander Hamilton.

We look at that dark side of Aaron Burr, this enigmatic brilliant man, Vice President of the United States, that dark side of this mysterious man. But there was a good side to this man. He fairly worshipped this daughter, Theodosia. And she loved her father very deeply. And upon this particular occasion, she left Georgia in a boat or a ship, and there was Aaron Burr, expecting her to arrive, looking forward to her arrival, loving this daughter as he did. She never arrived.

The ship encountered a storm and was never heard of again. And so died Theodosia, the daughter of Aaron Burr. And Aaron Burr, after that dreadful happening, this man who had killed Alexander Hamilton, one of the great founders of this country, Aaron Burr for years would go down to the seashore and stand for hours looking out upon the sad and solemn sea, seemingly to be looking for that ship that never came in, the ship that was carrying his daughter. He stood and looked out on the sea. When Aaron Burr came to his last days on this Earth, he, while lying in his bed, positioned himself so that he could see there on the wall in front of him a picture of that daughter, Theodosia.

When the streams of early sunlight first entered into his room, there was Theodosia in front of Aaron Burr, that loving father. When the shades of night had fallen and night, with her sabled robes, had closed the light of day for the last moment, he could see in the dim light the picture of that daughter, Theodosia.

Well, that was a side of Aaron Burr that not many people know about. A good many years ago, I went to the Library of Congress and went to the rare books section and sought out this bit of material because I was researching the life of Aaron Burr. I had intended to put such a chapter into my "History of the Senate, 1789–1989." I intended to put a chapter on Aaron Burr, the great enigma, in that book.

There were two chapters I wrote that I never put into the book. That was one. The other was about two great West Virginia Senators, Senator John Kenna—it is a very interesting story about John Kenna and what he had to do with the location of the Capitol in Charleston. I will not tell that today. The other great Senator from West Virginia I wrote about was Henry Hatfield, a Republican. So I wrote about one Democrat and one Republican.

In writing those chapters, I went into the rare books section of the Library of Congress, and among those tomes I fished out this story, and many more, about Aaron Burr. It was there that I discovered that this man with such an evil, mean spirit, with the lust to kill Alexander Hamilton, because he hated Hamilton—he challenged this man whom he hated to a duel, and Hamilton, being a man of honor, charged Burr with having said things concerning the honor and patriotism of Burr. In those days, they fought duels about honor.

How many men in this Chamber would die today for honor? Well, in those days they did.

The thing I want to say again is, here was this man, this evil spirit. I can envision his lying awake at night thinking of how he would like to kill Alexander Hamilton—and he did kill him. But there was another side to Burr—a very tender, loving side. He loved his daughter Theodosia.

So the Senator from Virginia, when he spoke of his daughter—I have two daughters also, but when he spoke of his daughter, it reminded me of Aaron Burr, that great enigma, and how he, too, had a daughter he loved and treasured.

Mr. WARNER. Will the Senator yield?

Mr. BYRD. Yes.

Mr. WARNER. I enjoyed that story. I have a great and abiding love for my eldest daughter. I think at that point, I depart from the background of Aaron Burr and his other features, but I would not suggest in any way that you were drawing an analogy. I found the story fascinating.

Mr. BYRD. Mr. President, that is a given. What the Senator talked about the love for his daughter, that is a given. I wasn't attempting to connect the Senator from Virginia with Aaron Burr in that respect. The Senator spoke of his daughter, and it awakened memories in my own mind. Burr was a great man, a brilliant man, Vice President of the United States. He killed one of the Founders of this Republic of ours—not this democracy, but this Republic. And he meant to kill him. In those days, they fought duels to kill.

Well, enough about dueling.

(Mr. BARKLEY assumed the Chair.)

Mr. DASCHLE. Will the Senator from West Virginia yield for a moment?

Mr. BYRD. Yes.

Mr. DASCHLE. Mr. President, I was watching the monitor in my office and noted that Senator BYRD was speaking. Senator REID and I noted as we were watching on television that while the Senator from West Virginia celebrates his 85th birthday, he looks today like a man 25 years younger than 85. He looks youthful, vibrant, and rested. We all remarked as to how it would be possible for him to look as good as he does after the weeks he has had, the hours he has spent on this floor. He has regaled us with yet another story and has reminded us that, while on birthdays it is commonplace in our country and traditional to give gifts to those who are celebrating, it is another reminder of what a gift he is to us. He is a treasure, and we love him for so many reasons, but we especially acknowledge that treasure on this day, given his physical appearance, his eloquence, and his lessons from history. I thank him for that.

Mr. BYRD. Mr. President, I am grateful indeed for these encomiums being said by my colleagues. I deeply appreciate what the distinguished majority leader has just said. I appreciate his friendship on this day and the friendship of so many of my colleagues. I shall always treasure the words he has spoken on this day.

Oh, to be 70 again. The Lord has blessed me. I see his blessing in each of us. He has blessed me extraordinarily. Plato thanked the gods for his being a man. He also thanked the gods for his being a Greek. And he thanked the gods for having permitted him to live in the age of Sophocles. Well, I thank God on this day for what he has given to me. And I don't deserve it. I don't deserve the things God has given to me.

But for God, but for Him and his gracious mercy, I could have been in a penitentiary today; I could have been dead today many times over. It was a mother's wish that I be given to the wonderful couple who raised me. That mother died on the night of Armistice Day, November 11, 1918. I was just a week short of being a year old.

To go on, I thank God for a wife of more than 65 years. I am trying to think of a great Greek. The name starts with an A. He was a great orator. It was not Aristides. It was a very common name in ancient history, but when he in a speech could not think of the right word, he paused until the right word came to his mind. He paused.

He was not like today's speakers, many of whom when they cannot think of a right word they say: You know, you know, you know. That is a mind that is not in sync with the tongue—you know, you know, you know. Not this man, a great—Alcibiades. No. Anyhow, I thank God for having spared my life on many occasions and for giving me the opportunity to serve in this body.

I say to the distinguished Senator in the Chair, who has been here only a few days and who will be with us but a few days more, I could go home today, and I could write a letter to the Disbursing Office and say I am retiring tomorrow. I doubt that I would know the difference in my check that I get every month, twice a month. I doubt that I would know the difference between that check after I had gone home and sat down with my wife of 65 years, who is probably worrying, and in some manner of thinking that is where I ought to be, but I would get practically the same amount of money I would receive as a Senator. So I am not here today for my payroll, and I probably could earn much more money not being Senator or go on some board or be a lobbyist, if I ever deign to be one. I could probably get a lot more money. I do have grandchildren, and my wife and I have great-grandchildren. I probably ought to try to leave them as much money as I can leave them. But that has never been my desire. Wealth has never been a goal of mine.

My only goal is to serve this country, and I have been here 50 years come this January 3. Having studied the history of the Romans, the Greeks, the Persians, the people of the British Isles, and our own colonial forebears, my roots of love and admiration and respect for this country's Constitution, this country's history, colonial history, our forebears is so deep with me. That is why I am here.

I want to say that in the vote last evening, of which we had nine votes—who saw the same thing as I saw at the end—I saw on TV this morning that four of those nine were the oldest in seniority Members of the Senate: BYRD, KENNEDY, HOLLINGS, and INOUYE, the four oldest and senior. PAUL SARBANES, our dear friend from Maryland among the nine, but these are the four senior Democrats, and they voted as I did.

Do you think we collaborated about that? Does the Chair think—I am not asking for an answer; the Chair cannot respond—but does the Chair for a moment think that these nine Senators talked ahead of the vote and said: Will you vote this way? I am going to vote this way. I hope you will vote this way. How are you going to vote? Never a word. I never knew who those Senators were going to be and did not know who they were until after the vote.

I say that to say this: I serve here because I want to serve here and because the people of West Virginia want me to serve. They do not all agree with me. I do not seek to curry favor at home or here. But I do what I think best, and I like that Constitution. I want to compliment, I want to express my deep appreciation to those other eight Senators on this side of the aisle, one of them an Independent, JIM JEFFORDS of Vermont. These men gave up something when they did that. They are going to meet that vote down the road probably one day when they run for reelection.

Did it deter them? No, not for a moment. Nor did they do it because I asked them to do it. I would not have had the temerity to ask them to do it. I would have no business asking them to do that. I spoke my mind, they spoke theirs, and they voted their way.

Some of the Senators came to me afterward and while the vote was going on and said: Senator, I have been with you down to this point, but I am going to vote for this bill. They were kind enough—they did not have to do that. They did not have to come to me and tell me they were going to vote that way.

I had them come right here to me and say: Senator, I am going to leave you on this one. I have been with you thus far, but looking at the overall picture, I am going to vote the other way.

It was nice of them to do that. I thought it showed a tremendous respect for my viewpoint, and they did it on their own. They did not owe me anything. They did not need to tell me how they were going to vote. But how good of them to come to me and say: I am going to vote the other way.

Does the Senator from North Dakota wish to speak again? I will be happy to yield. I have said about everything I want to say.

I am going to yield the floor now, but I just want to pay homage to these other eight Senators. I am sure it was more difficult for any one of them to vote against the homeland security bill than it was for me because I cut this out in the beginning. I saw where it was going. I was determined not to be for this kind of thing because it was shifting power from the legislative branch to the executive branch. I am not for that. I was not at the beginning when I first said we ought to have a Department of Homeland Security.

That was the course I took. If it meant standing alone, that was all right. I did not mind being the only vote against it. But I never did it with any thought that my speeches would change anybody's mind. That was not it.

Why did I speak that way, knowing that this was almost a foregone conclusion? Not because I was trying to convince any of my colleagues or believing that my speeches would. I spoke for my grandchildren, for my grandchildren's grandchildren, and for future Senators who will be in this body. The record that was made will be a record until the crack of doom, be it 1,000 years, 10,000 years, or a million. If this Republic still exists, those words will be there. That is not my words so much that count, but these were words in support of the Constitution of the United States and of the institution of the Senate. That was my total feeling.

I was well rewarded, exceedingly well rewarded, with the supporting votes of eight other Senators, and the supporting thoughts and words of Senators on this side even beyond that. So I was well paid. I pay homage to these Senators who stood on their feet and reached this conclusion themselves.

I yield the floor.

Mr. SARBANES. Mr. President, I know the able Senator from North Dakota has been waiting, but I want to take a moment, with his indulgence.

I take this opportunity to wish the very able and distinguished Senator from West Virginia, and my good friend, ROBERT C. BYRD, a very happy birthday. There is no doubt that this institution is a better and stronger place because of not only his presence but his leadership and influence in helping to shape the Senate over decades. We are all enormously appreciative and grateful to him for that.

He carries the Constitution in his pocket. He understands the constitutional structure of our Nation and the role of the Senate within that constitutional structure. I have always greatly admired the fact that he is what I would call a constitutionalist. He understands that we have to have strong institutions in order to make representative democracy work. Without those strong institutions, we are in great danger of losing our liberties and the balance that has served this Republic so well for more than two centuries. I join my colleagues and pay respect to him today on his birthday.

In today's New York Times, there is a wonderful story about the distinguished Senator. I ask unanimous consent that the article be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SARBANES. It is headlined: "Byrd, at 85, Fills the Forum With Romans and Wrath."

They should have gone on and added one other thing. They should have said "and wisdom," because that is exactly what he has provided to all of us. We are appreciative to him for it, and we wish him a happy birthday, and many more.

Mr. REID. Will the Senator yield?

Mr. BYRD. Mr. President, before the distinguished Democratic whip speaks, I feel I must say this, and I must say it now, right at this point. Here is a true son of Athens. This is a true son of Sophocles, and Socrates and Plato and, yes, one more. I had it on my tongue just a moment ago. Not Alcibiades, but a man whose name I was trying to think of earlier. It came to me while the Senator was speaking. I am sorry because this really is ruined by what I wanted to say. That great Greek who left Athens and who went to the—what was that other part of Greece that had the emphasis always on——

Mr. REID. Sparta?

Mr. BYRD. Yes, went to Sparta. He went to Sparta. But anyhow, I just wanted to make reference to that and how this man who has been here—we have worked together so long, and now he said these things. I keep being bothered in what I am saying. I am trying to come up with the name. It will come to me.

Mr. REID. Make one up. We would not know the difference anyway.

Mr. BYRD. I thank the Senator from Maryland.

Mr. REID. I asked the Senator to yield because I wanted to, through the Chair, mention a word about you.

Mr. BYRD. The name that keeps bothering me is Aristides. But this was Alcibiades. He was a great speaker, and when he could not think of a word, he paused. He just stopped. He did not say, "you know, you know," or, "ah, oh, ah, you know, ah, you know." He paused.

I thank the distinguished Senator from Maryland very much.

Mr. SARBANES. I thank the Senator.

Mr. REID. Through the Chair, I wish Senator BYRD happy birthday. But I also want to say the Senator from Maryland, as we all know, is a Rhodes scholar. Being a Rhodes scholar is a tremendous distinction. Those of us who work with the Senator from Maryland know he deserved that academic opportunity, and certainly he has fulfilled anything that they thought could be done or should be done, and he is still doing such great things.

I am not a Rhodes scholar. I am a Byrd scholar. I have been trained for 20 years being a Byrd scholar. I have so far to go. I do not know many of the Greek names. I have listened intently to the speeches given on this Senate floor on the fall of the Roman Empire. As my distinguished friend knows, a professor who has since retired taught a course at the University of Nevada at Las Vegas on the Byrd speeches dealing with the Roman Empire. I have picked up a few traits from the Senator from West Virginia. I have my Constitution with me every day.

I have had a wonderful life, but this life has been made so much more full as a result of having become a Byrd scholar.

EXHIBIT 1

[From the New York Times, Nov. 20, 2002]

BYRD, AT 85, FILLS THE FORUM WITH ROMANS AND WRATH

(By John Tierney)

WASHINGTON, NOV. 19.—As his colleagues hurriedly tried to give the president a domestic security bill. Senator Robert C. Byrd took the floor this morning to tell them of a "truly great" senator from the first century A.D. named Helvidius Priscus. One day this Roman was met outside the senate by the emperor Vespasian, who threatened to execute him if he spoke too freely.

"And so both did their parts," Mr. Byrd said. "Helvidius Priscus spoke his mind; the emperor Vespasian killed him. In this effeminate age it is instructive to read of courage. There are members of the U.S. Senate and House who are terrified apparently if the president of the United States tells them, urges them, to vote a certain way that may be against their belief."

Mr Byrd, of course, is not one of those timid souls, and his recent speeches have been extraordinary even for the maestro of senatorial rhetoric, who turns 85 on Wednesday. While his colleagues have debated the fine points of the domestic security bill, he has been virtually alone in asking the larger question: Why is this new department suddenly so necessary? What will the largest and hastiest reorganization of the federal government in half a century do besides allow politicians to claim instant credit for fighting terrorism?

"This mon-stros-ity," Mr. Byrd has been calling the bill, repeatedly lifting its 484 pages above his head with trembling hands and flinging them down on his desk with the fury of Moses smashing the tablets. Mr. Byrd used to be known less for his distaste of federal bureaucracy than for his love of federal aid—he once vowed to be West Virginia's "billion-dollar industry," while his critics crowned him the "prince of pork." But now he is riffing against big government.

"Osama bin Laden is still alive and plotting more attacks while we play bureaucratic shuffle-board," Mr. Byrd told the Senate. "With a battle plan like the Bush administration is proposing, instead of crossing the Delaware River to capture the Hessian soldiers on Christmas Day, George Washington would have stayed on his side of the river and built a bureaucracy." Mr. Byrd imagined Nathan Hall declaring, "I have but one life to lose for my bureaucracy," and Commodore Oliver Perry hoisting a flag on his ship with the rallying cry, "Don't give up the bureaucracy!"

It would not be strictly accurate to say that Mr. Byrd's speeches have fallen on deaf ears in the Senate, since the chamber was mostly empty when he spoke. But thanks to C-Span, his recent oratory has won this traditional Democrat new allies across the political spectrum—from Barbra Streisand to Phyllis Schlafly, according to the letters his office has received. While liberals have hailed his opposition to the president on Iraq, which generated more than 50,000 letters, conservatives have joined him in warning of a threat to privacy from the domestic security bill.

As he was waiting to speak on the floor yet again this afternoon, Mr. Byrd sat in his office and marveled at the rush to pass the bill.

"That Department of Homeland Security will not add one whit of security in the near future to the American people," he said. "In the meantime, the terrorists are going to be very busy. I'm concerned that in our drive to focus on the war in Iraq and the Department of Homeland Security, we're going to be taking our eyes off what the terrorists may do to us."

Mr. Byrd advocated slowly creating the department, with Congress overseeing the process, and he pulled out the ever-present copy of the Constitution from his breast pocket to make his point. "We're being recreant in turning over to this president the power shift that is included in that bill," he said.

One Democrat senator who voted for the domestic security department said he and his colleagues were exasperated by Mr. Byrd's delaying tactics on this and other measures.

"More and more of our members feel he's dragging it on and on ad infinitum, which is not necessary," that senator said. "Make your point. Have a vote. And move on. He's not willing to do that. He's from a different school. At some point you have to say, 'Enough is enough.'"

That senator, acknowledging that Mr. Byrd is a powerful colleague, declined to be named publicly, saying, "I'll get killed."

Mr. Byrd's long speeches have irritated some of his colleagues anxious to adjourn, but he has his defenders even across the aisle.

"I don't happen to agree with Senator Byrd's position on homeland security, but he deserves to be heard," said Senator Chuck Hagel, Republican of Nebraska. "Some senators think we ought to be on a bus schedule, but I don't have any sympathy for people whining about being delayed. This is our job. I agree with Senator Byrd that we sometimes need to spend more time considering issues as important as this."

Mr. Byrd, who will celebrate his 50th anniversary in Congress in January, said he had no illusions that his oratory was going to change the outcome of the final vote. So why was he on the floor day after day? What was he accomplishing?

"To me, that question misses the point, with all due respect to you for asking it," he said. "To me, that matter is there for a thousand years in the record. I stood for the Constitution. I stood for the institution. If it isn't heard today, there'll be some future member who will come through and will comb these tomes."

* * *

END OF THE 107TH CONGRESS

Mr. DORGAN. Mr. President, I come to offer a few remarks today about the end of this legislative session. But of course, as is always the case when I have an opportunity to sit in this Chamber and listen to my colleague, Senator BYRD, I learn a great deal, and it is always a joy to do so.

I am going to be very brief. I have to make a speech to a convention at a hotel near the Capitol in a few minutes, but I did want to say at the end of this session, and especially after the election of this year, something about what I believe is ahead of us.

We have just gone through an election. That is the exercise that the late Claude Pepper used to describe as the miracle in the U.S. Constitution. He said every second year our Constitution provides that the American people are able to grab the steering wheel of this country and decide which way to nudge our country, which direction to provide America. So that is what the elections are about.

This election is described by some in the press as dispiriting and disquieting to those of us on the Democratic side of the aisle. To me, it is not dispiriting or disquieting. I wish the election had gone differently, but over two centuries we have elections that change and move and in other ways affect this democratic system of ours—this system of democracy, I should say—and I accept the election. The election described a government by the American people as a government that is very divided. The House of Representatives they chose is about 51 percent Republican, 49 percent Democrat. The Senate they have chosen is about 51 Republican, 49 Democrat. Of course, there is a special election in Louisiana in December that may alter that.

The point is the American people have chosen a very closely divided government. That is not dispiriting to me at all.

We are able, those who come to this passion and this public calling, to look ahead to great challenges in our country and understand with the President and with the cooperation of Democrats and Republicans, we have to work together to meet these challenges. The change in the Senate from a Democratic majority to a Republican majority is not much of a change, after all, because it simply moves a couple of seats around. It is now 51 to 49 instead of 50 to 49 to 1.

The fact is, in order to get things done to meet the challenges we face in America, we must find ways to work together. The art of this democracy working is through compromise. There are some who come here and decide to say, here is what I believe and I will not move from that point in the compass. I will not accept anything less than that which I believe today, on Wednesday.

That is not the way to get things done. We will be best served as we meet significant challenges ahead if we, the President and all in the Senate, understand we serve the same master; that is, the American people. And we want for this country the same thing: To do well, to grow, to prosper, to be safe, to be secure.

Much of the agenda we work on, especially on the Democratic side of the aisle, is an agenda that is almost timeless, the things people sit at the supper table in the evening and talk about, as they have supper together as a family. These are the things we have worked on for decades. Questions that a family asks: Do I have a good job? Does dad or mom have a good job? Does it pay well? Does it offer job security? Do grandpa and grandma have access to decent health care now they have reached their declining income years? Are we sending our children to schools we are proud of? Are our children entering a schoolroom door that is the best we can make it? Do we live in a safe neighborhood, free from crime? Is our country safe? Is the security of America safe? These are issues the families care about and are issues we work on in the Congress and the Senate.

There are some who come to public service with a very critical message of our country; it is the easiest thing in the world. It takes no talent at all. I could demonstrate it in 2 minutes. The easiest thing in the world is to take a flaw in our system and hold it to the light and say, look at this, isn't this ugly? Look at this imperfection, isn't it ugly? Yes, it is a flaw and an imperfection and there are many in our great country.

But that is not the norm in America. We have industries that spring up looking at our imperfections. We have television programs that entertain the American people with other people's dysfunctional behavior, and they get great ratings. But it is not the main of what America is about. It is so easy to give the negative side. I am tempted but I will not; in 2 minutes I can recite the awful things about our country. We have people who are professionals doing it on radio and television and in politics every day: Look how awful this place is.

It is not awful at all. This country is a country born of the courage and blood of patriots. It is a country that survived the Civil War. It has overcome a depression; beat back the forces of Hitler, Nazism. It is a country that has done what no other country has done. It has built the strongest economic engine for growth and opportunity for people in the world. It has split the atom, spliced genes, cloned animals, inventions too numerous to mention. It is a country that had people build airplanes and learn to fly them, had people build rockets and go to the moon and walk on the moon. Along the way, it cured smallpox and polio, invented the telephone, the television, the computer.

It is a strong country with a resilient people, people who live in communities and help each other, who care about their kids, care about their future. Gregg Easterbrook wrote "America the OK." I like the title—and the book. I like the title because it describes a different attitude about America, "America the OK." That book came out some while ago but came out at a time when, as is usually the case, there were so many voices talking how awful things were in America.

There is not a better place on Earth to live. We are lucky to be Americans. We are lucky to be alive now.

When I mention the challenges ahead, first and foremost is a national security challenge. That is an awesome challenge. There is no question that the September 11 tragedy that befell our country and killed so many innocent American citizens reminds all this is a big, troubled world in many respects and national security is very important, as is homeland security. We must find ways to work together in a big, free, and open country, to provide some assurance of security for the American people. We must do that without diminishing the basic civil liberties that exist in our Constitution for the American people.

This discussion about a national identification card, about a database in which they will data mine all the information about people's lives to find out if there is somebody doing something untoward, that is not the way to approach providing security for our country, by diminishing the basic civil rights in our country.

We face this very significant threat from Osama bin Laden, who apparently still lives. I might say, in the early part of this year I was in Afghanistan, I flew from Tajikistan-Uzbekistan to Baghram Airbase in Afghanistan, myself, Senator DASCHLE and others. Flying over the mountains of Afghanistan, preparing to land at Baghram, I looked down at the hills and understood deep in those caves were terrorists led by Osama bin Laden plotting the murder of innocent Americans by crashing airplanes into the World Trade Center. You understand especially more than ever when you look on the mountains that we cannot ever be oblivious to what is going on in the rest of the world. We do so at our peril. What happens in other parts of the world is of significant interest to us.

So national security is very important. I don't think there is any division, any partisanship, on that issue. We care about this country. We care about its security. We care about the men and women who wear its uniform proudly in the armed services.

In addition, the issue of national security, another part of security that is important is economic security for our country because all we can become in this country relates to having the economic engine that provides people opportunities so people can work, have jobs that pay well, with security, to build the good schools, send your kids to good schools, and provide health care for grandma and grandpa and do the things that make this a great place in which to live. That economic security and all of the attendant issues dealing with this economy are also very important.

I am proud to be part of a caucus in the Senate that says, here are the things we think we need to do to strengthen our country and provide opportunity to people in this country. Not handouts, opportunities.

There are times when people are down and out and have a tougher time with it, when it is important for a country to say, let us help you up. But the most important element of what we are about is to provide opportunity. There is no social program in America as important as a good job that pays well. That is what represents the basis for providing for a family and providing opportunity in the future.

This is a big old world, with 6 billion people; about half of them have never made a telephone call; 2.5 billion live on less than $2 a day; 150 million children are not in school.

It is a big, difficult, challenged world in many ways, and we are enormously blessed to live here, right here, in this great democracy. We come from different parts of our country, different backgrounds, different philosophies, to arrive here amidst 100 seats in the Senate. None of us owns a seat here. We are here as a matter of privilege—privileged to represent those who sent us here from our home States.

When we come to this Senate and in public policy engage in debate, there are some who look at that debate and say: Look, isn't that awful. Debate has broke out in the Senate.

I remember one day reading the Washington Post and one of the critics some number of years ago said—talking about some very aggressive debate in public policy here in the Senate:

> This has just degenerated into a dispute about principle.

I thought to myself: Well, I hope so. That's why I came here—about principle.

Debate is what best serves the American people. The old saying: When everyone in the room is thinking the same thing, no one is thinking very much—that is a very important thing for us to remember here in the Senate. We will best serve the cause of our country's future and best serve the American people by continuing to be aggressive about that which we believe for the future of this country; by standing here, offering ideas that represent the approaches we believe will advance America's interests.

The next session of Congress, both because of national security and also economic security issues, will be a very difficult Congress. There is no question about that. But it will not be made more difficult by me wanting to see the other side lose. I want America to win. And this country wins when we best serve this country's interests by not wishing others to lose, but offering the best ideas we have and hoping that they will engage us in a way that selects the best of all the ideas offered in the Senate to advance this country's interests.

My fervent hope is that the next couple of years will be years of accomplishment in which all of us together can think we have done a good job in a troubled time for this country; in the face of threats—terrorist threats, national security threats—we have still advanced the interests of this country, even while keeping this country safe; advanced the interests of people who work for a living and want education, good schools, they want health care. They want the things that make this a good life, as well, here at home. If we do that, at the end of 2 years I think we will have accomplished something very significant for this great country of ours.

I thank the Senator from West Virginia for his indulgence as well. I saw by his papers he is intending, perhaps, to visit with us today a bit about Thanksgiving, and what a perfect, appropriate subject, the week prior to Thanksgiving.

I will yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I want to just take off on a word that the Senator spoke, the Senator from North Dakota. I will not detain him. I know he has to be somewhere, but he spoke about privilege, that we ought to be thankful; that this is a privilege. He referred to a privilege. I want to tee off that word, "privilege."

Also, I must say before the Senator leaves that I still have not come up with the right word when I am thinking about that Greek—it was not

Aristides, it was not Alcibiades, but I will come up with it. But it was another word. It will come to me. I am still worrying about it.

But on this word "privilege," let us think, if I may suggest for a little while, about what a privilege it is—what a privilege it is to be an American, a person born in this country of whatever background, or a person who has emigrated to this country and been accepted as an American citizen—what a privilege that is.

I am not thinking about Afro-Americans or Italian-Americans or Greek-Americans or Anglo-Saxon Americans or anything—we have too much of these hyphenations. I am not much on hyphenations. I don't go around talking about my being an Anglo-Saxon American—but I am proud of it. I know other individuals in this country are proud of their heritage, and they should be. They should be proud that their ancestors came from Africa or their ancestors came from England or their ancestors came from Germany or their ancestors came from Ireland or from Poland or the Middle East or wherever. They ought to be proud of that. But I don't go around saying I am an Anglo-Saxon-American. I am proud of being a descendant of an Englishman who came to this country in 1657—but I am an American, that's the thing—of whatever lineage it may be.

It may be from the subcontinent of Asia. It may be a Persian. It may be an Iranian. It may be an Iraqi. Or it may be an Indian from India, where they have that beautiful Taj Mahal, at Agra.

But I am an American. What a privilege that is. Do you remember what Paul said? Paul, who was earlier Saul, but he persecuted the Christians and he came to be named Paul, the great Apostle. He and Silas—I believe it was Silas—they were arrested and they were beaten. But when the Roman centurion or the Roman officer heard that Paul was a Roman, he sent word: Don't—don't strike that man anymore. He is a Roman.

Being a Roman was something, in those days of Biblical history. It meant something very special, being a Roman. Don't strike him. Don't flog him anymore, he is a Roman, a Roman citizen.

The distinguished Senator from North Dakota who just addressed the Senate has a deep appreciation for the privilege of being an American. And, on this day when we are about to adjourn the Senate, and in thinking of a day that is coming soon, Thanksgiving Day, we should be grateful and prayerfully grateful, for being an American; grateful for this land of ours; grateful, privileged to be an American—privileged.

Let me now refer to the Mayflower Compact. The Mayflower Compact, adopted on November 11—ha. What is that day in our time? The old Armistice Day, the day on which my mother, my angel mother was buried. She died of the influenza the night before Armistice Day.

My mother—and may I say to my brother, who is 90 years old and living in Wilkes County, NC, today, I would almost imagine that he is listening to the Senate—"debate." He is listening to us on the Senate floor today. That's my brother. I don't know that he is, but I would wager he is. He is 90 years old. He listens to the Senate debates.

May I say, if he is listening: Our mother died on November 11, the night preceding. I don't know whether it was before midnight or after on that night. Just as I don't remember whether Caesar crossed the Rubicon before midnight or after midnight on January 11, in the year 49 B.C. I don't remember that. But in any event, isn't it interesting that the Mayflower Compact was drawn up on November 11, 1620, and Governor Bradford makes this reference to the circumstances under which the Compact was drawn up and signed—this is William Bradford. He said this:

> This day, before we came to harbour, observing some not well affected to unity and concord, but gave some appearance of faction, it was thought good there should be an association and agreement, that we should combine together in one body, and to submit to such government and governors as we should by common consent agree to make and choose, and set our hands to this that follows, word for word.
>
> In The Name of God, Amen,
>
> In The Name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the faith . . . Having undertaken for the Glory of God.

Are you listening?

> Having undertaken for the Glory of God.

Do I hear that a judge in this land has said to take that monument to the Ten Commandments out of your Statehouse? Read it. It is in today's papers—or yesterday's—where a judge who wears his robes of justice, said remove it.

He should visit my office and see the words of the Ten Commandants all over the walls there in that public place—the Ten Commandants.

How could we come to a place like this in America, this wonderful land of ours, this land in which it is a privilege to be born, or to become a citizen, to live, to serve, to die in this land of ours, where we can be privileged, how could that judge—how could any judge—say: Remove those words, the Ten Commandants? Was that the kind of judge, was that the kind of interpretation of the Constitution—I wonder if Governor Bradford had that in mind. I wonder what he was thinking about when he referred to God.

Let us hear it again. This is what the Mayflower Compact said:

> In The Name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord King James.

King James was King of England from the year 1603 until the year 1624, I believe.

By the way, that Bible, the King James Version, was authorized at Hampton Court in 1604, and it was first published in 1611—the King James Version of the Holy Bible.

Let me say it again. This is what the Mayflower Compact said. This is not what some misguided judge may have said about the Ten Commandments. This is not some misguided judge who has misinterpreted the Constitution, in my judgment. But who am I? But I am a citizen—not a Roman citizen. I am an American, "privileged," in the words of Senator DORGAN, to serve in this land, to work in this land, and to live in this land.

Here is what the Mayflower Compact said.

Hear me. Hear me now. This is the Mayflower Compact.

> In The Name of God.

I am going to go out to meet Him soon. Abraham lived to be 170. Isaac was 180. Jacob lived to be 147. Joseph lived to be 110. STROM THURMOND is going to be 100 in just a few days. I am 85 today. But we can't be here always. I am going out to meet God.

Here is what the Mayflower Compact said. It was drawn up by those rugged, brave people on that ship as they prepared to get off that ship and step on the stormy shores—the rockbound coast of Massachusetts.

> In the name of God—

Let us listen today as we prepare for Thanksgiving in this Year of our Lord, 2002.

> In The Name of God, Amen. We, whose names are underwritten, the Loyal Subjects of our dread Sovereign Lord, King James, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, [et cetera] Having undertaken for the Glory of God, and Advancement of the Christian Faith, in the Honor of our King and Country, a Voyage to plant the first colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually in the Presence of God and one another . . .

I think it means and of one another—

> . . . covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid; And by Virtue hereof do enact, constitute, and frame, such just and equal Laws, Ordinances, Acts, Constitutions, and Offices, from time to time, as shall be thought most meet and convenient for the general Good of the Colony; unto which we promise all due Submission and Obedience. In WITNESS whereof we have hereunto subscribed our names at Cape Cod this eleventh day of November, in the year of the Reign of our Sovereign Lord King James of England, France, and Ireland, the eighteenth and of Scotland, the fifty-fourth. Anno Domini, 1620.

There it is. That is the Mayflower Compact.

Today, on Thanksgiving, let us be thankful to the same God referenced in this Mayflower Compact. Let us be thankful we are Americans, that we live in America, that we live in the land of the free and the home of the brave, that we live in this land which has been so wonderfully blessed by the God of Hosts, the Creator. Let us be thankful to Him.

Great God, our king.

And the names that followed were: Mr. John Carver, Mr. William Bradford, Mr. Edward Winslow, Mr. William Brewster, Isaac Allerton, Myles Standish, John Alden, John Turner, Francis Eaton, James Chilton, John Craxton, John Billington, Joses Fletcher, John Goodman, Mr. Samuel Fuller, Mr. Christopher Martin, Mr. William Mullins, Mr. William White, Mr. Richard Warren, John Howland, Mr. Steven Hopkins, Digery Priest, Thomas Williams, Gilbert Winslow, Edmund Margesson, Peter Brown, Richard Britteridge, George Soule, Edward Tilly, John Tilly, Francis Cooke, Thomas Rogers, Thomas Tinker, John Ridgdale, Edward Fuller, Richard Clark, Richard Gardiner, Mr. JOHN Allerton, Thomas English, Edward Doten, Edward Liester.

There you have it, the Mayflower Compact and all the names of the signatories.

Then there was Thanksgiving Day, an annual national holiday in the United States, celebrating the harvest and other blessings of the past year. It originated in the autumn of 1621 when Plymouth Gov. William Bradford invited neighboring Indians to join the Pilgrims for a 3-day festival of recreation and feasting in gratitude for the bounty of the season. By the end of the 19th century, Thanksgiving Day had become an institution throughout New England and was officially proclaimed as a national holiday by President Abraham Lincoln in 1863. The traditional feast of turkey and pumpkin pie has since become an indigenous part of the national culture. Traditionally celebrated on the last Thursday in November, it was changed by act of Congress in 1941 to the fourth Thursday of that month. Canada first adopted Thanksgiving as a national holiday in November 1879, and it is now celebrated annually on the second Monday in October.

That has reference to Thanksgiving Day, again, referring to Plymouth Gov. William Bradford who, in the autumn of 1621, invited the neighboring Indians to join the Pilgrims for a 3-day festival of recreation and feasting in gratitude for the bounteous season.

So on Thanksgiving Day let us remember those colonial forbears of ours, let us remember Plymouth Gov. William Bradford, who recognized that day of thanksgiving and whose name I referenced earlier in regard to the Mayflower Compact.

(Mr. DURBIN assumed the Chair.)

Mr. BYRD. So, Mr. President, I want to spend a few minutes just being thankful. The change in party control is but a small shift in the wind compared to the gale forces that have blown in the past. It does not compare to war, to acts of terror, the upheavals in the strategic balance of power. I will live through that again, if I live, if the Good Lord so blesses me.

Today, as the Senate attempts to conclude its work for this session, one can almost smell the turkey roasting.

Tomorrow, if the Good Lord willing—in the Book of James it says: Don't say you will go here or there tomorrow, and you will buy this and that, or you will visit this city or that tomorrow; but say: If the Lord wills.

The Book of James.

So tomorrow, if the Lord wills, my wife and I hope to visit the Giant store over in McLean. And I can see the lines in the grocery stores. They are long. And the carts are full, as families prepare for the feast, for the feast to come next week: Plump turkeys, deep red cranberries—my wife is the best when it comes to fixing that cherry pie and the cranberry dressing, and all these things—rich pumpkin pie filling, sweet whipped cream, crisp green beans, flour and spices for baking—all are fond reminders of the season of Thanksgiving.

This year, travel is expected to rebound, after the scares of last year, as families reconnect more strongly. The Thanksgiving feast, the epitome of family tradition, is back, more precious, more appreciated than ever.

The Nation, too, feels stronger. Our economy may be weaker, but we are more aware of ourselves as a nation of Americans, as citizens of one land, rather than an eclectic mix of communities with little connection to each other.

As a nation, we feared the sniper who stalked the National Capital Area just a few weeks ago. As a nation, we pulled for those coal miners.

I know the Presiding Officer of the Senate today, the distinguished Senator from Illinois, Mr. DURBIN, whose ancestry goes back to the great country of Poland, does not go around saying: I am a Polish American. He says: I am an American. He is proud of his ancestry. I have talked with him about it. But he does not remind me every day that he is a Polish American. He is an American, just, as I said a little earlier, I am an Anglo Saxon American. But I do not go around talking about it. These hyphenated Americans, I am not too high on using the hyphen in that respect. We are all Americans.

In any event, as a nation, we feared that sniper. And as a nation, then, we pulled for those miners. And the Senator from Illinois knows about the coal miners of that State, as I know about the coal miners of West Virginia.

As a nation, we pulled for the miners who were trapped underground in Pennsylvania. As a nation, we followed the hunt for terrorists. We mourned for the victims of terrorist acts committed around the world.

We now know the feeling of wearing a target on our backs by virtue of the passport we carry. It is a new feeling for many Americans; not exactly a pleasant one, but if it is a burden of our citizenship, we wear it with pride.

The flags that have flown in yards nationwide since September 11, 2001, are still flying in our minds and in our memories, in our hearts.

Our military, with the National Guard and Reserve forces, is more unified this Thanksgiving. All are under the strain of extended callups and deployments but all are working together. They are not weekend warriors, they are not sunshine patriots versus regulars, but they are full-time professionals, operating under the shadow of war, pushing hard to extend security across the globe. I am thankful for their effort.

I am reminded of the words of Thomas Paine, who wrote, on December 23, 1776:

> These are the times that try men's souls. The summer soldier and the sunshine patriot will, in this crisis, shrink from the service of his country; but he that stands in NOW, deserves the love and thanks of man and woman.

Now, Mr. President, as I share my turkey and dressing with my dear Erma and with my daughters and sons in law, grandchildren and great grandchildren, I will offer a prayer to each of the Nation's men and women in uniform and their families. As we dine, they are flying, they are steaming, driving, and standing guard over our Nation's liberty. They are on the front lines of the war against terrorism.

Their families are gathering around tables that are not as full as they should be. Some of the chairs will be vacant. The circle of smiling faces will be incomplete.

This year especially we ought to remember and be thankful to them and to God for their effort. We should remember and give thanks for the efforts of our Nation's veterans. They and their families have also sacrificed for our Nation. Their families have sacrificed. Their wives have sacrificed. Their children have sacrificed. Their parents have sacrificed. Their brothers, their sisters, their kinsmen have sacrificed.

In this year even more than ever, we will remember the firemen, the policemen, the lifesaving crews who have performed so heroically during the crises of the past year and more. As terrorism struck our homeland, as anthrax filled our Federal buildings, as a sniper took aim at innocent people going about their everyday business, these first responders rose to the challenge. People are alive today because of their efforts.

In addition to their everyday duties, the local and State police, the fire departments, the public health departments, the hospitals, the ambulance crews, all are planning how they might best respond to a major terrorist attack, whether it comes in the form of conventional explosives or chemical, biological, or even nuclear weapons. Their diligence at this task may make the difference for all of us in the future. They, too, will have my prayers this Thanksgiving.

Those of us in the Senate family should remember in our prayers the men and women who gave their lives on September 11, who gave their lives for us. There was a fourth plane, and some noble men and women on that fourth plane decided among themselves that they were going to die, but they decided that that plane, while it would carry them to their death, that plane would never complete its mission. Its mission, we understand, was this Capitol.

So we Members of this body, the members of the Senate family, the pages, the security people here, the Chaplain and his staff, our staffs, may all give thanks on that day for those brave men and women who knew they were going to die, who took phones and called their loved ones and said, for the last time: I love you. But they concluded among themselves: We will die that others won't die. If one could write the chapter, if one could have been there, they gave their lives and brought forth their sacrifices. Who knows? Who knows? Those eagles up there that from time to time must scream would not be there today.

That plane, that fourth plane, went down in Pennsylvania, the State in which that Philadelphia Convention was held, out of which came the Constitution and this great constitutional system that we know about.

So it is a daunting task when we think about the settlers who thanked Providence for seeing them through a difficult first year. It is a daunting task to carve a homestead out of the wilderness thousands of miles from anything familiar. One could not drive to the hardware store to purchase lumber and nails and shingles and windowpanes. You could not plug in or charge up labor-saving tools such as power saws and nail guns. No, each log had to be cut with an axe, dragged to the site and lifted by hand—not by an electric crane—and placed.

Each shingle for the roof had to be planed for more wood; each stone for the foundation and the chimney had to be dug up and hauled to the site. And while the home building was going on, the fields had to be cleared. The fields had to be planted; the fields had to be tended. Game had to be hunted and cured, or there would be no food for winter, let alone for a Thanksgiving feast.

So in this year of our Lord 2002, we gather in warm houses with our loved ones, each house a glowing lamp of civilization in an increasingly hostile world. It is a different kind of wilderness that surrounds us now, a forest of threats from unfamiliar places with unfamiliar names that press in from all sides. But for a day we can easily push our nagging fears aside and find comfort in the warm bonds of family affection.

As we work together, polishing the silver, setting the table, and preparing and serving the delicious food and talking to the little ones, the little grandchildren, and to little puppies, like Trouble over at my house and Danny over at my daughter's home, and washing the dishes, we share in life's greatest gift—our families.

I would like to close with a poem. I am still looking for that Greek name. It has slipped my mind.

The poem is "Home, Sweet Home":

'Mid pleasures and palaces though we may roam,
Be it ever so humble, there's no place like home;
A charm from the sky seem to hallow us there,
Which, seek through the world, is ne'er met elsewhere,
Home, home, sweet, sweet home!
There's no place like home, oh, there's no place like home!
An exile from home, splendor dazzles in vain;
Oh, give me my lowly thatched cottage again!
The birds singing gaily, that came at my call—
Give me them—and the peace of mind, dearer than all!
Home, home, sweet, sweet home!
There's no place like home, oh, there's no place like home!
I gaze on the moon as I tread the drear wild,
And feel that my mother now thinks of her child,
As she looks on that moon from our own cottage door
Thro' the woodbine, whose fragrance shall cheer me no more.
There's no place like home, oh, there's no place like home!
How sweet 'tis to sit 'neath a fond father's smile,
And the caress of a mother to soothe and beguile!
Let others delight 'mid new pleasure to roam,
But give me, oh, give me, the pleasures of home.
Home, home, sweet, sweet home!
There's no place like home, oh, there's no place like home!
To thee I'll return, overburdened with care;
The heart's dearest solace will smile on me there;
No more from that cottage again will I roam;
Be it ever so humble, there's no place like home.
Home, home, sweet, sweet home!
There's no place like home, oh, there's no place like home!

God bless our homes, and God bless the sweet land of liberty, America.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Mr. President, God bless America, and God bless Senator BYRD and what he has meant to this institution, and for serving in this institution, the Congress of the United States, for over a half century.

We have had the privilege of again having one of the great insights into American history as seen through the prism of Senator BYRD's observation after a half century of American politics and American history.

When I was a Member of the other body, the House of Representatives, one of the great delights I had was to sit at the knee of Congressman Claude Pepper, a former Senator. He was a walking political history book. And along with that delightful personality, you could learn so much just listening. Of course, he was always a great delight. The Senator who presides and I both had the pleasure of being with Claude Pepper. So often I would hear when he would take what he would call his "boys"—those members of the Rules Committee—on a trip and those younger Members of Congress—younger by one-half and sometimes two-thirds the age of the venerable Claude Pepper—could not keep up with the energetic pace he kept on those congressional delegation trips.

And so, likewise, it has been such a privilege for me that I have now had the opportunity to come here to the Senate and sometimes to sit at the knee and learn from the senior Senator from West Virginia.

For what you have given to all of us—the particular interests and affection you have shown to the new Members of the Senate in the 107th Congress—we are all so very appreciative to you.

Again, thank you for your words today in commemorating this time of Thanksgiving that so many of us in our own way will say a little prayer of gratefulness for this blessed land of which we have the privilege of being citizens.

Mr. President, I rise today to again give another one of my speeches about my favorite little agency, the National Aeronautics and Space Administration.

Mr. BYRD. Mr. President, before the distinguished Senator proceeds, if he would allow me to interrupt him for a comment.

Mr. NELSON of Florida. I yield to the Senator for that purpose.

Mr. BYRD. Mr. President, I thank the distinguished Senator for his kind words of praise. But let me say some good words about him. That is why I have sought to interrupt him. The Senator has come to the Senate and brings with him a marvelous background of knowledge—knowledge of space, space flight, and our explorations into space. He is not by any means as long in his experience in this great country as I am. I can remember when Lindbergh flew across the ocean in 1927, I believe on May 9. When he launched that flight in the Spirit of St. Louis, the New York Times had a headline, if I remember, that said Lindbergh flew across

New York City—or perhaps it was Nova Scotia—at the "tremendous" speed of 100 miles an hour. That man, when he flew across the ocean—sometimes 10 feet above the water, sometimes probably 10,000 feet above the water—he had a payload of about 5,500 pounds; he had about five sandwiches, and he ate a half of one on his way across the water. That was a lonely man.

But now this man from Florida, who graces this Chamber, flew in space at the tremendous speed, I would imagine, of about 18,000 miles an hour. So as we in high school used to talk about that flivver—there were not many flivvers in that day. A few automobiles were owned by high-ranking officials in the coal mining community, and they spoke of that automobile coming down Sofia Mountain at the speed of a mile a minute. Here is this man who has come to us and has flown at the tremendous speed of 18,000 miles an hour. He has also brought with him a deep respect of the Constitution of the country, a deep respect for this institution.

I thank God, as we near Thanksgiving Day, for pioneers like this man, Senator NELSON of Florida. He is a pioneer in space. We have thankfulness to him and other men like him, such as the Presiding Officer who comes from Illinois; they both came over from the other body. So many of us came from the other body, and so many of us, I am sorry to say—especially those who have come lately—seem to think this body should be another House of Representatives. I should not get started on that.

But I thank the distinguished Senator, my dear friend, for his kind references to me and the context in which he made those references. I hope I can live up to his faith and his accomplishments. I thank him for the Senator he is and the American that he is as we near Thanksgiving Day in a land for which we have so much to be grateful.

Mr. NELSON of Florida. Mr. President, I thank the Senator for his kind words. Whenever he is so gracious to me, as he just has been, I think myself undeserving of those kind words.

I look around this Chamber and see the places that people who have really shown courage and devotion to duty and to country sit, a place like over there, Senator INOUYE, a winner of the Congressional Medal of Honor; a place like over there, Senator MCCAIN, a prisoner of war who withstood those horrors for over 6 years; a place like over there for Senator CHUCK HAGEL, a distinguished veteran of Vietnam; a place like over here, the seat of Senator JOHN KERRY, the holder of the Silver Star from Vietnam; or that seat right there, the occupant of which will be leaving us at the end of this Congress, a triple amputee from Vietnam, Senator MAX CLELAND, who has overcome so much and yet who has the greatest attitude of any Senator in this body. These are the heroes, and there are many more, both men and women, in daily acts of courage. I feel very privileged to be a part.

NASA'S FISCAL YEAR 2003 BUDGET AMENDMENT AND A NON-PARTISAN NASA

Mr. NELSON of Florida. Mr. President, I have been making a series of speeches about NASA, and I rise again today to speak about this little agency. It is a favorite agency of mine, the National Aeronautics and Space Administration.

Last week, the White House submitted a budget amendment to its 2003 budget request for NASA. The budget amendment, which also retools NASA's 5-year budget plan, amounts to a watershed point for NASA.

In this budget amendment, the administration has requested a significant change in its 2003 NASA priorities. Instead of funding a program to replace the space shuttle, this amendment seeks to scale back funding for the space launch initiative to a more realistic development time line.

This budget amendment, in my opinion, signals a revamping of NASA's integrated space transportation plan. The new plan incorporates the space shuttle, a new orbital space plane, and technology for future reusable launch vehicles into one comprehensive plan to provide for the advancement of human space flight. It is about time we had such a plan, and I applaud the administration's efforts to move in this direction.

The new plan includes an increased shuttle launch rate to better meet the research needs of the space station. Under this new budget plan, both the shuttle and the station programs will be funded on a much more sustainable and long-term level, while also seeking to develop a new orbital space plane. This new spacecraft would be used to provide astronauts regular access to the international space station without always needing to rely on the aging space shuttle fleet.

The new budget plan provides for a much-needed infusion of cash to start to provide for space shuttle safety upgrades and infrastructure repairs and modernization. These repairs and improvements will help us fly the shuttle much more safely through the middle of the next decade and possibly even longer.

This funding is a welcome reprieve for the neglected and decaying human space flight infrastructure that is literally falling apart at NASA centers around the country.

The new budget plan also responds to the concerns of a new study. This study, called the ReMAP study, concluded that the space station in its currently planned form would not be able to conduct even a minimum level of science research to call it a science program.

NASA's 2003 budget amendment seeks to fix some of these concerns by providing additional funding to increase the research capabilities onboard the space station. I welcome this decision. I have been into the mockup of the space station at the Johnson Space Center, and the capability for science, for research, is there if we can have the crew members who can be dedicated to the research while in orbit.

With this budget amendment, I am pleased with the administration's restructuring of NASA's budgetary priorities for fiscal year 2003, and I congratulate administrator Sean O'Keefe. In this budget amendment, the administration, with Administrator O'Keefe, and his deputy administrator Fred Gregory, have provided more funding for the shuttle program, including an increased flight rate and more funds dedicated to safety and supportability upgrades, as well as improvements to the ground-based infrastructure.

These areas are in dire need of additional financial support. The space shuttle simply cannot continue to fly safely if NASA does not dedicate additional resources to the orbital fleet.

The one missing piece from this plan is the formal cooperation with the departments dealing with the Nation's defense. NASA's new plans to upgrade the Evolved Expendable Launch Vehicle—everything has an acronym at NASA—or the EELV—to meet the human-rated requirements may also yield great efficiencies and reliabilities for defense launch needs. An orbital space plan could also meet some of our defense needs, and the Air Force has also had on the books for many years plans to develop such a vehicle.

The defense establishment should be part of this effort. DOD, NASA, and other agencies need to pool their resources to develop these high-risk, expensive technology programs. NASA cannot be expected to do this alone. Our country will be better served by jointly developing the technology needed for exploration and use of space.

I congratulate the agency and its leadership on what I think is a budgetary watershed point and one that is a shift in the right direction, and I encourage the defense-related agencies to start cooperating with NASA to develop these new technologies.

Mr. President, there is another area in which I have concern and I want to express it. NASA has a proud history of staying outside the partisan nature of our political arena. As one of the largest independent agencies, NASA has a unique role in the structure of our executive branch. Its leader does not assume a Cabinet-level position, and yet its policies and practices have a significant impact on the strength and future of our Nation's science and technology programs and sector.

No other independent agency has as much influence on our country's innovation capabilities in science and technology, outside of the medical field. Yet unlike the Departments of Commerce or the Department of Education, NASA does not usually get brought into partisan battles or political struggles of Congress. Rather, NASA's nonpartisan approach is more akin to the nonpartisan style of the Department of State and the Department of Defense. There are clearly occasionally disagreements within these Halls about the future of this little agency, but never have the differences come down to simply a question of to which party a Member belongs.

The Nation's space program is not a partisan program. It is an American program, and that is the way the Senators of this body treat it.

In recent weeks, constituents, newspaper columns, editorials, and NASA employees have brought to my attention at least two incidents of partisan political activity on the part of the agency's head, who may have been acting at the direction of the White House itself.

In October, NASA's Administrator made a decision that could stand to challenge this agency's traditional bipartisan and nonpolitical status. Administrator Sean O'Keefe flew to Alabama to campaign for a candidate for Governor, and then he publicly announced his plans to travel to Florida to hold a space townhall meeting for a nonincumbent congressional candidate. He also participated in a fundraiser in Alabama.

Now, in this last announced trip, were it not for a mechanical problem that delayed his flight beyond the candidate's reasonable timeframe, Administrator O'Keefe would have been on the ground in Florida conducting political campaign events.

I am troubled about the implications of this public decision. At present, I have the good fortune of cooperating on space policy issues with dozens of my colleagues in both parties. Senators who share my love and enthusiasm for space exploration include Senators TRENT LOTT, DON NICKLES, ORRIN HATCH, KAY BAILEY HUTCHISON, CONRAD BURNS, GEORGE ALLEN, RICHARD SHELBY, BARBARA MIKULSKI, JOHN BREAUX, MARY LANDRIEU, and BOB GRAHAM.

When it comes to supporting our favorite little agency, we agree wholeheartedly and together happily roll up our sleeves and work on furthering the Nation's space-faring capabilities, despite what other issues might separate us, or despite the partisanship in which we sometimes engage in this body.

In the other Chamber, NASA's supporters come from both sides of the aisle. Representatives TOM DELAY, DANA ROHRABACHER, KEN CALVERT, DAVE WELDON, NICK LAMPSON, RALPH HALL, BART GORDON, and BUD CRAMER are but a few who have repeatedly gone out on a limb for NASA.

By announcing his plans to participate, being perceived as acting in his official capacity as the head of NASA, Administrator O'Keefe diminished the spirit of bipartisanship. Well, thank goodness for an airline mechanical problem on that last occasion.

So I rise to make a public request of our Administrator, which follows the private request I made of him prior to his scheduled trips, and that was a private one before the fact. My request now publicly is do not ruin the spirit of bipartisanship and bipartisan cooperation that NASA and its supporters enjoy.

When it comes to political campaigns, just stay out of them altogether and keep the long-standing tradition that NASA Administrators stay out of partisan politics.

This is a speech in which for the first two-thirds I praised the Administrator of NASA for the change in direction that I think is a good change, and I think shows his good leadership, but it is a speech also with a heavy heart that since he would not take my advice, or that of many others privately, it needs to be stated publicly that there is a great and long-standing tradition that NASA Administrators stay out of partisan politics.

I ask unanimous consent that supporting documentation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Florida Today, Oct. 23, 2002]

NASA HEAD STUMPS FOR GOP CANDIDATES

(By John Kelly and Kelly Young)

Sean O'Keefe is taking time off from his day job, as administrator of NASA, to campaign for Republican political candidates in two states with high-profile NASA centers.

O'Keefe took time off Monday and went to Huntsville, Ala., to endorse the Republicans' candidate for governor at a space museum near Marshall Space Flight Center. Monday, he will be at the Cocoa Beach Hilton with Tom Feeney, the GOP nominee in the 24th Congressional District that includes Kennedy Space Center.

NASA is not paying for the trips and O'Keefe is not doing official business, agency spokesman Glenn Mahone said. He is not flying on NASA planes or taking government aides along. O'Keefe and the candidates are paying any costs, Mahone and the GOP campaigns' officials said.

High-ranking presidential appointees often hit the campaign trail for party candidates. A search of news archives and interviews with longtime NASA watchers yielded no examples of former administrator Daniel Goldin politicking so openly or endorsing specific candidates. If Goldin ever did make such an appearance, "I'm reasonably sure he would have been the first," said Howard McCurdy, an American University public affairs professor.

McCurdy, who has written books about NASA, said the practice is becoming more common. Goldin could not be reached for comment.

"It's certainly expanding in the federal government as a whole," McCurdy said. "It's not unusual to see the head of the parks services doing the same thing."

There are no rules against it as long as government resources are not used and O'Keefe carefully distinguishes his appearances as personal rather than official.

"As long as he's not trying to say four out of five astronauts agree, and I assume he's not, then he's OK," said John Pike, a defense and space policy analyst with Virginia-based globalsecurity.org. "Now if I was a partisan Democrat with an interest in these races, I wouldn't have to work very hard to come up with a cheap shot."

Mahone said everyone knows O'Keefe is a Republican, and he has rights as an individual to support candidates like anyone else.

"He did not endorse them as the NASA administrator, but as Sean O'Keefe, a Republican and a member of the administration," Mahone said. "He is Sean Q. Citizen.

Apparently, that's not how U.S. Rep. Bob Riley saw it. His campaign material clearly identified "NASA Administrator Sean O'Keefe" among the people who've endorsed him.

"Bob Riley is an enlightened leader who understands the critical nature of research investment, and Alabama's economy will prosper under Bob Riley's leadership," O'Keefe said at the event, according to a campaign news release. "Bob Riley is the right man with the right plan for Alabama."

The release quoted Riley: "Having NASA's administrator fly down from Washington to endorse my campaign for governor illustrates the viability of my plan to build a new high-tech research-based economy in Alabama. Administrator O'Keefe's strong endorsement highlights his confidence that Alabama can become a vital part of the new economy if given the right leadership."

Riley campaign spokesman Dave Acbell said O'Keefe in interested in Riley's plan to develop Alabama's economy like North Carolina's Research Triangle.

The Hunstville Times quoted O'Keefe in Tuesday's edition saying his two appearances were not about bipartisanship but leadership ability. The paper reported that when asked if he would endorse Democrats with similar leadership abilities, O'Keefe said, "These are the only two opportunities I had to be involved with."

Feeney's campaign is stressing that O'Keefe is appearing in an "unofficial capacity." But the campaign is billing the event as a "Space Town Hall Meeting" at which space industry officials selected by the campaign will get to ask the men about NASA and other space issues.

In debates and other space-related appearances in the district, which includes Kennedy Space Center, Feeney has said his close relationship with O'Keefe and President Bush will help the area.

His press secretary, Kim Stone, made the same case Tuesday. Harry Jacobs, the Democrat candidate running against Feeney, is not invited. Questions asked of Feeney and O'Keefe will be screened by the campaign, she said.

Jacobs' spokeswoman Azalea Candelaria said such events are not unusual and President Bush's aides and appointees have been helping Feeney from the start. She said she hoped O'Keefe and NASA were equally willing to provide the Democrat candidate with access to tours and to face-to-face discussions with the administrator.

"Harry Jacobs has lots more support than the Republicans expected so Tom Feeney rang the alarm and a series of dignitaries are coming down to campaign for him," she said. "When the president of the United States is a Republican and you're not, you can't get that campaign help."

Neither Mahone nor Feeney's spokeswoman said they knew whether O'Keefe will endorse Feeney.

O'Keefe has long served Republican administrations, including that of President Bush's father. The younger Bush moved O'Keefe over from the Office of Management and Budget to head NASA on orders to clean up the agency's money woes.

Pike said previous NASA administrators have been "space cadets" who were at NASA because it was their dream job. O'Keefe is more of a career political appointee, so it's not surprising he is politically active, Pike said.

[From the Orlando Sentinel, Oct. 23, 2002]

NASA CHIEF O'KEEFE TO JOIN FEENEY AT CAMPAIGN STOP IN COCOA BEACH

(By Gwyneth K. Shaw and Sean Mussenden)

NASA chief Sean O'Keefe will campaign with House Speaker Tom Feeney in Cocoa Beach next week—a highly unusual foray into politics for the head of an agency that has tried hard for its 44 years to stay above the partisan fray.

O'Keefe's appearance will occur eight days before voters decide whether to send Feeney or opponent Harry Jacobs to Congress.

District 24, a new district essentially handdrawn for Feeney, includes parts of Volusia, Orange and Seminole counties. It also encompasses much of northern Brevard County—including Kennedy Space Center, one of NASA's highest-profile sites and the workplace of thousands of constituents.

The Feeney campaign and officials with the National Aeronautics and Space Administration insist the visit Monday is simply a gesture of friendship from O'Keefe and that he is appearing with Feeney as a private citizen, not as the nation's top space policymaker. They also say the trip will not cost taxpayers: O'Keefe is taking the day off, and the campaign is paying for his commercial airline ticket.

O'KEEFE IS A REPUBLICAN

Glenn Mahone, NASA's associate administrator for Public Affairs, pointed out that O'Keefe is a Republican as well as a political appointee named by a Republican president.

"He was invited by Speaker Feeney to come down and attend an event on his own time, and he graciously accepted," Mahone said. "He is going not as NASA administrator, but as a friend of Speaker Feeney."

On Monday, O'Keefe traveled to Huntsville, Ala.—home of NASA's Marshall Space Flight Center—to endorse U.S. Rep. Bob Riley, R-Ala., who is running for governor.

O'Keefe could not be reached for comment.

Alex Roland, Duke University professor and former NASA historian, called O'Keefe's political visits unprecedented in the annals of the agency. NASA administrators, who often complain about interference from Capitol Hill, typically do not get involved in elections, he said.

Roland said it's ironic that O'Keefe has chosen to step in.

"It's one thing to be politicized, in the sense that the agency represents a set of policies with which some elected official may or may not be in agreement. But it's entirely different to be partisan, because those members of Congress that decide about this can be of either party," he said. "This is a member of a federal agency saying a representative of one party is better able to serve NASA's interests than the representative of another party. That's just none of their business—how the elected representatives get there."

Bill Allison of the Center for Public Integrity, a Washington-based nonpartisan ethical watchdog group, said the situation is clearly more than just a friendly gathering. "It's obviously a favor being done to elect a member, a Republican, to Congress," he said. "This is somebody trying to use the prestige of his position to further the political interests of a candidate.

Mahone said that if O'Keefe were invited by other Republicans he knows to campaign with them between now and the elections, he would be open to it if his schedule would allow it.

"Is it unusual for a NASA administrator? Well, we have a new NASA administrator, and this NASA administrator has decided this is something that he wants to do," Mahone said.

Jacobs, the Altamonte Springs lawyer challenging Feeney in the Nov. 5 election, said if he wins, O'Keefe's decision to help Feeney would not make it more difficult for him to work with the agency.

"NASA is not Sean O'Keefe and Sean O'Keefe is not NASA," Jacobs said. "NASA will be there before or after Sean O'Keefe."

Asked whether he thought it was improper of O'Keefe to break with the neutral tradition of his predecessors, Jacobs said, "That's a question for Sean O'Keefe."

DISTRICT SPLIT-UP

When Feeney's top lieutenants in the Legislature were carving out District 24, they swiped Kennedy Space Center from a Brevard-based seat now held by U.S. Rep. Dave Weldon, R-Palm Bay. Weldon was able to keep the adjacent Cape Canaveral Air Force Station, site of the military's space operations.

The split, Feeney and others have said, ensured that Central Florida would have two sets of eyes in Washington focused on space.

O'Keefe's visit Monday is Feeney's latest attempt to court the votes of the area's space workers—something he has done with promises to funnel more money into developing the region's space industry and his tours of key public- and private-sector facilities.

Feeney also frequently mentions that his wife, Ellen, works at KSC—reminders that are exceeded only by his frequent descriptions of his "close" ties with President Bush and O'Keefe, two people with extraordinary power over NASA's budget. The implication is that Jacobs does not have the connections needed to bring the bacon back to Brevard.

Jacobs, in response, has said that Democratic leaders in Congress have promised him a seat on the committee that oversees NASA's budget.

But Feeney's partisan ties have granted him access that Jacobs has not enjoyed. Although KSC officials invited Jacobs on a tour of NASA facilities, Feeney was a guest of O'Keefe at a shuttle launch earlier this month. Jacobs was invited to the same launch by U.S. Sen. Bill Nelson, D-Fla., but was unable to attend, a Jacobs spokeswoman said.

Ralph Gonzales, Feeney's campaign manager, said the town hall meeting at the Hilton Oceanfront in Cocoa Beach is "not really a political event."

The 90-minute meeting, which begins at 4 p.m., is by invitation only, campaign spokeswoman Kim Stone said, with a a host of Republicans and about 100 people from the space community, including Democrats, Republicans and independents, on the list.

Allison said it has become fairly common in recent years to use administration officials, from the President on down, to lend a hand to candidates.

And Feeney has been a beneficiary several times over: In August, Vice President Dick Cheney raised an estimated $250,000 at an Orlando cocktail party. Last month, Veterans Affairs Secretary Anthony Principi and Commerce Secretary Donald Evans campaigned with Feeney.

But O'Keefe's visits do stand out, Allison said.

"It definitely muddies the water," he said. "A NASA administrator is supposed to be running NASA. He's not supposed to be intervening in politics."

[From Florida Today, Oct. 29, 2002]

PLANE TROUBLE CANCELS NASA TOWN MEETING

(By Kelly Young)

CAPE CANAVERAL.—NASA Administrator Sean O'Keefe canceled plans to attend a Space Coast event with Republican Congressional candidate Tom Feeney after airplane problems in Washington on Monday.

The administrator took some personal time off from his normal duties to fly down to Florida to appear with Feeney, who is running for a District 24 seat in the U.S. House of Representatives. The joint event was billed as a town hall meeting where space industry officials could ask O'Keefe and Feeney questions about NASA.

After O'Keefe was delayed at the airport for about an hour, Feeney's office decided to cancel the event when they realized he would not make it to the Cocoa Beach Hilton by the scheduled start time at 4 p.m.

The cockpit door wouldn't close, said Feeney spokeswoman Kim Stone. O'Keefe was traveling on a commercial flight to Orlando and paying his own way.

Other passengers got off the plane and boarded another flight. O'Keefe stayed in Washington, said NASA spokesman Glenn Mahone.

O'Keefe probably will not make it back to the Space Coast before elections next Tuesday, but Mahone said a later visit was not unreasonable.

"If invited and if time permits, he'll be more than happy to go down because he thinks very highly of Speaker Feeney," Mahone said.

[From Aviation Week & Space Technology, Oct. 28, 2002]

MR. O'KEEFE, STICK TO NASA

Breaking with a long-standing tradition that NASA administrators do not directly participate in partisan politics, Sean O'Keefe has taken to the hustings for Republican candidates and participated in a state party fund-raiser. Last week he turned up in Huntsville to endorse U.S. Rep. Bob Riley in his bid to become governor of Alabama. This week, O'Keefe is scheduled to appear at a political event in Cocoa Beach with Tom Feeney, the speaker of the Florida House of Representatives, who is running in the congressional district that includes Cape Canaveral. O'Keefe will insist he is making these efforts purely as a private citizen. But that is a thin reed to grasp—and one not recognized by the candidates. In a press release, Riley gushed about "having NASA's administrator fly down from Washington to endorse my campaign for governor."

Even more disturbing than running out onto the campaign trail, O'Keefe participated in an Alabama Republican party fundraising dinner in Huntsville in February. It was billed as a tribute to the aerospace and defense industry, but at $250-a-plate, the dinner might more honestly have been labeled an occasion for the Grand Old Party to extract tribute from NASA contractors. Want some face time with Sean? Fork over your check.

Lest anyone accuse us of being naive or disingenuous, we are not "shocked, shocked" to learn that O'Keefe is a staunch Republican. Nor do we think there is anything illegal or immoral about a presidential appointee taking part in party affairs, provided it is done on his own time and does not involve government resources.

But that doesn't make these campaign swings and party fund-raisings a good idea. Throughout its history, NASA has depended on bipartisan support. It's support that some have characterized as a mile wide but only an inch deep, so O'Keefe should be careful not to drain much off this reservoir of goodwill. In politics, what goes around comes around. And while none of the Democrats running against the candidates O'Keefe is endorsing is likely to turn against NASA should they win, the administrator should not be surprised if Democrats seek a payback and, in so doing, disrupt his plans for this storied government agency.

Mr. NELSON of Florida. I wish all of the Senate, all of our colleagues in Congress, as well as the American people, Happy Thanksgiving.

I yield the floor.

TRIBUTE TO SENATORS BOB SMITH AND FRED THOMPSON

Mr. NICKLES. Mr. President, one of the privileges we have of serving in this body is we get to work with a lot of outstanding men and women. I wish to mention a couple of those who are very good friends of mine, who will be leaving the service of the Senate, one of which is BOB SMITH. BOB SMITH has served in the Senate for 12 years. I had the pleasure of working with him. He is a respected veteran. He served in Vietnam. I have had the pleasure of knowing BOB SMITH and his wife Mary Jo and their kids. Actually, their kids went to the same school as my children did.

BOB was a high school teacher and a coach from the great State of New Hampshire. He was elected to Congress in 1984, but I did not really get to know BOB SMITH until he was elected to the Senate in 1990. He was reelected in 1996. He served on the Armed Services Committee and was what I would call a very strong defender of our Nation's freedom, a very strong national patriot.

He was always interested in improving our national defense and he did an outstanding job. He was a leader in trying to find out what happened to the men and women serving in the Army, Navy, and Air Force who were missing in action in Vietnam. He showed great courage on a lot of issues that were not popular. He led the fight in trying to ban partial-birth abortion, and my guess is we will pass that in the next Congress, and it will be because of the leadership of BOB SMITH and his courageous effort in initiating that.

On behalf of countless unborn children, on behalf of the men and women serving in the military, on behalf of a nation that is very grateful for patriots who have led the fight in Congress to make our country free, they have always had a friend in Senator BOB SMITH. I congratulate him on his years of service in Congress, both in the House and the Senate, and I wish him and Mary Jo every best wish for their future.

I also wish to make a couple of comments about our soon retiring colleague, Senator FRED THOMPSON. Senator THOMPSON's career was shorter than many of us had hoped. He only served 8 years in the Senate. He was elected in a special election in the State of Tennessee 8 years ago, and then was reelected. He has served this body very ably and very nobly well.

Senator THOMPSON had remarkable achievements in his very short Senate career. After he was in the Senate for only 2 years, he was selected and elected chairman of the Governmental Affairs Committee, a remarkable accomplishment. He served as chairman of the Governmental Affairs Committee at a very interesting time. I was on that committee for a couple of years during the investigation of campaign abuses, primarily focused on the Clinton administration. Chairman THOMPSON conducted those hearings and investigations in a way that deserves great credit. It would have been quite easy to have the hearings evolve into nothing but a partisan allegation, and he did not do that. He conducted the hearings very nobly, in a very respected manner. I was proud to serve with him on that committee. It was an enormous responsibility to be investigating the sitting President. I believe Senator THOMPSON conducted those hearings very well.

He also, in a very short period of time, was made a Member of the Senate Finance Committee. I had the pleasure of serving with him on the Senate Finance Committee, again, a committee where we were able to make some positive changes for the country regarding tax cuts. Senator THOMPSON has proven to be a real friend of taxpayers in enacting probably one of the largest tax cuts in our Nation's history, certainly in the last couple of decades.

He always provided common sense, a sense of humor, as well. Certainly Senator FRED THOMPSON will be missed in the Senate. He is my friend from Tennessee. I wish Senator FRED THOMPSON and his lovely wife, Geri, every success in the future. No doubt he will have many.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

BRINGING SOUTH DAKOTA'S COMPASSION TO AFRICA

Mr. DASCHLE. Mr. President, in August, I had the good fortune to be able to travel with several Senate colleagues to South Africa, Kenya, Botswana, and Nigeria. We wanted to get a clear look at the development challenges in Africa, including health crises, U.S. investment and trade, microenterprise development, education and agriculture.

Even before we left, we got a sense of the common cause between the people of the United States and the people of Africa. Working with the South Dakota Red Cross and Hope Worldwide, citizens from Sioux Falls donated more than 1000 pounds of clothes and toys to South African children who have been affected by the AIDS pandemic. I want to publicly acknowledge the great work of Stephanie Koster, director of HIV/AIDS Services for the Sioux Empire Chapter of the American Red Cross, on this effort.

I was overjoyed to be able to deliver, on behalf of South Dakotans, some glimmer of hope to children who have suffered either because one or both of their parents contracted HIV or because they themselves contracted it. In Soweto we met a young girl, Mary, who gave me an indication of the price children are paying as a result of HIV.

Mary is 12 and the eldest of five children. She recently lost both of her parents due to complications with AIDS. Not yet a teenager, she is left to fend for herself and her four siblings. Despite this challenge, Mary rose to greet our delegation and recited a poem she had recently written to her parents entitled, "Parents yesterday, parents today, parents tomorrow."

I left for that trip convinced that these challenges facing Africa—chief among them the AIDS pandemic—were tragic humanitarian crises. After this trip, I am convinced Africa's challenges, if left unaddressed, could soon become America's national security threats. Failure to more energetically engage this troubled continent, especially in the post-September 11 world, poses risks to both the lives of millions of Africans and our own national security.

That is why I was especially disappointed to learn last Friday morning that the House chose to adjourn without passing two important pieces of legislation that could have energized our efforts in Africa.

S. 3032, a bipartisan bill to expand U.S. efforts to support micro-enterprise and which passed the Senate unanimously, was a casualty of the House's rush to leave town. We all know that micro-enterprises are a lifeline for the poorest of the poor—and have proven to be a pivotal tool that has allowed women, especially, to provide for their families. Across Africa, we saw women fighting for their families and raising their children on money they earned at small shops. But for every woman who was able to make ends meet because of her micro-enterprise, there are thousands of others who need a helping hand to get started. And by helping hand I don't mean a costly program. The typical micro-enterprise loan is $50. By failing to pass S. 3032, the House missed the opportunity to provide that helping hand and opportunity.

The House also left town without passing a Global HIV/AIDS bill. In July, the Senate unanimously passed H.R. 2069, which authorized the resources that we all know will be required in the battle against HIV/AIDS. We were told by the House that the price tag on that bill was too high, and that they would pass it if we reduced the funding level. So we made clear to the House that we were ready to cut back the amounts authorized for this battle—vastly if they insisted—to remove the obstacles to some form of progress on this vital issue. Apparently, any amount at all was too much for the House leadership, because the House just could not get to yes on this vital issue.

I am particularly disappointed because the House's refusal to act ends any hope of enacting the Family Partnership Survival Act. This program is very simple. It authorizes $75 million over the next 2 years to treat HIV-positive mothers and their partners. By keeping mothers and fathers alive so that they can help raise their children, it is, in effect, an orphan-prevention program.

I remember vividly arriving at an HIV Voluntary Counseling and Testing Center in Kibera, the largest slum in Nairobi, Kenya. We were greeted by mothers, each of whom was HIV-positive. Yet they greeted us, dancing and singing a song whose lyrics were:

> We are so blessed, because we know our status.

They felt blessed to have learned they were HIV-positive because, by knowing their status, they could take steps to protect their partners. And they could receive counseling and nutritional supplements to keep themselves healthy in the face of this insidious virus.

It will be an even more joyful day when these women will feel blessed not only because they know their status, but also because they have access to treatment and drugs that will keep them alive. The House could have hastened that day. It did not. And so, Mr. President, I will come back at this issue until it is law.

The President is scheduled to travel to Africa in January. As I was able to carry with me on my trip—to young Mary and others—some of the compassion of South Dakota, I wish the President could have been able to bring with him two new laws expressing the compassion of the United States.

As our dear colleague Paul Wellstone used to say, "time is not neutral." We can no longer afford to ignore Africa's challenges, because before long they will become our challenges. The House missed its chance to help confront those challenges in the 107th Congress. I hope it will help us address them in the next.

HONORING THE RETIRING SENATORS OF THE 107TH CONGRESS

Mr. DASCHLE. Mr. President, one of the advantages of a lame duck session is it gives us a little longer before we have to say good-bye to departing colleagues. Quite a few members of our Senate family will not be with us when the 108th Congress begins in January.

From the moment we first step foot on this floor, most of us are powerfully aware that we are links in an extraordinary chain of history. When we open our desks, we see carved or penned in them the names of those who served in this body before us.

Over in the historic Old Senate Chamber, we can almost hear the voices Daniel Webster, Henry Clay and John Calhoun. Here in this Chamber, we walk in the footsteps of such leaders as Lyndon Johnson, Mike Mansfield and Howard Baker.

Once you have served here, you never leave here entirely. Every Senator who has ever served here remains here in some form.

That connection is not only carved in our desks. It is carried in those with whom we serve.

Think about this: Senator THURMOND entered the Senate in 1954.

He served with Walter George, who entered in 1922. Walter George served with Henry Cabot Lodge, who entered in 1893, who served with John Sherman, who entered in 1861, who served with Hannibal Hamlin, who entered in 1848, who served with William King, who entered in 1819, who served with Rufus King, who re-entered in 1813, who served with Joseph Anderson, who entered in 1797, who served with John Brown, who entered in 1792, who served with Robert Morris.

Robert Morris entered in 1789—and signed both the United States Constitution and the Declaration of Independence.

Through just ten people, we are directly connected to the two documents that this Nation is founded upon—two documents that all of these departing Members have advanced and defended throughout their careers.

We are able to see those linkages because of the masterful historical work of another of our colleagues, Senator BYRD, whose birthday, we have noted, is today.

Every departing Senator has added pages to the history of this Senate and this Nation. Some have provided whole chapters. And, in a couple of cases, whole volumes of history.

I would like to take a moment and acknowledge our departing Senators.

STROM THURMOND is the longest serving Senator in our Nation's history. His career has spanned the arc of the last century, and his service has helped usher in this one.

He has gone from Democrat, to Dixiecrat, to Republican. His party affiliation may have changed, and his position on some issues may have changed, but his service to the people of South Carolina has been unwavering. He is truly the Cal Ripken of the Senate.

JESSE HELMS began his first term in the Senate in January 1973. Senator HELMS is a giant—not only on the Senate stage, but also on the world stage. And, with his budding friendship with the rock star, Bono, in retirement we may yet see him on a concert stage. It has been said that leaders face a choice between being loved or feared—Senator HELMS is both.

JESSE and Dot have been indispensable members of the Senate family, and we will miss them.

PHIL GRAMM has been at the center of every major economic and domestic policy battle in my time here. And even though I have frequently disagreed with him, I have always learned from him. Virtually singlehandely, he has changed America's economic policy—twice. Like all things Texan, he is larger than life, and he leaves some big shoes to fill.

FRANK MURKOWSKI is departing the Senate not because the people of Alaska don't want him in Washington, but because they do want him closer to home. That makes sense, because he has been a tireless advocate for his State. I have no doubt that he will continue to be, whether it is shaping policy at home, or twisting the arms of his former colleagues here. Congratulations, Governor.

BOB SMITH once said, "I hope that they'll put in my obituary that I was a good legislator—that I did my job for the people of New Hampshire. I hope they put that whole picture in."

Well, we don't have time to capture the whole picture—and I know that there are more chapters to be written in BOB SMITH's political life—but for nearly 20 years in the Congress, he has been a good legislator, and he has certainly done his job for the people of New Hampshire.

We may not be seeing FRED THOMPSON on C-SPAN anymore, but we will certainly be seeing him on TV. And should he ever take a role that involves combating government fraud, waste, and mismanagement, it will be a case of life imitating art—because that is just one of them many things he has done so well here in the Senate.

From the Arkansas State house, to the House, to the Senate, TIM HUTCHINSON has brought his keen understanding of both education and small business to bear for the people of Arkansas—and that is something I am certain he will continue to do in the days and years ahead.

Let me also say a word to Senator BARKLEY. I recently saw an interview in which Senator BARKELY said he would bring some bottled water from Minnesota so as not to catch Potomac Fever. I think you probably need a slightly longer exposure to catch it—but we thank him for his service at this time of transition for Minnesota and for the Senate.

I also want to say a few words about the departing members of the Democratic Caucus:

There is no tougher fighter for this party or its values than BOB TORRICELLI. There is no more loyal ally, there is no more passionate Senator. He has lived a life devoted to public service.

I have often heard Senator TORRICELLI talk about how, growing up in his house, "a person's value was measured by what they did for other people." By that measure—or by any measure—BOB TORRICELLI has been an invaluable member of the Senate.

BOB TORRICELLI has always put others first. He helped recruit and elect the Senators who would ultimately put Democrats in the majority—embracing a thankless task, and excelling beyond all expectations. In an act of political courage, he stepped down when he felt his own candidacy would threaten that majority he worked so hard to build.

In the legislative arena, he has worked to protect Americans from gun violence—to protect women's rights—and workers' rights—and civil rights—and he has sought to provide tax relief for working families.

And in the wake of the tragic events of 9/11, BOB TORRICELLI took on the cause of rebuilding—helping New York rebuild—helping the region rebuild—and helping the victims and the survivors begin the process of rebuilding their lives.

I will miss BOB TORRICELLI's eloquent, passionate, articulate voice—and I thank him for his service.

I am sure these last few weeks have been bittersweet for MAX CLELAND. He lost an election—but he did get engaged the next day.

It shows he has his priorities straight.

But then, he always has had his priorities right. After Vietnam, just about anyone else would have said: I've given enough for this country. Not MAX CLELAND. When some of the people whose job it was to care for him lost hope, saying that the very act of putting on a shirt would tire him for the whole day—MAX willed himself to health. And then he set out to help others.

In 1970, at age 28, he became Georgia's youngest State Senator ever. In 1977, he became President Carter's outspoken chief of Veterans Affairs. After that, he served for 13 years as Georgia's Secretary of State.

In every job, he worked to make life better for Georgians, for veterans, and for those who needed the government to work for them.

And then—as if he hadn't given enough of his time and energy to others—he volunteered for another tour of duty—this time as a U.S. Senator.

In the Senate, MAX's personal experience gave him a voice in the issues of war and peace, the preparedness of our armed forces, and the way in which we treat those whose service is done.

Though MAX knows the sacrifices service sometimes demands, he didn't limit his focus to those who have sacrificed. He dedicated himself to the creation of an America worthy of that sacrifice: a society of justice, freedom, compassion and strength.

In the wake of September 11, and the anthrax attacks here on my office, MAX was instrumental in passing the legislation that better secures our ports and airports, better prepares our armed forces, and better equips the CDC to confront the new challenges of bioterrorism.

The things he has done may have been important for Georgia, but they were vital for America—and history will bear that out.

From his service in Vietnam, to the VA, to the U.S. Senate, MAX has exhibited a rare, almost singular kind of patriotism. He has taken his service seriously, but—as anyone who has been a subject of one of his jokes, or has witnessed him telling jokes about himself can tell you—he has never taken himself too seriously.

It has been reported that nearly every day, someone calls MAX's office, just to thank him for being MAX—for overcoming what he has overcome to become a leader.

Today, I want to thank MAX CLELAND for being MAX—for being a great Senator, a personal inspiration, and a dear friend, one who I will miss tremendously here in the Senate.

Tragedy carried JEAN CARNAHAN into the Senate, but she refused to let it define her once she arrived here.

I saw that most vividly last October 16, the first anniversary of the plane crash that killed her husband, her son Randy, and their aid Chris Sifford.

Jean had visited their graves over the weekend—and then returned to Washington so she could debate and vote on a foreign operations bill that strengthened our efforts to track terrorists, to strengthen the coalition against terrorism, and to feed and shelter Afghanistan's refugees.

That was the same day a letter containing anthrax was opened in my office, forcing her to continue her work—as a freshman Senator—without an office.

Compared to the adversity she has overcome, that was nothing. From the day she arrived, JEAN CARNAHAN brought with her to the Senate the hopes and concerns of millions of Missouri's families. She has a unique ability to find compromise, but there was one thing she never compromised—she never compromised the interests of hardworking Missourians.

Whether it was working for tax relief, prescription drug coverage, a National Patients' Bill of Rights that would be as strong as Missouri's, or help for laid-off workers—her elegant words and depth of understanding commanded attention, and more often than not, got something done.

JEAN sits in Harry Truman's seat—and I think that is fitting, because she occupied it with strength, dignity, plain-spoken independence.

She may not have served long, but she served this Nation and the people of Missouri well, and she served at one of the most turbulent and historic times in the life of our Nation.

I remember once hearing Governor CARNAHAN say, "Most of the time, you just get to sit in the boat, but every now and then you get to row the boat and direct it."

In a short time, JEAN CARNAHAN demonstrated that she belongs at the helm, and I, for one, am going to miss having her there.

I sometime think MAX CLELAND and JEAN CARNAHAN possess as much internal strength and grace as the rest of the Senate combined. They are extraordinary people, exceptional public servants. Each in his or her way, is an inspiration.

They served their Nation faithfully, and at great personal cost.

I must say, it was disturbing and disheartening to see how their records and characters were misrepresented in this campaign. They deserved far better. Voters in Georgia and Missouri deserved far better.

I hope that through the clarity of history, the people of their States see these two great patriots for what they are, and how well they served.

Finally, let me mention a colleague who left us too soon—Paul Wellstone. It was a joy and an honor to have him in the Senate.

Paul said that he came here to rattle some cages—and sometimes he rattled mine. But he always told the truth. And he always remembered who he was speaking for. As I have said before, he was the soul of the Senate. He had that rarest and most difficult kind of bravery: moral courage. He always stood for what he believed in, even if it meant standing alone. And he fought in a way that ennobled his causes and inspired us all. And I will miss him dearly.

To hear each of these leaders call me "leader" has been one of the greatest honors of my life—and I will be forever grateful to you.

In 1998, Senator LOTT inaugurated the "Leader's Lecture Series," featuring speakers who had "enrich[ed] the memory of the Senate by sharing with us the wisdom and insights that can be gained only by a lifetime of service."

Without exception, every speaker—including those who went on to serve as Vice President, even President of the United States—has recalled his years in the Senate as the best and happiest of his career.

Given the historic events that shaped this Congress, I don't know that any of us will look back on these 2 years as the happiest of our careers—although there have been moments of great joy for all of us.

But I hope we will look back on these 2 years and remember times when we were able to work together to help lead America through one of our Nation's darkest chapters.

The private times we have all shared together over those months have forged bonds that make us more than just colleagues. In keeping with the Senate's best traditions, we have become friends, and family.

I regret that we weren't always able to maintain that unity—especially this year—that I had hoped we might have. I hope we can recapture it in the days ahead.

To all of my departing colleagues, it is an honor to be connected to history—that short thread that ties us to the Founders of this great Nation. But as a much of an honor as it is to be connected to history, it has been a privilege to be connected to each of you.

THANKING STAFF

Senators may be the most visible people here, but there are also many people who make the Senate work.

I want to thank all of those who make the Senate run: our staff here on the floor, the reporters, the doorkeepers, the police officers, the pages, the tour guides, the librarians, the employees of the Architect of the Capitol, our Chaplain and his staff—and the list goes on.

Our clerks, those who are with us today, our Parliamentarian—to all of them, to each of them, let me express my heartfelt thank you.

They deserve our thanks, but there are two people in particular who I also want to thank: Jeri Thomson, the Secretary of the Senate, and Al Lenhardt, our Sergeant at Arms—both of whom I had the privilege, as majority leader, to nominate.

I have heard them called our 101st and 102nd Senators, and they truly have been indispensable to me, and to the Senate family.

For Al Lenhardt, the fact that he was in place in this job 6 days before September 11 is further proof for me that God watches over this body. Through 9/11, anthrax, he helped the Senate to handle unprecedented challenges, and prepare for a new generation of threats.

For Jeri Thomson, no challenge was too big, no detail too small, the consummate professional, unflappable. She kept the Senate functioning in the aftermath of anthrax. Without her, we would not have broken ground on the Visitors Center. She made the Senate work better—not only for the Senators, but for the people we serve.

She has been by my side my entire time as leader. She has become a dear personal friend. And I will miss her, as we all will.

This has been an historic Congress. Between September 11 and anthrax, we have lived through two of the greatest crises the Capitol has not seen since Civil War soldiers were camped out in this Chamber 140 years ago.

The dedication and professionalism of Jeri Thomson, Al Lenhardt, and all of those who work here helped us not only survive those who work here helped us not only survive those crises, but to work through them, and to continue to serve the American people.

I thank them, the Senate thanks them, and I feel confident that history will record them as able servants who deserve our thanks for generations to come. And that, too, is a part of the recognition they deserve.

I yield the floor.

The PRESIDING OFFICER (Mr. BAUCUS). The Senator from Pennsylvania.

TRIBUTE TO THE SENATE AND TO DEPARTING SENATORS

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly about the conclusion of our Senate session. We finished our last vote late last night, and after today's session, we will be in adjournment until January.

The Senate, unlike the House of Representatives, is a continuous body. Only one-third of our number stands for election each year, unlike the House of Representatives, where there is a new House elected every two years. So we are continuous.

The Senate has been called the world's greatest deliberative body. Sometimes I doubt that acclamation, but sometimes we measure up to it, and I think we did yesterday in passing homeland security and the terrorism insurance bill.

There is an air of collegiality and an air of civility, which is the backbone of the Senate. There are only 100 of us. We get to know each other very well. We do that in our committee meetings. We do that in our travels. We do that on the floor of the Senate. A good occasion for that is when we have consecutive votes, back to back to back to back, as we had last night, four votes. This gives us a chance to avoid playing telephone tag, which occurs frequently, and to see our colleagues on the floor and to talk to them.

We will be missing some really outstanding Senators as we conclude the 107th Congress. There is a great deal that could be said about each of them from my own personal experiences.

Senator THURMOND is truly a living legend. When I first saw him chair the Judiciary Committee, he asked a nominee if the nominee promised to be courteous. I questioned whether that was a very good inquiry. What else could the nominee say? The nominee said, "Yes." Then, Senator THURMOND said, "the more power the person has, the more courteous a person should be."

Senator HELMS finished six terms in the Senate, elected in 1972. One of my fondest recollections of Senator HELMS is relative to the pornography bill, which he wrote, and which was declared unconstitutional. After being consulted by him, I gave him a hand in writing a bill which was constitutional.

In order of seniority on our departing colleagues, FRANK MURKOWSKI came to the Senate with 15 other Senators, a total of 16. They called us the "Sweet 16," elected in 1980. Now there are but three: Senator GRASSLEY, Senator NICKLES, and myself.

Senator MURKOWSKI goes on to be Governor of Alaska, where he can maintain his own schedule and be an executive without relying on 50 other Senators to carry the day.

PHIL GRAMM is truly an extraordinary Senator. Nobody in the Senate is smarter than PHIL GRAMM. Perhaps nobody in the history of the Senate was smarter than PHIL GRAMM. One of his memorable moments was when we were debating how to proceed on the impeachment proceedings of President Clinton. There was a lot of disagreement. Suddenly, like a bolt of lightning, PHIL GRAMM and TED KENNEDY agreed. What were the other 98 of us to do? If those two men could agree, it must be an appropriate solution.

BOB SMITH, with distinguished service in the House and distinguished service in the Senate, was perhaps a little too candid sometimes as he took the floor in his quest for the Republican nomination. A little critical of the party, but he was always courageous and always straightforward. I learned a lot from Senator SMITH in our caucuses on impeachment. I had not known the depth of his knowledge as a high school teacher, but he was an extraordinary Senator and made a great contribution.

Senator FRED THOMPSON, a super star. When he came to the Senate, he took over the chairmanship of a major committee in record time and presided over very important hearings on campaign finance reform. What is not really known about FRED is that he is as lighthearted and as good at repartee as he is at the law, which is a very high degree.

TIM HUTCHINSON served on the Committee on Veterans' Affairs with me, very devoted, very serious, very sincere. He had the misfortune to lose an election or else, I think, he would have had a very long and illustrious career in the Senate. Yet, he may have a long, illustrious career in the Senate. He will live to fight another day.

BOB TORRICELLI, always on top of the issues, very important to the Judiciary Committee where we served together. He was the ranking Democrat when I chaired the Subcommittee on Department of Justice Oversight; always judicious, always fair and always a great contributor.

MAX CLELAND, a real hero, a man of great courage. To see MAX function in the Senate or in life, with the tremendous injuries he suffered in Vietnam when he fell on a hand grenade, is truly inspirational. We will all miss MAX CLELAND.

JEAN CARNAHAN. Senator JEAN CARNAHAN picked up the mantle of her husband, Governor Mel Carnahan, and made a real contribution in her two years in the Senate.

Paul Wellstone has been the subject of tribute and a man who will be truly missed. His work on mental health parity with physical ailments will be Paul Wellstone's real legacy. I had an opportunity to travel to Minneapolis to pay tribute to the Wellstones' two sons. The tragedy with Paul and Sheila and their daughter is truly the saddest occasion of the past Congress.

Beyond those who will no longer be with us in the 108th Congress, just a moment to pay tribute to two of our colleagues who are having birthdays today. Senator BYRD, I know his age but I shall not repeat it. That is up to him to say, however, he finishes his 50th year in the Congress of the United States. He was elected to the House of Representatives in 1952 and the Senate in 1958. I am glad to be able to have a few minutes on the floor of the Senate to make a few comments. It is a little hard to be recognized when Senator BYRD is in the Chamber.

I heard on National Public Radio, so the world knows, that JOE BIDEN is 60 today. He was just elected to a sixth term, which is really remarkable.

It is a great privilege to be a Member of the Senate and to have had the opportunity to work with these men and women and to work for the people of Pennsylvania, my State, and for the people of the United States.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I join my colleague from Pennsylvania and other colleagues who have recently been on the floor today, first in expressing happy birthday wishes to our esteemed colleague from West Virginia, Senator ROBERT BYRD. I just expressed those birthday wishes to him personally a few moments ago on this, as I told him, the 35th anniversary of his 50th birthday. Because in so many ways Senator BYRD has been a real pillar of strength in the Senate, standing up for the rights and privileges of the Senate, standing up for the demarcation set down by our Founding Fathers between the legislative branch and the executive branch of the Government.

When I say 35th anniversary of his 50th birthday, I mean that because, quite frankly, Senator BYRD does not appear in any way to be one day over the age of 50. So I wish him the best on his birthday and wish him to maintain strength and good health to continue the leadership he has shown in the Senate for the last almost 30 some years.

I also pay my respects to Senators who are leaving: Senator THURMOND, Senator HELMS, Senator BOB SMITH, Senator FRED THOMPSON, Senator TIM HUTCHINSON on the Republican side. Especially I pay my respects to Senator HUTCHINSON for his great work on the farm bill. We got a really good farm bill out this year. He was a very diligent and good member of the Senate Agriculture Committee, and we worked very hard together in a bipartisan fashion to report out a very good farm bill for farmers and for rural America. I especially thank Senator HUTCHINSON for his efforts in getting that farm bill through.

I also pay my respects to Senator HELMS. Senator HELMS was the chairman of the Agriculture Committee when I first came to the Senate. We formed a friendship at that time that has endured, although I am sure it is clear to anyone watching or listening that Senator HELMS and I have probably not agreed too much on too many things, but nonetheless, we have maintained a very close friendship and respect for one another through all the years. I wish him the best in his retirement, and many happy years ahead for our distinguished colleague, Senator HELMS.

For those Senators on this side, Senator BOB TORRICELLI, again, I thank him for all the work he has done, first as the Chair of our Democratic Senate Campaign Committee that ensured we had the wherewithal in the election before last to win many elections and maintain our strength in the Senate. I wish Bob the best in his future endeavors.

For Senator JEAN CARNAHAN, again, I thank her for her 2 years of service here under very trying circumstances. I was a close friend of her deceased husband, Governor Mel Carnahan, who, as we know, was lost in a tragic plane crash a little over 2 years ago, right before the election, along with her son Randy. Senator CARNAHAN did a remarkably good job for Missouri and the Nation during these 2 years. She was diligent, hard working, and fought very hard for Missouri and her constituents. Again, I wish her the best in her future endeavors, and her family, to her son Tom and daughter Robin whom I have worked with in the past.

I also pay my respects to Senator MAX CLELAND. MAX and I do go back a long way. I first met MAX when he was here in the Senate on the Senate Veterans' Affairs Committee. He became President Carter's Secretary of Veterans Affairs when I was in the House of Representatives. Being a veteran and being a member of the veterans sort of group we had in the House of Representatives at that time, we couldn't have asked for a better champion for veterans issues at that time in the late 1970s than we had in MAX CLELAND. It was Senator CLELAND who, as Secretary of Veterans Affairs, set up the vets centers around the United States. There are now more than 200 of them.

In every case I have been privileged to see a vets center, they are just sort of the heart and soul of outreach and a place for veterans to get help, if they need it, and a place where veterans can make sure they have access to the outlets of the Federal Government for job training and that type of thing, for education.

That is his lasting legacy all over the United States. Of course, it has been repeated time and again about his great heroism in the Vietnam war, for which he received a Silver Star. I will miss him as a very close friend for all these years, and the country has lost the service of a truly remarkable, courageous, compassionate, brave American, MAX CLELAND.

Senator DEAN BARKLEY, our second Independent, came here from Minnesota under trying circumstances. I had not known him before, but over the last couple of weeks I got to know him, and I have a great deal of respect for him for what he has done here. Very few people serve for only a couple of weeks in the Senate and actually get a bill passed. Senator BARKLEY got his bill through, and I congratulate him for that. I thank him for his service here and, again, wish him the best and hope he will stay involved in public affairs, both in Minnesota and nationally.

TRIBUTE TO SENATOR PAUL WELLSTONE

Lastly, I want to pay my respects to our departed friend, Senator Paul Wellstone. I did not want this session to end without saying something for the RECORD about the large gap left in the Senate by the untimely death of Paul Wellstone.

Paul was my closest friend in the Senate. But in truth, Paul Wellstone was one of those rare souls who so many saw as their best friend. He had a powerful authenticity that made a miner on the Iron Range know that he was as important to Paul as the President of the United States.

Paul never had to proclaim his decency; it shone forth every day in great acts of political courage and small acts of human kindness. He never had to ever say he cared. It just showed in how he greeted the elevator operators and the policemen outside. Sometimes we would walk over to the Hart Building and talked to workers on the ground. Everyone was a friend of Paul's and he always had a smile and a handshake for everyone.

We saw this in him every day, in dozens of ways, from that hand over there at his desk relentlessly chopping the air as he stood on the floor speaking for those who otherwise had no voice, to the countless people he reached out to help across his State and across the Nation.

The hard-working folks he cared about most didn't have lobbyists or influence, but they had Paul Wellstone, and he truly was their best friend. Everyone called him Paul—not just his colleagues but staff and citizens alike. He would not have it any other way. No one ever wore the title of "Senator" better—or used it less.

In the days since that terrible tragedy, we have seen an outpouring of grief and admiration every bit as authentic as Paul was himself. It is a tribute to him and to the yearning I believe in this country for a politics that can truly be the noble profession of putting principle above the latest polls. Paul truly was the soul of the Senate. Sometimes he cast votes that even some of his friends disagreed with—on war or on welfare. But when he did, he was the mirror in which we, his colleagues, looked at ourselves and searched our own hearts to ask whether or not we were doing the right thing.

So we say thank you to the political science professor whose measure of truth was never in political theory, but the impact that his decisions and ours had on real people.

Since he left us, Paul's friends and admirers have focused on Paul Wellstone as the lone man in the arena fighting a battle against injustice. Paul Wellstone was that. But he was also a doer who left behind a real record of accomplishment in the Senate.

Paul was one of the Senate's leading voices for education, pushing for investments in early education, for class size reduction, and for student financial aid so working and middle-class families could afford to send their kids through college. And we worked together tirelessly to increase the Federal Government's investment in special education, so students with disabilities could get the education that is their right.

Paul Wellstone worked alongside Senator DEWINE to pass sweeping reforms of our Nation's job training, adult education, and vocational rehabilitation programs. By streamlining often confusing and overlapping programs and paperwork, Paul Wellstone's efforts are helping ensure that America's workers get the training and help they need to stay on the job or to find new employment.

As a warrior for peace, Paul understood this Nation's duty to the men and women who bear the scars of war. Paul authored, fought for, and helped enact legislation to improve the living conditions of hundreds of thousands of American veterans. This law ensures that homeless veterans who suffer with alcoholism and drug addiction have ready access to the treatment and care they need and deserve.

Paul also made a courageous push for a policy whose time had passed and should be done now, and that is mental health parity. Along with Senator DOMENICI, Paul authored the Mental Health Parity Act of 1996, a groundbreaking proposal ensuring health care coverage of mental illnesses be provided on par with coverage of other medical illnesses. In the final year of his life, he continued to push for the expansion of mental health coverage, again teaming with Senator DOMENICI to introduce the bipartisan Mental Health Equitable Treatment Act, which could expand parity for mental health insurance.

I hope that in the next Congress, the Senate and the House will enact what I hope will be deemed the Paul Wellstone Mental Health Parity Act, to finally put mental health on the same plain, the same level as all other medical illnesses.

Paul once said, "Politics is about what we create by what we do, what we hope for, and what we dare to imagine."

Paul didn't just dare to imagine a better America—he helped to build it. Sure, he was willing to fight the lonely fight when he thought it was right and proper, but he also knew how to turn idealism and ideas, ideas into action to improve people's lives—investing in education, expanding health care, fighting killer diseases such as Parkinson's, helping homeless veterans, and veterans exposed to radiation.

Because of what he did, family farmers will have a better future. Because of what he demanded, mental illness will be soon treated equally in our health care system. Because of who he married—his wife Sheila—and because of her passionate charge, more women and children will find safe harbor from the scourge of domestic violence.

Paul Wellstone left us at a time when America needs him the most. He believed, as his champion and mentor Hubert Humphrey once said, that "the moral test of Government is how that Government treats those who are in the dawn of life, the children, those who are in the twilight of life, the elderly, and those who are in the shadows of life, the sick, the disabled, and the needy."

Those words, as much as anything else, form the focus of my public life and, I hope, the true path of my political party. It is a course in conscience that Paul Wellstone tried to set for his party and his country.

But it now falls to each of us, those in the land of the living, to continue Paul Wellstone's journey for justice, to continue to speak out, to stand up and fight the good fight, and to lead our Nation with courage and conviction. The times demand it. In the coming days, may we all have the courage of our friend, Paul Wellstone.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WORKING WITH SENATORS DON NICKLES AND MITCH McCONNELL

Mr. REID. Mr. President, when I first was elected to the House of Representatives, I knew a man by the name of Cliff Young who had also served in the House of Representatives for two or three terms, ran for the Senate, was defeated, and then served for many years in the Nevada State Senate, and then served in the supreme court, where he became the chief justice of the Nevada Supreme Court—that is also an elective job. At the end of this year, he will retire. He is a wonderful man, a Republican, who rendered great service to the State of Nevada and to the country. The reason I mention his name, however, is that he said: HARRY, you are going to Washington to serve in the House. Make sure you do a couple of things. One is use the gym. You need to get some exercise. Also, make sure you do nothing to change the seniority system. The seniority system is the only thing that gives that body, the House of Representatives, stability.

He certainly spoke volumes when he said that because it is absolutely true. The seniority system in the House has some faults, but at least it gives that body stability. One of the things the Gingrich-led Congress did to hurt the House was change the seniority system.

I mention that because there is going to be a change in the Senate. MITCH MCCONNELL is going to take over for DON NICKLES as the assistant Republican leader, their whip. That is being brought about as a result of the fact that they do not follow the seniority system there and have term limits on their jobs, except for the leader of the Republicans. That is a rule they have, and even though I think it is wrong and I think they are making a mistake doing it, that is the way it is.

Having said that, I want to acknowledge publicly how I have enjoyed serving with DON NICKLES as my counterpart on the minority side. DON NICKLES and I have worked together since I came to the Senate. We were on the Appropriations Committee together. We served as chairman and ranking member on the Legislative Branch. We did a lot of work together on the Interior Appropriations Committee. I always found him to be easy to work with, someone who is very set in his views but would tell you how he felt. That has not changed in all of the years I have known him.

The reason I admire and respect DON NICKLES is I do not agree with a number of things he wants to do politically and tries to do politically, but he believes in those things. These are ideological feelings he has, and I have great respect for people who do things based on ideology. So I am going to miss DON NICKLES in this capacity, and I want him to know that I have great admiration and respect for him, and I consider the friendship we have developed over the years as something that is very important to me.

I say to MITCH MCCONNELL, who is going to take his place, that I welcome him. He will be assistant to the Republican leader, Senator LOTT, and will do a good job for him, but also for the Republicans generally. I have told him this personally and I say publicly, anything I can do to help the transition to make it more smooth, I will be happy to do that.

MITCH MCCONNELL is someone whom I have gotten to know. MITCH MCCONNELL has held different leadership positions on the other side, including having been the campaign chairman, where he did an excellent job. He served in other capacities with the Republicans. A lot of times I disagree with what MITCH MCCONNELL does politically, but he never hides his feelings from anybody. Campaign finance reform: There was a train moving down the track, and he was the only one brave enough to stand in front of it, and he never left. I have admiration for his stand on that issue, even though I disagree with what he wanted to try to do.

So I will miss DON NICKLES. I welcome Senator MCCONNELL. I have great respect for his abilities and look forward to working with him.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. REID. I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered.

Thereupon, the Senate, at 4:17 p.m., recessed until 5:40 p.m. and reassembled when called to order by the Presiding Officer (Mr. DAYTON).

UNEMPLOYMENT INSURANCE EXTENSION

Mr. DASCHLE. Mr. President, I come to the floor to make one final plea with regard to unemployment compensation. It is important to remember what the Senate has done as we reflect back over the last many months in our efforts to deal with this issue.

We offered an amendment that was sponsored by our departed, distinguished Senator Paul Wellstone. That legislation was the same as legislation that Congress passed when the first President Bush was in office in the early 1990s. We tried to pass it. Unfortunately, it was blocked by our Republican colleagues on eight different occasions.

Again, let me repeat. That was what we had in place when the first Bush administration was in office. Unemployment benefits that were actually extended three times when President Bush Sr. was in office.

The Senate then took up a bipartisan compromise to extend benefits for just 3 months. Republicans and Democrats got together. On the 14th of November we passed a simple extension for 3 months. Once again, the House refused to act.

So we took what was originally acceptable to the senior Bush administration, and that didn't work with the House. Then we passed what worked on both sides of the aisle here in the Senate for a simple 3-month extension, and that too didn't work for the House.

Over the course of the last 48 hours, we have been involved with House leadership, asking if there was any possible compromise, any way that we could extend it for 2 months, 1 month, any way that somehow we could send a message to the almost one million people who will lose their benefits on the 28th of December and to the 95,000 people who will lose them each week following the 28th of December. Hundreds of thousands of people, ironically, right over the Christmas holidays will lose any opportunity to provide for their familiar with unemployment insurance.

I must say I am disappointed to announce to my colleagues that once again our House Republicans said no.

I have to say that I think it is a story right out of Charles Dickens. I can't imagine that under these circumstances, even for a month, they couldn't see fit to act. Ebenezer Scrooge had a last-minute conversion. I hope that our Republican colleagues in the House will do so.

They are coming back on Friday and the Senate's bipartisan 3-month extension is waiting. I would urge the President—I ask President Bush—to call on the House Republican leadership to recognize the consequences of their inaction and pass our bipartisan unemployment extension.

We were, as I said, prepared to take whatever action necessary. We would have stayed in session if we had to to accommodate something that the House could have done to extend those benefits for a couple of months, which would have allowed us to work out something for a longer period of time.

That is my plea, my hope, recognizing, as I say, that hundreds of thousands of people will be affected at the worst possible time of the year.

I again renew that request. I urge the President to act. I urge our House colleagues to reconsider.

Mr. FITZGERALD. Mr. President, I want to call upon the House to act on the unemployment insurance compensation relief that we have passed in this body. I have been a cosponsor with other Members on this side of the aisle, as well as Senators CLINTON and SARBANES on the Democratic side.

I think we need to pass the legislation over in the House which has already cleared this body. If we do not, benefits are going to fall off the cliff on December 28, as the majority leader stated. I hope the House will take up that important legislation and at least extend the benefits until we can come back and deal in the new year with this issue.

PRESIDENTIAL AUTHORITY TO INTRODUCE ARMED FORCES INTO IRAQ

Mr. BYRD. Mr. President, earlier this year, I wrote to a number of constitutional scholars advising them that I was concerned about reports that our Nation was coming closer to war with Iraq. I asked a number of esteemed academics their opinion as to whether they believed that the Bush administration had the authority, consistent with the U.S. Constitution, to introduce U.S. Armed Forces into Iraq to remove Saddam Hussein from power.

All of the scholars I consulted responded by stating that, under current circumstances, the President did not have such authority. Several of the professors I consulted, namely Peter Raven-Hansen of George Washington University Law School, and Philip Trimble, Professor Emeritus of the UCLA School of Law, were kind enough to call and discuss their views on this subject with my office. I would like to take this opportunity to thank them for taking the time to provide me with their thoughts on this matter.

While those professors contacted me by phone, others provided written responses. I have previously submitted for the RECORD the responses of professors Michael Glennon of the Fletcher

School of Law and Diplomacy at Tufts, Jane Stromseth of Georgetown University Law Center, Laurence Tribe of Harvard Law School, and William Van Alstyne of the Duke University School of Law.

Now, I would like to submit four additional responses I received on this same subject from professors Jules Lobel of the University of Pittsburgh School of Law, Thomas M. Franck of the New York University School of Law, Bruce Ackerman of Yale Law School, and Larry Sabato of the University of Virginia. I found their analyses of this important issue to be exceptionally learned and informative. For this reason, I ask unanimous consent that their responses be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

UNIVERSITY OF PITTSBURGH
SCHOOL OF LAW
Pittsburgh, Pennsylvania, August 2, 2002.

Senator ROBERT C. BYRD,
U.S. Senate, Committee on Appropriations, Washington, DC.

DEAR SENATOR BYRD: Thank you for your letter of July 22, 2002 requesting my analysis of President Bush's constitutional and/or legislative authority to introduce U.S. Armed Forces into Iraq for the purpose of removing Saddam Hussein from power. I too, am deeply concerned that the Bush Administration is moving toward war with Iraq, and doing so without congressional authorization. I only received your letter Thursday, August 1 and unfortunately leave for vacation on Saturday August 3rd. Because of the importance of this issue, I intend to send you my opinion analysis today by FAX.

I. PRESIDENT'S CONSTITUTIONAL AUTHORITY

As you correctly state, Article I, Section 8 of the Constitution provides Congress the power to, among other things, declare war. (It also provides an important power which is omitted from your letter, but which I and other scholars have argued was designed to prevent the President from unilaterally engaging in reprisals, or limited wars—the power to issue letters of marque and reprisal.)

The meaning of the power to declare war is course, contested, with Presidents at times asserting the power to engage U.S. troops abroad in various limited actions. I, along with many other constitutional scholars believe that the Constitution requires congressional authorization for all non-defensive, non-emergency deployment of U.S. forces in combat against another country.[1] Nonetheless, proponents of Executive power argue that the President can initiate minor uses of force without obtaining congressional approval. Despite this dispute, virtually all scholars agree with Judge Greene's interpretation of the war powers clause in the case of *Dellums v. Bush:* where "the forces involved are of such magnitude and significance as to present no serious claim that a war would not ensue if they became engaged in combat," Congress has the authority under the Constitution to decide upon whether to go to war. 752 F. Supp. 1141, (D.D.C. 1990). In *Dellums*, Judge Greene held that in the context of the U.S. threat of war against Iraq over its invasion of Kuwait, "the Court has no hesitation in concluding that an offensive entry into Iraq by several hundred thousand United States servicemen . . . could be described as a 'war' within the meaning of Article I, Section 8, Clause II of the Constitution" To put it another way: the Court is not prepared to read out of the Constitution the clause granting to the Congress, and to it alone, the authority "to declare war." 752 F. Supp., *supra* at 1146.

In the present situation the magnitude and significance of any United States invasion of Iraq to overthrow Saddam Hussein requires congressional approval. The courts, scholars and even past Administrations have recognized that offensive action involving significant numbers of U.S. troops facing a substantial enemy requires congressional approval. *See, e.g., Mitchell v. Laird*, 488 F.2d 611, 613–14 (D.C. Cir. 1973); *Berk v. Laird*, 429 F.2d 302, 305 (2d Cir. 1970); Moore, *The National Executive and the Use of the Armed Forces Abroad, in* 2 The Vietnam War and International Law 808, 814 (Falk ed. 1969). *See also* Moore, *Emergency War Powers, the U.S. Constitution and the Power to Go to War*, 159, 161 *in* The U.S. Constitution and the Power to Go to War (Gary Stein & Morton Halpern eds., 1994); Peter Spiro, *War Powers and the Sirens of Formalism*, 68 N.Y.U. Rev. 1338, 1353 (1993). *See also* Joseph Biden & John Pitch III, *The War Power at a Constitutional Impasse: A Joint Decision Solution*, 77 Georgetown L.J. 367, 400 (1988); Major Geoffrey S. Corn, *Presidential War Power: Do the Courts Offer Any Answers?*, 157 Mil. L. Rev. 180, 252 (1998) ("Certainly the initiation of significant offensive hostilities in such a policy decision, which under our constitutional system of government should not be made without the approval of Congress.") *See also* Letter of Assistant Attorney General Walter Dellinger, September 27, 1994, reprinted at 89 Am. J. Int'l 122, 126 (1995) (recognizing that where U.S. forces attacked another country without the consent of the recognized government, leading to prolonged hostilities, inflicting substantial casualties on the enemy, and involving such "extreme" uses of force as sustained air "bombardment," the United States was engaged in "war" for constitutional purposes requiring congressional authorization).

William P. Rogers, when he was President Nixon's Secretary of State, argued that Congress' power to declare war is not "purely symbolic":

> "While the legislative form in which the power is exercised may change, nevertheless the constitutional imperative remains: if the nation is to be taken into war, the critical decisions must be made only after the most searching examination and on the basis of a national consensus, and they must be truly representative of the will of the people. For this reason; we must ensure that such decisions reflect the effective exercise by the Congress and the President of their respective constitutional responsibilities."

William Rogers, Congress, the President and War Powers, 59 Cal. L. Rev. 1194, 1212 (1971). Therefore, I conclude that any invasion of Iraq to remove Saddam Hussein would involve such significant forces and significant casualties so as to be inescapably categorized as a war which under Article I, Section 8 must be authorized by Congress.

II. WAR POWERS RESOLUTION

The War Powers Resolution clearly would apply to any U.S. effort to attack Iraq to remove Saddam Hussein. since such an effort would introduce U.S. Armed Forces into imminent or actual hostilities. Therefore Section 4(b)'s limitation on such action to 60 (or 90) days would apply, as would the reporting or consulting provisions of the Resolution. I would also argue that the Resolution was not intended to, nor can it override the Constitution's clear proscription that only Congress can decide to engage the U.S. in an offensive attack on another country. Therefore, prior to any such invasion, congressional authorization must be sought and obtained by the President.

III. POTENTIAL LEGISLATIVE AUTHORITY FOR WAR AGAINST IRAQ

You also ask about two potential legislative sources of authority for a Presidential decision to use force against Iraq. Public Law No. 107–40 does not provide authorization for the President to attack Iraq. The language of Section 2 of the Act authorizes the President to use force against nations he determines planned, authorized, committed or aided the terrorist attacks that occurred on September 11. 2001. or harbored organizations or individuals who planned those attacks, in order to prevent any future acts of international terrorism by such organizations. To date, the Executive Branch has offered no evidence that Iraq planned, aided or harbored Al Qaeda in connection with the September 11 attacks. The statute is clear that the authorization is limited to using force in connection with responding to nations, organizations and individuals connected with the September 11 attack, and did not authorize any broad based response to all forms of international terrorism. Indeed, the original bill that the President submitted for authorization was so broad as to plausibly authorize an attack on Iraq. Congress refused to enact the President's proposed bill; instead agreeing on the much narrower language currently contained in Section 2 of Pub. L. No. 107–40.

Nor does Pub. L. No. 102–1, authorizing the President to use force in 1991 to reverse Iraq's illegal invasion of Kuwait, provide any authorization for a current assault to remove Saddam Hussein. I understand the Administration's argument to be that since Iraq has not complied with the cease fire resolution 687 ending the 1991 war, Resolution 673 is revived, and thus both the Security Council's and Congress' authorization of force against Iraq pursuant to Resolution 678 are revived. This position is clearly erroneous and has been continuously rejected by the Security Council. Michael Ratner and I wrote a lengthy article published in the American Journal of International Law, 93 Am. J. Int'l Law 124 (1999), refuting this position which had been articulated by the Clinton Administration. To summarize our general view:

(1) Permanent cease fires such as occurred after the 1991 war generally terminate any U.N. authorization of force and such authorizations are not revived by any purported material breach by one side to the conflict.

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[1] Jules Lobel, *Little Wars and the Constitution*, 50 MIAMI L. REV. 61 (1995). *See* letter dated October 14, 1994 from Professors Bruce Ackerman (Yale), Abram Chayes (Harvard), Lori Damrosch (Columbia), John Hart Ely (Stanford and Miami visiting), Gerald Gunther (Stanford), Louis Henkin (Columbia), Harold Hongju Koh (Yale), Philip B. Kurland (Chicago), Laurence H. Tribe (Harvard), and William Van Alystyne (Duke) reprinted 89 Am. J. Int'l L. 127, 130 (1995) (Constitution "reserves to Congress alone the prerogative and duty to authorize initiation of hostilities"). (*See also* letter dated August 24, 1994 from same professors requesting that President Clinton seek and obtain Congress' express prior approval before launching a military invasion of Haiti.)'*See also* Ely, *War and Responsibility*, *supra* at p. 1, 66–67; Louis Henkin, *Constitutionalism, Democracy and Foreign Affairs* 40 n.* (1990).

(2) Article 34 of Resolution 687 is quite explicit that the Security Council, and not individual states, has the authority to determine whether Iraq has violated Resolution 687 and also what "further steps," including presumably the use of force, to take in order to implement that Resolution.

(3) The history of Resolution 687 also supports the conclusion that it terminated the authorization of force contained in Resolution 678. After the suspension of hostilities in 1991, a provisional cease fire, Resolution 686 was adopted. Resolution 686 explicitly refers to Resolution 678 and "recognizes" that it "remain[s] valid" during the period required for Iraq to comply with the provisional cease fire's terms. The Security Council dropped that language in Resolution 687 which, unlike 686 does not recognize that Resolution 687 remains valid. Of all the detailed provisions in the cease-fire, only paragraph 4 guaranteeing the inviolability of the Iraq-Kuwait border contains language authorizing the use of force, and then only by the Security Council and not by individual states. That the Council decided to guarantee Kuwait's boundary by force if necessary—a guarantee that is central to both Article 2(4) of the Charter and the 1991 Persian Gulf war—excludes an interpretation of Resolution 687 as continuing the Resolution 687 authorization so as to allow individual nations to use force to rectify other, presumably less central violations. It would be illogical for Resolution 687 to require Security Council action to authorize force against threatened boundary violations, yet dispense with such action if Iraq violated another provision of the resolution.

(4) The subsequent history of the efforts to enforce Resolution 687 demonstrates that only the Security Council could authorize the use of force to enforce that Resolution's terms. Resolution 1154 adopted on March 2, 1998 clarified the view of a majority of the Council that its explicit authorization was required to renew the use of force. As the Russian delegate noted, "No one can ignore the resolution adopted today and attempt to act by bypassing the Security Council." Similarly, France stated that the resolution was designed "to underscore the prerogatives of the Security Council in a way that excludes any question of automaticity . . . It is the Security Council that must evaluate the behavior of a country, if necessary to determine any possible violations, and to take the appropriate decisions." Other members of the Security Council concurred.

Moreover, even if the Administration is correct and as a matter of international law Resolution 678 is still in effect and constitutes a U.N. authorization of force, the congressional authorization of force in Pub. L. No. 102–1 is significantly narrower than Resolution 678. Prior Administrations have pointed out that Resolution 678 not only authorized force to enforce the exant Security Council Resolutions, but also to "restore international peace and security in the area," which could conceivably be read to authorize removing Saddam Hussein from power. However, Pub. L. No. 102–1 contains no equivalent language. The congressional authorization only permits the President to use force pursuant to Resolution 678 "in order to achieve implementation of Security Council Resolutions 600, 661, 662, 664, 665, 666, 667, 669, 670, 674 and 677. Since those resolutions have now all been implemented and are not now at issue (Resolution 687 is of course not mentioned in Pub. L. No. 102–1), that law can not by any conceivable argument be interpreted to authorize the use of force in the current situation.

The Administration will undoubtedly argue that it has been using force against Iraq for the past decade, enforcing the no fly zones, and occasionally bombing Iraq, such as the December 1998 four days of air strikes. Those uses of force in my opinion and the opinion of many experts, and majority of the Security Council have been illegal and unconstitutional. That Congress may have for political reasons acquiesced in or not strongly opposed such actions does not, in my opinion, make them constitutional.

Moreover, whatever the constitutional and international legality of those relatively minor uses of force, what the Administration now proposes is of a totally different character—both in magnitude and purpose. The scale, magnitude and significant of an invasion of Iraq to remove Saddam Hussein can not conceivably be covered by enforcing the no-fly zone and intermittent bombing precedent. What is clearly required in the present situation is an open congressional debate and new authorization of force.

I have been involved in constitutional War Powers issues for many years, both as a scholar and as a litagtor. As a litigator, I have been bipartisan in opposing presidential uses of force without congressional authority. I was lead counsel for 57 democratic legislators who challenged the elder President Bush's plan to go to war to drive Iraq from Kuwait without receiving congressional authorization. I was also lead counsel for a group of predominantly Republican members of Congress led by Congressman Campbell who challenged President Clinton's bombing of Yugoslavia in response to the Kosovo crisis. I have also written on issues involving constitutional war powers, with articles in the Harvard International Law Journal, University of Pennsylvania Law Review, University of Miami Law Review, American Journal of International Law and other journals.

I apologize for this rushed answer to your letter, but I wanted to get you a response before leaving on vacation. As you can see, I, like you, have a deep concern about these constitutional issues, and would be happy to assist you or other legislators in any manner to ensure that these questions are properly debated and voted on by Congress. I will be out of my office for several weeks, but will call in for messages and would be available for any consultation you might wish. My office number is 412–648–1375 and my FAX number is 412–648–2649.

Yours truly,

Jules Lobel.

University of Pittsburgh
School of Law,
Pittsburgh, PA, October 3, 2002.

Hon. Robert Byrd,
U.S. Senate,
c/o Kathleen Hatfield.

Dear Senator Byrd: Article 2(4) of the UN Charter prohibits preemptive attacks on other nations. The Charter only allows a nation to use force (1) in self-defense where it has either been attacked or faces eminent attack, or (2) when the Security Council authorizes such use of force. Article 6 of the U.S. Constitution makes treaty provisions such as Article 2(4) of the UN Charter part of the "supreme law of the land."

For Congress to authorize a preemptive attack on Iraq without imposing a condition that the UN Security Council first approve such force would therefore violate both the Charter and our own supreme law. The general assumption has been that Congress should not and cannot authorize aggressive war. Indeed, the prohibition on aggression is considered a fundamental, peremptory norm of international law and the D.C. Circuit Court of Appeals has suggested that Congress does not have the Constitutional authority to authorize actions that violate such norms. CUSCLIN v. Reagan, 859 F2d 929, 941 (D.C.Cir. 1988).

Therefore, if Congress wants to act legally, it must at minimum include in any authorization a requirement that the Security Council first approve the use of force before the President launches such attack. Including such a condition will also hopefully force Congress to discuss and debate the legality of preemptive strikes.

Sincerely,

Jules Lobel,
Professor of Law.

New York University
School of Law,
New York, NY, September 4, 2002.

Senator Robert C. Byrd,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

Dear Senator Byrd: I regret that my absence, until yesterday, has delayed my response to your letter of July 22, 2002. The issues as to which you have asked me to comment are ones of great importance to the constitutional structure that underpins our freedoms as Americans. I have therefore drafted a bare-bones response for the sake of timeliness, but would be glad to provide further comment and sources as to any part of this submission.

(1) *The War Powers Resolution.* Because of its unsatisfactory drafting, the President's obligations towards Congress are quite limited. Under Section 5(b) the President has broad authority to conduct hostilities before Congress' approval is required. Since the provision of Section 5(c) has been rendered migratory by decision of the Supreme Court declaring the "legislative veto" essentially unconstitutional, the Act now has more force in validating, rather than invalidating, presidential war-making.

(2) *Pub. L. No. 107–40 (9/18/01).* This wildly overbroad authorization for presidential war-making—more recently egregiously echoed in legislation authorizing presidential use of force in connection with Americans who may be surrendered to the International Criminal Court by foreign governments—allows the President broad latitude to use force against any nation "he determines" to have "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001." And it even specifies that this broad delegation constitutes authorization under Section 5(b) of the War Powers Resolution. "He determines" seems to convey unlimited discretion It can be argued, however, that such "he determines" language has been defined by courts in reviewing other examples of delegates executive/administrative authority as implying that the authority must be exercised reasonably and justifiably. It can be further argued, accordingly, that the President must justify the reasonableness of his determination to the Congress. It is not, however, a very powerful argument and, in the end, it still leaves broad discretion with the President. It can also be argued that the delegation was meant to be tied to the events of September 11 and that the President's authority therefore does not extend to the use of force when there is no demonstrable connection to those events.

(3) *Pub. L. No. 102–1 (1/14/91).* This provision is interpreted by the Executive as authorizing the use of force against Iraq for an indefinite period of time. Congress, however,

wisely tied the authorization to the use of force "pursuant to United Nations Security Council Resolution 678 (1990)." The force of argument that this authorization continues to be in effect therefore depends on whether the Security Council Resolution 678 remains effective. That question compels consideration of international law: particularly, Security Council Resolution 687 of 3 April 1991, which established a cease-fire but imposed on Iraq a weapons monitoring regime as to which it is now clearly in violation. It is unclear from the text of Resolution 687 whether this meant to continue, suspend, or terminate Resolution 678. Two considerations are relevant. *One* is that para. 33 of S/Res/687 declares that, on the acceptance of the conditions set by the Council, "a formal ceasefire is effective" between Iraq and its opponents and that (para. 34) the council declares itself "to remain seized of the matter" and retains for itself the power "to take such further steps as may be required for the implementation of the present resolution and to secure peace and security in the area." This does not seem to authorize states to use force whenever they deem Resolution 687 to have been violated, but, rather, makes such action conditional on specific new Security Council authorization. (Note that, even were such new authorization forthcoming, it would not automatically revive the authority Congress gave the President under Pub. L. No. 102-1.) *The other consideration* is that the Council has never passed a resolution objecting to the many instances in which the U.S. and its allies have acted on their own (for example, by establishing and enforcing "no-fly zones"). This omission by the Security Council is better understood, however, in terms of the realities of the "veto" in the Council, and its deterrent effect, than as evidence of Council acquiescence in such use of force.

In sum:

(1) The war Powers Resolution does not help Congress, and this may further illustrate the need for its repeal.

(2) Congress gave away far too much of its power in enacting Pub. L. No. 107-40 and should avoid such extremely broad authorizations—*in futuro* and extending to uncertain circumstances—of war-making authority. Nevertheless, it can be argued that the authority must be read to include a "reasonably justified" standard for its exercise.

(3) Pub. L. No. 102-1 does not authorize the use of force against Iraq because it is limited to war-making under the aegis of Security Council Resolution 678, which was suspended by Security Council Resolution 687.

I hope this will be of some assistance. With good wishes,

Cordially yours,

THOMAS M. FRANCK,
Professor of Law Emeritus.

[From the Los Angeles Times, May 31, 2002]

BUSH MUST AVOID SHORTCUTS ON ROAD TO WAR

(By Bruce Ackerman)

President Bush has been busy reassuring Europeans that he "has no war plans" on his desk for an invasion of Iraq. Such statements can only evoke concern at home. Even when the president receives his plans from the military, he lacks the authority to execute them. The Constitution makes him commander in chief, but only Congress can declare war.

We have been here before.

Two days after the congressional elections of 1990, the first President Bush ordered a massive increase of American troops for an offensive against Iraq. Dick Cheney, then Defense secretary, publicly announced that the president did not "require any additional authorization from the Congress before committing 'U.S. forces to achieve our objectives."

Fifty-four members of Congress responded by going to court and demanding an injunction against military action until both houses gave their explicit approval. The administration was unimpressed by the lawsuit. It told the court to stay out and treat the matter as a "political question."

The case speedily came to trial in federal district court, where Judge Harold Greene roundly rejected the president's claims.

While handing Congress a victory on the merits, Greene was more cautious when it came to a remedy. In his view, the time was not yet ripe for decisive judicial intervention. As far as he could tell, a peaceful settlement with Iraq was still possible, and it wasn't clear whether a majority of Congress would oppose the war if negotiations broke down. So why intervene when the whole issue might dissolve and make judicial intrusion unnecessary?

The next move was up to the elder President Bush: He might press on unilaterally and challenge Congress to return to Greene's court for an injunction once war was clearly in the cards. Or he could call a halt to the escalating institutional battle and ask both houses explicitly to authorize the war.

This was an easy choice for the public: Polls showed that more than 70% favored explicit congressional authorization.

After mulling over the matter, the president bowed to the combination of law and public opinion. In January 1991, he dropped his unilateralist claim and formally requested both houses to approve the attack against Saddam Hussein.

The first shot was fired only after Congress gave its consent.

The argument for legislative authorization is more compelling the second time around. In 1991, the country was responding to a clear act of aggression. Nobody could doubt that Iraq had invaded Kuwait. And a lengthy congressional debate might have cost American lives because Hussein's soldiers would have had more time to prepare for the invasion.

The second President Bush can't take advantage of either extenuating factor.

Rather than pointing to a clear boundary-crossing, he will be offering circumstantial evidence of Iraq's atomic and biological weapons program. If this evidence is truly persuasive, he should have no trouble convincing a majority of Congress. But if the president attempts to skirt Congress, it will cast doubt on whether his claims can survive a fair test in the court of public opinion.

Nor is time of the essence. We aren't dealing with a situation where Iraqi troops can dig in while Congress dithers.

A second American invasion would, at most, prevent a future threat to national security. Nobody seriously suggests that a debate of a week or a month would cause permanent damage.

There is no good reason for Bush to deviate from the precedent set by his father in 1991.

But aren't we already embarked on a "war against terrorism"? In invading Iraq, isn't the president simply opening another front in an ongoing struggle? This might serve as a TV sound bite, but it is nonsense as a matter of law.

Up until now, Congress authorized "necessary and appropriate force" only against those who "aided the terrorist attacks that occurred on Sept. 11." The Bush administration has failed to implicate Hussein in those attacks. If a second invasion of Iraq is justified, it is because of a future threat.

The real question is how the administration meets its constitutional responsibilities. The first President Bush did not abandon unilateralism without a fight. Will his son also escalate the institutional confrontation at home as he accelerates war preparations abroad?

This is no time for constitutional brinkmanship. The president should take the first opportunity to say that he respects the constitutional precedents established during the Gulf War. It will be tough enough to confront the prospect of a major war soberly without attempting an end run around the people's representatives.

CENTER FOR POLITICS,
Charlottesville, VA, August 28, 2002.
Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

DEAR SENATOR BYRD: Thank you for requesting my views on the U.S. constitutional and political questions surrounding presidential war-making authority, especially as they apply to the current situation with Iraq. I am happy to offer them, for whatever they may be worth, and I will attempt to do so in un-professorial fashion, by being relatively brief.

It is clear that the Founders fully trusted neither the Executive nor the Legislature with war powers, and so they divided them—making the President the commander-in-chief and giving to the Congress the right to declare war. A reasonable inference, then, is that the Founders expected the two elective branches to share war powers, and to check and balance one another in this life-and-death arena, as in so many other areas of governmental authority. Neither the 20th Century history of executive usurpation of congressional war powers, nor the various interpretations and applications of the War Powers Resolution since 1973, can change this fundamental truth. Simply put, the executive usurpation in the last century was constitutionally flawed. Moreover, the unquestioned legislative goal of the War Powers Resolution was to return to the Founders' original intent—that the Congress should be thoroughly involved, and not just informed or 'consulted' after the fact, in this nation's acts of war. Unilateral presidential action in Iraq based on S.J. Res. 23 (enacted after September 11, 2001) or the Congress' "Iraq Resolution" of 1991 would be a real stretch, a result-oriented rationalization that would be unwise and constitutionally suspect.

Given the constitutional imperatives of war-making, it is difficult to understand how any President could argue that Congress does not have a co-equal role to play in an act of war by this country against another sovereign state. This is especially true in a case such as Iraq, where immediate attack is not required, and where planning and build-up for war will take many weeks. Let's note, too, that these preparations will hardly be a secret, and that they will be reported in some detail to the American people, and indeed the entire world, including the enemy state.

My own academic specialty is politics, and here the case for full congressional consultation is overwhelming. A President who undertakes a risky foreign war without the expressed support of the American people is courting disaster. Since (blessedly) we do not have any process for national referendum, and since our system of government is representative democracy, the logical institution to provide both careful, elite review and broad, popular mandate for any proposed war is the Congress. Presidents have often unwisely tried to avoid this step, preferring complete executive branch control. But surely a lingering, invaluable lesson from the United States' tragic involvement in Vietnam is the necessity to bring along the congress, and through it, the American people, in a united commitment to succeed whenever the lives of our soldiers and our national treasure are on the line.

While initially reluctant to seek congressional authorization for the Persian Gulf War in 1990–91, President George H.W. Bush correctly asked for and received the support of the Congress after a healthy, high-toned, and memorable debate. At the time, no one knew for sure that the war with Saddam Hussein could be won so quickly and easily. If the fortunes of war had not been so favorable to our country, and the Persian gulf conflict had taken many months to win, President Bush would have been especially grateful for that congressional vote to proceed. It would have provided a firm basis for sustaining support and prosecuting the war until victory was complete. So it will be in 2002–03 in any new war with Iraq. Saddam Hussein may or may not fall quickly, and the post-war turmoil may or may not engulf the Middle East and entangle the United States for months or years. But come what may, a congressional vote of authorization would provide President George W. Bush with the political support to ask for patience and sacrifice, should they be needed, over a lengthy period of time. Our elected leaders in both representative branches would have given proper constitutional consent, and as a nation, we would all be in it together, to do what it takes to win for as long as it takes to win.

And what if the Congress, in its wisdom, should choose not to authorize a war with Iraq at this time? Then our political system would have worked equally well. For if one or both houses of Congress should choose to say no, it would mean that Congress sees that a war with Iraq has consequences too serious to risk, or that such a war would not have the requisite support of the American people. With the failure of Vietnam as well as the success of the Persian Gulf War in mind, the Congress might decide that this war could be closer to the former than the latter. And should Congress so decide, and make this case convincingly to the citizenry, then surely the nation would be grateful since one Vietnam is enough for all of American history.

Senator, I hope this analysis has been of some assistance to you. Please let me know if I can help in any other way. And please also accept my warm wishes and genuine admiration for your work on our behalf.

Yours sincerely,
LARRY J. SABATO,
Director, U. VA. Center for Politics & University Professor of Politics.

Mrs. FEINSTEIN. Mr. President, I rise to address the fact that by the end of the year more than 2 million Americans will have exhausted their unemployment insurance.

There is no more pressing issue facing our Nation's workforce, and yet Congress has chosen to put partisanship ahead of what nearly everyone agrees is smart policy.

By passing widely divergent bills, the House and the Senate have virtually ensured that on December 28 of this year thousands of workers will be in the impossible position of trying to feed, clothe, and house their families with no work and no benefits.

I strongly support the Emergency Unemployment Compensation Act of 2002, a bipartisan compromise bill which was introduced in the Senate in late September.

This bill, introduced by Senators Wellstone, CLINTON, and KENNEDY, with the support of 33 Senators, extends unemployment benefits nationwide for 13 weeks, and provides 20 weeks of extended benefits for California and other high unemployment States.

It provides crucial temporary assistance to those who have been hardest hit by the current economic downturn, and provides them a chance to support themselves and their families while they look for work.

Although the compromise bill passed by the Senate does not include the 20-week extension that is vital to States such as California, which suffer from a higher unemployment rate than the national average, it provides a meaningful extension that could help American families, especially during the Christmas holiday.

Let me stress that this bill is the product of bipartisan compromise, and is supported by Senator NICKLES and other Republicans who have been vocal on this issue.

At the moment, millions of Americans have lost their job and are unable to find another, despite their efforts to reenter the labor force. The number of Americans unable to find employment has increased from 5.7 million at the end of 2000 to more than 8.2 million today.

Even more disturbing, due to continued economic weakness, the number of Americans who have been out of work for over 6 months has almost doubled from 900,000 to 1.5 million in the past year.

Between May and July of this year, approximately 900,000 workers exhausted the benefits made available through the extension that was passed in March.

By the end of this year, that number will increase to 2.1 million individuals. Those are the individuals at greatest risk for falling through the social safety net we have provided for them.

This illustrates the critical need for an extension of unemployment insurance that makes sense.

When the national economy was booming 2 years ago, California was particularly blessed. California's economy grew at double-digit rates, and California become the fifth-largest economy in the world.

Billions of dollars of investment flowed into our State, and thousands of talented workers moved to California to take advantages of opportunities in Silicon Valley and other growth engines of the New Economy. Now that picture is dramatically different.

A recent report by a group of economists at UCLA predicted that California's unemployment rate will rise to 6.5 percent next year, and that nonfarm jobs in the San Francisco Bay area contracted by an annual rate of 4.6 percent between April and June of this year. After dropping to a decade-long low of 4.7 percent in December of 2000, the unemployment rate is back up to 6.4 percent as of the end of October. The number of Californians receiving unemployment benefits has increased to 470,000 from 430,000 1 year ago.

During this period of great economic hardship, we have a duty to give people the chance to get back onto their feet. This is an obligation that we have met in the past, most recently when faced with an economic downturn during the first Bush administration.

The Senate voted in 1991 to extend temporary unemployment insurance on five separate occasions. Each time such extensions were approved by overwhelming bipartisan majorities.

Therefore, I call on the House and Senate leadership to ensure that an extension of unemployment benefits for a full 13 weeks be the first item considered during the 108th Congress. Although that will not prevent the expiration of benefits for many Americans, it will provide a fairly rapid restoration of benefits to those who will be cut off at the end of the year.

With that goal in mind, I have sent a letter to Speaker HASTERT and Senator LOTT with the signatures of more than 40 of my colleagues in the Senate, asking them to bring up an extension of unemployment insurance immediately upon reconvening next year.

Let me be clear: by ducking this issue we seem to be hoping that this problem will disappear.

It will not, and if we do not address it now, we will not be living up to our obligation to the families of this Nation.

RECOGNIZING STAFF INVOLVED IN HOMELAND SECURITY

Mr. LOTT. Mr. President, putting the homeland security bill together has been a difficult almost herculean task. Many Senators have played important roles in this legislation, but it could not have been done without the contributions of our staff. Without the aid of these individuals, the work of this institution would be impossible to accomplish. I would like to recognize the hard work and dedication of those staff members whose contributions to this legislation have been critical and without whom we would not have been able to pass this bill.

On the Democrat side of the aisle, I want to recognize the contributions of Senator LIEBERMAN'S staff—especially his staff director, Joyce Rechtschaffen, as well as Laurie Rubenstein, Mike Alexander, Kiersten Coon, Holly Idelson, Kevin Landy, Larry Novey, and Susan Propper. I would also like to acknowledge the contributions of Sarah Walter of Senator BREAUX's staff, David Culver of Senator BEN NELSON's staff, and Alex Albert of Senator MILLER's staff.

On the Republican side, I would especially like to thank Richard Hertling, Senator THOMPSON's Staff Director who, along with Rohit Kumar of my staff, was integral in the drafting of the bill that we are sending to the President. I would also like to compliment the rest of Senator THOMPSON's staff—Libby Wood Jarvis, Ellen Brown, Bill Outhier, Mason Alinger, Alison Bean, John Daggett, Johanna Hardy, Stephanie Henning, Morgan Muchnick, Jayson Roehl, Jana Sinclair, Elizabeth VanDersarl and Allen Lomax—all of whom played an important role in crafting this legislation. Senator GRAMM's Legislative Director, Mike Solon, and David Morgenstern of Senator CHAFEE's staff also played very important roles in the process.

Finally, I would like to acknowledge the efforts of those individuals from the other body and from the White House, all of whom dedicated significant time and effort to this bill. From the House of Representatives, the efforts of the House Select Committee staff—in particular Hugh Halpern, Paul Morrell and especially Margaret Peterlin—were absolutely essential to drafting the compromise language.

From the White House, I would like to thank Ziad Ojakli, Christine Ciconne, Heather Wingate of the Legislative Affairs Office, Wendy Grubbs, Michael Allen, Richard Falkenrath, Sally Canfield and especially Lucy Clark from Governor Ridge's Office of Homeland Security, Christine Burgeson from the Office of Management and Budget, Brad Berenson from the White House Counsel's office, and Joel Kaplan from Chief of Staff Andy Card's office for their assistance in putting together this legislation. Without their efforts and cooperation, this bill could not have come to pass.

These staff members have worked diligently and largely in anonymity. Given all that they have done in service to their country, I think it is appropriate to recognize their work publicly, so that the rest of the country knows, as we all know, how well we are served by our staff.

TRIBUTE TO DEPARTING SENATORS

Mr. REID. Mr. President, I rise to pay tribute to our colleagues who are leaving the Senate. What many Americans do not realize is that the Senate is a place where many of us become friends. It is true that the 100 men and women who serve in this wonderful body arrive here with different backgrounds, experiences, and perspectives. We hold different philosophies and ideas, represent states with different and at times competing interests and needs, and we pursue different goals. But we all share a lot in common by virtue of being here, and in the course of working together on matters of national importance, we develop respect and admiration for our colleagues, and often genuine friendships are established. And so it is with the remarkable group of Senators who are completing their service as the 107th Congress draws to a close.

JEAN CARNAHAN

I want to speak first about JEAN CARNAHAN, who has accomplished many firsts in her lifetime, including being the first woman to represent Missouri in the United States Senate. She was also the first person in her family to graduate from college, in fact the first to graduate from high school.

Senator CARNAHAN has served the people of Missouri so well over so many years, including her outstanding work during her time here in the Senate. We rightfully identify her with Missouri, but actually she grew up in Washington, DC, attending Anacostia High School and then George Washington University.

Her return to Washington 2 years ago should have been a happy homecoming, but instead followed a calamity. JEAN CARNAHAN arrived in the Senate having suffered a seemingly unbearable tragedy, the death of her husband Mel and her oldest son Randy in a plane crash. She not only had little time to grieve but also was immediately thrust into the public arena.

Mel Carnahan had a distinguished 40-year career in Missouri politics serving as a judge, state representative, state treasurer, lieutenant governor, and for 8 years as a popular and respected governor and was a strong candidate for the United States Senate at the time of his death.

Just days after the funerals for her husband and son, she was asked if she would serve in the Senate in Mel's place. It was a difficult decision, and one she had to make amid shock and sorrow. JEAN CARNAHAN was not a politician, but she was her husband's political partner and trusted adviser for many years, starting soon after their marriage. She card-catalogued the names of every potential supporter and donor during her husband's career, wrote many of his speeches and wrote and delivered many of her own.

Fortunately for Missouri and for us, she volunteered to serve, motivated by a desire to further the work that Mel and she had done together to help the people of Missouri.

Talk about severe stress! Loss of her beloved husband, her high school sweetheart, lifelong companion, loss of her son, moving to a new home, changing jobs . . . all with people watching closely, openly questioning her abilities and wondering if she would succeed.

Senator CARNAHAN has demonstrated remarkable composure and grace while proving that she was indeed up to the challenges of the Senate. She had to learn the intricacies of legislation and policy quickly, and I am sure she would have been even more effective if given the opportunity to serve longer.

But she succeeded by seeking commonsense solutions to complex problems and helping to forge compromises. She didn't seek attention or credit for her accomplishments but worked hard and made a difference.

Senator CARNAHAN's accomplishments include helping protect the jobs of more than 12,000 airline employees during the merger negotiations between TWA and American Airlines. She also worked hard to help local school districts hire teaching specialists and deal with disruptive students. Her Quality Classrooms provisions were included in the landmark education bill we passed last year.

Senator CARNAHAN supported efforts to bolster our national security and win the war on terrorism. She was a member of the first bipartisan congressional delegation to travel to Afghanistan to visit the troops and meet with regional leaders.

And I am especially grateful for her strong opposition to the Administration's plan to ship nuclear waste across the country to Yucca Mountain. Many people thought this plan would harm only Nevada, but she understood that storing nuclear waste in Nevada would require tens of thousands of shipments of highly dangerous substances across highways and railroads in Missouri and almost every other state. And she could not accept this risk of potential harm to the children and families and environment of our great country.

So JEAN CARNAHAN deserves our admiration, respect and gratitude for all she has done. She has occupied Harry Truman's seat in the United States Senate and worked at his old desk. Missouri should be proud of how she has continued Harry Truman's legacy and her husband's legacy and been an advocate for the working families of Missouri.

By a narrow margin she was unable to overcome a well-funded opponent whose campaign benefitted from the popularity of the President this year. She might have come up short in this election, but she understands that a political defeat is not the most significant loss one can suffer.

Her time here has been all too brief, but Senator JEAN CARNAHAN has made a difference and I will miss her very much.

JEAN will enjoy spending time on her family farm in Rolla, Missouri, visiting with her children and grandchildren. And I expect her to continue writing books, giving speeches and advice. She has much to say, and we would do well to hear and read her words.

MAX CLELAND

I also wish to pay tribute to MAX CLELAND, Georgia's senior senator and a true American hero.

While his story is familiar to those of us fortunate enough to know him and have served with him, I encourage Americans looking for inspiration to read his book Strong at the Broken Places, which describes his experiences overcoming tremendous adversity and reveals his remarkable character.

He is a native Georgian who is proud of his state and has served it so well for so long, but MAX CLELAND personifies qualities that the people of Nevada and all Americans appreciate: patriotism, courage, and fortitude.

MAX CLELAND was awarded the Bronze Star and a Silver Star for meritorious service in Vietnam.

During college he joined the Army ROTC program and after graduation he took a Second Lieutenant's commission in the Army. MAX CLELAND volunteered for duty in Vietnam in 1967 and the following year he was promoted to the rank of Captain.

Just one month prior to the end of his tour of duty, he was seriously wounded in a grenade explosion. As a result he lost both legs and his right arm.

His body broken, he spent the next year and a half recovering from his injuries in various Army and Veterans Administration hospitals. Despite his enormous sacrifice, he refused to let his injuries break his spirit. And he did not dwell on his own experiences but rather sought to help others.

He described the difficulties veterans were experiencing returning home from Vietnam in testimony before the United States Senate Veterans Affairs Committee in 1969.

The next year, he was elected to the Georgia State Senate, thus beginning a career in public service that has continued for more than 30 years. As the youngest member of the Georgia Senate at the age of 28, he wrote the state law making public facilities in the state accessible to the disabled.

MAX was hired to work for the Senate Veterans Affairs Committee in 1975 and two years later, President Jimmy Carter appointed him to head the U.S. Veterans Administration. He became the youngest VA administrator in history and the first Vietnam veteran to head the agency. In this position, he instituted the revolutionary "Vets Center program" which for the first time offered psychological counseling to combat veterans in order to heal their emotional wounds as well as their physical wounds. There are now more than 200 Vets Centers across the country offering support to combat and non-combat veterans and their families.

Continuing to set precedents, he became the youngest Secretary of State in Georgia's history when he won election in 1982. He was so effective and so popular that he won reelection by large margins three times. He resigned as Secretary of State in 1995 to run for the U.S. Senate seat being vacated by Sam Nunn. Although he was outspent three to one, MAX CLELAND overcame this obstacle as he has done throughout his life, and he won.

Over the past 6 years, Senator CLELAND has made important contributions to the people of Georgia, the people of Nevada and all Americans, helping to safeguard our homeland, keep our military strong and treat our veterans fairly.

As the Chairman of the Personnel Subcommittee of the Armed Services Committee, Senator CLELAND has fought to improve the quality of life of our nation's active duty, reserve and retired military personnel. He has lobbied to improve health care, education and retirement benefits.

While MAX CLELAND will be leaving the Senate, I know that he will continue serving the people of this country he loves so much. He also will marry his fiancee Nancy, and I wish them much happiness.

ROBERT TORRICELLI

ROBERT TORRICELLI has devoted his entire adult life to public service, including the past 20 years in Congress. He was elected at the age of 31 to the House of Representatives in 1982, the same year I was, and I enjoyed serving with him in the House and more recently in the Senate.

BOB TORRICELLI has served his constituents in New Jersey so well as a tough fighter, an articulate debater and an effective legislator.

He has also been so good to Nevada as a great friend and advocate for the gaming industry, an important part of our state's economy. And he joined with us in opposing the Administration's plan to transport the nation's nuclear waste for storage at Yucca Mountain.

BOB also was highly successful as the chairman of the Democratic Senate Campaign Committee during the 1999–2000 election cycle, recruiting strong candidates and raising money to allow them to get their message out and be competitive. He targeted weak opponents and helped Democratic candidates defeat the largest number of Republican incumbents in many years. These surprising results enabled our party to reach a 50–50 split in the Senate and positioned us to become the majority party subsequently.

There has been no finer advocate in the Senate than Senator TORRICELLI. He has been articulate, knowledgeable and experienced.

Senator TORRICELLI's departure from this body is a sad time. I know how passionately he cares about politics and how devoted he has been to public service.

I will miss BOB. Nevada will miss BOB. Our country will miss BOB. But one thing I will not miss is his friendship; we have bonded, and our friendship is forever.

STROM THURMOND

Mr. President, I join my colleagues today in recognizing the distinguished Senator from South Carolina and his years of service in the United States Senate.

STROM THURMOND has lived almost one century, his 100th birthday will be December 5th, and he has been a Senator for almost half of that time. He is now finishing his eighth full term, making him the longest-serving Senator and the oldest member of Congress.

But Senator THURMOND is known, and will long be remembered, for much more than his longevity.

He has had a remarkable life and career of service to South Carolina and the United States, having served as a school superintendent, state senator, judge and as the Palmetto State's Governor.

He entered the nation's military when he was 21 years old and almost 20 years later volunteered to serve in World War II. He was among the brave American troops who landed in Normandy on D-day with 82nd Airborne Division, and he received numerous awards for his military service including the Bronze Star for Valor and a Purple Heart.

Senator THURMOND has fought no less fiercely in the political arena. He has used his gifts, experience, the power and respect he has earned and knowledge of Senate rules and procedures to advocate on behalf of his causes.

Although he has switched political parties during his career, serving first as a Democrat, running for President as a "States Rights" third party candidate in 1948, and becoming a Republican in 1964, he has consistently adhered to his political ideology.

I am glad that we have an opportunity to acknowledge his contributions and to reflect on the considerable impact he has had on this body, his party, and the nation.

Senator THURMOND is a living monument, but just to make sure his service is recognized, the people of South Carolina, whom he has represented for so long, have honored him by erecting a monument for him and naming dozens of facilities for him.

Senator THURMOND will certainly be missed around here. I bid him farewell and extend my best wishes to him and his family.

JESSE HELMS

JESSE HELMS is retiring after serving five terms in the Senate. During this time, he has become a legend: He has been a powerful legislator and wielded significant influence on issues within the Senate and events around the world.

While he and I do not share the same philosophy of government and have not always agreed on policies, I have no doubt that he believes sincerely in his causes, and I admire the passion with which he has fought for what he believes is right.

As I have noted previously, the Senate is a place where many friendships are forged, even among people who seem unlikely to get along. But what many people don't understand is that it is possible to disagree without being disagreeable.

Senator HELMS has succeeded in charming and befriending many people, ranging from fellow Senators to internationally known rock stars, who strongly disagree with much of what he advocates.

Certainly, the Senate will be different without JESSE HELMS, and I wish him the best.

FRANK MURKOWSKI

As the people of Nevada know all too well, FRANK MURKOWSKI can be a tough opponent. He has led the effort in the Senate to push through the Administration's plan to transport tens of thousands of tons of nuclear waste through most of the Lower 48 for storage at Yucca Mountain, and therefore he and I have often been on opposing sides.

But I recognize that his motives are not personal; he has a different vision of what our priorities should be and what policy is the best course of action. He has been a forceful advocate for Alaska here in the Senate since 1980, and he will continue to be one after he leaves to serve as Alaska's next Governor.

PHIL GRAMM

PHIL GRAMM has been an influential politician and has had an interesting life. Although he flunked third, seventh and ninth grades, he received a Ph.D. in economics. This education instilled in him a strong belief in free markets, and he brought that understanding to Washington, along with his speeches about a Texas print shop owner named Dicky Flatt who has been cited as a representative American resistant to government spending.

PHIL was elected to the House of Representatives first as a Democrat and then again after he became a Republican. He was elected to the Senate in 1984 and has authored major pieces of legislation during his career, perhaps most notably the Gramm-Rudman-Hollings effort to reduce the federal budget deficit.

On this issue, as on so many others, Senator GRAMM has been relentless. You always knew where he stood and always heard what he said. He will be missed.

BOB SMITH

I have the greatest affection for the departing Senator from New Hampshire BOB SMITH. He and I worked together for one difficult year when he was the co-chairman of the MIA/POW Committee along with Senator KERRY. They led us as we completed that most important study, and I learned a lot about Senator SMITH in the process.

He served in the Navy in the Gulf of Tonkin during the Vietnam War, so he was very interested in the issue of missing soldiers. And he is a real patriot, committed to making sure America's military is strong. BOB SMITH loves this country.

Our friendship was cemented when we were asked to lead the Ethics Committee and had to resolve very difficult issues. He impressed me with his institutional awareness, intelligence and historical knowledge, and I found him to be a true gentleman. In addressing the issues before the Ethics Committee he was firm and strict but fair, which is what leadership of that group requires.

Senator SMITH and I also served together on the Environment and Public Works Committee, including a time when he was Chairman and I was Ranking Member. He might have surprised a lot of people with his concern for the environment, but I am proud that we were able to work together to protect this nation's air and water, to defend wildlife and preserve the environment.

BOB SMITH is a friend. I was disappointed with the results of the elections in the Granite State, and I am going to miss him.

FRED THOMPSON

FRED THOMPSON leaves the Senate after 8 years of service. It seems like he has been here much longer perhaps because he has been so highly visible both in public service and as an entertainer.

FRED THOMPSON not only has been a Senator; he also has played one on TV. His other acting roles include leader of the CIA, the FBI, and White House Chief of Staff.

Many Americans first noticed FRED THOMPSON during the Watergate crisis. He was a young lawyer serving as minority counsel to the Senate Watergate Committee in 1973, and he played a role in the public disclosure of the tapes President Nixon recorded in the Oval Office. Of course the scandal led to the President's resignation.

And since that introduction, we have come to know FRED THOMPSON well and know we can rely on his intelligence, judgment, wit, and insight.

He has been a skillful negotiator in the Senate, a popular colleague and someone people look up to.

While he will be missed around here, I take comfort knowing I will be able to see him frequently on TV and in the movies.

TIM HUTCHINSON

Senator TIM HUTCHINSON grew up on a farm in rural Arkansas and graduated from Bob Jones University. So he and I have had different experiences and are guided by different beliefs. Not surprisingly, we have often voted differently. But I do not question how dearly he holds his convictions, and I recognize that he has been a dedicated advocate for the people of Arkansas throughout his 10 years in Washington—4 years in the House of Representatives and 6 here in the Senate.

TIM HUTCHINSON is part of a family that has had a significant impact on politics in the state of Arkansas: when TIM ran for the Senate, his brother Asa ran for and won the seat TIM had held in the House. Asa has since gone on to become the Administrator of the Drug Enforcement Agency. I have worked with both TIM and Asa, and I understand TIM's son is now a state legislator so I might have the opportunity one day to work with him too.

Before he leaves, let me extend my appreciation to Senator HUTCHINSON for all his kind deeds toward me. Despite our differences, we have had a good relationship. We have worked together on my concurrent receipt legislation to secure retirement benefits for disabled military retirees and on a number of other issues. He and his brother are both considerate, thoughtful gentlemen. I wish him well in whatever comes next.

DEAN BARKLEY

In contrast to longest-serving Senator in history, DEAN BARKLEY wraps up one of the shortest terms ever, having taken his oath of office just last week. Of course, we all recognize the sad and special circumstances which led to his being here: the tragic death of our dear friend and colleague Paul Wellstone. I have already spoken of Paul Wellstone, how much he accomplished here in the Senate, what his role was and his legacy will be, and what I remember of our personal interaction. I said that Paul Wellstone is irreplaceable. Nobody, whether they serve 2 weeks or 2 decades, will fill his shoes. To his credit, DEAN BARKLEY understood that and he realized what his role during his brief time in the Senate should be. I spoke with him shortly after his appointment. He had a lot of pressure on him to align with one side or the other and he could have created a lot of problems. Fortunately, he decided it would be best for the people of Minnesota not to change the balance in the Senate, and he stuck to the independence streak for which he is known. DEAN BARKLEY was not here long, but he has taken his position seriously, and I am sure he has had an unforgettable experience. I thank him for his service and wish him well.

BOB SMITH

Mr. GREGG. Mr. President, BOB SMITH loved serving the people of New Hampshire. I have witnessed BOB's high regard for the office he has held here in the U.S. Senate; he has taken his job seriously, both in Washington and at home. He is a man of strong family values and hearty resolve, two fundamental characteristics of our State. BOB is not a programmed politician. In fact, he is the opposite. He has always been driven by his independence and conservative ideas.

When BOB and Mary Jo Smith first moved to New Hampshire, they did not waste any time getting involved in the Lakes Region community. BOB became a high school history and government teacher and helped coach the football and baseball teams. He also got involved in local politics by joining the school board. Fourteen years after settling in New Hampshire, BOB was elected into the U.S. House of Representatives, where he served until he was elected to the Senate.

Here in the Senate, BOB has been an advocate and representative for the interests of New Hampshire, taking strong stands on the issues he cares about. Regardless of political bias, it can never be said that BOB SMITH did not stand up for what he believed in, a fact that is known and respected in New Hampshire.

He became chairman of the Environment and Public Works Committee, providing leadership and a voice for New Hampshire on environmental issues. He has continued to speak out for the concerns of States like New Hampshire.

On the Armed Services Committee, BOB has championed the cause of accounting for American prisoners of war and those service men and women who are reported missing in action. As a veteran of the Navy and the Vietnam War, BOB has long advocated for a strong military and understands the importance of government support and assistance for brave members of our armed services.

During the past 18 years, BOB has shown grace and strength. He has served New Hampshire with honor and I admire his courage in standing up for what he believes in time and time again. BOB, his wife Mary Jo, and their three children have spent the past eighteen years achieving well the difficult balance of raising a family while simultaneously handling the constant demands of public office. I want to take this opportunity to congratulate my colleague on his distinguished career and thank him for his service to New Hampshire.

FRED THOMPSON

Ms. COLLINS. Mr. President, at the conclusion of this year, we will bid farewell to a Senator who is larger than life, both literally and figuratively.

FRED THOMPSON, may chairman of the Governmental Affairs Committee, and my food friend, will be leaving the Senate after 8 years of distinguished service.

While there is no question that the people of Tennessee would have returned him to the Senate for another term had he chosen to seek it, FRED decided that there is life after the Senate—and if the past is prologue, we can be sure that it will be an interesting life.

FRED came to this body after a varied and distinguished career. He had been a prominent public servant—most notably as an assistant U.S. attorney and as the Republican counsel to the Watergate committee—as well as a skilled lawyer and a gifted actor. From his days with Senators Howard Baker and Sam Ervin in the Watergate hearings, to his role in exposing the sale of pardons in the State of Tennessee, to his acting in 18 films, FRED brought a keen intellect, a great sense of humor, and an exceptional capacity for hard work to every task. And those are the very characteristics that have marked his Senate service.

FRED has been a leader in the Senate on a wide variety of critical issues, including intelligence reform and oversight, reducing the threat posed by the proliferation of weapons of mass destruction, and reducing the tax burden on American families. He was among the first to join Senators MCCAIN and FEINGOLD in the quest for campaign finance reform and fairly and effectively chaired extensive hearings to expose the abuses in the financing of the 1996 Presidential campaign.

As chairman and later ranking Republican on the Governmental Affairs Committee, his efforts have led to management and regulatory reforms as well as the passage of the legislation to create the new Department of Homeland Security.

In the 6 years that I have worked closely with FRED, I have never known him to be unprepared. I have never known him to be undisciplined. And I have never known him to be anything less than eloquent—although, as a Yankee, I may not always appreciate the subtlety of his colloquial expressions. Two examples that I recall with special fondness are: "Don't load up the wagon unless you're willing to pay the freight,"—which is, I believe, a reference to spending proclivities—and then, my personal favorite: "It's like teaching a pig to dance. It wastes your time, and it irritates the pig.

Of course, FRED is much more than just quotable. FRED is a truly courageous leader. He actually relishes being in the minority, even a tiny minority, when one of his basic principles, such as States rights and the 10th amendment, is at issue. He always votes his convictions—even when the current polls suggest that public sentiment is on the other side. His good judgment and his careful consideration of every issue are a model for all of us. FRED's fearless leadership is one of many reasons why his constituents, even those who may disagree with him, hold him in such high regard. They know that FRED THOMPSON will speak the truth and do with it right, that he will make the hard choices, and that the well being of his constituents and our country guides his every decision.

No one can be certain what the future will hold for FRED. We know that he has already drawn on two of his previous careers—the law and acting—by signing on to play the avuncular district attorney on the popular television show, "Law and Order." It also seems very likely that he will have future responsibilities in Government, since I anticipate that this President will seek to use his extraordinary talents.

But no matter what FRED THOMPSON's post-Senate career may entail, one conclusion can be stated with confidence. He has graced this institution and served his Nation well. I feel so fortunate to have served with him during these past 6 years, and I shall miss him.

Godspeed, my friend.

TIM HUTCHINSON

Mr. President, I rise this morning to pay tribute to my colleague and good friend from Arkansas, Senator TIM HUTCHINSON.

I have particularly enjoyed working with TIM on the Senate HELP Committee. We have literally worked "shoulder to shoulder" both in committee and on the Senate floor on many issues of tremendous importance to the health and well-being of all Americans—the Patients' Bill of Rights, legislation to increase access to more affordable prescription drugs, home health care, increased funding for diabetes research, and legislation to increase access to health care in the rural and underserved areas of our country.

TIM demonstrated his ability to reach across the aisle and work on a bipartisan basis when he joined with Senator MIKULSKI in developing legislation to address our Nation's growing shortage of registered nurses. I was pleased to join as an original cosponsor of the Nurse Reinvestment Act, which has been signed into law, and which will address this problem by providing incentives for individuals to enter the nursing profession, providing continuing education and opportunities for advancement within the profession, and increasing the number of nurse faculty to teach at our nursing schools.

Senator HUTCHINSON has also been a leader and an advocate for our men and women in uniform, and I have been honored to serve with him on the Senate Armed Forces Committee. As the ranking member on the personnel subcommittee, he has seen to the needs of the soldiers, sailors, airmen, and marines time and time again. He has fought to ensure that the men and women serving our country receive adequate pay and compensation, and this year he went to the mat to support our military retirees on concurrent receipt/special compensation.

In January 2000, I traveled with Senator HUTCHINSON to Japan, South Korea, and Taiwan where we got an update on the region and had an opportunity to meet with many troops there. In particular, Senator HUTCHINSON spent a lot of time speaking with our troops who were serving proudly on the front line of the DMZ. In Korea, it was the dead of winter, and the meeting rooms in South Korea actually straddled the DMZ line.

On that trip we also visited the U.S.S. *Kitty Hawk* in Japan, where I found that Senator HUTCHINSON had a special place in his heart for our naval forces. We also made history when we met with the first democratic president of Taiwan—President Lee.

Senator HUTCHINSON has always taken the time to listen to our troops and military leaders, as he was always looking for ways that he could make a positive difference for these young men and women proudly serving our country. Senator HUTCHINSON will be greatly missed, but his legacy and accomplishments will remain in our history forever.

FRED THOMPSON

Mr. DOMENICI. Mr. President, I rise today to pay tribute to a friend and colleague who is retiring from the Senate after eight years of principled and distinguished service. The Senate will lose an extremely dedicated public servant and also a good bit of star power when FRED THOMPSON leaves us at the end of the 107th Congress.

I had the pleasure of serving on the Governmental Affairs Committee headed by Senator THOMPSON from 1997 until June 2001. I appreciate Senator THOMPSON's determination in pursuing fiscal accountability and relentlessly seeking a smaller and more efficient Federal Government. Senator THOMPSON's leadership on issues such as the proliferation of weapons of mass destruction and missile technologies has made an enduring contribution to our national security, and I have enjoyed working closely with him on matters related to our national laboratories. I would like to thank Senator THOMPSON for his tireless work more recently on the monumental task of creating a Department of Homeland Security. I submit that his industry and integrity in this historic undertaking will leave him a legacy of which he should be proud.

The people of Tennessee first elected Senator THOMPSON to the Senate in 1994, to fill an unexpired two-year term. When he was reelected in 1996, he made history by garnering more votes than any previous candidate for any office in Tennessee. A native of Lawrenceburg, TN, THOMPSON worked his way through school to earn an undergraduate degree in philosophy and political science from Memphis State University, and a law degree from Vanderbilt University. Only two years after law school, THOMPSON was named an Assistant United States Attorney. THOMPSON was then appointed at the age of 30 as minority counsel to the Senate Watergate Committee, where he served in 1973 and 1974. Before he was elected to the Senate, FRED THOMPSON operated successful law practices in Nashville and Washington and served as Special Counsel to the Senate Select Committee on Intelligence and the Senate Committee on Foreign Relations.

While many know that Senator THOMPSON is embarking on a new role as district attorney in the television series Law & Order, his talents for law and acting first came together in the film Marie, in which he portrayed himself after taking on a case in 1977 that uncovered a cash-for-clemency scandal that unseated Tennessee's Governor. FRED THOMPSON has subsequently acted in 18 motion pictures, including In the Line of Fire, Die Hard II and The Hunt for Red October, as well as four television series.

Some might characterize FRED THOMPSON's uncommonly successful career in show business as a natural complement to the daily business of the Senate. What I know is that whether on the big screen or on the floor of the Senate, FRED THOMPSON's larger-than-life presence has touched the lives of a great many Americans, and he will be sorely missed by his colleagues in the Senate. I thank my colleague for his eight years of distinguished service in which he has enlivened the Senate and served his country with uncommon resolve. I wish Senator THOMPSON the very best in his retirement and all his future endeavors.

FRANK MURKOWSKI

Mr. President, I rise today to pay tribute to one of my distinguished colleagues, a Senator from the class of 1980. From our seats on the same side of the aisle, I have been able to serve 22 years with my long-time friend, and colleague, Senator MURKOWSKI.

I want to take this opportunity to thank Senator MURKOWSKI for his distinguished career of service both to our Nation and his home State of Alaska, and to congratulate him. Senator MURKOWSKI has been a great advocate of his State, which has been demonstrated by his winning 75 percent of the vote in 1998, and the gubernatorial race in this last election. As the Senator moves onto a new challenge, I wish him well with his efforts to continually serve the people of Alaska.

As I look at the past seven years, and all that the Senator has accomplished during his time as chairman of the Energy Committee, I know that these will be big shoes to fill. Throughout his career, the Senator has held steadfast to his ideals, while fighting for improved veterans' health care, and the search for American POW/MIAs, as Chairman of the Veterans' Affairs Committee. While on the Finance Committee, the Senator from Alaska played a pivotal role in passing the Balanced Budget Act of 1997.

Senator MURKOWSKI, his professional manner, and his willingness to work have made him an asset to our Senate. We, in the Senate, will be at a loss without his unrelenting will-power, and determination.

Senator MURKOWSKI has been a friend and servant to the citizens of Alaska, earning a reputation for unbeatable service to his constituents. We have always had a lot in common, fighting for the interest of our predominantly rural States. I have always been impressed with his capability to keep the diversified interests of his State in mind, while developing bills to improve and preserve the tradition, and way of life, for Alaskan citizens. Alaska will be lucky to have him as their Governor.

Today I join my colleagues in offering a goodbye, and good luck, to Senator MURKOWSKI, a tenacious man of high-integrity, for his years of dedicated service. I will certainly miss my friend, and wish him the best as he enters his new career as Governor of Alaska.

PHIL GRAMM AND FRED THOMPSON

Mr. FRIST. Mr. President, the time has come—as it does at the conclusion of every Congress—to honor those members who will be departing from this body. This is a task not easily done. The Senate is one of the highest pinnacles in public service to our nation. Those who serve here have often dedicated their lives—and with great success—to changing America for better.

Today I wish to honor two Senators who have indeed changed America for the better—PHIL GRAMM and my fellow Tennessean and partner in the Senate for the last eight years, FRED THOMPSON.

Senator GRAMM began his service in Congress as a House Democrat in 1978. Five years later he switched parties. But rather than serve out his term as a Republican, he resigned his seat and let the people of his district choose whether they wanted to be represented by a Republican. Well, they did, and PHIL GRAMM became not only the first Republican in history to represent the 6th district of Texas, but the only member of Congress in the 20th century to resign and then win re-election as a member of another party.

PHIL and I share the same commitment to being a citizen legislator . . . to bringing professional expertise to public service. In PHIL's case, he's an economist, a college professor, and a public health expert, and his legislative accomplishments reflect that experience. He's been a staunch proponent of tax relief, economic growth, and a balanced budget. And the Gramm-Rudman Act stands as one of the most groundbreaking pieces of budget legislation in the second half of the 20th century.

FRED THOMPSON has been a dear friend for many years and great partner with whom to work on behalf of the people of Tennessee in the United States Senate. FRED was elected in 1994 to fill 2 years of an unexpired term. He was then reelected in 1996. And just as he did in Hollywood, he rapidly rose to become a star in the Senate.

In 1997, FRED was elected chairman of the Governmental Affairs Committee, making him one of the most junior Senators in history to serve as chairman of a major Senate committee. As chairman, he held hearings on issues such as improving the federal regulatory process; reforming the IRS; exploring ways to eliminate waste, fraud, and abuse in government; and a number of national security issues, including the proliferation of weapons of mass destruction and missile technologies.

Senator THOMPSON has also been a member of the Finance Committee—one of the most influential committees in the Senate. From that position, he has focused on reducing taxes, reforming the tax code to make it simpler and fairer, and restoring the Social Security and Medicare programs to long-term solvency. Though FRED has served eight years in the Senate, the scale and number of his accomplishments would lead one think he has spent an entire career in this chamber.

PHIL GRAMM and FRED THOMPSON will be missed by each and every one of their Senate colleagues. For me it has been an honor, a privilege and a pleasure to work with them both. They have brought to the Senate a rare combination of intellect, charisma, political skill and, above all, a steadfast commitment to principle. And for that they will also be missed by the American people.

Mr. LIEBERMAN. Mr. President, I rise to honor the Members of the Senate who will be leaving us at the end of this Congress. They will not be here in this Chamber next year, but each will leave an indelible imprint on this body, and on the lives of the American people.

First, I wish to say a few words about my colleague, my compatriot on the Senate Governmental Affairs Committee, and my friend, FRED THOMPSON, who has served the people of Tennessee and the people of America ably and nobly for the past 8 years.

The man the Screen Actors Guild knows as Fred Dalton Thompson acts—and acts quite well, I should add—but the man we know as Senator FRED THOMPSON has never read off of anyone's script. Again and again, he has done what he in his heart believed was right for the nation. I will always admire his clarity, integrity, and intellectual curiosity.

Since his joining the Senate in 1994, I have known Senator THOMPSON as a dogged investigator who is always willing to go wherever the evidence may lead, and as an independent-minded legislator who sticks to and stands on principle. Senator THOMPSON was the first Republican after JOHN MCCAIN to support campaign finance reform—an act that speaks volumes about who he is and for what he stands.

On the Governmental Affairs Committee, Senator THOMPSON and I worked closely together on probing the evidence and then issuing a report on the government's highly suspect investigation into the alleged wrongdoing of Wen Ho Lee. Senator THOMPSON brought a singular focus to dissecting and fixing the government's computer security problems. And he has and spared no energy working to ferret out waste, mismanagement, corruption, and abuse in the federal government. Senator THOMPSON understands that the people's Government must do justice to the people's values—not just in the pronouncements it makes, but in the way it does business every day.

Every Member of this body respects the quality of Senator THOMPSON's reasoning and the strength of his voice. Whether it's on defense, intelligence, free trade, or a wide range of other issues, Senator THOMPSON's words are cogent and clear, and his deeds are consistent with those words.

In addition to his career as a Senator, he has practiced law, written a book, acted in 18 motion pictures and a television show, posted his mother's recipe for fresh coconut cake on his website, and—in the midst of it all—managed to find a lovely women to marry. I am in awe of his energy and vitality.

We know each other as colleagues, as partners, and often as intellectual opponents. But we also know each other as human beings. And at every point and in every context, Senator THOMPSON has brought wisdom, decency, and a great sense of humor to this Congress. When he served as chairman of the Governmental Affairs Committee, he treated me with great consideration and respect, and I hope in my time as Chairman I have afforded him the same courtesies.

I am disappointed to see him go, but look forward to watching him on television on Wednesday nights.

Mr. President, I also wish to honor Senator STROM THURMOND.

We all know that the 20th century was the American Century. It was also the century in which, primarily in his service in the U.S. Senate, STROM THURMOND left his indelible mark on the history of this nation.

There are not many Members of this body today who bring the breadth of his experience to the floor. Senator THURMOND began his career as a farmer, teacher, and athletic coach. He was Superintendent of Education in his home county. He was town and county attorney. He was state senator in his great state of South Carolina. He was a judge. He served in the Second World War, and was part of the Normandy invasion with the 82nd Airborne. He was governor of South Carolina. Then, in 1954, he was elected to the United States Senate.

The long list of these accomplishments would take most Americans 300 years to accumulate. Senator THURMOND has gotten them all under his belt in a mere 100. And he has raised a family, to boot.

Through it all, Senator THURMOND has grown not only as a legislator but as a human being. When we honor him, we pay tribute to human beings' capacity for growth. After running for President, as I mentioned, as a state's rights candidate, he later supported the renewal of the Voting Rights Act and observance of the Martin Luther King, Jr. Holiday on behalf of his state. That transformation sent a powerful message that all of us could become better Americans and better individuals—and that the United States of America, for all its blessings, can always become a better nation.

I also wish to honor another Member the Senate will miss, my good friend from Texas, Senator PHIL GRAMM. Senator GRAMM has only served since 1984, not since 1954 like Senator THURMOND, but his achievements have been remarkable indeed.

Senator GRAMM, who came to the Senate with a Ph.D. in economics and a distinguished career in teaching, has become one of this Chamber's foremost experts on fiscal policy, one of its clearest voices on defense and foreign policy, and one of the most stalwart defenders of individual liberties.

He has a wonderful intuitive understanding of the value of basic research and other technological innovation, and I have been proud to work with him to increase both the Government's total funding commitment to science and the effectiveness of the money we spend.

Senator GRAMM is an ideologue—and I mean that in the best sense of the word. He fervently defends his beliefs against all challenges. Senator GRAMM relishes debate. Here on the floor, you can see it in his eyes and hear it in his voice. And let me add—and I say this reluctantly, having been at the receiving end of more than a few of his missives—that he is quite good at it. In that way, he has continued and advanced one of the great traditions of this body. Yes, compromise is what makes governments great and marriages happy; we all know that. But without firm principles and intellectual passion to guide us, without ideals we are not willing to sacrifice, we would never know what is worth compromising. And Senator GRAMM has never forgotten why he is here or what he is fighting for.

I wish him luck in the private sector, where he will continue to serve the nation and will, much to his liking, make much more money in the process.

The Senate is losing many giants at the end of this term. Let me now say a few words about JESSE HELMS of North Carolina—a Navy veteran in the Second World War, a respected journalist, a businessman, a city councilman, and since 1973, a legendary legislator in the Senate.

As a Member of this body, Senator HELMS has done too much to mention here today. But he is most respected for his leadership of the Senate Foreign Relations Committee.

There, he has proven to be a tireless defender of the interests of America—and an advocate of the inalienable rights of people all over the world to the basic freedoms and opportunities we enjoy. I have always admired his steadfastness and his strength. And I have always known that the goals we seek—a strong America that advances democracy and increases prosperity around the world—are the same.

And we have at least one other thing in common. Senator HELMS' name was placed in nomination for Vice President of the United States—this was at the GOP convention in Kansas City in 1976. Although he asked the convention to withdraw his name, he nevertheless received 99 delegate votes. A few years later, I could have used those votes.

Another Senator retiring after a distinguished career—in his case because he is trading the U.S. Capitol for the Governor's mansion in his great home state of Alaska—is Senator FRANK MURKOWSKI. Hopefully his new challenge will afford him more opportunities to enjoy life with his lovely wife Nancy, his six children and his 11 grandchildren.

For four terms of office, Senator MURKOWSKI has served the people of his state with vigorous energy and rigorous attention to detail since being elected to the Senate in 1980. He delivers for the people of Alaska—and they appreciate it. I am confident he will continue to lead with distinction as governor.

My friend and colleague Senator MAX CLELAND gave elegant departing remarks yesterday on this floor. Those remarks reminded me how much the Senate will miss his buoyant personality, his eloquent words, his principled service to the people of Georgia, and his transcendent faith.

I was privileged to serve alongside Senator CLELAND on the Senate Governmental Affairs Committee, where he was always courageous, independent, and tenacious. I also had the good fortune of working with him on the Armed Services Committee and the Small Business Committee. I could not have wished for a kinder or more decent man to call my colleague.

Senator CLELAND also was an early supporter of and essential contributor to the bill establishing a Department of Homeland Security that we reported out of committee in May. Therefore, the historic bill we passed yesterday, and the Department it will create to protect the American people from terrorism here at home, is due in no small measure to his efforts.

But Senator CLELAND will be remembered for the spirit he brought to this Senate as much as for the many things he accomplished here. His grit, His wit. His honesty. His willingness to take risks. His never-failing sense of humor. I wish MAX the best of luck.

Mr. President, let me also take a moment to honor my friend and colleague Senator JEAN CARNAHAN who has added to a long and storied career by serving the people of Missouri with care, skill, and devotion over the last 2 years.

Senator CARNAHAN was not only the proud occupant of Harry Truman's seat, but was an able custodian of Harry Truman's legacy. She legislated with an independent mind and a pragmatic personal philosophy, always putting the well-being of Missouri's working families first.

I have been fortunate enough to serve alongside Senator CARNAHAN not only on the Governmental Affairs Committee, where she quickly proved to be an invaluable asset, but on the Senate Armed Services Committee. Senator CARNAHAN doesn't only talk about bipartisanship. She practices it. I'm proud to call her a fellow New Democrat, and even more proud to call her a friend.

We are losing many women and men of principle from this body; I hope an equal number replace them. I will fondly remember Senator BOB SMITH for his unwavering adherence to the values of his faith and his family. And I admired Senator SMITH's hard work on the Environmental and Public Works Committee in defense of New Hampshire's environment and this nation's. BOB is a man of honor and I was proud to serve with him.

Many of us strive for eloquence here on the floor. But few of us are as consistently passionate and persuasive as another departing colleagues, ROBERT TORRICELLI, who served seven terms in the House of Representatives and then here in the Senate since 1996. As a fellow northeastern and fellow member of the Senate Governmental Affairs Committee, I will miss his wisdom and great sense of purpose. He is extremely gifted and gave great service for New Jersey and America.

Finally, Mr. President, a special word for our dear departed colleague Senator Paul Wellstone—who I want to describe in the best way I know how, as a mensch—a man, a very good man. He radiated decency and kindness and commitment to make the world a better place. That was so not just in what he said and did on camera, but in what he said and did in quiet moments, small moments, private moments.

Much has been made of the fact that Paul was a teacher. And it is fitting. I think about all the lessons that Paul Wellstone the political scientist taught to his students, and how every one must have come alive when he ran for office—and won—in 1990. That inspiration will last for generations.

Paul Wellstone taught his students, by example, that Americans who want change can do much more than carp or complain. They can and should enter and shape the system. They can and should be a part of the government of the people, by the people, and for the people.

Senator Wellstone uplifted the Senate and uplifted our democracy, and he did it with the clarity of his conscience and the power of his principles and passions.

It's no wonder Paul titled his book The Conscience of a Liberal, after Barry Goldwater's book The Conscience of a Conservative. Paul had read Senator Goldwater's book as a boy, and though he found himself at the opposite end of the political spectrum, Paul admired Goldwater's decency, his honesty, and his conviction.

The name "Paul" comes from the Roman family name "Paulus," which meant "small" or "humble" in Latin. And Paul was physically small. He was spiritually humble. But the scope of his ideals and of his service was monumental.

In The Ethics of the Fathers, a tome of Jewish law, it is written: "It is not your obligation to complete the task [of perfecting the world], but neither are you free to desist [from doing all you can]."

Paul Wellstone, as a Senator, a father, a husband, and a man, lived these words and lived them well. May he rest alongside his wife and daughter in peace.

I thank the Chair and yield the floor.

LONG-TERM CARE OMBUDSMAN PROGRAM

Mr. BREAUX. Mr. President, I would like to engage the distinguished Chairman of the Appropriations Committee's Subcommittee on Labor, Health and Human Services, and Education in a brief colloquy on an issue that is very important to frail older persons and individuals with disabilities who reside in nursing homes and other long-term care facilities.

My colleague should be congratulated for the additional funds that his subcommittee has provided in recent years for the Long-Term Care Ombudsman Program, under the Older Americans Act. Our colleagues, Senator KOHL, and Senator SPECTER, should also be recognized for their support of the ombudsman program. The Labor, Health and Human Services, and Education Appropriations bill that you introduced for Fiscal Year 2003 proposes a much needed $3 million increase to provide more ombusdmen to help address the growing quality problems in nursing homes and assisted living facilities.

I would like to discuss with the chairman and my distinguished colleague and ranking minority member of the Finance Committee our strong support for this program and the National Long-Term Care Ombudsman Resource Center that so effectively serves State and local ombudsmen across the Nation.

Mr. HARKIN. Mr. President, the distinguished chairman of the Special Committee on Aging is correct in describing our efforts to steadily increase the capacity of State Long-Term Care Ombudsman Programs. This very effective program is available to the 2.8 million residents of over 60,000 facilities including licensed assisted living. It makes a big difference in the quality of life for residents by resolving their complaints 231,889 about resident care and residents' rights, visiting facilities on a regular basis, and by advising residents, their families, and facility staff. We have also supported funding for the very effective Ombudsman Resource Center, which has been housed at the National Citizens' Coalition for Nursing Home Reform since 1993. I would like to see an increase for this important Center.

Mr. GRASSLEY. Mr. President, I rise in support of my two colleagues' viewpoints on the value of the Long-Term Care Ombudsman Program and its national resource center. The hearings that my colleague from Louisiana and I have conducted over the years have provided significant evidence that the ombudsman program is critical in protecting the rights of older and disabled individuals living in long-term care facilities.

Training and technical assistance are among the critical variables in determining the quality of services that ombudsmen are able to provide. Additional funds appropriated for the National Long-Term Care Ombudsman Resource Center would be used to increase the capacity of the Center to develop and coordinate training systems and other skills-building opportunities for State, local and volunteer ombudsmen. The Center has an exemplary track record and this will improve program consistency among states and enhance program effectiveness.

Mr. BREAUX. Mr. President, I agree with my colleague. The Center's work is critical to millions of residents of long-term care facilities and their families. I am hopeful that when we finally pass a fiscal year 2003 Labor, HHS, Education appropriations bill that we will provide appropriate support for the Center and report language that ensures the continued quality training and assistance for omsbudmen that has been so ably provided through the Center.

It is my view that the Center must continue to be housed in an independent nonprofit citizens-based organization that has the improvement of care in long-term care facilities as its primary purpose. Such an organization should include long-term care ombudsmen and consumers in its governance and have a minimum of 5 years of experience on a national basis of providing long-term care ombudsmen with technical assistance, training, and information.

Mr. GRASSLEY. Mr. President, I concur with that assessment. We know that there is a growing demand for ombudsman services and too few ombudsmen and volunteers to regularly visit all of the nursing homes and assisted living facilities. And we know that training and resources are essential. The Center provides individualized support to State and local ombudsmen on specific, complicated long-term care questions and provides training at state and regional conferences. The need to expand these supportive services is growing rapidly.

Mr. HARKIN. Mr. President, I believe that we must put our energies toward ensuring that we protect the rights of nursing home residents and help them to resolve problems with the quality of the care that they receive. I am committed to working with my colleagues on this goal for fiscal year 2003 and beyond. I am also supportive of the notion that we need to ensure that the resource center continues to be housed in an organization as described by my colleague.

I thank my colleagues for their support of the work of our subcommittee. I look forward to working with my distinguished colleagues to ensure that these programs continue to serve older adults and disabled individuals.

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CONFIRMATION OF JOHN ROGERS

Mr. McCONNELL. Mr. President, the Senate last week confirmed Professor John Rogers to one of the seven vacant seats on the Sixth Circuit Court of Appeals. Professor Rogers' career has been marked by excellence and achievement, and he will be a fine addition to the Sixth Circuit.

He was elected to Phi Beta Kappa at Stanford. At the University of Michigan law school, he was a member of the prestigious Order of the Coif. He has twice served in the Appellate Section of the Civil Division of the Department of Justice, earning a Special Commendation for Outstanding Service. He has been on the faculty of the University of Kentucky College of Law since 1978, where he is the Thomas P. Lewis Professor of Law. Professor Rogers has also twice served as a Fulbright Professor in China. Finally, it is worth noting that Professor Rogers has dedicated a good part of his life to the service of his country as a member of the field artillery in the United States Army Reserves. He is retired with the rank of Lieutenant Colonel.

Professor Rogers, in addition to having the enthusiastic support of both Senator BUNNING and myself, has earned a unanimous rating of qualified by the American Bar Association. I am confident that he will make the citizens of the Commonwealth proud, and that he will provide badly-needed relief to the woefully understaffed Sixth Circuit Court of Appeals.

As I have said repeatedly, I appreciate the fair manner in which Chairman Leahy treated Kentucky judicial nominees, particularly nominees to the district courts in Kentucky. However, some of his statements on the floor Monday evidence a serious misunderstanding of the genesis of the Sixth Circuit vacancy crisis and of Professor Rogers' judicial record and philosophy.

As many people know, the Sixth Circuit has been in dire straits, and although some of my Democrat colleagues have tried mightily to do so, the blame for this sorry situation cannot be laid at the feet of a Republican-controlled Senate.

At the beginning of this year, half of the sixteen seats on the Sixth Circuit were vacant. But contrary to the assertions of my friend from Vermont, half of those vacancies arose in the first year of President Bush's presidency. Judges Gilbert F. Merritt, Alan E. Norris, Richard F. Suhrheinrich, and Eugene F. Siler all took senior status in 2001—after President Bush came into office.

With respect to another vacancy on the Sixth Circuit, my friend from Vermont notes that the Senate did not act on President Clinton's nomination of Mr. Kent Markus. Mr. Markus was nominated to fill the vacancy that arose from Judge David A. Nelson taking senior status. The Senate was unable to act on this vacancy, however, because President Clinton did not nominate Mr. Markus until his final year in office, when only nine months remained until the presidential election.

As to a sixth vacancy, that created by the retirement of Judge James L. Ryan, President Clinton did not even submit a nomination.

As to the remaining two vacancies, it is my understanding that the Republican Senate could not confirm the nominees to these seats, Ms. Helene White and Ms. Katherine McCree Lewis, because the Clinton Administration did not properly consult on their nominations. As a result, these nominations faced home-state opposition that prevented the Senate from moving them forward.

I ask unanimous consent that an article from the Wall Street Journal on the subject of these nominations be printed in the RECORD at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit I)

Mr. MCCONNELL. Mr. President, the situation with Ms. White and Ms. Lewis is obviously quite different from the situation of Mr. Jeffrey Sutton and Justice Deborah Cook, whom President Bush has nominated to fill two of the six remaining vacancies on the Sixth Circuit. Both Mr. Sutton and Justice Cook have strong home-state support. Furthermore, they are part of the President's first group of judicial nominees that he submitted to the Senate in May of last year. Nevertheless, neither has been able to obtain a hearing. I am confident that in the next Congress the Judiciary Committee will promptly act on their nominations.

Far from treating President Clinton poorly with respect to his judicial nominees, the Republican Senate treated him quite well, particularly on nominations to the Sixth Circuit. President Clinton got three hundred and seventy-seven of his judicial nominees confirmed, only five shy of President Reagan's all-time record. This is quite impressive in and of itself. It is even more impressive when one considers that President Clinton got these nominees confirmed when Republicans controlled the Senate for seventy-five percent of his term. By contrast, President Reagan got his judicial nominations confirmed when his own party controlled the Senate for seventy-five percent of his term. Thus, a Republican Senate treated Presidents Reagan and Clinton equally well.

As part of his near-record total, President Clinton got five Sixth Circuit nominees confirmed. Judges Martha Craig Daughtery, R. Guy Cole, Jr., Karen Nelson Moore, Ronald Lee Gilman, and Eric L. Clay were all Clinton nominees who were confirmed to the Sixth Circuit. This is also a fairly impressive statistic, particularly when compared to President Bush, who has only gotten two of his Sixth Circuit nominees confirmed, including Professor Rogers. But President Clinton's Sixth Circuit accomplishment is even more impressive when one considers that a Republican Senate confirmed four out of the five, or eighty percent, of those nominations. Only Judge Daughtery was confirmed by a Democrat Senate.

Indeed, because the Republican Senate confirmed so many nominees to the Sixth Circuit, Democrat appointees outnumbered Republican appointees by a ratio of three to one at the beginning of this year: there were six Democrat-appointed judges on the Sixth Circuit and only two Republican-appointed judges. President Clinton might have had even more judicial nominees confirmed to the Sixth Circuit if his administration had consulted properly on the White and Lewis nominations.

With respect to the Rogers' nomination, Professor Rogers has not been a judicial activist, as the Chairman claims. The law review article on which my friend from Vermont relies for this sweeping assertion was a theoretical piece discussing an esoteric subject that scholars have debated since the great Learned Hand. It was Professor Rogers' lone foray into the topic.

Far from arguing that inferior courts should somehow try to overrule higher court precedent—if that were even possible—Professor Rogers argues just the opposite: that lower courts have a duty to follow all precedent, including precedents with which they disagree. My friend from Vermont may want to read page 185 of the article where Professor Rogers writes that our legal system "would not work well if lower courts persisted in their own sincere legal analyses regardless of the decisions of higher courts." Professor Rogers goes on to write that it "follows that judges may, indeed should, follow the law as appellate courts determine it, in order to apply—per their oaths—the law of the system that set up their courts."

Over the course of his long and distinguished career, Professor Rogers has consistently demonstrated a strong and abiding fidelity to precedent. A judicial activist, by contrast, would be a label more appropriately applied to someone like Clinton appointee William Sessions, a district court judge from Vermont, who recently declared that the federal death penalty statute is unconstitutional in all its applications, which would preclude using it against mass murderers and serial killers. Or it could apply to Clinton appointee Jed Rakoff, a district court judge who also ruled the federal death penalty unconstitutional, which prompted even the Washington Post to complain about such judicial activism in a piece entitled "Right Answer, Wrong Branch."

Or that label might apply to Clinton appointee Shira Scheindlin. According to the Wall Street Journal, in an article entitled "Osama's Favorite Judge," a Jordanian named Osama Awadallah knew two of the 9/11 hijackers and met with one at least forty times. His name was found in the car parked at Dulles Airport by one of the hijackers of American Airlines Flight 77. Photos of his better-known namesake—Osama bin Laden—were found in Mr. Awadallah's apartment. Under the law, a material witness may be detained if he has relevant information and is a flight risk.

Federal prosecutors thought that Osama Awadallah easily met both parts of that test and therefore detained him. While detained Mr. Awadallah was indicted for perjury. But Judge Scheindlin dismissed the perjury charges and released Mr. Awadallah. She reasoned that the convening of a federal grand jury investigating a crime was not a "criminal proceeding" and therefore it was unconstitutional to detain Mr. Awadallah. This was quite a surprise to federal prosecutors who for decades had used the material witness law in the context of grand jury proceedings for everyone from mobsters to mass murderer Timothy McVeigh.

Or that label might apply to Clinton appointees Tashima, Hawkins, Paez, and Berzon, all of whom discovered in the Constitution the right of prisoners serving life sentences to procreate via artificial insemination. Fortunately, there were enough judges on the Ninth Circuit to conclude that the Constitution does not include a "right to procreate from prison via FedEx."

There are other Clinton nominees to whom one could apply the label "judicial activist." That label cannot, however, fairly be applied to Professor Rogers.

The Chairman also implies that Professor Rogers is an activist because of his views on the Supreme Court's opinion in Roe v. Wade. But Professor Rogers has never ruled on that subject. In fact, he has never even written on it, except for his one assignment as a line attorney in the Justice Department in helping draft an amicus brief. If daring to note some of the flawed analytical underpinnings of Roe makes one a judicial activist, then Justice Ruth Bader Ginsburg must be one. In a 1985 article, she noted that "Roe sparked public opposition and academic criticism, in part, I believe, because the Court ventured too far in the change it ordered and presented an incomplete justification for its action." She also recognized that in Roe "heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict." Other liberal scholars have also recognized serious flaws in Roe's analysis.

In conclusion, Professor Rogers possesses the intellect, integrity, and commitment to public service that will make him a fine addition to the Sixth Circuit. His confirmation will provide some badly-needed relief to my constituents and other citizens in the Sixth Circuit, and I am confident that he will make Kentucky and his country proud. And while I believe my friend from Vermont misapprehends the cause of the vacancy crisis on the Sixth Circuit and Professor Rogers' judicial philosophy and record, I appreciate him moving the Rogers' nomination and other Kentucky nominees through the process. He correctly notes that there are now no judicial vacancies in Kentucky, and I thank him again for helping the Commonwealth in that respect.

Exhibit 1

[From the Wall Street Journal, Dec. 4, 2001]

Judges and Grudges

MICHIGAN'S DEMOCRATIC SENATORS SEEK PAYBACK

(By Thomas J. Bray)

On Thursday, the Sixth U.S. Circuit Court of Appeals, which handles federal appeals from Kentucky, Michigan, Ohio and Tennessee, will meet en banc to hear oral arguments on whether the University of Michigan's use of racial preferences in administrations is constitutional. Such a hearing, in which all of the court's active judges, rather than the usual three-judge panel, hear the case, is highly unusual.

But then the number of judges on the Sixth Circuit is bit unusual, too. Though there are normally 16 active judges assigned to the appeals court, only nine of the seats are currently filled. Moreover, the number will fall to eight at the end of the year when one judge retires.

Nominations to fill seats in the Sixth Circuit have are being stymied by bitter partisan wangling in the Senate. And there appears to be little prospect of breaking the deadlock. Michigan's two Democratic senators, Carl Levin and Deborah Stabenow, have put a hold on three of President Bush's nominees from that state. (Mr. Bush hasn't yet named a candidate for a fourth seat traditionally held by a Michiganian.) Judiciary Committee Chairman Patrick Leahy has refused even to hold hearings on the nominations.

Echoing their party's rationale for foot-dragging on judicial nominations from all across the country, Sens. Levin and Stabenow complain that when Republicans controlled the Judiciary Committee in the warning days of the Clinton administration, they arbitrarily refused to act on the nominations of state appellate judge Helen White and Detroit lawyer Kathleen McCree Lewis. "This was despite the fact that no concerns were raised about either woman's qualifications," the two senators wrote in a letter last weekend to the Detroit News.

That leaves the implication that the White and Lewis nominations were stalled because of sheer partisanship, thus justifying retaliation now that the Senate is in Democratic hands. But the story is a bit more complicated.

Helene White happens to be the wife of Carl Legion's cousin Charles Levin, a former member of the Michigan Supreme Court. In 1996, Judge White was threatening to run as an independent for the state Supreme Court. This horrified Michigan Democrats, who feared that she might draw off a big chunk of the liberal vote. The White House, according to state political sources, was persuaded to forestall that possibility by nominating her for a seat on the Sixth Circuit. (The Democratic candidate went on to lose anyway.)

But her nomination outraged then-Sen. Spencer Abraham, a Michigan Republican who is now secretary of energy. Mr. Abraham traded his help for getting three Michigan nominees to the federal courts approved by the GOP Senate in exchange for Clinton-judge pickers holding off on further nominations.

When the White House was ahead with the White nomination anyway, Sen. Abraham made no secret of his feeling that he had been double-crossed. He then placed his hold on the White nomination and later the Lewis nomination.

All of this came well into the Clinton tenure. Newly elected presidents, including Mr. Clinton, have generally received speedy accommodation for their initial nominees. Blocking nominees so early makes it appear the Democrats are motivated by little more than partisanship stemming from disappointment at the outcome of the 2000 election and the desire to impose an ideological litmus test on judicial nominees.

Sen. Charles Schumer of New York, a member of the Judiciary Committee, let the cat out of the bag shortly after the Democrats took over the Senate. The committee, he announced, would be justified in opposing nominees "whose views fall outside the mainstream"—in other words, anybody with whom he and his Democratic colleagues disagreed.

The three blocked Bush nominees to the Sixth Circuit include a highly qualified federal district judged from western Michigan, a female state trial judge and a state appeals-court judge of Arab descent. At a time when Democrats are loudly complaining about insensitivity toward Arab and Muslim visa-holders, the last nomination might seem particularly timely. A federal district judge in Detroit is now hearing charges against three Arab aliens charged with visa violations who authorities say may have connections to al Qaeda.

There currently are 110 vacancies among the nation's 862 district and appeals courts judgeships. The gap has so far been filled by semiretired senior judges, through they aren't allowed to join in en banc court proceedings.

An indignant Sen. Leahy is hauling Attorney General John Ashcroft before his committee this week to answer questions about the constitutionality of his investigative techniques as well as the use of military commissions to conduct speedy trials of captured foreign terrorists. If Mr. Leahy and his colleagues are so keen on having the regular courts do this job, maybe they should be asked why they are still sitting on so many of the president's nominations.

OPPOSING THE LONG-TERM CONTINUING RESOLUTION

Mrs. LINCOLN. Mr. President, I rise in opposition to the continuing resolution because I believe it is irresponsible for Congress to adjourn without fulfilling our constitutional obligations. I have in the past allowed short-term continuing resolutions to fund our Government in order to give my colleagues time to complete the appropriations process. But I cannot support the long-term continuing resolution which will simply allow Congress to go home for the rest of the year before our job is complete.

As our Nation stands on the verge of going to war, it is beyond me how we can simply pass a bill to keep government spending at last year's levels. Yesterday's Washington Post reports that fire crews, police officers, emergency workers and others who would be the first on the scene in the event of a new terrorist attack haven't received any of the money that the President's budget promised them. I ask unanimous consent that this article be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Washington Post, Nov. 19, 2002]

Spending Bill Delays Crimp War on Terror

CONGRESS'S INACTION SLOWS DOMESTIC PLANS

(By Jonathan Weisman)

With their political attention focused on establishing a Department of Homeland Security, Congress and the White House have given up funding many of the department's proposed functions, at least in the short run. As a result, programs such as trucking security, bioterrorism defense and customs operations are strapped for cash, perhaps well into next year.

Congress's decision to fund the government at 2002 levels until Jan. 11 could mean federal, state and local agencies expecting large increases for emergency response, new equipment and other needs will not see additional money until spring, halfway through the fiscal year that began Oct. 1. Budget experts say Congress is unlikely to pass any 2003 nondefense spending bills until February at the earliest.

"After the attacks of September 11, many of us anticipated with urgency what should have been recognized by Congress—that all this money would have been passed by October 1," said Matthew R. Bettenhausen, director of homeland security for Illinois. "Now, it's not going to be until calendar year '03 that they even consider the president's proposals."

Spokesmen for various Federal agencies say their departments are functioning fine under the temporary funding measures, known as continuing resolutions. White House budget officials say they can shore up programs as needed by shifting funds from where they are not needed, or tapping unspent money from the last fiscal year.

But Federal officials speaking on condition of anonymity say the stalemate will have serious consequences. The director of the National Institutes of Health told Congress in October that if his agency did not receive requested funding increases soon, he would have to scale back bioterrorism research grants scheduled to be awarded in December and January. Biodefense "is one program that was slated to markedly increase in 2003, so a continuing resolution there for any length of time will greatly impair that program," Director Elias A. Zerhouni warned.

Congress has provided the entire Federal Government's bioterrorism program with $1.5 billion, a fraction of the president's $4.3 billion request, said G. William Hoagland, Republican staff director of the Senate Budget Committee.

The Customs Service has reached agreements with nine countries to inspect massive shipping containers heading to the United States from 15 of the world's 20 largest ports, but it will likely have to postpone the deployment of agents that had been scheduled for January.

The Department of Energy's National Nuclear Security Administration has frozen hiring, even as it tries to ramp up security at the nation's nuclear weapons plants and laboratories. In a Nov. 15 memo, the agency's acting administrator, Linton F. Brooks, told agency chiefs that Congress's actions had presented "a serious management challenge" that forced him to impose the freeze to avoid large reductions in force later in the fiscal year.

Major computer purchases to bolster the president's border security initiative are on hold. And the newly established Transportation Security Administration, operating on $466 million less than it expected for the next two months, has had to withhold $20 million in truck security grants, a senior Transportation Department official said.

The agency also has deferred reimbursements to the airlines for cockpit door retrofits. TSA employees scattered around 429 airports are without computers or administrative support. And if Congress does not act quickly in January, when TSA employees must receive a mandatory 3.1 percent pay raise, the agency will have to furlough hundreds of its workers.

"There are a lot of agencies that are going to be in the soup on this thing," said one administration official, who refused to be identified. "But the biggest problems are at TSA. They're going to be clobbered."

Rep. David R. Obey (Wis.), the ranking Democrat on the House Appropriations Committee, called the performance "a disgrace" and "a spectacular abdication of responsibility." House Appropriations Committee Chairman C.W. Bill Young (R-Fla.) was less forceful but conceded that Congress's action was "not the best way to fund the government."

Homeland security is just one area that fell victim to Congress's failure to pass new appropriations bills. House Republicans were bitterly divided all year between moderates, who wanted to spend more on nondefense domestic programs, and conservatives, who wanted to stick to the president's austere spending limits. In the end, the House passed only two of the 11 annual nondefense appropriations bills.

Democrats on the Senate Appropriations Committee pushed through all 13 of their spending bills at levels well above House levels, but they managed to get only one nondefense spending bill through the full Senate.

To be sure, some homeland defense functions are moving forward. The temporary spending resolution funds the government at 2002 levels, but it also carries forward emergency spending approved shortly after Sept. 11, 2001. For example, the $151 million fund that Congress provided the Food and Drug Administration for an emergency food safety program will remain flush. The stopgap spending resolution, expected to pass the Senate this week, also allows the president to redirect $640 million from other programs to the newly created Homeland Security Department.

And in some cases, more money would do little good for agencies still struggling to come to grips with their new security responsibilities. Congress has failed to provide the U.S. Border Patrol with funds it would need to hire 570 agents that lawmakers have requested. But, said patrol spokesman Mario Villarreal, the agency's recruiting efforts could not reach last year's goal of 10,551 Border Patrol agents, in part because about 750 agents quit to become air marshals for the TSA.

Still, Congress's failures have left bitter feelings, especially with organizations that backed politicians in exchange for promises they fear will be broken.

"It's going to be my members, wherever the next [terrorist] event is, God forbid, that are the first on the scene, and we have a federal government that has been unable to put any money on the ground to help them," said Harold A. Schaitberger, president of the International Association of Fire Fighters.

And for state governments facing severe fiscal crises, the failure of Congress to provide federal help has been particularly ill-timed, said Philip G. Cabaud Jr., Delaware's homeland security adviser.

President Bush and Congress can claim great success in establishing the framework for the nation's eventual response to terrorist threats. Before lawmakers officially close the 107th Congress, they will likely have established a Department of Homeland Security and approved port security, border security and bioterrorism measures. But none has been fully funded.

The president's budget promised that $3.5 billion would begin flowing in October to "first responders," but fire crews, police officers and emergency workers are still waiting for even a penny.

One executive of the American College of Emergency Physicians recalled an invitation to the White House in June to watch Bush sign the Bioterrorism Preparedness Act, which authorized Congress to send $520 million to hospital emergency rooms. So far, though, only about $135 million has been made available, and the official said her organization has seen none of it.

Two years ago, Congress began providing $360 million for federal grants to local firehouses. The House promised to increase that number to $400 million this year. The Senate promised $900 million. So far, firefighters have gotten nothing.

"There has been a tremendous amount of rhetoric and a tremendous amount of utilization [by politicians] of fire services whose new status was purchased at such a high cost," said Garry L. Briese, executive director of the International Association of Fire Chiefs. "But their actions do not reflect the words."

Mr. President, it's not just our counterterrorism operations that need to be funded. Our domestic priorities are also hurting. For example, the Administration has boasted about the education bill, the No Child Left Behind Act, which the president signed in 2002. Yet we haven't come close to funding the programs authorized in the bill. Leaving town without funding these and other priorities is irresponsible.

We have also failed to act on the Medicare give-back bill (S. 3018), leaving physicians, rural hospitals, nursing homes, ambulance providers and pathologists without adequate reimbursements from the federal government. Adjourning without ensuring proper Medicare reimbursements to these providers means they will have to choose between helping patients while operating at a financial loss or discontinuing services. What an unfair choice to leave those who help our senior citizens!

Adjourning now will also leave states like Arkansas in the lurch. The Senate Finance Committee passed a three-year reauthorization of welfare, but we didn't complete this bill on the Senate floor. Arkansas has one of the six state legislatures that meet biennially and is one of the 19 states that must pass two-year budgets. Our legislature meets early next year. How will they be able to plan their budget if they don't know what federal money they will be getting for their TANF (Temporary Assistance for Needy Families) program? TANF is one of the major federal programs designed to help needy families with children. An estimated 5.5 million parents and children depend on welfare benefits for a monthly cash check. An additional 1 million families do not receive a cash payment, but depend on TANF for child care and/or transportation subsidies which are essential to enable parents to work and move toward self-sufficiency. How can we leave 6.5 million people in the lurch?

Lastly Mr. President, it took headlines and plummeting stock shares to alert the nation to the vast fraud and greed which had inflated the Wall-Street stock bubble. The government and the Congress had no clue what was going on and the public suffered. In order to remedy this problem the Congress overwhelmingly approved the Sarbanes-Oxley Act. This new law authorized a 77 percent increase in SEC funding to $776 million. The increase was included in both the Sarbanes bill here in the Senate and in the House-passed H.R. 3764. But now we are learning that the White House doesn't want to fund the full authorization and is ready to propose nearly a third less than that. That is outrageous and I think the public should pay attention to this issue. Unless the authorization is funded it is meaningless. Meaningless, Mr. President, a hollow position crafted for an age of thirty second sound bites. The public should not allow this to go on.

Congress should fund the priorities we have authorized. That is why I oppose the long-term continuing resolution.

CYPRUS' MEMBERSHIP TO THE EUROPEAN UNION

Ms. SNOWE. Mr. President, the Senate has recently passed by unanimous consent a resolution, S. Con. Res. 122, that I, along with Senators BIDEN and SARBANES introduced expressing support for Cyprus' membership in the European Union, EU. This is a timely and significant statement of support for the Senate to make on the cusp of Cyprus' membership and I would like to thank Senators BIDEN and SARBANES for their efforts toward achieving the passage of S. Con. Res. 122.

Just this past month, Cyprus moved yet another step closer to its goal of EU membership. At the end of October, the 15 European nations met in Brussels and endorsed the recommendations of the European Commission that Cyprus and nine other countries become EU members in 2004. It was agreed that Cyprus had fulfilled the political criteria for accession and will be able to meet the economic criteria and assume the obligations of membership. It is expected that an official invitation for membership will be expanded this December, with accession in 2004.

The EU countries did reaffirm the call for continuing efforts by President Clerides and Turkish-Cypriots to work toward a solution to the Cyprus problem by the end of the year. However, as was stated at the Helsinki Summit in 1999, such a solution is not a precondition for Cyprus' membership.

After 27 years Cyprus remains a divided nation. However, as an EU member, the entire island of Cyprus will see economic benefits. All Cypriots will have access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods and services, and capital.

But EU membership is not only about economic prosperity it is also about human rights. The EU guarantees citizens of its members human, legal and civil rights as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights.

Moreover, Cyprus' EU membership will be, and has been, a catalyst for the solution to the Cyprus problem as the mere prospect of membership has already yielded progress. That Cypriot President Clerides and Turkish-Cypriot leader Denktash have been meeting since January in direct talks to seek a resolution of the division of Cyprus is seen as evidence of the positive leverage exacted by expected EU accession.

As a result of these continuous meetings, other international efforts have occurred such as the recent submission by the U.N. Secretary General of a comprehensive proposal for the solution of the Cyprus problem. If it were not for Turkey's desire to also be an EU member knowing that other EU members could block this goal it is questionable whether these talks would even be taking place. That, along with improved economic prosperity and guaranteed human rights, is why it was vital that the Senate go on record as supporting Cyprus' EU membership.

INDIAN TRUST FUNDS MANAGEMENT

Mr. McCAIN. Mr. President, I would like to make a brief statement for the RECORD regarding an issue of significant importance to me, and that is the fiduciary and trust responsibility of the United States toward Native Americans for management of trust assets and trust funds.

Earlier this year, I introduced S. 2212, the Indian Trust Asset and Trust Fund Management and Reform Act of 2002. This legislation would have amended the 1994 American Indian Trust Fund Management Reform Act to initiate further reform of the administration and management of the assets and funds held by the United States in trust for federally recognized Indian tribes and individual Indians. I was pleased to be joined in this effort by my distinguished colleagues, the two Senators from South Dakota, Mr. DASCHLE and Mr. JOHNSON, and I appreciate the time and effort they have expended as we have tried to move the bill toward enactment.

I also thank the chairman of the Committee on Indian Affairs, Senator INOUYE, for holding a hearing on S. 2212 in July. As a result of the testimony received in the hearing and the comments from many of the Indian tribes that would be affected by this legislation, we developed an amendment in the nature of a substitute which significantly improved the original bill. Many tribal leaders shared comments and offered recommendations to us in the process and were grateful for their efforts.

By sponsoring this legislation, Senators DASCHLE, JOHNSON, and I intended to express congressional support and provide direction for reform of the Federal Government's management of Indian trust funds and assets, which has for some time been subject to intense criticism and scrutiny by the Federal courts. High-level Government officials have been held in civil contempt twice by the U.S. District Court here in Washington, DC, for their abject breach of fiduciary duties as well as the continuing failure to comply with statutory mandates and court orders.

S. 2212 focused on two primary changes to the 1994 American Indian Trust Fund Management Reform Act, the underlying law governing Indian trust funds management. First, it would have created a single line of authority in the Interior Department by establishing a Deputy Secretary for Trust Management and Reform; and second, the bill would have strengthened provisions for Indian tribes and beneficiaries to directly manage or comanage with the Interior Secretary trust funds and assets, based on successful self-determination policies.

Based on comments received from tribes, we amended S. 2212 to affirm the fiduciary standards to be applied to the management of Indian trust funds and assets, as well as to abolish the Office of Special Trustee and establish the Office of Trust Reform under the new Deputy Secretary. The Advisory Committee to the Special Trustee would have been replaced with a task force composed of representatives of the tribes and the Department who would work with the new Deputy Secretary to develop recommendations for further necessary changes to the laws governing the management of trust assets and trust funds.

The changes represented in S. 2212 were modest, but important. It could have formed the basis for a stronger partnership between the tribal beneficiaries and the Interior Department, instituting congressional requirements for development of consensus policies governing trust standards and additional management reforms. Such a partnership would have set the Department and the tribes on a course toward resolution of the problems that have plagued the management of the trust funds and assets for more than a century.

Unfortunately, we are at the end of the 107th Congress and no further action will be taken on S. 2212. A sufficient consensus could not be reached among the tribes as well as between the tribes and the Department of the Interior to allow us to move forward to enact the bill. By failing to enact legislation like S. 2212 this year, the Congress is not fulfilling its responsibility to the Indian tribes and individuals who have suffered from decades of Federal mismanagement.

For most of this year, tribal representatives have been working on a range of possible reforms through a special task force established by Secretary Norton after the tribes resoundingly rejected her administrative reform proposal during 2001. Despite the efforts of the tribes, the discussions with the Interior Department culminated in an impasse and an end to the Department's participation in the task force.

The Department's latest action is unfortunate, but it is certainly not the first time the tribes and the Department have been unable to agree. It should not pose an insurmountable hurdle for the Congress to act. In fact, it merely adds impetus to the need for amendments to the 1994 act, particularly to ensure through legislative language that the Interior Department would be required to consult and work with the affected beneficiaries on any reforms or changes to its management. Court requirements may now compel the Interior Department to once again develop its own management reforms without the consultation or agreement of the affected beneficiaries.

The sponsors of S. 2212 were told that we shouldn't act on this legislation in this session because of the lack of agreement between the tribes and the Department of the Interior. At the same time, several efforts ensued by the Department and some tribal representatives to add legislative riders to appropriations bills or other must-pass legislation. These were efforts I could not support as I continue to abide by the principle of legislating through the open processes of the Congress.

It is certainly true that no one fully agreed with everything in S. 2212. That fact suggests to me that the bill deserved our full and fair consideration because it represented a balanced approach. S. 2212 was intended to foster a process of further reform in the years ahead and not to impose some sort of "quick fix" or "final remedy" that is not fully embraced by all interested and affected parties.

Senators DASCHLE, JOHNSON, and I worked very hard to achieve consensus on S. 2212 and while we garnered significant tribal support for this legislative remedy, we abided by the wishes of the tribal task force leadership to withhold from further action on the bill. Without legislative reform this year, I am very much concerned that trust duties will effectively be redefined and reassigned by the courts and the Department without the input or approval of the Congress and the affected beneficiaries.

I have no doubt that the Congress will be urged to act again in the 108th Congress as the matter of trust fund management will continue to require legislative review and reform. I believe a significant opportunity may have been lost by not enacting S. 2212, but I remain committed to ensure that the Federal Government's responsibility to the individual and tribal beneficiaries will be fulfilled.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred January 16, 2002 in Atlanta, GA. According to police, Michael Keith Bargeron intentionally hit Keishuna Young, 15, with his car because she is black. Bargeron yelled racial slurs at Keishuna and her friend as he drove by in his car. Seconds later, he turned around and tried to ram her with his car. Keishuna sustained multiple injuries when she rolled off the car onto the pavement.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO SENATOR PAUL WELLSTONE

Mr. AKAKA. Mr. President, as the 107th Congress nears its conclusion, I rise to join my colleagues in remembering our beloved colleague, Senator Paul Wellstone. Our thoughts and prayers are with the Wellstone family, Paul's staff, and the people of Minnesota. We are all saddened by the tragic deaths of Paul and Sheila Wellstone, their daughter, Marcia Wellstone Markuson, and the Wellstone staffers and pilots.

America will sorely miss Paul Wellstone and his passionate advocacy on behalf of those in our communities and our country who too often feel that no one in Washington hears their voice. Paul Wellstone was their voice, he was their champion, driven by his unwavering conviction that government can and should be a force for good in people's lives. Paul was a caring, persistent, and passionate advocate for veterans, children, the mentally ill, and working families. He was committed to ensuring that all Americans had the opportunity to make a better life for themselves and their families, and that wherever possible, government act as a positive instrument to advance opportunity and equality for all Americans in education, job training, access to health care, and the availability of quality health care. He was driven by his commitment to civil rights and equal justice. Whether speaking on the Senate floor or to a workers' rally, retracing Robert F. Kennedy's tour of America's poorest communities, or visiting veterans hospitalized in Minnesota, Paul lived his convictions and values. Whether you agreed or disagreed with Paul Wellstone on an issue, there was never any doubt about his integrity, the passion and commitment he brought to his work, and the deep pride he felt in serving the people of Minnesota in the Senate.

Paul and I were both first elected to the Senate in November 1990. I had been appointed to the Senate a few months earlier, but we were both the new kids on the block. From the outset, with his incandescent personality, exacting integrity, commitment to the values he espoused and the ability to speak passionately and eloquently about the issues he cared so deeply about Paul distinguished himself as an exceptional Senator and an extraordinary human being.

Over the course of his tenure in the Senate, Paul became a dear friend. Because of the chronic discomfort he experienced as a consequence of his lifetime love of the sport of wrestling, he was interested in my experiences with hip replacement surgery. At the start of the 107th Congress, our offices were next to one another. His boundless energy, enthusiasm, and good spirits were always welcome and brightened the day for everyone he greeted on his way to and from his office. I remember one conversation on a long bus ride back from a Democratic retreat in Pennsylvania. My eldest son, Danny, had joined Millie and me for the weekend, and he struck up a quick friendship with Paul and Sheila. Over the course of ride back to Washington, we discussed philosophy and politics, the upcoming midterm elections, destiny, and the power of living in consonance with your values and beliefs. I listened as Paul and my son agreed on the importance of living life to the fullest and living every day as if it is your last. That day stays with me because that is precisely the way Paul Wellstone lived his life. He celebrated life. He loved his job and his constituents. He adored Sheila and his children and grandchildren. He always made the time to greet, talk to, or offer words of encouragement to everyone he encountered as he went about his day. To me, this is Paul's greatest legacy, the lives he touched, the people he inspired, the spirits he lifted with his message of hope and justice.

Paul had hoped to visit Hawaii after the November election and had spoken to my son Danny about bringing his entire family for some well-deserved rest and relaxation. Paul and Sheila never had the opportunity to visit Hawaii with their children and grandchildren as we talked about, but they truly lived aloha. For aloha is love. And love is the spirit that brings people together in harmony. In its true sense, aloha has to be transmitted to others, especially to each other, and aloha really is in the giving, not the taking. When you give, you are sharing aloha. This is how Paul and Sheila Wellstone lived their lives and it is why we in the Senate family miss Paul and Sheila terribly. I want to bid Paul and Sheila Wellstone a fond aloha. May God bless them and the Wellstone family. Na Iehowa 'oe e ho'omaika'i mai, a e malama mai—The Lord bless you and keep you.

Mrs. LINCOLN. Mr. President, I appreciate this opportunity to add my voice to those who have spoken in honor of our late colleague Senator Paul Wellstone.

In the 4 years we served together, Paul and I didn't always vote the same way. But we shared the most important value of all: We wanted to do best for the people who sent us to the Senate to represent them. On a full range of issues, from education to health care to veterans affairs, Paul fought tirelessly for what he believed was best for the people of Minnesota and the United States.

I admired Paul's conviction and passion in presenting his viewpoints and arguing his case. I admired his honesty and conscientiousness in standing up for what he believed. Most of all, I admired the goodwill and sense of fairness that he brought to this body. I hope that even though we won't always agree in our debates here, we can always keep alive that same spirit of goodwill, fairness, and openness.

Paul Wellstone wasn't from the South, but he possessed all the qualities of a Southern gentleman. He was never rude or mean-spirited toward those who disagreed with him, and he was unfailingly civil to both his allies and his adversaries. I feel fortunate to have had him as a colleague and blessed to have had him as a friend. He will be sorely missed.

I would like to pay tribute also to the two members of Paul's family—his wife Sheila and his daughter Marcia—who perished with him on October 25. Furthermore, three members of Paul's campaign staff—Will McLaughlin, Tom Lapic, and Mary McEvoy—and two pilots—Richard Conroy and Michael Guess—lost their lives in that accident. My deepest sympathies and my prayers go out to their families and friends in this time of loss.

ENHANCED PROTECTION OF OUR CULTURAL HERITAGE ACT

Mr. LEAHY. I am pleased that the Senate late last night passed S. 2598, the Enhanced Protection of Our Cultural Heritage, EPOCH, Act of 2002, which I introduced earlier this year with Senators INOUYE, CLINTON, BINGAMAN, and BOXER. This legislation increases the maximum penalties for violations of three existing statutes that protect the cultural and archaeological history of the American people, particularly Native Americans. The U.S. Sentencing Commission recommended the statutory changes contained in this bill, which would complement the Commission's strengthening of Federal sentencing guidelines to ensure more stringent penalties for criminals who steal from our public lands.

This bill increases the maximum penalities for the Archaeological Resources Protection Act, ARPA, 16 U.S.C. §470ee, the Native American Graves Protection and Repatriation Act, NAGPRA, 18 U.S.C. §1170, and for 18 U.S.C. §1163, which prohibits theft from Indian tribal organizations. All three statutes currently impose a 5-year maximum sentence, and each includes a lower maximum for a first offense of the statute and/or a violation of the statute involving property of less than a specified value. The bill would create a 10-year maximum sentence for each statute, while eliminating the lower maximums under ARPA and NAGPRA for first offenses.

Such maximum sentences would be consistent with similar Federal statutes. For example, the 1994 law proscribing museum theft carriers a 10-year maximum sentence, as do the general statutes punishing theft and the destruction of Government property. Moreover, increasing the maximum sentences will give judges and the Sentencing Commission greater discretion to impose punishments appropriate to the amount of destruction a defendant has done.

Making these changes will also enable the Sentencing Commission's recent sentencing guidelines to be fully implemented. The Commission has increased sentencing guidelines for cultural heritage crimes, but the statutory maximum penalties contained in current law will prevent judges from issuing sentences in the upper range of the new guidelines. Those new guidelines have the enthusiastic support of the Justice and Interior Departments, the Society for American Archaeology, the National Trust for Historic Preservation, numerous Native American nations, and many others.

Two of the three laws this legislation amends protect Native American lands and property. The third, ARPA, protects both public and Indian lands, and provides significant protection to my State of Vermont. For example, ARPA can be used to prosecute those who would steal artifacts from the wrecked military vessels at the bottom of Lake Champlain that date to the Revolutionary War and the War of 1812. U.S. attorneys can also use ARPA to prosecute criminals who take items that are at least 100 years old from a protected site on Vermont State property without a permit, and then transport those goods into another State. In addition, ARPA protects artifacts found on the approximately 5 percent of Vermont land that is Federal property, land that includes many "ghost towns" that have long been abandoned but are an important part of our history.

Those who would pillage the rich cultural heritage of this Nation and its people are committing serious crimes. These artifacts are the legacy of all Americans and should not be degraded as garage sale commodities or as fodder for private enrichment.

ACCURACY IN STATISTICS AND THE DEBATE OVER BIPARTISAN TAX RELIEF

Mr. GRASSLEY. Mr. President, I rise today to discuss the importance of accuracy in the debate over bipartisan tax relief.

I was very pleased to work with over one-fourth of the Senate Democratic Caucus in passing the largest tax cut in a generation. That legislation has been the subject of a coordinated attack by the Democratic leadership and some of its allies in the media. For almost a year and a half, I have responded to these attacks in committee, on the Senate floor, and in the media.

The basic premise of my responses has been that participants ought to be intellectually honest in the data used in the debate. Reasonable folks can differ on whether bipartisan tax relief is a good idea or not. We ought to conduct that debate in a fair and open manner.

Apparently, my responses caught the eye of a key opinion maker, Mr. Paul Krugman of the New York Times. Mr. Krugman is a regular columnist and focuses mainly on economic policy. Mr. Krugman took aim at me and my statements in a column, dated October 18, 2002. I ask unanimous consent that a copy of that op-ed be included in the RECORD.

Mr. Krugman defended the often-mentioned but seldom-sourced statistic on distribution of the benefits of the tax relief package. It's the statistic we hear over and over again. The statistic claims that 40 percent of the benefits of the tax relief package go to the top 1 percent of taxpayers.

Mr. Krugman claims that I did not have an alternative answer to the 40 percent statistics.

I responded in a letter to the editor, dated October 24, 2002.

My letter sources data from the unbiased, official scorekeeper of tax policy for Congress, the Joint Committee on Taxation. This data had been placed in the record in the statements Mr. Krugman criticized. That data, updated for the last year the tax cut is distributed, 2006, shows that the top 1 percent of taxpayers will receive a lower share of the benefits of the tax cut, 27 percent, than their burden, 33 percent. The remaining difference of 6 percent is distributed to taxpayers within comes below $100,000. That's why Joint Tax concludes that the bipartisan tax relief makes the Tax Code more progressive.

By the way, this fact is not incidental. It reveals a key ingredient to our bipartisan success in 2001.

My Democratic partners in the bipartisan bill insisted that we make the Tax Code more progressive as a condition for their support. That was a condition that I shared with them. We would not have produced the bill in the Senate without their support.

Mr. Krugman struck back at me again in a column dated October 29, 2002. He claimed my letter was "misleading" because I did not include the benefits of death tax relief in the analysis. I ask unanimous consent that a copy of that op-ed be included in the RECORD.

I prepared a response to Mr. Krugman and submitted it to the New York Times editor. Unfortunately, the Times policy only permits two responses per person per year. So, Mr. Krugman can attack me every week if he wants to and my responses are limited. So, Mr. Krugman and the Times policy left me with the recourse of responding on the Senate floor. Otherwise, his charge would stand unanswered. That would be wrong.

Joint Tax does not distribute the death tax benefit because the analysis requires a conceptual leap. Economists have attempted to distribute the death tax benefit.

For instance, the Clinton Treasury performed an analysis at about the same time the former President was readying a veto on a tax bill that contained death tax relief. Joint Tax attempted to distribute the same kind of analysis in the early 1990s, but abandoned it after finding problems with it.

If you only read Mr. Krugman's columns, you would think that this analysis is straight forward. It is not. Basically, to get to where Mr. Krugman and his allies want to go, you have to make a conceptual leap. You have to assume that heirs of an estate have the same income tax profile as the dead person. So, you need to ignore the reality that, for instance, tax-exempt organizations, can be heirs of an estate. You need to ignore the reality that, as a general matter, no two sets of heirs look the same for income tax purposes. For these reasons, an unbiased official source, like Joint Tax, does not distribute the death tax. That was the point I was not permitted to make in a response.

For the sake of argument, however, let's give Mr. Krugman the benefit of the doubt. Let's stack the deck further in his favor by assuming that all of the death tax relief provided in 2006 inures to the benefit of the top 1 percent. Let's perform this calculation even though it is analytically unsound. If you add that revenue loss, about $4.6 billion for 2006, into Joint Tax's distribution table, you will find that the top 1 percent receive 29 percent of the benefits of the tax relief package. This compares with the 27 percent official Joint Tax figure. Recall that the top 1 percent bear 33 percent of the income tax burden. In this case, the 4 percent difference, once again, though to a smaller degree, increases the progressivity of the Federal tax system.

Mr. Krugman also cites an alternative tax burden, total Federal taxes, as the appropriate measure. Joint Tax's distribution analysis includes the Federal tax burden and as the projection for the last year shows the total Federal tax system was made more progressive.

Mr. President, I agree with Mr. Krugman on some things. We need to change the tone in Washington. If the tone is to change, all participants, including public servants, like myself, and opinion makers, like Mr. Krugman, must participate in the change.

Several things must happen if the tone in Washington is to change. The first thing that needs to happen is everyone must debate in an intellectually honest manner. This means when a statistic is used, the source should be referenced. Mr. Krugman's op-ed is the rare exception when the source of the 40 percent figure has been revealed. Over the last 18 months, in countless Congressional debates, in press reports, and other venues, the 40 percent figure has been used without attribution. At every point when I have debated the other side of this issue, I have provided the source of my statistics.

The source of the data is important because, in an honest debate, any biases should be revealed. The source of Mr. Krugman's statistic is Bob McIntyre of the Citizens for Tax Justice. I respect Mr. McIntyre as a spirited liberal advocate of his version of tax reform. Mr. McIntyre's organization has an agenda. It is a tax policy agenda that tends to be on the left side of the political spectrum. There are competing organizations on the right side of the political spectrum such as the Heritage Foundation. These organizations also produce data on tax legislation. I doubt Mr. Krugman would ever use alternative analyses. If he did use these analyses, I would expect him to cite the source.

There are also unbiased sources of data. an honest debate ought to bring out that data and distinguish it from data produced from biased sources. The Joint Committee on Taxation, established in 1926, is an unbiased source of data on tax policy. By definition, Congress' official tax policy scorekeeper, Joint Tax works for the House and Senate. Joint Tax works for both sides of the aisle. Senator MAX BAUCUS, a Democrat from Montana, is the current Chairman of Joint Tax. Last year, Congressman BILL THOMAS, a Republican from California, was Chairman.

Opponents of the bipartisan tax relief package, like Mr. Krugman, do not use this objective source of data.

If we are to change the tone in Washington, not only do we need to be honest about statistics, but we should put statistics in the proper context. Mr. Krugman uses the tax benefit figure in isolation. Mr. Krugman ignores the context of tax burden. Joint Tax's distribution analysis for 2006, shows that taxpayers who received the greatest reduction in their tax burden were those with incomes between $10,000 and $40,000. For instance, taxpayers with incomes between $10,000 and $20,000 will enjoy a reduction in their tax burden of 13.6 percent. Taxpayers with incomes over $200,000 will see their tax burden reduced by 6.1 percent. This example, drawn from Joint Tax, not a conservative think tank, puts the benefits of the tax cut in context.

I agree with Mr. Krugman's objective. I also agree with many of his sentiments about my late friend, Senator Paul Wellstone. Senator Wellstone liked a good and vigorous debate. He did so in an intellectually honest manner. Let's change the tone in Washington. Mr. Krugman has a role as an opinion maker who opposes last year's bipartisan tax relief package. I welcome a lively exchange with him and others of his view. All I ask is that we have that exchange in intellectually honest terms.

So I describe a real difference in the approach of midwestern transparent Iowans and that of an ivory tower easterner.

I ask unanimous consent to print the aforementioned materials in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC.
October 30, 2002.

Re "For the People," by Paul Krugman (column, Oct. 29): I continue to call for unbiased tax data in policy debates.

To the EDITOR,
The New York Times.
New York, NY.

MAYBE YOU CAN TAKE IT WITH YOU

I share many of Mr. Krugman's sentiments about my late neighbor and friend, Senator Paul Wellstone. As the Senate's only working farmer, I was a ready partner of Senator Wellstone in efforts to help family farmers.

Mr. Krugman described the data in my letter as "misleading." His dispute lies not with me, but with Congress' official, unbiased, tax policy scorekeeper, the Joint Committee on Taxation. Joint Tax says "estate and gift taxes are not included due to uncertainty concerning the incidence of those taxes."

The uncertainty arises, in part, because estate tax relief goes to the estate's heirs, not the dead person. For income tax purposes, generally the person earning income is alive to enjoy it. Attempts to distribute the estate tax benefit are, at best, a very rough calculation. In effect, those who take Mr. Krugman's view, believe the dead person benefits from estate tax relief. Only those in the ivory towers of academia believe you can take tax relief to the grave.

Sincerely,
Senator CHUCK GRASSLEY,
Ranking Member, Finance Committee.

[From the New York Times, Oct. 29, 2002]

FOR THE PEOPLE

(By Paul Krugman)

Ghoulish but true: as Minnesota mourns the death of Senator Paul Wellstone, many of the state's residents have been receiving fliers bearing a picture of a tombstone. The flier, sent out by a conservative business group, denounce the late senator's support for maintaining the estate tax. Under the tombstone, the text reads in part: "Paul Wellstone not only wants to tax you and your business to death . . . he wants to tax you in the hereafter."

To be fair, the people who mailed out those fliers—which are carefully worded so that the cost of the mailing doesn't officially count as a campaign contribution—didn't know how tasteless they would now appear. Yet in a sense the mass mailing is a fitting epitaph: it reminds us what Paul Wellstone stood for, and how brave he was to take that stand. Sometimes it seems as if Americans have forgotten what courage means. Here's a hint: talking tough doesn't make you a hero; you have to take personal risks. And I'm not just taking about physical risks—though it's striking how few of our biggest flag wavers have ever put themselves in harm's way. What we should demand of our representatives in Washington is the willingness to take political risks—to make a stand on principle, even if it means taking on powerful interest groups.

Paul Wellstone took risks. He was, everyone acknowledges, a political who truly voted his convictions, who supported what he thought was right, not what he thought would help him get re-elected. He took risky stands on many issues: agree or disagree, you have to admit that his vote against authorization for an Iraq war was a singularly brave act. Yet the most consistent theme in his record was economic—his courageous support for the interests of ordinary Americans against the growing power of our emerging plutocracy.

In our money-dominated politics, that's a dangerous position to take. When Mr. Wellstone first ran for the Senate, his opponent outspent him seven to one. According to one of his advisers, the success of that ramshackle campaign, run from a rickety green school bus, "made politics safe for populists again."

If only. Almost every politician in modern American pretends to be a populist; indeed, it's a general rule that the more slavishly a politician supports the interests of wealthy individuals and big corporations, the folksier his manner. But being a genuine populist, someone who really tries to stand up against what Mr. Wellstone called "Robin Hood in reverse" policies, isn't easy: you must face the power not just of money, but of sustained and shameless hypocrisy.

And that's why those fliers are a perfect illustration of what Paul Wellstone was fighting.

On one side, the inclusion of estate tax repeal in last year's federal tax cut is the most striking example to date of how our political system serves the interests of the wealthy. After all, the estate tax affects only a small minority of families; the bulk of the tax is paid by a tiny elite. In fact, estate tax repeal favors the wealthy to such an extent that defenders of last year's tax cut—like Senator Charles Grassley, who published a misleading letter in Friday's Times—always carefully omit it from calculations of who benefits. (The letter talked only about the income tax; had he included the effects of estate tax repeal, he would have been forced to admit that more than 40 percent of the benefits of that tax cut go to the wealthiest 1 percent of the population.) To eliminate the estate tax in the face of budget deficits means making the rich richer even as we slash essential services for the middle class and the poor.

On the other side, the estate tax debate illustrates the pervasive hypocrisy of our politics. For repeal of the "death tax" has been cast, incredibly, as a populist issue. Thanks to sustained, lavishly financed propaganda—of which that anti-Wellstone flier was a classic example—millions of Americans imagine, wrongly, that the estate tax mainly affects small businesses and farms, and that its repeal will help ordinary people. And who pays for the propaganda? Guess. It's amazing what money can buy.

In an age of fake populists, Paul Wellstone was the real thing. Now he's gone. Will others have the courage to carry on?

[From the New York Times, Oct. 25, 2002]

A TAX CUT FOR WHOM?

TO THE EDITOR: Re "Springtime for Hitler," by Paul Krugman (column, Oct. 18): I stand by my call for unbiased tax data in policy debates. Some observers claim that 40 percent of last year's tax cuts went to the top 1 percent of taxpayers. The Joint Committee on Taxation, Congress's official, unbiased source, says the top 1 percent will receive 27 percent of the income tax cuts in 2006, the latest projection available. Taxpayers with incomes of $200,000 and less will receive the majority of the tax-cut benefits, with 67 percent.

The real story is that despite those cuts, the top 1 percent of taxpayers will still pay 33 percent of federal income taxes. They will receive a lower share of the income tax cut, 27 percent, than their burden, 33 percent.

The joint committee says the taxpayers who will receive the greatest reduction in their tax burden have incomes between $10,000 and $40,000. Those with incomes between $10,000 and $20,000 will enjoy a reduction of 13.6 percent. Those with incomes of more than $200,000 will see their burden reduced by 6.1 percent. Intellectual honesty demands putting tax data in context.

CHUCK GRASSLEY.

[From the New York Times, Oct. 18, 2002]

(By Paul Krugman)

SPRINGTIME FOR HITLER

You may recall that George W. Bush promised, among other things, to change the tone in Washington. He made good on that promise: the tone has certainly changed.

As far as I know, in the past it wasn't considered appropriate for the occupant of the White House to declare that members of the opposition party weren't interested in the nation's security. And it certainly wasn't usual to compare anyone who wants to tax the rich—or even anyone who estimates the share of last year's tax cut that went to the wealthy—to Adolf Hitler.

O.K., maybe we should discount remarks by Senator Phil Gramm. When Mr. Gramm declared that a proposal to impose a one-time capital gains levy on people who renounce U.S. citizenship in order to avoid paying taxes was "right out of Nazi Germany," even the ranking Republican on the Senate Finance committee, Charles Grassley, objected to the comparison.

But Mr. Grassley must have thought better of his objection, since just a few weeks later he decided to use the Hitler analogy himself: "I am sure voters will get their fill of statistics claiming that the Bush tax cut hands out 40 percent of its benefits to the top 1 percent of taxpayers. This is not merely misleading, it is outright false. Some folks must be under the impression that as long as something is repeated often enough, it will become true. That was how Adolf Hitler got to the top."

For the record, Robert McIntyre of Citizens for Tax Justice—the original source of that 40 percent estimate—is no Adolf Hitler. The amazing thing is that Mr. Grassley is sometimes described as a moderate. His remarks are just one more indicator that we have entered an era of extreme partisanship—one that leaves no room for the acknowledgment of politically inconvenient facts. For the claim that Mr. Grassley describes as "outright false" is, in fact, almost certainly true; in a rational world it wouldn't even be a matter for argument.

You might imagine that Mr. Grassley has in hand an alternative answer to the question "How much of the tax cut will go to the top 1 percent?"—that the administration has, at some point, produced a number showing that the wealthy aren't getting a big share of the benefits. In fact, however, administration officials have never answered that question. When pressed, they have always insisted on answering some other question.

But last year the Treasury Department did release a table showing, somewhat inadvertently, that more than 25 percent of the income tax cut will go to people making more than $200,000 per year. This number doesn't include the effects of estate tax repeal; in 1999 only 2 percent of estates paid any tax, and half of that tax was paid by only 0.16 percent of estates. The number also probably doesn't take account of the alternative minimum tax, which will snatch away most of the income tax cut for upper-middle-class families, but won't affect the rich.

Put all this together and it becomes clear that, such enough, something like 40 percent of the tax cut—it could be a bit less, but probably it's considerably more—will go to 1 percent of the population. And the administration's systematic evasiveness on the question of who benefits from the tax cut amounts to a plea of nolo contendere.

Which brings us back to the new tone in Washington.

When Ronald Reagan cut taxes on rich people, he didn't deny that that was what he was doing. You could agree or disagree with the supply-side economic theory he used to justify his actions, but he didn't pretend that he was increasing the progressivity of the tax system.

The strategy used to sell the Bush tax cut was simply to deny the facts—and to lash out at anyone who tried to point them out. And it's a strategy that, having worked there, is now being applied across the board.

Michael Kinsley recently wrote that "The Bush campaign for war against Iraq has been insulting to American citizens, not just because it has been dishonest, but because it has been unserious. A lie is insulting; an obvious lie is doubly insulting." All I can say is, now he notices? It's been like that all along on economic policy.

You see, some folks must be under the impression that as long as something is repeated often enough, it will become true. That was how George W. Bush got to the top.

BASELINE FOR FISCAL YEAR 2003 SPENDING FOR TEA-21

Mr. INHOFE. Mr. President, as we wrap up business for the 107th Congress, I would like to engage in a brief colloquy with my Environment and Public Works Committee and budget Committee colleagues regarding an issue that will set the groundwork for reauthorization of the surface transportation program next Congress. Specifically, what the baseline figure will be for the program. Will it reflect the fiscal year 2003 enacted spending level or the pending CR level.

As my colleagues know, although Section 137 of Public Law 107-240, Making Further Continuing Appropriations for fiscal year 2003, provides that the highway program be funded at the fiscal year 2002 level of $31.8 billion, section 137 limits total annual obligations for the program to not more than $27.7 billion. Given that the fiscal year 2003 enacted level for surface transportation may not be known until after the President's fiscal year 2004 budget proposal is submitted, I have a concern that we could be faced with an artificially low baseline figure. I hope we can reach agreement now that it would be the intention of the Budget Committee to use the highest possible figure as the baseline for fiscal year 2003 when developing their fiscal year 2004 resolution. Ideally I would like to see a baseline of $31.8 billion.

At a minimum I hope that next year's Budget Resolution will ensure that all revenues into the highway account of the Highway Trust Fund will be available to the EPW Committee for authorization with the existing budgetary protections.

I know we can all agree that a strong surface transportation program creates and preserves jobs, and thereby boosts the economy. Beginning reauthorization discussions with a low baseline figure stunts the value of the economic activity that we can realize with a robust program.

If my colleagues would care to comment, I will be happy to yield.

Mr. JEFFORDS. I thank the Senator for yielding for my comments. I agree with my colleague Senator INHOFE and I look forward to working with him on this major transportation reauthorization bill. He is correct that beginning reauthorization discussions with a low baseline will hinder our efforts in crafting a truly robust national program which will provide strong economic and transportation benefits for all regions. I would be happy to yield back to my colleague Senator REID.

Mr. REID. I agree with my colleagues. The transportation bill will be one of the most important pieces of legislation taken up by the next Congress. The series of reauthorization hearings we held this past year made clear the importance of a well-functioning transportation system to our nation's economy and quality of life. These hearings also laid out the challenges our transportation system faces due to increasing congestion, safety concerns, the deterioration of our infrastructure, and the rapid projected growth in freight movements. Finding the necessary funds to address these problems will be our toughest reauthorization challenge and I hope that we can work closely with the Budget Committee to ensure that we devote the maximum resources possible to maintaining and improving our transportation infrastructure.

Mr. BOND. Senator INHOFE accurately states that transportation dollars have a direct effect on jobs and the economy in this country. For example, earlier this year there was a proposed $8.6 billion reduction in fiscal year 2003 proposed spending from fiscal year 2002 enacted level for highways. This would cost an estimated 6,600 jobs in Missouri alone. Fortunately, the Environment and Public Works Committee in working with our colleagues on the Senate Transportation Appropriation Subcommittee have proposed full funding for fiscal year 2003.

More importantly, we need to recognize that our nation's transportation infrastructure is also an issue of safety. There is no question that increased investment in our nation's transportation system saves lives. For these reasons and more, I stand with my colleagues on Environment and Public Works in doing everything in our power to maintain a robust highway program as we go into reauthorization.

Mr. NICKLES. I appreciate my colleagues comments and agree with them that the revenues collected through the federal gas tax should be used to maintain and improve our transportation infrastructure. I will work with my colleagues to ensure this is the case.

CONGRATULATIONS TO JUDGE SERGIO GUTIERREZ

Mr. CRAIG. Mr. President, today I congratulate and honor a man whose contributions are an example to all of us. Idaho's Judge Sergio Gutierrez was recently recognized by Hispanic Business magazine as one the 100 most influential Hispanics.

Judge Gutierrez holds the distinction of being the first Hispanic judge in Idaho. A judge since 1993, he was appointed to the Idaho Court of Appeals in January of this year by Gov. Dirk Kempthorne. Sergio Gutierrez does a tremendous job as a judge, but his contributions go far beyond those he has made in his official capacity. Judge Gutierrez has worked to fight drugs, register voters, curb gang violence, and promote education, and he sits on the Governor's Coordinating Council for Families and Children. I am also honored that he serves as a member of my Hispanic advisory group in Idaho. His wisdom and advice have been invaluable assets as we have worked together to meet the needs of Idaho's Hispanic population.

It is hard to believe Judge Gutierrez was once a ninth grade dropout. However, with perseverance, he attained his GED, worked his way through college, and went on to graduate cum laude from Boise State University, later earning a law degree from Hastings Law School.

Judge Gutierrez believes in people, and he goes out of his way to help others overcome unfortunate circumstances that otherwise would limit their success. As a judge, he takes the opportunity to counsel with those who come into his court room. He often invites defendants into his chambers to discuss their futures, including drug rehabilitation, job training, and education. This is not a common practice among judges, but it has proven to be effective in the lives of the individuals whom Judge Gutierrez has touched.

I am proud to know Judge Sergio Gutierrez, and I would like to thank Hispanic Business magazine and its readers for recognizing this talented man. I would also like to thank Judge Gutierrez on behalf of the people of Idaho for the contributions he has made to our State and its people. He is truly an inspiring example for all of us.

A REMARKABLE AMERICAN: ROBERT INGRAM

Mr. HELMS. Mr. President, as my father always said, there are two types of people, talkers and doers. Anyone who knows Robert Ingram will agree with me that he is a "doer extraordinaire." Bob, of course, is the distinguished Chief Operating Officer and President, Pharmaceutical Operations of GlaxoSmithKline, GSK.

A few weeks ago, October 15, Bob announced his intention to retire at year's end from his daily responsibilities as the second-highest executive officer at GSK, the world's premier pharmaceutical company. Through the years, GSK and more importantly, countless people around the world have benefitted immeasurably from Bob Ingram's compassion, energy, vision and intelligence.

In recent years, many politicians have engaged in a virtual sport, unjustifiably criticizing pharmaceutical companies and the senior executives who lead them. Thankfully, the American people have seen through many of these attacks for what they are, political expediency.

Americans are sophisticated enough to know that politicians do not develop life-saving and life-improving medications. Rather, it is the research-based pharmaceutical and biotech industries that invest billions of dollars each year to develop products that both extend our lives and improve the quality of life for billions of citizens around the world.

Bob Ingram has served as a beacon, consistently, respectfully and thoughtfully explaining the public health tradeoffs involved in implementing proposed new pharmaceutical regulations. It would be impossible to overstate his enormous contribution to reasoned discourse on this critical subject.

Bob Ingram has long understood that the ultimate victims of an inefficient and unproductive industry are the patients who will lack a safe and effective pharmaceutical therapy for the ailment that afflicts them not the pharmaceutical companies or their stockholders as some would have you believe.

Compassion requires that one stand up in support of what is proper. The measure of a leader is that he is willing to do so when that view is not popular. Bob Ingram has worked tirelessly as such a leader.

Fortunately, Bob's retirement from his day to day responsibilities at GSK will not mean that he is retiring from his role as an effective and outspoken advocate for the industry. Softening the blow somewhat is the knowledge that Bob will continue to fight for the well-being of patients as GSK's representative to the board of the Pharmaceutical Research and Manufacturer's Association.

Bob, his dear wife Jeannie, and GSK employees have long been involved in promoting service to others. Together with GSK's Chief Executive Officer, JP Garnier, Bob Ingram has done much to ensure that GSK serves as a global leader, launching effective medical programs that benefit millions of people throughout the world. The Orange Card discount program is a prime example of GSK's responsiveness and industry leadership in the United States.

Through GSK's Global Community Partnership programs, the Global Alliance to Eliminate Lymphatic Filariasis, a 20-year initiative to contribute hundreds of millions of doses of medication to rid the world of LF, the world's most disfiguring and disabling disease, contributions of HIV/AIDS and anti-malarial medications as well as numerous other global, national, state and local initiatives, GSK employees have contributed greatly to the improvement of the human condition and human spirit.

Bob's life is a testament to the importance of setting the right priorities. He is a success professionally because his actions have demonstrated an extraordinary sense of personal responsibility to the improvement of the lives of others less fortunate.

Raised in rural Illinois, Bob Ingram is highly respected as one of North Carolina's leading citizens. He has devoted countless thousands of hours to worthy civic, community and professional organizations. For example, Bob led GSK's effort to provide a founders grant to the Emily Krzyzewski Durham family community center, he supported the Durham hill learning center and has helped numerous other local civic organizations around North Carolina.

The list of worthy national causes Bob has generously helped is so extensive that I will not attempt to recite them all. Bob's role as Chair of the CEO Roundtable on Cancer, his Presidency of the American Cancer Society Foundation, and his leadership in the fight to find a cure for cystic fibrosis, CF, merit particular note.

These past several years, Dot Helms and I have considered ourselves fortunate to call Bob and Jeanie Ingram our friends.

I am grateful for the positive contributions Bob has made during his tenure at GSK. His advice and support have been invaluable. His dedication to ensuring that people everywhere can benefit from advanced pharmaceutical therapies and his commitment to innovative programs that expand access to pharmaceuticals will continue to pay dividends to literally billions of people throughout the world for many years to come. Bob has achieved a remarkable, and I hope unfinished, legacy.

I ask unanimous consent that a transcript of Bob Ingram's comments at the National Press Club on July 18, 2002 and an article entitled "A Retirement that hurts RTP" from the October 16, 2002 edition of the Raleigh News and Observer be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

Comments by Bob Ingram, National Press Club, Washington, DC, July 18, 2002

Thank you, Mr. (John) Aubuchon, for your kind introduction and for providing me with an opportunity to address this important audience.

I'd also like to thank all of you for joining us this afternoon. I know you've heard a lot of criticism about the pharmaceutical industry and drug pricing. Today, I'd like to set the record straight.

It's hard to predict where the current debate over health care will eventually end up, or what the consequences will be. And I'm inclined not to predict such things unless I end up like Lord Kelvin, an English Scientist and president of the Royal Society, who has gone down in history for saying: "Radio has no future. Heavier-than-air flying machines are impossible. X-rays will prove to be a hoax. I have not the smallest molecule of faith in aerial navigation other than ballooning." Now there's a man of conviction, but you certainly wouldn't want him betting for you at the racetrack.

That said, we Americans have a lot riding on the outcome of society's debate over how to control our healthcare costs—nothing less than the future health of ourselves and our children.

A key question in this current debate is: How much should we be spending on prescription drugs? Drug costs are skyrocketing, and payors are asking, how much is too much? Unfortunately, in focusing the debate almost solely on cost, it's easy to lose sight of the patient. Payors increasingly demand less expensive medicines, but it's easy to forget that a tiny pill often represents a scientific miracle in its ability to save lives and improve quality of life. As patients, we assume the research intensive pharmaceutical industry will find better treatments for cancer, and Alzheimer's and Parkinson's—but we don't recognize that paying for that research also means paying at the pharmacy counter. Do we spend more on pharmaceuticals today than we did years ago? Yes. In fact, our critics would say that we are spending too much on branded drugs.

But I would argue that rather than spending less, we should be investing more as a society on pharmaceuticals, because medicines actually represent the best value in healthcare today—for patients, and for payors.

Let's look at this issue of cost a little more carefully.

Between 1996 and 2000, national health spending for medicines increased 115 percent while overall health care costs increased 25 percent. Seems outrageous, doesn't it?

But let's put this in perspective. Total health care increased $260 billion during that time to a total of $1.3 trillion. Spending on pharmaceuticals was less than a 10th of that—$122 billion. In fact, of every dollar the government spends on health care, only 9 cents is spent on medicines—compared to 55 cents for doctors and hospitals. And that 9 cents includes the services of your pharmacist, plus current R&D efforts in our science labs. Unfortunately, people often confuse increased spending on drugs with increased prices for medicines.

The truth is that rising pressure on payor budgets is due to increased volume—more people using more and better medicines—not price increases on medicines. Pharmaceutical sales increased 19 percent in 2001 over 2000, but over 14 percent of that increase was volume growth. Less than 5 percent was due to price. So what accounts for the growth in volume? In great part, the very success of medicines in improving health and quality of life.

Those of you who are 45 or 50 . . . back at the turn of the last century, you'd be at the end of your life. But today, the majority of us can expect to blow out the candles on our 80th birthday cake. And we are part of a rapidly expanding group. Thirty-five million Americans are now over age 65; in just 30 years, that number will double to 70 million. Of course, if you're like me, you're tempted to ask why, if medicine has made so much progress in the past 50 years, how come I felt so much better 50 years ago.

Well the truth is, we Americans aren't just living longer; we are generally living healthier lives. Twenty years ago, in 1982, the average age of an elderly person entering a nursing home was 65. Today that age is 83. Many of you have elderly parents, and are perhaps caregivers. How important is it to you, and to your parents, that a few small pills can keep your loved ones living independently in the homes they've raised their families in, for as long as possible? But there's a cost to longer life, better health, and maintained independence—and somebody has to pay.

Industry critics say we can't afford this increased spending on pharmaceuticals. But what we really can't afford is the far greater cost of catastrophic care for heart disease, diabetes, Alzheimer's and other illnesses—costs that will grow substantially as the population grows. Let's consider diabetes.

Right now, we are facing an epidemic of Type II diabetes. Over 16 million Americans have Type II—the 5th leading cause of deaths by disease in the U.S. Another 16 million are estimated to have pre-diabetes, but most are not taking steps to avoid full onset.

We genuinely hope people will adopt preventive lifestyles to avoid the need for medicines. But those patients who do suffer with this chronic and progressive disease have a lot to look forward to Fatigue. Foot ulcers and gangrene leading to amputation. Blindness. Kidney failure. Heart disease. Stroke. Premature death. That's frightening for patients. But what will really frighten those responsible for paying for treatment is the alarming rise in the number of patients—and therefore costs—expected over the next 50 years. By then, at current rates, the number of patients with Type II diabetes will increase by 200 percent—skyrocketing our country's costs for dealing with Type II diabetes.

Today, we pay $100 billion a year to cover the human and economic cost to society from just this one disease—a huge proportion of which is spend for hospital care. When you consider the aging population, the increasing incidence of diabetes, and the huge cost associated with it, unless we come up with better answers, we'll break the bank with just one disease. That's what we can't afford.

But real hope lies in pharmaceuticals. Before 1995, doctors didn't have many options available. They relied primarily on insulin injections or sulfonylureas, as well as prevention. Just 7 years later, there are four new classes of oral diabetes medications on the market that help slow the progression of the disease, and prevent or delay the onset of its more serious and costly complications. Most importantly, these medicines ease patient suffering. And spending on these valuable medicines is only a fraction of the cost of fighting diabetes—just 2 percent in 1997. Can we afford to pay for new and better prescription medicines that fight diabetes? I would argue we can't afford not to. We have proven time and again that paying for medicines is the most cost effective way of fighting disease.

Take AIDS. Remember how, in the early 80's, full-blown AIDS was a death sentence for patients? Many died within two years of diagnosis. By 1996, AIDS had dropped out of the top 10 leading causes of death in the United States. Why?

In 1984, scientists at Burroughs Wellcome brought new hope to patients with AZT—the first treatment to fight HIV/AIDS. In the first 16 months after AZT came to market, hospital inpatient care dropped by nearly half (43 percent). Today, with a score of medicines on the market, if patients take their combination therapy as prescribed, they don't die of AIDS. Critics say these medicines cost a lot of money. And they do. Combination therapy—using several AIDS medicines at once to fight the disease—costs approximately $11,000 a year per patient. But before such therapies were available, an AIDS patient could account for $100,000 a year in hospital bills—until they died from the disease. Are we spending more today on AIDS medicines? Yes, but we are saving millions in the overall cost of medical care. And people with AIDS are living—and they are productive members of their communities. Instead of planning for their funerals, they are planning for the rest of their lives.

Then there's stroke.

Breakthrough clot-busting medicines can stop some strokes before permanent brain damage occurs. The end result not only saves lives, but also saves dollars—$1,700 in drug therapy versus over $6,000 per patient in treatment costs. More promising yet, increased drug use may prevent some strokes entirely. A study by the Agency for Health Care Policy and Research says that greater use of a blood-thinning drug would prevent 40,000 strokes a year, saving $600 million per year. Yet stroke remains the 3rd leading cause of death for senior citizens and the first leading cause of disability. Without future breakthroughs from the research intensive pharmaceutical industry, we face huge future human and cost implications from this disease.

Are we spending more money on drugs to prevent and treat strokes? Absolutely. Is it worth it? Absolutely—both in terms of lowered costs and, more importantly, reduced patient suffering. Are we continuing to search for new and better treatment for stroke? Absolutely. But stroke is notoriously one of the most challenging types of pharmaceutical research and development to undertake. The incentives have to be there to justify the huge investment required in such high risk research. But if you're an insurance company, or an employer, or a federal or state government budget officer, you see the money spent on medicines going up and up, and a ballooning senior population in the offing, and you think, we've got to get this spending under control.

Your first response? Find any way you can to cut the pharmacy budget. You can do that a number of ways—price caps, supplementary rebates, formularies, for example—but the result can be unexpected.

Years ago, the state of New Hampshire learned this lesson the hard way. The government capped prescription drug spending, and saved an average $57 a year on drugs for schizophrenia patients. But the law of unintended consequences kicked in, and they added $1,500 a year in costs for visits to mental-health clinics and emergency rooms.

Ladies and gentlemen, that's what my mother called penny-wise and pound-foolish. Pharmaceuticals are actually the best value in health care, and rather than spending less, we should be investing more on medicines. Penny-wise squeezing of pharmaceutical costs only results in pound-foolish expansion of costs for more expensive health care procedures. Do we spend more on pharmaceuticals today than we did years ago? Yes. But we can't afford to forget that the money paid for medicines today fuels investment in R&D for the medicines of tomorrow.

You're all familiar with the floppy disks or CDs you use to load software on your computer. You also probably know that these disks cost less than a dollar to buy at your local office supply store. Why then does your software often cost hundreds of dollars? Well, for the same reason that a little white pill costs so much at the pharmacy. Just as in the case of new medicines that improve your health, hundreds of highly-skilled people took many years to invent and develop that new software for your computer. You're not just buying a bit of plastic. You're buying creativity, and years of research and development that went into developing the software for your computer—and the new medicines that improve your health.

In our case that's an investment of $800 million, 10–12 years of R&D, and the failure of 5,000 to 10,000 compounds along the way—just to bring one new innovative medicine to market. But it's government and academia that discover drugs, right? Not exactly. Of the top 100 most commonly used medicines in the U.S., 93 were discovered and/or developed by research-based pharmaceutical companies. Certainly, government and academia play a vital role in scientific research. They push the frontiers of science, and while we do that in pharmaceutical research companies too, we have the practical expertise to link what we know about disease and the human body to develop medicines that improve human health. For example, the public sector discovered the presence of beta adrenergic receptors in the heart and blood vessels. But it took the pharmaceutical research industry to convert that scientific knowledge into new medicines that treat heart disease, high blood pressure and stroke—the beta-blockers that are keeping a number of us, and our parents, alive today.

GSK alone invests $4 billion a year in research and development. The hope for patients who are or will suffer from diabetes, AIDS, Parkinson's, stroke, Alzheimer's, Cystic Fibrosis and countless other diseases lies in the powerhouse of innovative pharmaceutical industry research—and in the partnerships between industry, government and academia. Recently many of you have read or seen news items about an insurance industry-sponsored study claiming that all this research effort doesn't result in better drugs, but only drugs of minimal value—so-called me-too drugs. Breakthrough medicines are fantastic—when you find them—but they are rare, and very hard to achieve. Believe me, no one sets out to discover or develop a medicine that has no advantage over current therapy.

I sometimes say working in a pharmaceutical company is a lot like playing golf: It costs a lot and takes a long time to play. You will likely never hit a hole in one. And you always feel like you're playing with a handicap. But you can't escape the fact that science is slow and incremental. More often than not, after years of testing, you learn that your medicine isn't a breakthrough; but it may offer fewer side effects, work a little faster, or come in a pill that is easier for patients to swallow. These incremental advances—while not breakthroughs—can and do provide real value for patients. Sometimes we find new uses for old drugs. Take Coreg—a GSK treatment for heart failure. Coreg is a beta-blocker, a class of drugs which at one time was restricted to treating hypertension because it was thought to cause heart failure in patients. But clinical trials showed Coreg actually benefited patients with congestive heart failure.

These trials were so successful that the only ethical thing to do was to stop the trial and give the medicine to all patients, even those who were on placebo. If you work for an insurance company, you might view Coreg as a me-too drug. If you're a patient, you'd likely view it as a lifesaver. Our critics say that we should concentrate only on new chemicals, and forget such incremental gains. But consider this. Merck and GSK both have AIDS vaccines in development. One may work, neither may work, or both may work.

But right now we don't know which could be the miracle vaccine that makes it first to market and which would be the follower—a so-called me-too. Tell me. Which of these research programs should we kill for the purpose of controlling costs? Personally, for those at risk of AIDS, I hope both programs are a success, and that physicians and patients have a choice of two AIDS vaccines competing with one another in the marketplace. Of course, when we do come up with a new idea and patent it, our critics claim that we abuse the patient system for the purpose of keeping generic drugs off the market. Let me set the record straight. There is clearly a place for generics in our health care system.

I have no problem competing with generics in the marketplace—but only after our patent expires. There's a great deal of confusion about patents in the public mind, and that's understandable, because it's a complex subject. First off, no innovator pharmaceutical company realizes a full 20 years of patent life on a medicine granted under the law. By the time that medicine makes it through the regulatory process, we only have about 11 years left on our 20 year patent to realize a return on that investment and fund current R&D. Other industries, by contrast, generally enjoy 18 years of patent life on their products.

Second, the Hatch Waxman Act of 1984 basically created the generic industry by outlining a delicate balance between the need, on the one hand, to bring low cost copies to market after a medicine's patent expires, and on the other hand, to protect incentives for pharmaceutical research and innovation. History has proven one thing—thanks to the Hatch Waxman Act, the modern generic drug industry is healthy and growing. In fact, generics now account for nearly half of all prescriptions filled in the United States. Yet as part of that delicate balance, generic drug companies were given a special treatment unlike any other industry. They have access to patent protected date *before* the patent expires.

So a generic company can copy our scientists' work, develop their plans to manufacture their version of our medicine, and have it ready to ship the day the patent expires. In every other industry, a copier has to wait until the patent expires on a technology before they can even think about planning to copy that product. The problem is, generic companies don't want to wait until the patents expire. They have taken to challenging innovator patents in an attempt to declare those patents invalid so they can come to market sooner.

In the case of our anti-depressant, Paxil, the first generic company challenged our patents just five and a half years into what should have been a 14-year patent term. In the next 3 years, seven other generic companies entered the fray.

Ladies and gentlemen, this kind of abuse of the Hatch-Waxman Act means lots of time and money wasted on litigation, costs that eventually get reflected in the price of medicines. The first generic company to market often gets 6 months of exclusivity to sell their version of our product without competition from other generics—so contesting patents is worth it to those companies.

It's a much simpler and lower risk business strategy for [generic companies to] hire lawyers and challenge patents in the courts than to invest in science and final new innovative medicines.

Speaking for GSK, I'd be willing to consider giving up the defensive litigation provisions available to the research intensive industry under Hatch Waxman if the generic companies agree to drop the special provisions they have to come to market. Current reform efforts threaten to destroy the balance that protects innovation while enabling the generics to operate. In a letter to Senator Kennedy, Richard Epstein, the James Parker Hall Distinguished Service Professor of Law at the University of Chicago, said it best: "The current regime . . . confess competition with confiscation of property rights." It's important to remember that generic companies do not discover new medicines yet it's the innovative pharmaceutical research industry that is at risk. In fact, the patient with a disease that needs a better treatment is at risk as well.

Let me close with where I started—with the idea that by focusing strictly on costs we are focusing on the wrong thing. Instead, we should be focusing on the patient. We need to be able to discover, develop, and deliver a better medicine that meets patient needs. To the degree we do that, we succeed. To the degree we don't do that, we fail. And when we fail, we fail patients who are suffering from disease. And we fail the society that looks to us for better treatments. I hope I've demonstrated that medicines offer the greatest value for better patient health and quality of life. But we do understand that if you can't afford your medicine, any price is too high. And that's why we at GSK—and at a number of other research-intensive pharmaceutical companies—are looking for ways to improve patient access to medicines, not only in developing countries, but here at home as well.

That's why we offer medicines to the most needy patients through our patient assistance programs. Last year, the innovative pharmaceutical industry helped to fill 6.5 million prescriptions for more than 2.4 million needy patients. That adds up to more than $1 billion worth of medicine provided free of charge. That's also why GlaxoSmithKline led the way in improving access to medicines for low-income seniors in the US.

GSK's Orange Card—the first savings card for seniors in the industry—offers low income seniors savings of 20–40% or more on more their GSK medicines. We now have over 100,000 seniors participating in this savings program. The Together Rx card does the same, but offers saving on more than 150 medicines from 7 different pharmaceutical companies. In less than six weeks after availability, over 1 million patients had requested enrollment forms for this program. Both cards are free, and easy to obtain and use. But such programs are only a stopgap until comprehensive Medicare reform can pass Congress.

Of course skeptics will say that passage of real Medicare reform is a bit like the story of the doctor who went to heaven and met God. God granted him one question, so the physician asked, "Will health-care reform ever occur?" "I have good news and bad news," God replied. "The answer is yes, there will be health care reform. The bad news is, it won't be in my lifetime." We in the research intensive industry hope passage of a meaningful benefit does occur, not just in our lifetime, but in this election year.

We understand passing reform of this magnitude in an election year can be a challenge. But we strongly favor adding a drug benefit to Medicare, because we believe patients should have coverage for health care—including prescription drugs. The House has already passed a bill which we supported. We hope that the Senate, in an election year, would put patients first and also pass meaningful reform, like that embodied in the tripartisan bill that Democrats, Republicans and Independents are supporting. That bill provides a meaningful benefit, but allows competition to take place in the free market. That type of arrangement allows real price competition, in the marketplace, but does not stifle innovation and research. That's where we stand now. We must come to grips with the cost side of the value equation if we are to restore balance and realize the true value of the medical innovations we have the opportunity to enjoy.

If we at GSK are ever inclined to forget the value of our medicines, we have to look no further for a reminder than the patients we serve today. I was astonished by an e-mail we received from a woman who takes Advair—our newest asthma medicine. She wrote; "I started taking Advair approximately August 24th. I really began feeling great—my breathing had improved immensely. On September 11th, I was in 2 World Trade Center when the impossible happened. I really believe that because of this medication I was able to make my way down 59 stories through Manhattan and across the Brooklyn Bridge. Please give my thanks to those who developed this life saving medicine."

This letter means a lot to me, and to all of us at GSK—particularly our scientists who dedicate their lives to discovering and developing new medicines like Advair.

Just yesterday, a Wall Street Journal editorial cited one of our industry's best critics, Sen. Edward Kennedy, saying that "something has to be done about the 'soaring cost of prescription drugs' else the 'miracle cures' promised by the biotech revolution will remain priced 'out of the reach of ordinary Americans.'" The editorial went on to say: "Miracles they may be, but they don't fall from heaven. They will be developed for a profit, or they won't be developed at all."

Thank you.

[From Newsobserver.com, Oct. 16, 2002]

A RETIREMENT THAT HURTS RTP

(By David Ranii)

RESEARCH TRIANGLE PARK.—Robert Ingram, the No. 2 executive at giant GlaxoSmithKline and the most visible pharmaceutical industry leader in the Triangle, is retiring at the end of this year.

Ingram, who in December turns 60, mandatory retirement age for GSK executives, is the former chief executive officer of London-based Glaxo Wellcome and was named chief operating officer and president of worldwide pharmaceutical operations after Glaxo merged with SmithKline Beecham nearly two years ago.

David Stout, now president of the U.S. pharmaceuticals business, will replace Ingram as head of worldwide pharmaceuticals.

"I think Bob is one of the most outstanding pharmaceutical executives in the United States," said John Plachetka, chief executive of Durham pharmaceutical company Pozen. "He is so well known and well respected—not just in our industry but in Washington."

As the highest-ranking former Glaxo executive remaining at GSK, Ingram's imminent retirement can be viewed as reinforcing the complaints of some employees that what was billed as a merger of equals has turned out to be a de facto takeover by SmithKline Beecham. Glaxo's former chairman, Richard Sykes, retired from GSK earlier this year. Ingram will continue to work with the company as part-time vice chairman and special adviser.

Ingram's retirement sets off a domino effect among senior executives at GSK, which is based in London and has twin U.S. headquarters in Research Triangle Park and Philadelphia.

Unlike Ingram, whose office is in RTP, Stout, 48, will move to Philadelphia when he takes charge. Stout hails from the Smithkline Beecham side of the business and was based in Philadelphia before being named to his current post in January 2001.

Ingram said he has "a high degree of confidence in David's ability."

Stout's successor as head of the U.S. pharmaceuticals business will be Christopher Viehbacher, 42, president of pharmaceuticals in Europe, who will move from Paris to RTP. Andre Witty, Asia Pacific senior vice president, has been named Viehbacher's successor. Both Viehbacher and Witty were with GSK before the merger.

After Ingram retires, six of the 14 top-tier executives at the company, what the company calls its corporate executive team, will have Glaxo Wellcome pedigrees, while the other eight will share a SmithKline Beecham heritage. Ingram, meanwhile, will continue to participate in executive team meetings even after he retires, said GSK spokeswoman Mary Anne Rhyne.

The chief operating officer position being vacated by Ingram isn't being filled.

Ingram, who began his pharmaceutical career as a sales representative, said that when he left Merck & Co. to join Glaxo in 1990, he realized that the one downside was that Glaxo, like many British companies, had a mandatory retirement age of 60 for top executives. "Time, unfortunately, marches on, as they say," he said.

Ingram said that, although he doesn't have a noncompete clause in his new arrangement with GSK, he isn't interested in being CEO of another pharmaceutical company. "I will say I have been approached to do that," he said. "It is flattering."

"There is certainly a possibility," he added, "that I might take on some nonexecutive chairmanships."

Ingram, who is well known in political circles, also said he has no plans to run for political office. "I think my wife would shoot me if I even considered it," he said.

Ingram has earned kudos for being an effective advocate for GSK and the industry in Washington, and he also has developed a relationship with President Bush and his family. At a black-tie GOP fund-raiser held in Washington in June that netted about $30 million, Ingram was called upon to offer the presidential toast.

In recognition of Ingram's Washington clout, he will remain GSK's representative on the board of the industry trade group, Pharmaceutical Research and Manufacturers' Association, after his retirement.

"Bob Ingram is one of the giants of the pharmaceutical industry, and we are pleased that he will continue to play a major role on the PhRMA Board," Alan Homer, the association's president, said in a statement. "Bob's sensitivity and caring for the needs of others, especially patients, is unparalleled.

Dr. Charles Sanders, a former chairman and chief executive of the U.S. operations of what is now GSK, praised Ingram's leadership. "Bob has been through two mergers, first with Burroughs Wellcome and then with SmithKline Beecham," said Sanders. "I think he has handled it very well. it is very difficult to merge companies."

Ingram, who lives in Durham, said he understands that some GSK employees keep score regarding how many former Glaxo Wellcome executives are in leadership positions compared with their counterparts from SmithKline Beecham. But that's not how the corporate executive team looks at things, he said.

"It is one company: GSK," he said. "Our competition isn't internal. The last time I checked, we had plenty of competition [elsewhere]."

FOSTERING DEMOCRATIC PRINCIPLES AND VALUES IN UKRAINE

Mr. SESSIONS. Mr. President. I wish to bring to the attention of my colleagues the Civitas International Civic Education Exchange Program, a cooperative project of civic education organizations in the United States and other nations. The goal of the project is to exchange ideas, experiences, and curricular programs to further the development of civic competence and responsibility among youth in emerging and established democracies. The program is administered by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act approved by the United States Congress.

Recently my office was pleased to meet with a delegation of educators participating in the Civitas exchange program from Ukraine who have spent time in Alabama working on a curriculum for teaching Ukrainian history and civic education. The Ukraine delegation is partnered with the Alabama Center for Law and Civic Education in Birmingham, which has an outstanding reputation for delivering high quality civic education programs under the leadership of Executive Director Jan Cowin and Associate Director Wade Black. The American leaders of the delegation included two other Alabama natives, Louis Smith, Professor, School of Education, University of Western Alabama and his wife Carole Smith, visiting lecturer, Mississippi State University. I wish to commend all four of these Alabama educators for their excellent work in promoting educational excellence in our state.

The Ukraine delegates include Larysa Seredyak, Teacher of History and Civics in Lviv; Anatoliy Kovtonyuk, Teacher of History, Law, and Philosophy in Zhytomyr; Volodymyr Gorbatenko, Professor, Koretskyi State and Law Institute of the National Academy of Sciences of Ukraine and Professor of Politology and Sociology in Kyiv; Grygoriy Freyman, Assistant Professor, World History, Luhansk Pedagogical University and Teacher of History and Law in Luhansk; and Nataliya Yuikhymovych, Translator and Interpreter in Lviv.

I ask unanimous consent to have printed in the RECORD an article in the Montgomery Advertiser about a recent visit by this distinguished Ukrainian delegation to a class of sixth graders at Dalraida Elementary School. It demonstrates how our teachers and students can benefit from these international programs through joint educational projects. Above all, it shows how we can work cooperatively with other nations to promote fundamental democratic principles, understanding and values among our youth.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Montgomery Advertiser, Nov. 9, 2002]

STUDENTS QUIZ UKRAINIAN TEACHERS

(By Ken L. Spear)

The schoolchildren bombarded the visiting Ukrainian classroom teachers with loads of questions:

"Do you have elections for political office?" "Do y'all own, like dogs and horses?" "Does your school have computers?" "What is your grading system?" "When kids get in trouble, what does the principal do?"

The inquiries are a part of the Dalraida Elementary sixth-graders' quest to seek a solution to a common problem while crossing international borders.

They are in the early stages of a civic project with their peers from Village School in Synkiv in the Ukraine.

Students here already are talking about how to bridge the digital divide and raising the money necessary to make it happen. There's one computer for the entire Village School.

"They should have better communication with everybody," said Dairaida's Ilyan Unyhkov, whose parents are Russian natives. "Plus we need to make allies. If we're not friends, we may still get into war."

"The may help us," classmate J'Darius Powell added.

Designed for grades five through eight, the "We the People . . . Project Citizen" curriculum not only teaches students about government, but the tools and skills necessary to solve problems in their communities. That includes learning how to monitor and influence public policy, and crafting an action plan.

Civic participation isn't a foreign concept to the Ukrainian sixth-graders. Two years ago, The Village School joined the ranks of Project Citizen schools. Students there have led projects, such as the restoration of memorials from World Wars I and II that have been neglected by the Soviets and the clean up of community rivers and streams.

The group of educators is visiting Alabama as part of its mission to develop a "common national definition" and a curriculum for teaching Ukrainian history and civics education, said Wade Black, associate director of the Alabama Center for Law and Civic Education at Samford University.

A final version of the curriculum is expected to be submitted by next summer to the European Union, which is similar to Samford University's law and civic education center.

Ukraine declared independence in 1991. Under Soviet rule prior to that, citizens weren't taught their history and had no access to a curriculum.

"It parallels with black history," Black said. "They want to write a history that unifies the country and defines what it means to be Ukrainian."

While Project Citizen is an international program, only 25 Alabama schools, scouting troops and church groups are involved. Proration of the education budget forced some schools to cut the program.

"If they could just see the difference it makes in kids' lives," said Teri Gisi, faculty adviser for Dairaida's program. "They see what a difference they can make."

Dalraida got its hands-on civics lesson when students revisited a 15-year battle to get a sidewalk down a 1½-mile stretch of Johnstown Drive. The sixth-graders devised a plan, appealed to the City Council and was granted a sidewalk.

THE QUIET EROSION OF OUR FEDERAL LANDS IN ALASKA

Mr. LEAHY. Mr. President, every year we get to this point at the end of a Congress where many bills get packaged together and move through under unanimous consent. Usually this process works well and gives each of us an opportunity to work out concerns we might have about any particular bill. Unfortunately, last night two bills were approved that should have received much greater scrutiny by the full Senate. Instead, they squeaked through because the proponents cleverly bundled them with over 100 other uncontroversial, local-interest bills.

Together, the Cape Fox Land Entitlement Adjustment Act and the University of Alaska lands bill will give away huge chunks of our federal lands in Alaska. Individually, they represent what I fear will be facing us in the near future—the quiet erosion of our federal lands for the benefit of private interests. These bills turn over more than 260,000 acres of federal lands in Alaska without addressing fundamental public concerns about public access, logging, roadless areas and the impact on fish and wildlife.

Both of these bills are opposed by many Alaska and national environmental organizations.

I ask unanimous consent to have printed in the RECORD two letters, dated July 16, 2002 and September 4, 2002, outlining some of their concerns that were not heard as these bills were being rushed to the floor and passed last night.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Alaska Coalition, Alaska Conservation Voters/Alaska Conservation Alliance, Alaska Rainforest Campaign, Alaska Wilderness League, Earth Justice, Eyak Preservation Council, Mineral Policy Center, National Audubon Society, National Wildlife Federation, Natural Resources Defense Council, League of Conservation Voters, Scenic America, Sierra Club, Southeast Alaska Conservation Council, The Endangered Species Coalition, The Wilderness Society, U.S. PIRG,

July 16, 2002.

Hon. Jeff Bingaman,
U.S. Senate,
Washington, DC.

Dear Chairman Bingaman: We are writing you to urge you to oppose S. 2222, the Cape Fox Entitlement Adjustment Act of 2002. Introduced earlier this year by Senator Frank Murkowski (R-AK), and currently being considered by the Energy and Natural Resources Committee, this bill is an attempt to benefit special interests by giving away valuable Tongass National Forest lands—lands owned by all Americans. Opposed by many Southeast Alaskans, S. 2222 attempts to trade the Tongass for commercial development including clear cutting and mining.

This bill proposes to give Cape Fox and Sealaska Corporations more than 11,000 acres of valuable Tongass National Forest lands in Berners Bay near Juneau in return for 3,000 acres of mostly roaded and clearcut lands near Ketchikan and certain subsurface rights. With the transfer of the publicly owned lands, the Corporations gain the rights to log, subdivide, sell, or develop this swath of land on the northwest side of Berners Bay. Despite the importance of Berners Bay to Alaskan residents, Senator Murkowski has not held a local hearing on the land exchange issue in Juneau. This bill is bad public policy and should not see the light of day.

Berners Bay is one of Juneau's most important recreation areas for kayaking, hunting, camping, bird watching, commercial touring and many other activities. The traded lands could be closed to public access, beautiful views and hunting grounds replaced with stumps and no trespassing signs. The Bay contains abundant wildlife, including four species of salmon, wolves and brown and black bears. It is an important stopover for migratory birds as well as foraging grounds for Steller sea lions.

The Alaska Department of Fish and Game, City and Borough of Juneau, and commercial fishermen have long supported protection of Berners Bay's high value fisheries and vast recreational opportunities. Additionally, the Auk Kwaan tribe, original settlers of the area, recognizes Berners Bay as an integral part of their traditional territory. These ancestral lands contain village site, burial grounds, and the sacred Spirit Mountain. Berners Bay is a critically important wild area for southeast Alaska residents and visitors alike.

The public lands to be given away include Slate Lake, where the Coeur d'Alene Mines Corporation anticipates dumping mine tailings from its proposed Kensington gold mine. Slates Lake is perched above a productive salmon stream in Berners Bay. Giving away these lands would risk contaminating the land and harming its irreplaceable natural resources.

Again, we urge you to oppose S. 2222. Please do not schedule a mark-up of this bill by the committee. The Tongass National Forest is a national treasure that deserves to be treated with care and in the best interest of the American people.

Sincerely,

Tim Bristol, Executive Director, Alaska Coalition; Tim Atkinson, Executive Director, Alaska Conservation Voters; Michael Finkelstein, Campaign Director,, Alaska Rainforest Campaign; Cindy Shogan, Executive Director, Alaska Wilderness League; Dune Lankard, Executive Director, Eyak Preservation Council; Vawter Parker, Executive Director, Earth Justice; Deb Callahan, President, League of Conservation Voters; Stephen D'Esposito, President, Mineral Policy Center; Bob Perciasepe, Senior Vice President, National Audubon Society; Jamie Rappaport Clark, Senior Vice President, National Wildlife Federation; John Adams, President, Natural Resources Defense Council; Meg Maquire, President, Scenic America; Carl Pope, Executive Director, Sierra Club; Jeremy Anderson, Executive Director, Southeast Alaska Conservation Council; Bill Meadows, President, The Wilderness Society; Brock Evans, Executive Director, The Endangered Species Coalition; Gene Karpinski, Executive Director, U.S. Public Research Group.

Alaska Coalition, Alaska Rainforest Campaign, Alaska Wilderness League, Earth Justice, Eyak Preservation Council, League of Conservation Voters, Mineral Policy Center, National Wildlife Federation, Natural Resources Defense Council, The Wilderness Society, US PIRG,

September 4, 2002.

The Hon. Harry Reid,
U.S. Senate,
Washington, DC.

Dear Senator Reid, We are writing to urge you to keep S. 2222, the Cape Fox Land Entitlement Adjustment Act of 2002, off the floor of the United States Senate. This bill was introduced earlier this year by Senator Frank Murkowski (AK-R), and passed through the Energy and Natural Resources Committee in late July.

Even with the changes in language made during the mark-up process, this bill is an attempt to benefit special interests by giving away valuable Tongass National Forest lands, which are owned by all Americans. Opposed by many Southeast Alaskans, S. 2222 attempts to trade Tongass lands for commercial development including clearcutting and mining.

This bill proposes to give Cape Fox and Sealaska Corporations more than 11,000 acres of valuable Tongass National Forest lands in Berners Bay near Juneau in return for 3,000 acres of mostly roaded and clearcut lands near Ketchikan and certain subsurface rights. With the transfer of the publicly owned lands, the Corporations gain the right to log, subdivide, sell, or develop this swath of land on the northwest side of Berners Bay. Despite the importance of Berners Bay to Alaskan residents, Senator Murkowski has not held a local hearing on the land exchange issue in Juneau, nor had a public appraisal prepared prior to the passage of this legislation through committee. We believe that a public appraisal should be required before this legislation is allowed to proceed. This bill is bad public policy, and is another attempt by Senator Murkowski to appease special interests during his governor's race.

Berners Bay is one of Juneau's most important recreation areas for kayaking, hunting, camping, bird watching, commercial touring and many other activities. The traded lands could be closed to public access, and beautiful views and hunting grounds replaced with stumps and no trespassing signs.

The Bay contains abundant wildlife, including four species of salmon, wolves and brown and black bears. It is an important stopover for migratory birds as well as foraging grounds for Steller sea lions.

The Alaska Department of Fish and Game, City and Borough of Juneau, and commercial fishermen have long supported protection of Berners Bay's high value fisheries and vast recreational opportunities. Additionally, the Auk Kwaan tribe, original settlers of the area, recognizes Berners Bay as an integral part of their traditional territory. These ancestral lands contain a village site, burial grounds, and the sacred Spirit Mountain. Berners Bay is a critically important wild area for southeast Alaska residents and visitors alike.

The public lands to be given away include Slate Lake, where the Coeur d'Alene Mines Corporation anticipates dumping mine tailings from its proposed Kensington gold mine. Slates Lake is perched above a productive salmon stream in Berners Bay. Giving away these lands would risk contaminating the land and harming its irreplaceable natural resources.

Again, we urge you to keep S. 2222 off the floor of the United States Senate. The Tongass National Forest is a national treasure that deserves to be treated with care and in the best interest of the American people.

Sincerely,

Tim Bristol, Executive Director, Alaska Coalition; Michael Finkelstein, Campaign Director, Alaska Rainforest Campaign; Cindy Shogan, Executive Director, Alaska Wilderness League; Dune Lankard, Executive Director, Eyak Preservation Council; Vawter Parker, Executive Director, Earth Justice; Stephen D'Esposito, President, Mineral Policy Center; Carl Pope, Executive Director, Sierra Club; Bill Meadows, President, The Wilderness Society; Gene Karpinski, Executive Director, U.S. Public Research Group; Jamie Rappaport Clark, Senior Vice President, National Wildlife Federation; Deb Callahan, President, League of Conservation Voters; John Adams, President, Natural Resources Defense Council.

Mr. LEAHY. Mr. President, S. 2222 would privatize 12,000 acres of Tóngass National Forest land in Berners Bay, a popular recreation area for residents of Juneau, Alaska. The two corporations—Sealaska and Cape Fox Corporations—that would receive title to the National Forest lands have a history of closing public access to their lands and heavily logging them. Most of the logs have been exported directly to Asia without any domestic processing. The provisions for old-growth reserves in the reported version of S. 2222 offer little protection. The vast majority of old-growth forest on the newly privatized National Forest lands could still be heavily logged and the logs shipped straight to Asia with no domestic manufacturing.

Trading land to two Native corporations is not the only reason proponents so desperately wanted this bill to move this year though. The bill will also make it much easier for a mining corporation to open a gold mine adjacent to the national forest land being traded. The proposed Kensington mine is currently permitted to store its mine tailings on its own land. But the mine wants to reduce its operating costs by instead dumping its mine tailings in a pristine lake that conveniently is within the 12,000 acres being traded. EPA and the State of Alaska have written opinions suggesting that dumping tailings in this lake is likely illegal under the Clean Water Act.

The potential environmental impact of the mine tailings dump and logging operation on the land will have long-term effects on an extremely rich salmon producing area. Berners Bay also contains abundant wildlife, such as wolves and brown and black bears that will be impacted by the increased activity in the area and water pollution generated by the mine and logging operations. By privatizing the land, the public will have little knowledge or say in how the mine and logging operations affect the recreational, hunting, fishing and ecological values of the bay.

The fishing and tourism industries, both key to Southeast Alaska, will be largely shut out of any oversight of the operations even though it will likely have a direct impact on their financial well-being.

The environmental and economic concerns about these land exchanges should raise enough red flags to demand much greater scrutiny from this body. On top of that, these bills also raise serious questions about the cost to taxpayers nationally of privatizing our public resources. In return for the 12,000 acres transferred to Cape Fox, taxpayers would get 3,000 acres of largely clearcut private lands and certain subsurface rights. There is no safeguard in the bill allowing the public to actually have a say in whether this is a good, or even fair, deal for taxpayers. The University of Alaska land exchange would turn over at least 250,000 acres of federal lands without a public process for approving or rejecting which lands actually get transferred. Instead, it is solely left to the Secretary of the Interior to decide.

Again, these two bills are troubling enough on their own because of their environmental and economic impacts. However, the idea of trading away public lands with little or no public input and no economic or environmental analysis is even more troubling. Over the years, our federal agencies and this body have done an admirable job of protecting these lands for the public, not for private interests. We should not start reversing that record now.

ARKANSAS RIVERBED LAND

Mr. INHOFE. Mr. President, I wish to express my thanks to the chairman and vice chairman of the Senate Committee on Indian Affairs who have greatly assisted the effort to bring much needed finality to the uncertainty created by litigation surrounding the ownership of the bed of the Arkansas River. A decision by the United States Supreme Court in 1970 determined that parts of the bed of the Arkansas River were included along with other land that was conveyed to Indian Nations based on 19th century treaties between the United States and the Indian Nations that were relocated from the East Coast of the United States to Oklahoma or "Indian Territory" as it was then known.

Based on the Supreme Court's decision that Arkansas riverbed lands were included within the treaties with Indian Nations, the United States is subject to monetary damages for any breaches of its trust obligation with respect to this land. A suit has been brought on behalf of the Indian Nations asserting that such breaches of trust have occurred. The case is presently before the United States Court of Federal Claims.

With respect to such treaty lands, the Non-Intercourse Act of 1790 prevents the transfer of title without Congressional approval. Without action by Congress, claims to legal title on behalf of the Indian Nations can continue to be raised with respect to these lands based on the Federal Government's underlying trust obligation. The threat of such lawsuits is a serious hardship on those people who were simply unaware that they were living on land that was once part of the bed of the Arkansas River. H.R. 3534 would eliminate title problems that are the result of the Supreme Court's decision and resolve breach of trust claims brought by the Indian Nations.

Several months ago, United Keetowah Band of Cherokee Indians, UKB, filed a motion to intervene in the Court of Federal Claims lawsuit. Although this motion was denied, the Department of Justice expressed its reluctance to endorse H.R. 3534 unless it was drafted to precluded the UKB from either bringing quiet title actions or from petitioning the United States to bring such actions. In order to ensure that UKB was not left without a remedy for pursuing its claims, the Justice Department proposed that the bill be amended to allow the UKB to pursue such claims in an action in the Court of Federal Claims. In addition, the Justice Department suggested that H.R. 3534 be amended to reserve some portion of the settlement proceeds until any claims that can be raised by the UKB are fully and finally litigated.

I am pleased to report that a compromise was reached on this issue. Like any compromise, everyone had to give something up in order for us to move forward. In that regard, I would like to express my appreciation to all of those who have worked so hard on this compromise.

Under the proposed amendment to H.R. 3534 that is before the Senate, all tribal claims concerning Arkansas riverbed land are resolved through proceedings in the Court of Federal Claims or through the settlement incorporated in H.R. 3534. This allows the United States Congress to remove the threat of quiet title actions brought by or on behalf of an Indian tribe claiming title to land based on the Supreme Court's decision. In other words, the UKB and each of the other tribes have agreed to allow their claims to the riverbed to be addressed through the process established by H.R. 3534. In return, the UKB has asked that 10% of the settlement fund established by the bill will be aside to satisfy any of the UKB's claims if the tribe is ultimately successful in the Court of Federal Claims. In addition, if this amount is not sufficient to satisfy any judgment awarded to the tribe, the permanent judgment appropriation, section 1304 of title 31, is explicitly made available to satisfy the remainder of any judgment amount awarded to the UKB.

The UKB has also requested one additional consideration. The UKB recognizes that the purpose of the legislation is to preclude the Tribe from bringing or asking the United States to bring a lawsuit making a direct claim that asserts right, title, or an interest in Arkansas riverbed arising out of the Supreme Court's opinion. However, the Tribe wishes to make it clear that nothing in H.R. 3534 is intended or is to be construed to address, resolve, or prejudice the underlying basis of a claim that they would have been able to make if H.R. 3534 was not enacted. In other words, the UKB have asked that the legislation include a provision to make it clear that H.R. 3534 does not alter the character, nature, or basis of any claim or right that the tribe could have made before the effective date of this legislation. We have done so.

I wish to express my appreciation for the assistance of the Chairman of the Committee on Indian Affairs, Senator INOUYE, who has provided important procedural assistance to allow the bill to be moved expeditiously now that we have an agreement between all of the Indian tribes and the Departments of Interior and Justice.

In addition, I wish to acknowledge the good work of Senator CAMPBELL, the vice chairman of the Indian Affairs Committee, who deserves a great deal of the credit for bringing the final compromise on this matter to fruition. With that in mind, I would like to briefly engage in a colloquy with him on this final compromise.

Does the vice chairman agree that section 9 of the proposed amendment ensures that the law will only be construed to preclude claims for title to the Arkansas riverbed lands either by the UKB or on its behalf; or from the UKB requesting that the Federal government bring such claims?

Mr. CAMPBELL. That is correct.

Mr. INHOFE. Based on the Senator's answer to my last question, it is clear that the UKB will no longer be able to make a claim to the riverbed lands. However, the bill still provides a means for the UKB to raise the riverbed claims it might otherwise have brought, but it now directs that they must pursue these claims exclusively in the manner provided in H.R. 3534; isn't that correct?

Mr. CAMPBELL. Yes, that is correct.

Mr. INHOFE. By including section 9, Congress is making it clear that other than this change in forums for riverbed matters, it is not Congress's intent to express any opinion or have any effect on the claims the UKB might bring. Isn't that correct?

Mr. CAMPBELL. That is correct. To my knowledge, Congress has not reviewed or considered these claims. Furthermore, it is not necessary for Congress to do so because the bill does not address the individual claims of the UKB, it merely ensures that the Tribe's claims to the riverbed are only pursued in the manner provided in H.R. 3534. Section 9 is included to make it clear that the bill is not to be construed to address the merits of any particular claim by the UKB; instead the bill is only concerned with how those riverbed claims may be pursued.

Mr. INHOFE. I thank the Senator for his assistance in this very important matter.

ADDITIONAL STATEMENTS

IN CELEBRATION OF THE TENTH ANNIVERSARY OF CAB CALLOWAY SCHOOL OF THE ARTS IN WILMINGTON, DELAWARE

• Mr. CARPER. Mr. President, I rise today to celebrate the 10th anniversary of the Cab Calloway School of the Arts in Wilmington, the first public arts school in the State of Delaware. Since the late Cab Calloway cut the ribbon for the school's grand opening on November 23, 1992, the school has expanded from a small middle school with vocal detractors to an overwhelmingly successful experiment in public school choice, boasting an enrollment of 760 6th to 12th graders. If their first decade is any indication of what they will offer in the future, we have much to look forward to.

Cab Calloway School of the Arts works to provide young people from diverse backgrounds with intensive training in the arts and a comprehensive academic curriculum that will prepare them for success in higher education and employment. They are succeeding.

The school's halls are filled with talented faculty, skilled supervisors, and dedicated staff. Its students have been awarded numerous accolades and recognition for their art, writing, theatre, academics, vocal and band performances, as well as academics.

Cab Calloway's students continue to defy the odds, meeting or exceeding our State's standards in reading, writing and math. Last year, the school's 10th graders ranked among the very highest in the State in reading and writing comprehension. Mixing academics with freedom of expression and strong parental support has boosted their students' self-confidence and given us all something to feel good about.

When I served as Governor of Delaware, Cab Calloway's students performed, at my request, at the Hotel DuPont for the Governor's National Association. They helped me celebrate my second inauguration as Governor at the Wilmington Grand Opera House and have since been named to the Governor's School of Excellence. They continue to make me proud.

Cab Calloway School of the Arts has represented the State of Delaware at The Kennedy Center in Washington DC, and its students have performed at the Delaware Mentoring Council Celebrations in Wilmington and Dover, attended by GEN. Colin Powell.

These days I work closely with HILLARY CLINTON in the Senate. When I brought her to tour the Cab Calloway School of the Arts in 1996, she was our First Lady, and I made sure that a tour showcasing the best of Delaware included the innovative school. We talked about the importance of school choice and the inroads made possible by a school dedicated to providing a cultural and academic experience that instills character and a greater appreciation of the arts.

As Governor of Delaware, and now as Senator, I have shared with people across America the story of Cab's success. I tell them about teachers such as Marty Lassman, who daily demonstrate unparalleled commitment and patience, the support staff that is there when needed, the students who again and again exceed expectations, and the parents and family members who understand they have an obligation to be full partners in the education of their children. Together, they serve as an inspiration and an example to communities across the country.

Delaware is a small State, but we are building a growing record of achievement in public school education. Statewide, scores have again increased in all grades and across the board in reading and math, as we begin to close the achievement gap.

Much of what we have accomplished in Delaware, and at the Cab Calloway School of the Arts, serves as a model for our Nation.

I thank the staff and students of the school, both past and present, for their efforts to create a more meaningful experience for our students, and I wish Cab Calloway School of the Arts a very happy 10th anniversary.

I rise today to offer my full support to future generations of students and educators at Cab Calloway School of the Arts and congratulate this extraordinary school on a remarkable decade of success.•

HONORING NATHANIEL BANKSTON UPON HIS RETIREMENT

• Mr. DASCHLE. Mr. President, today I want to share with my colleagues the dedication and public service rendered by Nathaniel Bankston, Registrar of Voters in East Baton Rouge Parish. He is retiring from public service today, and as he enters a new phase in his life, I look back and remember his accomplishments.

Mr. Bankston has served as the Registrar of Voters of East Baton Rouge Parish since 1969. His dedication to "getting the job done" causes him to reach out to both all parties, regardless of affiliation. He is a respected member of the community, having served as president of the Louisiana Registrars of Voters Associations, member on the Board of Trustees of the Louisiana Registrars of Voters Retirement System, and president of the East Baton Rouge Parish Board of Election Supervisors. He is a lifelong resident of Louisiana, having graduated from southeastern Louisiana University in Hammond, LA, in 1972.

He has spent his entire life striving to make Louisiana a better place, and it is with a heavy heart that I see him retire. Mr. Bankston is an upstanding citizen and it is my hope that his future holds all that he desires.•

HONORING THE LIFE OF ARNI COHEN

• Mr. BAYH. Mr. President, I rise to pay tribute to a fellow Hoosier, whose life embodied American ideals of entrepreneurship, community, and service.

In Indiana, we mourn Arni Cohen's death. Mr. Cohen began a pizza business by purchasing his first Arni's restaurant in 1965. Through a mixture of expansions and franchising, Mr. Cohen embodied the principle of free enterprise by populating 13 different cities in Indiana with nearly two dozen of his restaurants. Mr. Cohen's undying love for his community and baseball prompted him to create a softball league for the community of West Lafayette, where he played with and managed the team. Always a community-minded individual, Arni Cohen also offered his restaurants to upstart musicians and comedians, allowing them to pave their way into show business. Mr. Cohen's years in the Army and his years as a city council member illustrate his commitment to serving his country and community.

Family and friends remember Arni Cohen as a charitable person, always smiling, and eager to offer a kind word to everyone. Mr. Cohen loved his community, honorably serving it for 37 years. His dedication and kindness to his community are a credit to his family and to the State of Indiana.

It is my privilege to pay tribute to Arni Cohen for his commitment and service by honoring him in the official record of the Senate. I send my heartfelt condolences to his family, friends, and the community of West Lafayette.

When I reflect upon the lives of men such as Arni Cohen, who dedicated his life to serving others, I am reminded of the principles of public service.•

RETIREMENT OF RON KING

• Mr. CRAPO. Mr. President, I rise today to acknowledge the upcoming retirement of Ron King, Director of Communications at the Department of Energy's Idaho Operations Office. The DOE Idaho Operations Office oversees management of the Idaho National Engineering and Environmental Laboratory, INEEL, and for almost 10 years Ron has served, with distinction, as the director of communications.

Ron's service to his country began with a career in United States Navy, which included various intelligence and administrative positions. After retiring from the U.S. Navy in 1979, Ron continued to work with the Navy as a Government and contractor employee. Ron's public service culminated with his service to the Department of Energy with posting in Montana and Idaho.

As Director of Communications, Ron served as the interface between the DOE and various stakeholders such as State of Idaho officials, the Idaho congressional delegation, tribal governments, community groups, academic institutions and media outlets. In each of these groups, Ron is well-known and respected and the DOE has benefited from Ron's representation.

Public service involves personal sacrifice, commitment to duty and hard work. Ron King exemplified these values during his service in the Idaho Operations Office. Ron will leave big shoes to be filled and his service will not be forgotten.

I want to wish Ron and his wife Cindy all of the best as Ron leaves Government service.•

EFFECTIVE DATE PROVISION OF INVOLUNTARY BANKRUPTCY CLARIFICATION

• Mr. BAUCUS. Mr. President, we are all aware that last Thursday the House failed to pass the conference report on H.R. 333, the bankruptcy reform measure. Further, failing to pass H.R. 333, the version of bankruptcy reform that the House did pass last Friday was not taken up for Senate consideration this past week for several reasons. However there are much needed reforms in the bankruptcy bill and one in particular that I would like to discuss today.

It is my understanding that the final bill passed by the House did contain a number of technical corrections that were agreed to on a bipartisan, bicameral basis after inadvertent drafting errors were discovered following the conclusion of the work of the conference committee on H.R. 333. One such error involved the effective date provision of section 1234. Section 1234 was not a new provision of law but a reiteration of current law. This section made clear that a claim that is in bona fide dispute over the existence of liability, or the amount of that liability, cannot be used as the basis for bringing an involuntary bankruptcy action. This clarification is consistent with the 1984 legislative history of this portion of Section 303 of the Bankruptcy Code. It also tracks the decisions of all five Courts of Appeal that have ruled on the bona fide dispute bar to the bringing of involuntary bankruptcy actions.

Section 1234 restated and strengthened congressional intent that an involuntary bankruptcy action should not be employed by litigants seeking to gain more leverage than they would have if they disputed contract performance in the proper judicial forum. The respondent in a bona fide dispute over liability for a claim or the amount thereof should not be disadvantaged by the stigma and expense of an involuntary bankruptcy proceeding, nor should our overcrowded bankruptcy courts be burdened with such disputes. In as much as section 1234 restated existing law, it was given immediate effect upon enactment—but, due to a drafting error, it would not have applied to cases now pending before the bankruptcy courts. This mistake would have had a particularly perverse effect in the five Federal circuits that have correctly ruled that bona fide dispute standard applies to both liability and the amount thereof; no circuit court has reached a contrary conclusion.

As soon as the conferees became aware of this mistake, they worked to fashion a correction contained in a concurrent resolution to be adopted simultaneously with the conference report. That and other enrolling changes were incorporated in the bankruptcy bill passed by the House last Friday. The involuntary bankruptcy provision was contained in section 1233 of that measure, which stated that "This section and the amendments made by this section shall take effect on the date of enactment of this Act and shall apply with respect to cases commenced under Title 11 of the United States Code before, on, and after such a date."

As the author of both the 1984 amendment that established the bona fide dispute proviso of section 303 of the Code and 2001 Senate amendment that became section 1234 of the conference report and section 1233 of the House-passed bill, I intend to seek to secure the same clarification and reiteration of current law in the 108th Congress.•

TRIBUTE TO DR. LEON Y. SADLER, III

• Mr. SESSIONS. Mr. President, I rise today to express my congratulations to Dr. Leon Y. Sadler, III, originally of Camden, AL, now of Tuscaloosa, Alabama, for his receipt of the Outstanding Commitment to Teaching Award given by the University of Alabama.

Dr. Sadler comes from a well respected Wilcox County family who for generations have provided the area with leadership. His grandfather, Mr. "Duck" Sadler was a superb businessman, and farmer. Indeed, my father purchased his International Harvester dealership from him in the late 1950s. Dr. Sadler's father was a brilliant lawyer who did superb legal work for over a half century, operating from his modest office in Camden. Dr. Sadler's brother, Tom, graduated one year ahead of me at Wilcox County High School, obtained his engineering degree from Massachusetts of Technology and, likewise, excelled in engineering.

Leon earned a B.S. in Engineering from Georgia Institute of Technology, and his master's degree and Ph.D. at the University of Alabama. He joined the Department of Chemical Engineering at the University of Alabama in 1978 after working for Olin Chemical Corporation and the United States Bureau of Mines. His publications are numerous and his research has led to his being rewarded three patents. He is also the recipient of numerous awards including Reichold-Shumaker Professorship of Chemical Engineering; Department of Engineering 140th Anniversary Outstanding Fellow Award; Rau Beta Pi Outstanding College of Engineering Faculty Award and Alabama Society of Professional Engineers State of Alabama Engineering Educator of the Year for 2001, to name a few. His excellence as a teacher of chemical engineering is best enunciated by one of his students who said about Leon:

> Not only does he use his great technical skills to educate his students to be better suited for industry, but he also employs his personal skills to illustrate to students how to be better suited for the "real world." He never fails to provide students with the means to learn, as well as the tools to succeed in a competitive field.

I knew Leon as a student in the public schools of Wilcox County. He graduated several years ahead of me. While a terrific student, Leon was also a good basketball player. On one occasion, he undertook to coach a group of us who attended the Methodist Youth Fellowship in a basketball league. In fact, we had an ecumenical Methodist Youth

Fellowship, with Presbyterians and other church members attending. We thought he was a wonderful coach and that we would be a successful team. Unfortunately, he had chosen by far the shortest team in the league and though we learned much about the game, a winning season we did not have.

Leon married his high school classmate, Dana McNeil, a wonderful and sparkling person who maintained a successful career in real estate. She has been his loving partner throughout their marriage of many years. They have two wonderful sons, Leon IV and Cobb.

In recent years, I had the chance to reestablish a close relationship with Leon and Dana. Spending time with them has been a most pleasant experience. He and Dana have had me stay with them in their fine home in Tuscaloosa and treated me with genuine hospitality. I have cherished those visits and our talks about friends and family and our roots. In this highly mobile world, it is important that we stay close to our friends and to our heritage.

Everyone has such a great love and affection for Leon. Though brilliant and dedicated, he never lost his humility and humanity. People love him and love being with him. His friends are many and very, very loyal—just as he is to them.

Leon is now suffering an erosion of his physical abilities as the result of the progression of Lou Gehrig's disease. I visited him, Dana and Jim Wilburn recently and enjoyed it greatly. Among other things, we talked of my re-election effort which was just a few weeks off. Leon, now unable to speak, with a smile on his face, wrote on his small erasable board the words, "You're going to win." That was an encouraging comment and, as it turned out, he was correct.

Leon Y. Sadler, III has achieved excellence in a rigorous and demanding specialty, Assistant Professor of Chemical Engineering. He has been a blessing to his fellow man. He has remembered his roots and friends from Wilcox County. He loves his wife and family and is proud of all their accomplishments. To an unusual degree, he loves America, understands her greatness, keeps up with current affairs, and does all he can to keep her on the right path.

Teachers are important people. In addition to their professional excellence, teachers help young people learn how to live—in the words of his student, ". . . how to be better suited for the 'real world' ". Indeed. I extend my congratulations to Dr. Sadler for this important teaching award, presented by one of the great universities in the world, the University of Alabama. The presentation of the award on September 18, 2002, brought credit on both Dr. Sadler and the University.●

HONORING REVEREND HAROLD JONES

● Mr. JOHNSON. Mr. President, I am saddened to report the passing of one of South Dakota's most exceptional spiritual leaders, Rev. Harold Jones.

Harold was the first Native American to serve as a bishop in a Christian denomination. He was a widely respected leader, and was greatly admired by his peers for his dedication to the people he served and guided. His tremendous contributions to the community and groundbreaking achievements set him apart from other outstanding spiritual leaders.

Born in 1909 and raised on the Santee Reservation in Nebraska, Harold lost his parents at an early age and was raised by his grandparents, who brought him up as a Christian. He attended school at Seabury-Western Seminary in Illinois. After graduating, Harold spent 13 years at the Pine Ridge Mission and 12 years at Holy Trinity Parish in Wahpeton, ND. He also served at the Cheyenne River Agency, Gettysburg, Dupree, Pine Ridge, and Rapid City, SD and Fort Defiance, AZ. Harold was consecrated as a bishop suffragan of the Episcopal Diocese of South Dakota on January 11, 1972. The ecumenical ceremony was witnessed by 1,000 people in the Catholic Church's St. Joseph Cathedral in Sioux Falls.

As a Native American, Harold's entry into the church did not occur without controversy and prejudice. While at seminary school in Illinois, Harold earned money by giving talks about life on South Dakota Indian reservations to churches in the Chicago area. Outside these churches signs often read, "Come this Sunday and see a live Indian!" Never deterred from following his chosen path, Harold overcame the misconceptions and prejudices of others to become one of the most respected and revered bishops in the country.

Harold's dedication to helping others serves as his greatest legacy. His work continues to inspire all those who knew him. Our Nation and South Dakota are far better places because of Harold's life, and while we miss him very much, the best way to honor his life is to emulate the love and support he shared with others.●

THE LIFE OF JANET ADAMS VIGGIANI

● Mr. DODD. Mr. President, I rise today to pay tribute to the late Janet Adams Viggiani—a native of Connecticut. I have known the Viggiani family for many years as residents of our native State, and as neighbors in East Haddam, and as friends. Janet became a strong advocate for the public interest, an accomplished attorney, and an educator, who dedicated her professional life to helping young people and to making our Nation a more just and equitable land.

Born in Middletown, CT, Janet spent her early years in the Nutmeg State. After graduating summa cum laude from Smith College, she began what would become a lifetime of work motivated by a deep desire to serve others, particularly those who struggled mightily to overcome enormous adversity in their lives—such as illness, criminal abuse, and discrimination. She worked for the Nine-to-Five Organization for Women Workers in Boston and for Brigham and Women's Hospital. She cofounded the Massachusetts Public Interest Research Group, which has done so much to protect the rights and interests of working families. She also cofounded the New England Sexual Assault Network, which provided support for victims of some of society's most heinous crimes. Janet became assistant director of Radcliffe College's Career Services Center, where she provided guidance to students searching for meaningful careers. While working for her doctorate at the Harvard School of Education, Janet was named an assistant dean at Harvard College in 1988. She spent 3 years advising the college administration on sexual harassment, sexual assault, tutor training, and gender equality issues in the classroom.

In 1996, Janet obtained a law degree from Harvard. After working on a variety of employment discrimination cases in the private sector, Janet was able to combine her love of law and education by taking a position at Simmons College, where she served as a legal counsel to the president. In this capacity, Janet dealt with a variety of legal issues, including employment, gender and racial discrimination, intellectual property, and other student affairs.

Janet was taken from us too soon, but she touched the lives of many people throughout her life. Her dedication to making our world a better place inspired many people and serves as an example for all of us to follow. My thoughts and prayers are with Janet's friends and family, particularly with her parents, Carl and Jane of East Haddam, CT, her sister Frances, and her brother Carl. She will be deeply missed by all who knew her.

Mr. President, I would like to submit for the RECORD an article written about Janet that appeared several days ago in the Middletown Press.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

JANET VIGGIANI

Janet Adams Viggiani, a lawyer, educator, human rights advocate and former assistant dean for coeducation at Harvard College, died at her home in Mancos, Colorado on Friday, November 8, after a long illness. She was 48.

A co-founder of Massachusetts PIRG (Public Interest Research Group) and the New England Sexual Assault Network, she was named assistant dean at Harvard College in

1988 while working for her doctorate at the Harvard School of Education. As a dean, she dealt with issues of concern to women, sexual harassment and assault, training of teaching fellows and resident tutors in related matters, and advising the dean of the college and the Harvard administrative board on policy and procedure in these areas.

She was born in Middletown, Conn. October 15, 1954, the second child of Jane Mead Viggiani and Carl A. Viggiani, professor of Romance languages and literature at Wesleyan University. She spent her young years in nearby Middle Haddam and attended East Hampton High School, where her career in law was foreshadowed by her passionate public defense of Black students unjustly accused of provoking violence in a racial dispute. She completed high school at the Buxton School in Mass.

After graduating from Smith College summa cum laude in 1978, she worked for the Nine-to-Five Organization for Women Workers in Boston, for Brigham and Women's Hospital and for Radcliffe Career Services as a counselor and then assistant director.

At Harvard, in addition to her deanship, she held the post of Allston Burr Senior Tutor of the college's Adams House, where she was responsible for many aspects of the lives and studies of 420 Harvard undergraduates.

In 1991, she received the degree of doctor of education from Harvard. However, the same year marked the onset of a cancer that was to recur. Not knowing what the future held, she bought a car and traveled across America for almost a year.

In the fall of 1993, with the cancer in remission, she began a new career by entering Harvard Law School. She received her law degree in 1996, passed the state bar, and took a job with the Boston law firm of Hill & Barlow, where she specialized in discrimination and employment law.

In 1999, she accepted an invitation from Simmons College President Daniel Cheever to come to Simmons as the college counsel and assistant to the president. In the educational environment she enjoyed, she dealt with a wide range of legal issues ranging from employment, student affairs and intellectual property, to probate and criminal law.

In her year of travel across the country, she had discovered the peace and beauty of the southwest corner of Colorado. When the recurrence of cancer forced her retirement from Simmons in 2001, she returned to that area and rented a house in a pine forest where she spent her last year. She remained active until the final weeks of her life, even hiking at 13,000 feet in the nearby Rockies.

She is survived by her parents, of East Haddam; a sister, Frances A. Viggiani of Brooklyn, New York; and a brother, Carl A. Viggiani, Jr. of White Plains, New York.•

A TRIBUTE TO ARMAND DERFNER

• Mr. HOLLINGS. Mr. President, we have numerous inspirations in our Charleston, SC, community, but finally one unsung hero was heralded in the Post and Courier article this past Saturday. Armand Derfner spent his life fighting for the underdog, dedicated to civil rights. As a child of the Holocaust, his story is particularly inspirational. I ask unanimous consent to print the article in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Post and Courier, Nov. 16, 2002]

Attorney's Lifelong Passion To Defend Underdog Has Taken Him to the Nation's Highest Court

(By Jennifer Berry Hawes)

It's telling enough that Armand Derfner would win a prestigious national award that honors an attorney who has most contributed to the public interest in a precedent-setting case.

What's just as telling: Derfner missed the fancy, Oscar-like ceremony to get it.

Derfner and his wife, Mary Giles, were sitting on a tarmac in Charleston because their flight was delayed.

Of course, he had a defense for cutting it too close. He couldn't miss cross-examining a witness the day before. Besides, Derfner just isn't a man of pomp.

The honor is called the 2002 Trial Lawyer of the Year Award. It was given the summer by the Trial Lawyers for Public Justice.

Derfner and three other attorneys were honored for this year's huge settlement of their 27-year class-action lawsuit over Mississippi's treatment of the state's black college students and its traditionally black universities.

The state settled for $513 million. Now, even the suit's settlement is being disputed: "It's still going on!" Derfner grins.

Such a draining, drawn-out conflict could tax many people. But a good debate of any sort delights Derfner. It's why such an ardent liberal can enjoy life in conservative Charleston. "Armand always goes against the wind," says his longtime friend Martin Gold.

As a Jewish kid growing up in New York, Derfner's friends backed the Brooklyn Dodgers.

Derfner cheered the Giants, the working man's team.

Call it an early showing of a lifelong passion for defending the underdog, a passion he's taken to courtrooms around the nation—namely the South—arguing Civil rights cases, taking several to its highest court.

He's argued before the U.S. Supreme Court five times, and won them all. He's won several more cases that he didn't have to argue before the justices. He's also testified several times before Congress.

But in his hometown Charleston, he's better known for challenging County Council's at-large system of elections, arguing that the system discriminates against black voters. He also defended the Charleston 5 and argued that County Council violated the Constitution by posting the Ten Commandments.

They can be unpopular positions. It's why Derfner needs a sense of humor to work in a place like this.

In his office at Broad and Church streets, his thick legal texts and filing cabinets tower near a pinball machine. And this is no respectable pinball machine. It features The Fonz and a buxom, redheaded Pinky Tuscadero. Get him playing and Derfner, in slacks and a tie, grins like a 12-year-old in an arcade.

"Stuffy, he's not," former partner Ray McClain says with a laugh. "He's not someone with the slightest trace of arrogance or condescension."

Nor is he shy with his opinions. In 1999, amid the battle flag debate, Derfner wrote this letter to the editor: "I believe the Confederate flag should keep flying over the state Capitol. It is a useful reminder about the people inside, like a warning label on a hazardous product or a sign at the zoo saying, "Beware of the Animals."

While Derfner has a lighter side, talk about his work and he turns intense.

On his office wall hangs a sketch of a white hand uplifting a black one. In Hebrew and English, it reads, "Thou shalt not stand idly by."

And stand by he hasn't.

FLEEING HITLER

His Jewish family lived in Poland as Hitler came to power. With the rise of Nazi control in 1936, his parents fled their home with forged Swedish passports. They traveled through Germany and on to France, where they settled in Paris.

In 1938, his mother gave birth to Armand, her first child. During Derfner's first year of life, Hitler's aggression escalated, and his troops expanded their control. The next year, the Nazis invaded Poland.

His parents, foreseeing that Hitler would not stop there, tried to get passports to the United States—but couldn't.

Finally, as the Nazis began to invade France, Derfner's mother got the passports. His father raced to the U.S. Consulate to get American visas. But the consulate was packed up and the workers heading out. One worker still there broke open a locked desk drawer and stamped the visas.

It was June 12, 1940, Derfner's second birthday.

They left Paris by train just hours before the Nazi troops arrived. By June 14, Nazis occupied the city.

The Derfners fled south and stopped in Bordeaux. They crossed by train into Spain and then to Portugal, where they boarded a Greek ship, the Nea Hellas, on its way to New York.

Exactly one month later, on July 12, they landed in New York.

Derfner grew up mostly in New York, surrounded by fellow Jewish immigrants with similar family stories. Many older people he knew had numbers tattooed on their forearms.

Derfner's parents never again saw their families in Poland. "Everyone was killed in concentration camps," he says, turning emotional.

Years later, Derfner would sit with his mother to look at family pictures. On a good day, she could make it through four or five names before breaking down. "Everyone she'd ever known was gone.

"In my family, there's always been this sense that there is supposed to be justice in the world, and we're supposed to help people get it," he says. Even before the Holocaust, his father's family had gone to Palestine in the 1920s to fight the British. "Maybe it's a family tradition."

Today, Derfner's younger brother, Larry, is a journalist in Israel who covers the conflict there for U.S. News & World Report and the Jerusalem Post, an English-language newspaper. His sister, Suzanne, is a lawyer for children with disabilities in California.

After growing up, Derfner got his undergraduate degree from Princeton and then graduated from Yale Law School in 1963, Derfner—and the nation—was focused on the civil rights movement.

He was among those who headed into law "as an engine for social change," McClain says.

In college, Derfner clerked for the chief judge of a U.S. court of appeals and then landed a job at Covington & Burling, among the most prestigious firms in Washington, DC. He began traveling to Mississippi for stints to work in civil rights cases.

When a civil rights law group needed a full-time attorney, he packed up and moved south. Soon after, in 1968, he argued his first case before the U.S. Supreme Court, an early Voting Rights Act case.

Derfner was just 29, a young liberal standing before the court's renowned liberals, Earl Warren and Hugo Black, who grilled him good.

"They were giants then," he recalls. "And it was such an exciting experience, so exciting to see the court looking at laws and consulting in a way I though was so good for the country."

OLD MISSISSIPPI

When he moved to Mississippi, he was joined by his first wife, Mary Frances. They'd met in Washington. She was from an old Charleston family named Legare, he was a New York son of Jewish immigrants.

Different as they could have been, they shared a passion for civil rights. And they were about to become partners in risky work.

When Derfner landed in Mississippi in the late 1960s, a man he didn't know greeted him at the airport. "Hello, Mr. Derfner." He was followed day and night. And he was threatened. His dog was poisoned. He was arrested and jailed for contempt of court.

And while driving down a highway with May Frances one day, a bullet smashed through the passenger window beside her, shattering it, but missing them.

"It was definitely a war zone," he says. "I had a lot of friends who were shot at, so I wasn't surprised."

Yet he never unlisted his phone number. And Mary Frances remained active in the work with him. They stayed for three years.

"After a while, I could see that the work was so intense and so unrelenting that it has an effect. I began to feel like it was time to take a break."

They returned to Washington for several years. He was thrilled to work on hot national issues, but at times the work was abstract, less personal than toiling in legal trenches, working hands-on with clients who needed help.

And the couple wanted to start a family.

Yet Mary Frances suffered from juvenile diabetes. As a teenager, her doctor had said that she would die young and couldn't bear children. When they met, she'd already begun to feel the terrible disease's effects but didn't believe the doctor's dire prediction.

"She was active while being sick," Derfner smiles. "Her life was a miracle, too."

Mary Frances drove, even played baseball. And she wanted to have children.

But they didn't want to raise them in Washington and preferred to move south, closer to family and the civil rights work they loved. Her aunt was lieutenant governor, and her grandfather had been instrumental in restoring what became Charles Towne Landing.

In 1974, they made the move. Their first son, Joel, was a baby then. When Joel was born, doctors warned that he might not live because he was so premature. But he did.

And after they moved to Charleston, the Derfners welcomed their second son, Jeremy. Doctors again warned that the newborn might not live. He also survived.

Today, both sons live in New York. Joel, a Porter-Graud School valdictorian and Harvard summa cum laude graduate, composes musical theater. "I expect to see his name up in lights one of these days," Derfner says, smiling proudly.

Jeremy, named Porter-Gaud's best all-around, graduated from Brown University summa cum laude, wrote for Slate magazine and now is pursuing this Ph.D. at Columbia University.

When he moved to Charleston, Derfner joined a firm here with McCain and Frank Epstein working on civil rights and workers' rights cases. Twice he served as South Carolina's representative to the American Civil Liberties Union's national board.

Despite his liberal views in Charleston, Derfner says he never felt unwelcome. That may be thanks in part to his synagogue involvement and Mary Frances' family roots here.

Then in 1981, the Derfners returned to Washington for a third time to pursue a chance to extend the Voting Rights Act.

Derfner toiled from an office near the U.S. Capitol and taught at American University. He worked closely with Massachusetts Sen. Edward Kennedy and clashed with his home state's Sen. Storm Thurmond.

"He could be legitimately called one of the two or three most experienced and most effective attorneys in the area of voting rights in the country," McClain says.

But the Derfners returned, again, to Charleston. Soon after, around 1990, Mary Frances's diabetes ravaged her body.

She died in 1992 when she was just 45.

Joel was in college, and Jeremy in high school at Porter-Graud. "I think they were raising me," Derfner says, looking back on the painful time.

McClain recalls the years Derfner cared for his wife.

"He was very devoted," McClain says. "He grieved quite deeply for Mary Frances."

JOY IN LIFE

But then, in the mid-1990s, Derfner met a woman named Mary Giles. She worked at the S.C. Historical Society, which has archived some of Derfner's papers.

He became intrigued by this warm woman who found a fascinating life behind potentially dry documents. They began to date.

They married in 2000. Today, she works as archivist for the Catholic Diocese of Charleston.

Talking about her, Derfner grins big, like a boy with a giant crush. She's clearly returned joy to his life.

"She's an extraordinarily warm person," he says. "People are bulldozed by how close you feel to her. I know I was."

MESSAGE FROM THE HOUSE

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

At 1:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills and joint resolutions:

S. 1010. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina.

S. 1226. An act to require the display of the POW/MIA flag at the World War II Memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1907. An act to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon.

S. 1946. An act to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail.

S. 2239. An act to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

H.J. Res. 124. A joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

H.R. 727. An act to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

H.R. 2595. An act to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

S. 3044. An act to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 2712. An act to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress.

S. 3156. An act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

H.R. 3908. An act to reauthorize the North American Wetlands Conservation Act, and for other purposes.

H.R. 5504. An act to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

The following enrolled joint resolutions, previously signed by the Speaker of the House, were signed on today, November 20, 2002, by the President pro tempore (Mr. BYRD).

H.J. Res. 124. A joint resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–9740. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Revenue Procedure 2002–70—Cost of Living Adjustments for 2003" received on November 7, 2002; to the Committee on Finance.

EC–9741. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Unit Livestock Price Method" (RIN1545–BA25) received on November 7, 2002; to the Committee on Finance.

EC–9742. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Notice 2002–72—Clarification of Accounting Period Change Guidance" received on November 7, 2002; to the Committee on Finance.

EC–9743. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled

"Time for performing certain acts postponed by reason of service in a combat zone or a Presidentially declared disaster" (Rev. Proc. 2002–71) received on November 7, 2002; to the Committee on Finance.

EC–9744. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "October–December 2002 Bond Factor Amounts" (Rev. Ruling 2002–72) received on November 12, 2002; to the Committee on Finance.

EC–9745. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Revenue Ruling 2002–67—Donation of Used Vehicles to Charity" (Rev. Rul. 2002–67) received on November 12, 2002; to the Committee on Finance.

EC–9746. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Section 1.856–4; Rents from Real Property" ((Rev. Rul. 2002–38)(2002–26)) received on November 12, 2002; to the Committee on Finance.

EC–9747. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Weighted Average Interest Rate Update Notice" (Notice 2002–74) received on November 12, 2002; to the Committee on Finance.

EC–9748. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; End-Stage Renal Disease-Waiver of Condition for Coverage Under a State of Emergency in Houston, TX Area" (RIN0938–AK98) received on October 21, 2002; to the Committee on Finance.

EC–9749. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; Change of Agency Name: Technical Amendments" (RIN0938–AL02) received on October 21, 2002; to the Committee on Finance.

EC–9750. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Payment for Nursing and Allied Health Education; Final Rule Medicare Program; Payment for Clinical Psychology Training Programs" (RIN0938–AE79) received on October 21, 2002; to the Committee on Finance.

EC–9751. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Correction of Certain Year 2002 Payment Rates Under the Hospital Outpatient Prospective Payment System and the Pro Rata Reduction on Transitional Pass-Through Payments; Correction of Technical and Typographical Errors (CMS–1159–F4)" (0938–AK54) received on October 21, 2002; to the Committee on Finance.

EC–9752. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Office of the Inspector General-Health Care; Medicare and Medicaid Programs; Peer Review Organizations: Name and Other Changes—Technical Amendments" (RIN0938–AL38) recieved on October 21, 2002; to the Committee on Finance.

EC–9753. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Fee Schedule for Payment of Ambulance Services and Revisions to the Physician Certification Requirements for Coverage of Non emergency Ambulance Services" (RIN0938–AK30); to the Committee on Finance.

EC–9754. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; Hospital Conditions of Participation; Anesthesia Services"; to the Committee on Finance.

EC–9755. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities with Which They Have Financial Relationships" (RIN0938–AG80) received on October 21, 2002; to the Committee on Finance.

EC–9756. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicaid Program; Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities Providing Psychiatric Services to Individuals Under Age 21" received on October 21, 2002; to the Committee on Finance.

EC–9757. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare and Medicaid Programs; Emergency Recertification for Coverage for Organ Procurement Organizations (OPO)" (RIN0938–AK81) received on October 21, 2002; to the Committee on Finance.

EC–9758. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program, Part A Premium for 2003 for the Uninsured Aged and for Certain Disabled Individuals Who have Exhausted Other Entitlement" (RIN0938–AL69) received on October 28, 2002; to the Committee on Finance.

EC–9759. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Negotiated Rule Making; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Services" (RIN0938–AL03) received on October 21, 2002; to the Committee on Finance.

EC–9760. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003 (CMS–8014–87)" (0938–AL63) received on October 28, 2002; to the Committee on Finance.

EC–9761. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medicare Program; Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates; and Changes to Payment suspension for Unfiled Cost Report (CMS–1206–FC & CMS–1179–F)" ((RIN0938–AL19)(0938–AK59)) received on November 7, 2002; to the Committee on Finance.

EC–9762. A communication from the Chief Counsel, Bureau of the Public Debt, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Sale and Issue of Marketable Book-Entry Treasury Bills, Notes and Bonds; Reporting of Net Long Position and Application of the 35 Percent Limit" received on November 7, 2002; to the Committee on Finance.

EC–9763. A communication from the Chief, Regulations Branch, U.S. Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "General Order Warehouses" (RIN1515–AC57) received on November 7, 2002; to the Committee on Finance.

EC–9764. A communication from the Commissioner, Social Security Administration, transmitting, a report relative to the Yearly Automatic Pay Increase of Social Security and Supplemental Security Income (SSI) received on November 7, 2002; to the Committee on Finance.

EC–9765. A communication from the Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants: Final Rule to Establish Thirteen Additional Manatee Protection Areas in Florida" (RIN1018–AH80) received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9766. a communication from the Deputy Assistant Secretary, Fish and Wildlife Service, Department of Interior, transmitting, pursuant to law, the report of a rule entitled "Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Eriodictyon capitatum (Lompoc yerda santa) and Deinandra increases ssp. villosa (Gaviota tarplant)" (RIN1018–AG88) received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9767. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled "Enforcement First for Remedial Action at Superfund Sites" received on November 13, 2002; to the Committee on Environment and Public Works.

EC–9768. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Motor Vehicle Emissions Budgets in Progress, Attainments and Maintenance State Implementation Plans for Ozone, Carbon Monoxide and Nitrogen Dioxide, California" (FRL 7408–5) received on November 13, 2002; to the Committee on Environment and Public Works.

EC–9769. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans for Kentucky; Approval of

Revisions to Jefferson County Portion of the Kentucky State Implementation Plan" (FRL7409-1) received on November 13, 2002; to the Committee on Environment and Public Works.

EC-9770. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standard for Hazardous Air Pollutants: Paper and Other Web Coating" (FRL 7385-5) received on November 13, 2002; to the Committee on Environment and Public Works.

EC-9771. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Georgia: Final Authorization of State Hazardous Waste Management Program Revision" (FRL 7409-2) received on November 13, 2002; to the Committee on Environment and Public Works.

EC-9772. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Guidelines Establishing Test Procedures for the Analysis of Pollutants; Whole Effluent Toxicity Test Methods; Final Rule" (FRL 7408-6) received on November 13, 2002; to the Committee on Environment and Public Works.

EC-9773. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District" (FRL 7395-8) received on November 12, 2002; to the Committee on Environment and Public Works.

EC-9774. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; Texas; Environmental Speed Limit Revision; and Voluntary Mobile Emission Reduction Program commitment for the Houston/Galveston (HG) Ozone Nonattainment Area" (FRL 7407-1) received November 13, 2002; to the Committee on Environment and Public Works.

EC-9775. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans, Pennsylvania; Revisions to Allegheny County Articles XX and XXI" (FRL 7391-6) received on November 13, 2002; to the Committee on Environment and Public Works.

EC-9776. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Designation of Areas for Air Quality Planning Purposes; Redesignation of Particulate Matter Unclassifiable Areas; Redesignation of Hydrographic Areas 61 for Particulate Matter, Sulfer Dioxide, and Nitrogen Dioxide; State of Nevada" (FRL 7408-2) received on November 12, 2002 ; to the Committee on Environment and Public Works.

EC-9777. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; South Carolina; Adoption of Revision Governing Credible Evidence and Removal of Standard 8" (FRL 7406-7) received on November 12, 2002; to the Committee on Environment and Public Works.

EC-9778. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; State of Washington; Yakima Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes" (FRL 7267-8) received on November 7, 2002; to the Committee on Environment and Public Works.

EC-9779. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; State of Iowa" (FRL 7403-7) received on November 7, 2002; to the Committee on Environment and Public Works.

EC-9780. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans; State of Kansas" (FRL 7401-4) received on November 7, 2002; to the Committee on Environment and Public Works.

EC-9781. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Acquisition Regulation: Contractor Performance Evaluation" (FRL 7402-8) received on November 7, 2002; to the Committee on Environment and Public Works.

EC-9782. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Determination of Attainment of 1-hour Ozone Standard as of November 15, 1993, for the Birmingham, Alabama, Marginal Ozone Nonattainment Area" (FRL 7403-5) received on November 7, 2002; to the Committee on Environment and Public Works.

EC-9783. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report entitled "Implementation Guidance for Radionuclides" received on November 7, 2002; to the Committee on Environment and Public Works.

EC-9784. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works" (FRL 7394-7) received on October 28, 2002; to the Committee on Environment and Public Works.

EC-9785. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Air Quality Implementation Plans; State of Idaho; Northern Ada County Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes" (FRL 7398-1) received on October 28, 2002; to the Committee on Environment and Public Works.

EC-9786. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans North Carolina: Approval of Miscellaneous Revisions to Regulation Within the North Carolina State Implementation Plan" (FRL7395-5) received on October 28, 2002; to the Committee on Environment and Public Works.

EC-9787. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans North Carolina: Approval of Miscellaneous Revisions to Regulations Within the Forsyth County Local Implementation Plan" (FRL 7395-3) received on October 28, 2002; to the Committee on Environment and Public Works.

EC-9788. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Approval and Promulgation of Implementation Plans State of North Carolina: Approval of Miscellaneous Revisions to the Meeklenburg County Air Pollution Control Ordinance" (FRL7395-7) received on October 28, 2002; to the Committee on Environment and Public Works.

EC-9789. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Determination of Attainment of the 1 Hour Ozone Standard for San Diego County, California" (FRL 7397-5) received on October 28, 2002; to the Committee on Environment and Public Works.

EC-9790. A communication from the Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled "Finding of Attainment for PM20; Wallula PM10 Nonattainment Area, Washington" (FRL 7397-1) received on October 28, 2002 ; to the Committee on Environment and Public Works.

EC-9791. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Protection of Human Research Subjects" (RIN0925-AA14) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9792. A communication from the Regulations Officer, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Acquisition Regulation Revision" received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9793. A communication from the Regulations Officer, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Requirements for Facilities Transferring or Receiving Select Agents" (RIN0920-AA02) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9794. A communication from the Regulations Officer, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Compliance Alternatives for Provision of Uncompensated Services" (RIN0906-AA52) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9795. A communication from the Regulations Officer, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Head Start Program" (RIN0970-AB24) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC-9796. A communication from the Regulations Officer, Department of Health and

Human Services, transmitting, pursuant to law, the report of a rule entitled "Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction" (RIN0910–AA52) received on October 22, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9797. A communication from the Regulations Officer, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Ricky Ray Hemophilia Relief Fund Program" (RIN0906–AA56) received on October 21, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9798. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Listing of Color Additives Exempt from Certification; Mica-Based Pearlescent Pigments" (Doc. No. 00C–1321) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9799. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Amendment to Examination and Investigation Sample Requirements" (Doc. No. 98N–0417) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9800. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Postmarketing Studies for Approved Human Drug and Licensed Biological Products; Status Reports; Delay of Effective Date" (RIN99N–1852) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9801. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and not Misbranded" (RIN0910–AA01) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9802. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Uniform Compliance Date for Food Labeling Regulations" (Doc. No. 98N–1149) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9803. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Hematology and Pathology Devices; Reclassification; Restricted Devices; OTC Test Sample Collection Systems for Drugs of Abuse Testing; Delay of Effective Date" (Doc. No. 97N–0135) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9804. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Indirect Food Additives: Adhesives and Components of Coating" (Doc. No. 92F–0443); to the Committee on Health, Education, Labor, and Pensions.

EC–9805. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Postmarket Surveillance" (Doc. No. 00N–1367) received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9806. A communication from the Director, Regulations and Policy Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled "Medical Devices; Reclassification and Codification of Uterine Activity Monitor" (Doc. No. 97P–0350); to the Committee on Health, Education, Labor, and Pensions.

EC–9807. A communication from the Director, Occupational Safety and Health Administration, Department of Labor, transmitting the report of a rule entitled "Exit Routes, Emergency Action Plans, and Fire Prevention Plans" (RIN1218–AB82) received on November 12, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9808. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of rule entitled "Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits" received on November 13, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9809. A communication from the Acting Assistant General Counsel for Regulations, Office of the General Counsel, Department of Education, transmitting, pursuant to law, the report of rule entitled "Adjustment of Civil Monetary Penalties for Inflation" (34 CFR Part 36) received on November 14, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9810. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report entitled "Community Services Block Grant Program Report to Congress Fiscal Year 1999" received on November 7, 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–9811. A communication from the Attorney General of the United States, transmitting, a report relative to deterring, detecting, and punishing unauthorized disclosures of United States national security secrets; to the Select Committee on Intelligence.

EC–9812. A communication from the Chairman, Defense Nuclear Facilities Safety Board, transmitting, a report relative to the Federal Managers' Financial Integrity Act and the status of internal audit and investigative activities; to the Committee on Governmental Affairs.

EC–9813. A communication from the Chairman, Appraisal Subcommittee, Federal Financial Institutions Examination Council, transmitting, pursuant to law, a report entitled "Financial Statements and Independent Auditors' Report"; to the Committee on Governmental Affairs.

EC–9814. A communication from the Secretary, American Battle Monuments Commission, transmitting, pursuant to law, the Annual Report of the American Battle Monuments Commission; to the Committee on Governmental Affairs.

EC–9815. A communication from the Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury, transmitting, pursuant to law, the report on the Fair Act Commercial Activities Inventory for 2002; to the Committee on Governmental Affairs.

EC–9816. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Suspension of Community Eligibility" [67 FR 63271] (Doc. No. FEMA–7793) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9817. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determination" [67 FR 63275] received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9818. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determination" [67 FR 63849](44 CFR Part 67) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9819. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determination" [67 FR 63829](44 CFR part 65) received on November 13, 2002 ; to the Committee on Banking, Housing, and Urban Affairs.

EC–9820. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Changes in Flood Elevation Determinations" [67 FR 63834](Doc. No. FEMA–P7616) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9821. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Final Flood Elevation Determinations" [67 FR 63837] received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9822. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "National Flood Insurance Program; Group Flood Insurance Policy" [67 FR 61460] (RIN3067–AD31) received on November 12, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9823. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Disaster Assistance; Federal Assistance to Individuals and Households" [67 FR 61446] (RIN3067–AD25) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9824. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled "Disaster Assistance; Federal Assistance to Individuals and Households; Correction" [67 FR 62896](RIN 3067–AD25) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9825. A communication from the Assistant General Counsel for Regulations, Office of Public and Indian Housing, Department of Housing and Urban Development, transmitting, the report of a rule entitled "Section 8

Homeownership Program: Downpayment Assistance Grants and Streamlining Amendments" (RIN2577–AC28) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9826. A communication from the Assistant General Counsel for Regulations, Office of the Secretary, Department of Housing and Urban Development, transmitting, the report of a rule entitled "Testimony of Employees in Legal Proceedings" (RIN2501–AC90) received on October 23, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9827. A communication from the Assistant General Counsel for Regulations, Office of Public and Indian Housing, Department of Housing and Urban Development, transmitting, the report of a rule entitled "Clarification of Eligibility of Citizens of Freely Associated States for Housing Assistance" (RIN2577–AC35) received on November 13, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9828. A communication from the President of the United States, transmitting, pursuant to law, the periodic report on the national emergency with respect to Sudan that was declared in Executive Order 13067 of November 3, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–9829. A communication from the President of the United States, transmitting, pursuant to law, a report continuing the national emergency with respect to Sudan (Executive Order 13067); to the Committee on Banking, Housing, and Urban Affairs.

EC–9830. A communication from the Vice Chairman, Export-Import Bank, transmitting, pursuant to law, a report relative to transactions involving U.S. exports to Kenya; to the Committee on Banking, Housing, and Urban Affairs.

EC–9831. A communication from the Director, Financial Crimes Enforcement Network, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions" (RIN1506–AA28) received on November 7, 2002; to the Committee on Banking, Housing, and Urban Affairs.

EC–9832. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations, Lufkin and Tyler, TX" (Doc. No. 01–244)(Doc. No. 01–245) received on November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9833. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.606(b). table of Allotments, TV Broadcast Station, New Iberia, LA" (Doc. No. 02–153) received on November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9834. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations, Topeka, KS" (Doc. No. 02–154) received on November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9835. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations, Lewisburg, WVA" (Doc. No. 02–178) received on November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9836. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotment, DTV Broadcast Stations, Wiggins, MS" (Doc. No. 02–152) received November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9837. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations, Montgomery, AL" (Doc. No. 02–132) received on November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9838. A communication from the Senior Legal Advisor to the Bureau Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled "Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations, Des Moines, IA" (Doc. No. 02–130) received on November 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9839. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Inseason trip limit adjustments" (I.D. 092602B) received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9840. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries off the Exclusive Economic Zone Off Alaska-Closes Offshore Component of Pacific Cod in the Central Regulatory Area, Gulf of Alaska" received on November 7, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9841. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Economic Exclusive Zone Off Alaska; Closure for Trawl Gear in the Gulf of Alaska" received on November 13, 2002; to the Committee on Commerce, Science, and Transportation.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–361. A Resolution adopted by the House of the General Assembly of the State of North Carolina relative to a Tobacco Quota Buyout Program; to the Committee on Agriculture, Nutrition, and Forestry.

HOUSE RESOLUTION 1786

Whereas, the system of growing and marketing burley and flue-cured tobacco currently in place in the United States faces many challenges and changes due to contracting, lawsuits, governmental regulation, and foreign competition; and

Whereas, quota owners, tobacco growers, and the tobacco industry agree that a transition from the current system is needed to ensure continued tobacco production; and

Whereas, a plan of transition that is fair and equitable to all quota owners and tobacco growers is needed to provide stability, uniformity, and certainty for quota owners, growers, and the tobacco industry; and

Whereas, protecting family farmers and minority farmers and preserving the production of tobacco for economic viability in rural communities is an important goal of the State; and

Whereas, a buyout of the quota owners and tobacco growers would provide a significant and needed economic stimulus over a period of time in the State of North Carolina during a time of economic distress: Now, therefore, be it

Resolved by the House of Representatives:

Section 1. The House of Representatives urges the Congress of the United States and the President to support and enact legislation that would establish a fair and equitable transition program for quota owners and tobacco growers and the tobacco industry that would buy out quota owners and tobacco growers.

Section 2. The Principal Clerk shall transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate, and to each Senator and Representative from North Carolina in the Congress of the United States.

Section 3. This resolution is effective upon adoption.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 2945: To authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes. (Rept. No. 107–350).

NOMINATION DISCHARGED

The following nomination was discharged from the Committee on Rules and Administration pursuant to the order of November 20, 2002:

GOVERNMENT PRINTING OFFICE

Bruce R. James, of Nevada, to be Public Printer.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DODD:

S. 12. A bill to amend the Peace Corps Act to promote global acceptance of the principles of international peace and nonviolent coexistence among peoples of diverse cultures and systems of government; considered and passed.

By Mr. SARBANES (for himself, Mr. BOND, and Ms. MIKULSKI):

S. 13. A bill to extend authorization for the national flood insurance program; considered and passed.

By Mr. THURMOND (for himself, Mr. HELMS, Mr. HOLLINGS, Mr. MILLER, Mr. WARNER, and Mr. ALLEN):

S. 14. A bill to amend the Agricultural Adjustment Act of 1938 to extend the farm reconstitution provision to the 2003 and 2004 crops; considered and passed.

By Mr. KERRY (for himself, Mr. FRIST, Mr. BIDEN, and Mr. LEVIN):

S. 15. A bill to amend the Foreign Assistance Act of 1961 to increase assistance for foreign countries seriously affected by HIV/AIDS, tuberculosis, and malaria, and for other purposes; to the Committee on Foreign Relations.

By Mr. ROCKEFELLER (for himself, Mr. GRASSLEY, Mr. CHAFEE, Mr. KENNEDY, Mrs. CLINTON, Mr. BAYH, Mrs. HUTCHISON, and Mr. BAUCUS):

S. 3180. A bill to amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program (SCHIP); to the Committee on Finance.

By Mr. LEAHY (for himself and Ms. LANDRIEU):

S. 3181. A bill to amend the Consolidated Farm and Rural Development Act to ensure that the interest rate for direct loans paid by low income, limited resource borrowers is less than the interest rate for direct loans paid by other borrowers under the Act; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 361. A resolution tendering thanks of the Senate to the Vice President for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. DASCHLE (for himself and Mr. LOTT):

S. Res. 362. A resolution tendering the thanks of the Senate to the President pro tempore for the courteous, dignified, and impartial manner in which he has presided over the deliberations of the Senate; considered and agreed to.

By Mr. DASCHLE:

S. Res. 363. A resolution to commend the exemplary leadership of the Republican Leader; considered and agreed to.

By Mr. LOTT:

S. Res. 364. A resolution to commend the exemplary leadership of the Majority Leader; considered and agreed to.

By Mr. CHAFEE (for himself and Mr. DODD):

S. Res. 365. A resolution congratulating the people of Brazil on the completion of peaceful, free, and fair elections in Brazil and the election of President da Silva; considered and agreed to.

By Mr. NELSON of Florida (for himself, Mr. SMITH of Oregon, Mrs. CLINTON, Mr. HELMS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. ROCKEFELLER, Mr. VOINOVICH, Mr. HATCH, Mr. SCHUMER, and Ms. LANDRIEU):

S. Res. 366. A resolution urging the Government of Egypt and other Arab governments not to allow their government-controlled television stations to broadcast any program that lends legitimacy to the Protocols of the Elders of Zion, and for other purposes; considered and agreed to.

By Mr. HATCH (for himself and Mr. BARKLEY):

S. Res. 367. A resolution recognizing the community services of Archie Edwards Blues Heritage Foundation, designating the fortnight beginning November 29, 2002, as the "Blues Heritage Appreciation Fortnight", and designating Friday, November 29, 2002, as "Blues Friday"; considered and agreed to.

By Mr. LEAHY (for himself, Mr. DODD, Mr. SPECTER, and Mrs. FEINSTEIN):

S. Res. 368. A resolution expressing the Sense of the Senate concerning the decline of world coffee prices and its impact on developing nations; considered and agreed to.

By Mr. DASCHLE:

S. Con. Res. 160. A concurrent resolution providing for the sine die adjournment of the One Hundred Seventh Congress, Second Session; considered and agreed to.

ADDITIONAL COSPONSORS

S. 2039

At the request of Mr. DURBIN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2039, a bill to expand aviation capacity in the Chicago area.

S. 2577

At the request of Mr. GRASSLEY, his name was added as a cosponsor of S. 2577, a bill to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime.

S. 2945

At the request of Mr. LEVIN, his name was added as a cosponsor of S. 2945, To authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 3018

At the request of Mr. BAUCUS, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 3018, a bill to amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare program, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DODD:

S. 12. A bill to amend the Peace Corps Act to promote global acceptance of the principles of international peace and nonviolent coexistence among peoples of divers cultures and systems of government; considered and passed.

Mr. DODD. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection the bill was ordered to be printed in the RECORD, as follows:

S. 12

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Peace Corps Charter for the 21st Century Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Peace Corps was established in 1961 to promote world peace and friendship through the service of American volunteers abroad.

(2) The three goals codified in the Peace Corps Act which have guided the Peace Corps and its volunteers over the years, can work in concert to promote global acceptance of the principles of international peace and nonviolent coexistence among peoples of diverse cultures and systems of government.

(3) The Peace Corps has operated in 135 countries with 165,000 Peace Corps volunteers since its establishment.

(4) The Peace Corps has sought to fulfill three goals, as follows: to help people in developing nations meet basic needs, to promote understanding of America's values and ideals abroad, and to promote an understanding of other peoples by Americans.

(5) After more than 40 years of operation, the Peace Corps remains the world's premier international service organization dedicated to promoting grassroots development.

(6) The Peace Corps remains committed to sending well trained and well supported Peace Corps volunteers overseas to promote peace, friendship, and international understanding.

(7) The Peace Corps is an independent agency, and therefore no Peace Corps personnel or volunteers should be used to accomplish any other goal than the goals established by the Peace Corps Act.

(8) The Crisis Corps has been an effective tool in harnessing the skills and talents for returned Peace Corps volunteers and should be expanded to utilize to the maximum extent the talent pool of returned Peace Corps volunteers.

(9) The Peace Corps is currently operating with an annual budget of $275,000,000 in 70 countries with 7,000 Peace Corps volunteers.

(10) There is deep misunderstanding and misinformation about American values and ideals in many parts of the world, particularly those with substantial Muslim populations, and a greater Peace Corps presence in such places could foster greater understanding and tolerance.

(11) Congress has declared that the Peace Corps should be expanded to sponsor a minimum of 10,000 Peace Corps volunteers.

(12) President George W. Bush has called for the doubling of the number of Peace Corps volunteers in service.

(13) Any expansion of the Peace Corps shall not jeopardize the quality of the Peace Corps volunteer experience, and therefore can only be accomplished by an appropriate increase in field and headquarters support staff.

(14) In order to ensure that proposed expansion of the Peace Corps preserves the integrity of the program and the security of volunteers, the integrated Planning and Budget System supported by the Office of Planning and Policy Analysis should continue its focus on strategic planning.

(15) A streamlined, bipartisan National Peace Corps Advisory Council composed of distinguished returned Peace Corps volunteers and other individuals, with diverse backgrounds and expertise, can be a source of ideas and suggestions that may be useful to the Director of the Peace Corps as he discharges his duties and responsibilities as head of the agency.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) DIRECTOR.—The term "Director" means the Director of the Peace Corps.

(3) PEACE CORPS VOLUNTEER.—The term "Peace Corps volunteer" means a volunteer or a volunteer leader under the Peace Corps Act.

(4) RETURNED PEACE CORPS VOLUNTEER.—The term "returned Peace Corps volunteer" means a person who has been certified by the Director as having served satisfactorily as a Peace Corps volunteer.

SEC. 4. RESTATEMENT OF INDEPENDENCE OF THE PEACE CORPS.

(a) IN GENERAL.—Section 2A of the Peace Corps Act (22 U.S.C. 2501–1) is amended by adding at the end the following new sentence: "As an independent agency, all recruiting of volunteers shall be undertaken primarily by the Peace Corps.".

(b) DETAILS AND ASSIGNMENTS.—Section 5(g) of the Peace Corps Act (22 U.S.C. 2504(g)) is amended by inserting after "*Provided*, That" the following: "such detail or assignment does not contradict the standing of Peace Corps volunteers as being independent: *Provided further*, That".

SEC. 5. REPORTS AND CONSULTATIONS.

(a) ANNUAL REPORTS; CONSULTATIONS ON NEW INITIATIVES.—Section 11 of the Peace Corps Act (22 U.S.C. 2510) is amended by striking the section heading and the text of section 11 and inserting the following:

"SEC. 11. ANNUAL REPORTS; CONSULTATIONS ON NEW INITIATIVES.

"(a) ANNUAL REPORTS.—The Director shall transmit to Congress, at least once in each fiscal year, a report on operations under this Act. Each report shall contain information—

"(1) describing efforts undertaken to improve coordination of activities of the Peace Corps with activities of international voluntary service organizations, such as the United Nations volunteer program, and of host country voluntary service organizations, including—

"(A) a description of the purpose and scope of any development project which the Peace Corps undertook during the preceding fiscal year as a joint venture with any such international or host country voluntary service organizations; and

"(B) recommendations for improving coordination of development projects between the Peace Corps and any such international or host country voluntary service organizations;

"(2) describing—

"(A) any major new initiatives that the Peace Corps has under review for the upcoming fiscal year, and any major initiatives that were undertaken in the previous fiscal year that were not included in prior reports to the Congress;

"(B) the rationale for undertaking such new initiatives;

"(C) an estimate of the cost of such initiatives; and

"(D) the impact on the safety of volunteers;

"(3) describing in detail the Peace Corp's plans for doubling the number of volunteers from 2002 levels, including a five-year budget plan for reaching that goal; and

"(4) describing standard security procedures for any country in which the Peace Corps operates programs or is considering doing so, as well as any special security procedures contemplated because of changed circumstances in specific countries, and assessing whether security conditions would be enhanced—

"(A) by colocating volunteers with international or local nongovernmental organizations; or

"(B) with the placement of multiple volunteers in one location.

"(b) CONSULTATIONS ON NEW INITIATIVES.—The Director of the Peace Corps should consult with the appropriate congressional committees with respect to any major new initiatives not previously discussed in the latest annual report submitted to Congress under subsection (a) or in budget presentations. Wherever possible, such consultations should take place prior to the initiation of such initiatives, but in any event as soon as practicable thereafter.".

(b) ONE TIME REPORT ON STUDENT LOAN FORGIVENESS PROGRAMS.—Not later than 30 days after the date of enactment of this Act, the Director shall submit to the appropriate congressional committees a report—

(1) describing the student loan forgiveness programs currently available to Peace Corps volunteers upon completion of their service; and

(2) comparing such programs with other Government-sponsored student loan forgiveness programs; and

(3) recommending any additional student loan forgiveness programs which could attract more applicants from more low and middle income applicants facing high student loan obligations.

SEC. 6. SPECIAL VOLUNTEER RECRUITMENT AND PLACEMENT FOR COUNTRIES WHOSE GOVERNMENTS ARE SEEKING TO FOSTER GREATER UNDERSTANDING BETWEEN THEIR CITIZENS AND THE UNITED STATES.

(a) REPORT.—Not later than 60 days after the date of enactment of this Act, the Director shall submit a report to the appropriate congressional committees describing the initiatives that the Peace Corps intends to pursue with eligible countries where the presence of Peace Corps volunteers would facilitate a greater understanding that there exists a universe of commonly shared human values and aspirations. Such report shall include—

(1) a description of the recruitment strategies to be employed by the Peace Corps to recruit and train volunteers with the appropriate language skills and interest in serving in such countries; and

(2) a list of the countries that the Director has determined should be priorities for special recruitment and placement of Peace Corps volunteers.

(b) USE OF RETURNED PEACE CORPS VOLUNTEERS.—Notwithstanding any other provision of law, the Director is authorized and strongly urged to utilize the services of returned Peace Corps volunteers having language and cultural expertise, including those returned Peace Corps volunteers who may have served previously in countries with substantial Muslim populations, in order to open or reopen Peace Corps programs in such countries.

SEC. 7. GLOBAL INFECTIOUS DISEASES INITIATIVE.

(a) IN GENERAL.—The Director, in cooperation with international public health experts such as the Centers for Disease Control and Prevention, the National Institutes of Health, the World Health Organization, the Pan American Health Organization, and local public health officials shall develop a program of training for all Peace Corps volunteers in the areas of education, prevention, and treatment of infectious diseases in order to ensure that all Peace Corps volunteers make a contribution to the global campaign against such diseases.

(b) DEFINITIONS.—In this section:

(1) AIDS.—The term "AIDS" means the acquired immune deficiency syndrome.

(2) HIV.—The term "HIV" means the human immunodeficiency virus, the pathogen that causes AIDS.

(3) HIV/AIDS.—The term "HIV/AIDS" means, with respect to an individual, an individual who is infected with HIV or living with AIDS.

(4) INFECTIOUS DISEASES.—The term "infectious diseases" means HIV/AIDS, tuberculosis, and malaria.

SEC. 8. PEACE CORPS ADVISORY COUNCIL.

Section 12 of the Peace Corps Act (22 U.S.C. 2511; relating to the Peace Corps National Advisory Council) is amended—

(1) by amending subsection (b)(2)(D) to read as follows:

"(D) make recommendations for utilizing the expertise of returned Peace Corps volunteers in fulfilling the goals of the Peace Corps.";

(2) in subsection (c)—

(A) in paragraph (2)(A)—

(i) in the first sentence, by striking "fifteen" and inserting "seven"; and

(ii) by striking the second sentence and inserting the following: "Four of the members shall be former Peace Corps volunteers, at least one of whom shall have been a former staff member abroad or in the Washington headquarters, and not more than four shall be members of the same political party.";

(B) by amending subparagraph (D) to read as follows:

"(D) The members of the Council shall be appointed to 2-year terms.";

(C) by striking subparagraphs (B) and (H); and

(D) by redesignating subparagraphs (C), (D), (E), (F), (G), and (I) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively;

(3) by amending subsection (g) to read as follows:

"(g) CHAIR.—The President shall designate one of the voting members of the Council as Chair, who shall serve in that capacity for a period not to exceed two years.";

(4) by amending subsection (h) to read as follows:

"(h) MEETINGS.—The Council shall hold a regular meeting during each calendar quarter at a date and time to be determined by the Chair of the Council."; and

(5) by amending subsection (i) to read as follows:

"(i) REPORT.—Not later than July 30, 2003, and annually thereafter, the Council shall submit a report to the President and the Director of the Peace Corps describing how the Council has carried out its functions under subsection (b)(2).".

SEC. 9. READJUSTMENT ALLOWANCES.

The Peace Corps Act is amended—

(1) in section 5(c) (22 U.S.C. 2504(c)), by striking "$125" and inserting "$275"; and

(2) in section 6(1) (22 U.S.C. 2505(1)), by striking "$125" and inserting "$275".

SEC. 10. PROGRAMS AND PROJECTS OF RETURNED PEACE CORPS VOLUNTEERS TO PROMOTE THE GOALS OF THE PEACE CORPS.

(a) Purpose.—The purpose of this section is to provide support for returned Peace Corps volunteers to develop and carry out programs and projects to promote the third purpose of the Peace Corps Act, as set forth in section 2(a) of that Act (22 U.S.C. 2501(a)), by promoting a better understanding of other peoples on the part of the American people.

(b) Grants to Certain Nonprofit Corporations.—

(1) Grant authority.—To carry out the purpose of this section, and subject to the availability of appropriations, the Chief Executive Officer of the Corporation for National and Community Service (referred to in this section as the "Corporation") shall award grants on a competitive basis to private nonprofit corporations for the purpose of enabling returned Peace Corps volunteers to use their knowledge and expertise to develop and carry out the programs and projects described in subsection (a).

(2) Programs and projects.—Such programs and projects may include—

(A) educational programs designed to enrich the knowledge and interest of elementary school and secondary school students in the geography and cultures of other countries where the volunteers have served;

(B) projects that involve partnerships with local libraries to enhance community knowledge about other peoples and countries; and

(C) audio-visual projects that utilize materials collected by the volunteers during their service that would be of educational value to communities.

(3) Eligibility for grants.—To be eligible to compete for grants under this section, a nonprofit corporation shall have a board of directors composed of returned Peace Corps volunteers with a background in community service, education, or health. The nonprofit corporation shall meet all appropriate Corporation management requirements, as determined by the Corporation.

(c) Grant Requirements.—Such grants shall be made pursuant to a grant agreement between the Corporation and the nonprofit corporation that requires that—

(1) the grant funds will only be used to support programs and projects described in subsection (a) pursuant to proposals submitted by returned Peace Corps volunteers (either individually or cooperatively with other returned volunteers);

(2) the nonprofit corporation will give consideration to funding individual programs or projects by returned Peace Corps volunteers, in amounts of not more than $100,000, under this section;

(3) not more than 20 percent of the grant funds made available to the nonprofit corporation will be used for the salaries, overhead, or other administrative expenses of the nonprofit corporation;

(4) the nonprofit corporation will not receive grant funds for programs or projects under this section for a third or subsequent year unless the nonprofit corporation makes available, to carry out the programs or projects during that year, non-Federal contributions—

(A) in an amount not less than $2 for every $3 of Federal funds provided through the grant; and

(B) provided directly or through donations from private entities, in cash or in kind, fairly evaluated, including plant, equipment, or services; and

(5) the nonprofit corporation shall manage, monitor, and submit reports to the Corporation on each program or project for which the nonprofit corporation receives a grant under this section.

(d) Status of the Fund.—Nothing in this section shall be construed to make any nonprofit corporation supported under this section an agency or establishment of the Federal Government or to make the members of the board of directors or any officer or employee of such nonprofit corporation an officer or employee of the United States.

(e) Factors in Awarding Grants.—In determining the number of nonprofit corporations to receive grants under this section for any fiscal year, the Corporation—

(1) shall take into consideration the need to minimize overhead costs that direct resources from the funding of programs and projects; and

(2) shall seek to ensure a broad geographical distribution of grants for programs and projects under this section.

(f) Congressional Oversight.—Grant recipients under this section shall be subject to the appropriate oversight procedures of Congress.

(g) Funding.—

(1) In general.—There is authorized to be appropriated to carry out this section $10,000,000. Such sum shall be in addition to funds made available to the Corporation under Federal law other than this section.

(2) Availability.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

Section 3(b)(1) of the Peace Corps Act (22 U.S.C. 2502(b)(1)) is amended—

(1) by striking "2002, and" and inserting "2002,"; and

(2) by inserting before the period the following: ", $362,000,000 for fiscal year 2004, $404,000,000 for fiscal year 2005, $446,000,000 for fiscal year 2006, and $488,000,000 for fiscal year 2007".

New bill to provide a Peace Corps Charter for the 21st Century introduced by Senator Dodd:

This bill is identical to S. 2667 which passed the Senate on October 16, 2002 except in section 11 where the President's authorizing requested numbers are substituted for the higher numbers included in S. 2667.

By Mr. SARBANES (for himself, Mr. Bond, and Ms. Mikulski):

S. 13. A bill to extend authorization for the national flood insurance program; considered and passed.

Mr. SARBANES. I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection the bill was ordered to be printed in the Record, as follows.

S. 13

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION FOR THE NATIONAL FLOOD INSURANCE PROGRAM.

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended—

(1) in section 1309(a)(2) (42 U.S.C. 4016(a)(2)), by striking "December 31, 2002" and inserting "December 31, 2003";

(2) in section 1319 (42 U.S.C. 4026), by striking "December 31, 2002" and inserting "December 31, 2003";

By Mr. THURMOND (for himself, Mr. Helms, Mr. Hollings, Mr. Miller, Mr. Warner, and Mr. Allen):

S. 14. A bill to amend the Agricultural Adjustment Act of 1938 to extend the farm reconstitution provision to the 2003 and 2004 crops; considered and passed.

Mr. THURMOND. I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection the bill was ordered to be printed in the Record, as follows.

S. 14

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FARM RECONSTITUTIONS.

Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(a)(1)(A)(ii)) is amended in the last sentence by striking "2002 crop" and inserting "2002, 2003, and 2004 crops".

By Mr. ROCKEFELLER (for himself, Mr. Grassley, Mr. Chafee, Mr. Kennedy, Mrs. Clinton, Mr. Bayh, Mrs. Hutchison, and Mr. Baucus):

S. 3180. A bill to amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program (SCHIP); to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I rise today to introduce a bill that will improve and protect health insurance for out Nation's children. Earlier this year, I worked in a bipartisan manner to develop a comprehensive proposal based on the basic and fundamental philosophy that no child should go without needed health care. I was pleased at that time to be joined by my good friends Senator Chafee, Senator Kennedy, and Senator Hatch to introduce the Children's Health Insurance Improvement and Protection Act of 2002.

Unfortunately, no action has been taken on that proposal and I am left worrying that we will end the 107th session of Congress having forgotten our children. Therefore, I am introducing a proposal that will at least protect the Children's Health Insurance Program for the next 2 years.

The Children's Health Insurance Program, CHIP, has been an unqualified success. Last year, 4.6 million children were enrolled in CHIP and the percentage of children without health insurance has declined in recent years. In my State of West Virginia, the CHIP program provides health coverage to over 20,000 children. Health insurance coverage is key to assuring children's access to appropriate and adequate health care, including preventive services. Research demonstrates that uninsured children are more likely to lack a usual source of care, to go without needed care, and to experience worse health outcomes than children with coverage. Uninsured children who are injured are 30 percent less likely than insured children to receive medical treatment and three times more likely not to get a needed prescription.

However, the continued success of the CHIP program is now in serious jeopardy. On September 30 of this year $1.2 billion in unspent CHIP funds was sent back to the General Treasury. In addition, some $1.5 billion of these funds are projected to revert back to the Treasury next September 30. If we do not act to protect this money for children and send money to the States that can use it, we will have failed our children. A 2-year fix is only a first step. There is more that we need to do. The Bush administration projects that 900,000 children will lose their health coverage between fiscal years 2003 and 2006, if Congress does not take appropriate action. This is because even as State enrollment and spending rapidly increases, Federal CHIP funding dropped by more than $1 billion this year and will be reduced in each of the next 2 years. Known as the "CHIP Dip," this reduction has no underlying health policy justification; it was solely the result of the budget compromises we had to make when enacting the balance budget deal in 1997.

As a result, a number of States will have insufficient Federal funding to sustain their enrollment and they will have no choice but to scale back or limit their CHIP programs. As enrollment is cut, the number of uninsured children will increase, and as a consequence, sick children will get sicker. The biggest problem that will result from enrollment cuts in the CHIP program are the future health problems of adults who as children could have received benefits under CHIP.

The bill I am introducing today is only a first step that we must take this year. We need a comprehensive and reasonable approach to shore up CHIP financing in order to avert the devastating enrollment decline and make sure that our children are protected into the future. We need to put more money into this program. However, this legislation will protect $1.2 billion that should be spent on children's health insurance from being spent on roads and will put money in states that can use it now to cover kids. It is the least we can do.

I urge Congress to enact this legislation and ensure the continued success of the CHIP program and sustain the significant progress CHIP has made in reducing the ranks of uninsured children. I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3180

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENDING AVAILABILITY OF SCHIP ALLOTMENTS FOR FISCAL YEARS 1998 THROUGH 2001.

(a) Retained and Redistributed Allotments for Fiscal Years 1998 and 1999.—Paragraphs (2)(A)(i) and (2)(A)(ii) of section 2104(g) of the Social Security Act (42 U.S.C. 1397dd(g)) are each amended by striking "fiscal year 2002" and inserting "fiscal year 2004".

(b) Extension and Revision of Retained and Redistributed Allotments for Fiscal Year 2000.—

(1) Permitting and extending retention of portion of fiscal year 2000 allotment.—Paragraph (2) of such section 2104(g) is amended—

(A) in the heading, by striking "AND 1999" and inserting "THROUGH 2000"; and

(B) by adding at the end of subparagraph (A) the following:

"(iii) Fiscal year 2000 allotment.—Of the amounts allotted to a State pursuant to this section for fiscal year 2000 that were not expended by the State by the end of fiscal year 2002, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2004.".

(2) Redistributed allotments.—Paragraph (1) of such section 2104(g) is amended—

(A) in subparagraph (A), by inserting "or for fiscal year 2000 by the end of fiscal year 2002," after "fiscal year 2001,";

(B) in subparagraph (A), by striking "1998 or 1999" and inserting "1998, 1999, or 2000";

(C) in subparagraph (A)(i)—

(i) by striking "or" at the end of subclause (I),

(ii) by striking the period at the end of subclause (II) and inserting "; or"; and

(iii) by adding at the end the following new subclause:

"(III) the fiscal year 2000 allotment, the amount specified in subparagraph (C)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (C)(ii) for the State to the amount specified in subparagraph (C)(iii).";

(D) in subparagraph (A)(ii), by striking "or 1999" and inserting ", 1999, or 2000";

(E) in subparagraph (B), by striking "with respect to fiscal year 1998 or 1999";

(F) in subparagraph (B)(ii)—

(i) by inserting "with respect to fiscal year 1998, 1999, or 2000," after "subsection (e),"; and

(ii) by striking "2002" and inserting "2004"; and

(G) by adding at the end the following new subparagraph:

"(C) Amounts used in computing redistributions for fiscal year 2000.—For purposes of subparagraph (A)(i)(III)—

"(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2000, less the total amount remaining available pursuant to paragraph (2)(A)(iii);

"(ii) the amount specified in this clause for a State is the amount by which the State's expenditures under this title in fiscal years 2000, 2001, and 2002 exceed the State's allotment for fiscal year 2000 under subsection (b); and

"(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2000, of the amounts specified in clause (ii).".

(3) Conforming amendments.—Such section 2104(g) is further amended—

(A) in its heading, by striking "AND 1999" and inserting ", 1999, AND 2000"; and

(B) in paragraph (3)—

(i) by striking "or fiscal year 1999" and inserting ", fiscal year 1999, or fiscal year 2000"; and

(ii) by striking "or November 30, 2001" and inserting "November 30, 2001, or November 30, 2002", respectively.

(c) Extension and Revision of Retained and Redistributed Allotments for Fiscal Year 2001.—

(1) Permitting and extending retention of portion of fiscal year 2001 allotment.—Paragraph (2) of such section 2104(g), as amended in subsection (b)(1)(B), is further amended—

(A) in the heading, by striking "2000" and inserting "2001"; and

(B) by adding at the end of subparagraph (A) the following:

"(iv) Fiscal year 2001 allotment.—Of the amounts allotted to a State pursuant to this section for fiscal year 2001 that were not expended by the State by the end of fiscal year 2003, 50 percent of that amount shall remain available for expenditure by the State through the end of fiscal year 2005.".

(2) Redistributed allotments.—Paragraph (1) of such section 2104(g), as amended in subsection (b)(2), is further amended—

(A) in subparagraph (A), by inserting "or for fiscal year 2001 by the end of fiscal year 2003," after "fiscal year 2002,";

(B) in subparagraph (A), by striking "1999, or 2000" and inserting "1999, 2000, or 2001";

(C) in subparagraph (A)(i)—

(i) by striking "or" at the end of subclause (II),

(ii) by striking the period at the end of subclause (III) and inserting "; or"; and

(iii) by adding at the end the following new subclause:

"(IV) the fiscal year 2001 allotment, the amount specified in subparagraph (D)(i) (less the total of the amounts under clause (ii) for such fiscal year), multiplied by the ratio of the amount specified in subparagraph (D)(ii) for the State to the amount specified in subparagraph (D)(iii).";

(D) in subparagraph (A)(ii), by striking "or 2000" and inserting "2000, or 2001";

(E) in subparagraph (B)—

(i) by striking "and" at the end of clause (ii);

(ii) by redesignating clause (iii) as clause (iv); and

(iii) by inserting after clause (ii) the following new clause:

"(iii) notwithstanding subsection (e), with respect to fiscal year 2001, shall remain available for expenditure by the State through the end of fiscal year 2005; and"; and

(F) by adding at the end the following new subparagraph:

"(D) Amounts used in computing redistributions for fiscal year 2001.—For purposes of subparagraph (A)(i)(IV)—

"(i) the amount specified in this clause is the amount specified in paragraph (2)(B)(i)(I) for fiscal year 2001, less the total amount remaining available pursuant to paragraph (2)(A)(iv);

"(ii) the amount specified in this clause for a State is the amount by which the State's expenditures under this title in fiscal years 2001, 2002, and 2003 exceed the State's allotment for fiscal year 2001 under subsection (b); and

"(iii) the amount specified in this clause is the sum, for all States entitled to a redistribution under subparagraph (A) from the allotments for fiscal year 2001, of the amounts specified in clause (ii).".

(3) Conforming amendments.—Such section 2104(g) is further amended—

(A) in its heading, by striking "AND 2000" and inserting "2000, AND 2001"; and

(B) in paragraph (3)—

(i) by striking "or fiscal year 2000" and inserting "fiscal year 2000, or fiscal year 2001"; and

(ii) by striking "or November 30, 2002," and inserting "November 30, 2002, or November 30, 2003,", respectively.

(d) EFFECTIVE DATE.—This section, and the amendments made by this section, shall be effective as if this section had been enacted on September 30, 2002, and amounts under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.) from allotments for fiscal years 1998 through 2000 are available for expenditure on and after October 1, 2002, under the amendments made by this section as if this section had been enacted on September 30, 2002.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 361—TENDERING THANKS OF THE SENATE TO THE VICE PRESIDENT FOR THE COURTEOUS, DIGNIFIED, AND IMPARTIAL MANNER IN WHICH HE HAS PRESIDED OVER THE DELIBERATIONS OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. RES. 361

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Richard B. Cheney, Vice President of the United States and President of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Seventh Congress.

SENATE RESOLUTION 362—TENDERING THE THANKS OF THE SENATE TO THE PRESIDENT PRO TEMPORE FOR THE COURTEOUS, DIGNIFIED, AND IMPARTIAL MANNER IN WHICH HE HAS PRESIDED OVER THE DELIBERATIONS OF THE SENATE

Mr. DASCHLE (for himself and Mr. LOTT) submitted the following resolution; which was considered and agreed to:

S. RES. 362

Resolved, That the thanks of the Senate are hereby tendered to the Honorable Robert C. Byrd, President pro tempore of the Senate, for the courteous, dignified, and impartial manner in which he has presided over its deliberations during the second session of the One Hundred Seventh Congress.

SENATE RESOLUTION 363—TO COMMAND THE EXEMPLARY LEADERSHIP OF THE REPUBLICAN LEADER

Mr. DASCHLE submitted the following resolution; which was considered and agreed to:

S. RES. 363

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Republican Leader, the Senator from Mississippi, the Honorable Trent Lott, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 107th Congress.

SENATE RESOLUTION 364—TO COMMEND THE EXEMPLARY LEADERSHIP OF THE MAJORITY LEADER

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 364

Resolved, That the thanks of the Senate are hereby tendered to the distinguished Majority Leader, the Senator from South Dakota, the Honorable Thomas A. Daschle, for his exemplary leadership and the cooperative and dedicated manner in which he has performed his leadership responsibilities in the conduct of Senate business during the second session of the 107th Congress.

SENATE RESOLUTION 365—CONGRATULATING THE PEOPLE OF BRAZIL ON THE COMPLETION OF PEACEFUL, FREE, AND FAIR ELECTIONS IN BRAZIL AND THE ELECTION OF PRESIDENT DA SILVA

Mr. CHAFEE (for himself and Mr. DODD) submitted the following resolution; which was considered and agreed to:

S. RES. 365

Whereas, in October 2002, the people of Brazil completed peaceful, free, and fair elections of a President and other officials of their country;

Whereas Luiz Inacio "Lula" da Silva, candidate of Brazil's Worker's Party, was elected President of Brazil on October 27, 2002, receiving 52,793,364 votes, representing 61.27 percent of the votes cast;

Whereas Brazil utilized a new nationwide computerized voting system, which enabled the tallying of approximately 100,000,000 votes in less than 10 hours, including votes cast in areas that are accessible only by boat or plane;

Whereas Brazil has a population of 174,500,000, making it the eighth most populous nation in the world and the most populous nation in Latin America;

Whereas Brazil's diversified economy is the eighth largest in the world, and Brazil's gross domestic product, which was $540,000,000,000 in 2001, is the largest in Latin America;

Whereas Brazil plays a critical regional leadership role in Latin America within the Organization of American States, the Inter-American Treaty of Reciprocal Assistance (commonly known as the "Rio Treaty"), the Latin American Integration Association, and Mercosur/Mercosul (Southern Common Market), and is one of the guarantors of the Peru-Ecuador peace process;

Whereas Brazil has been a member of the United Nations Security Council four times, most recently from 1998 through 2000, has contributed troops to several United Nations peacekeeping missions, and is an active participant in international cooperation and commerce as a party to numerous international treaties and conventions;

Whereas the economic relationship between Brazil and the United States is substantial and growing, with United States direct foreign investment increasing from less than $19,000,000,000 in 1994 to an estimated $35,000,000,000 in 2000, United States exports to Brazil increasing from $8,100,000,000 in 1994 to $15,900,000,000 in 2001, and United States imports from Brazil increasing from $8,700,000,000 in 1994 to $14,500,000,000 in 2001;

Whereas Brazil will play a critical role in the continuing negotiations related to the creation of a Free Trade Area of the Americas, which the United States and Brazil will co-chair during the next two years;

Whereas the United States and Brazil have a long history of friendly relations beginning when the United States became the first country to recognize Brazil's independence in 1822;

Whereas Brazil led the parties to the Inter-American Treaty of Reciprocal Assistance in stating on September 11, 2001, that the attacks on the United States on that date were attacks on all American States;

Whereas there are an estimated 50,000 United States citizens residing in Brazil, and some 150,000 United States citizens visit Brazil each year;

Whereas the United States and Brazil have entered into many agreements together, including the Education Partnership Agreement, the Technical Safeguards Agreement, the Common Agenda on the Environment, and agreements to cooperate in matters relating to energy, the international space station, national parks, and government reform; and

Whereas cooperation between the United States and Brazil on several counter-narcotics efforts, including the United States training of Brazilian counter-narcotics agents and Operation Cobra in northern Brazil, has increased significantly in recent years: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the people of Brazil on successfully completing peaceful, free, and fair elections on October 6, 2002, and October 22, 2002;

(2) congratulates President-elect Luiz Inacio "Lula" da Silva on his electoral victory and welcomes him as a democratic partner in the numerous bilateral and multilateral efforts to which the United States and Brazil are parties;

(3) endorses President Bush's invitation of President-elect da Silva to Washington, District of Columbia, which will result in a meeting between the two leaders on December 10, 2002;

(4) urges President Bush and President-elect da Silva to pursue policies on economic, security, drug enforcement, and other matters of mutual interest to Brazil and the United States that will continue to strengthen the relationship between the people and governments of the two countries; and

(5) pledges the Senate's continued support for a strong and friendly economic, political, and cultural relationship between the United States and Brazil based on shared values.

SENATE RESOLUTION 366—URGING THE GOVERNMENT OF EGYPT AND OTHER ARAB GOVERNMENTS NOT TO ALLOW THEIR GOVERNMENT-CONTROLLED TELEVISION STATIONS TO BROADCAST ANY PROGRAM THAT LENDS LEGITIMACY TO THE PROTOCOLS OF THE ELDERS OF ZION, AND FOR OTHER PURPOSES

Mr. NELSON of Florida (for himself, Mr. SMITH of Oregon, Mrs. CLINTON, Mr. HELMS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. ROCKEFELLER, Mr. VOINOVICH, Mr. HATCH, Mr. SCHUMER, and Ms. LANDRIEU) submitted the following resolution; which was considered and agreed to:

S. RES. 366

Whereas in November 2002, a number of government-controlled television stations in Egypt began broadcasting a multi-part series, "Horseman Without a Horse", based on the Protocols of the Elders of Zion and conspiracy myths about Jewish global domination;

Whereas the Protocols of the Elders of Zion are a notorious forgery, written by Russian anti-Semites in the early 20th century, which purport to reveal a plot for Jewish domination of the world;

Whereas the Protocols of the Elders of Zion have been a staple of anti-Semitic and anti-Israel propaganda for decades and have long since been discredited by all reputable scholars;

Whereas the broadcast of this series takes place in the context of a sustained pattern of vitriolic anti-Semitic commentary and depictions in the Egyptian government-sponsored press, which has gone unanswered by the Government of Egypt; and

Whereas the Department of State has urged Egypt and other Arab states not to broadcast this program, saying "We don't think government TV stations should be broadcasting programs that we consider racist and untrue": Now, therefore, be it

Resolved, That the Senate—

(1) condemns any publication or program that lends legitimacy to the Protocols of the Elders of Zion;

(2) believes the use of such heinous propaganda, especially in the Arab world, serves to incite popular sentiment against Jewish people and the State of Israel rather than promoting religious tolerance and preparing Arab populations for the prospect of peace with Israel;

(3) commends the Department of State for its denunciation of the "Horseman Without a Horse" television series and its efforts to discourage Arab states from broadcasting it; and

(4) urges the Government of Egypt and other Arab governments—

(A) not to allow their government-controlled television stations to broadcast this program or any other racist and untrue material; and

(B) to speak out against such incitement by vigorously and publicly condemning anti-Semitism as a form of bigotry.

SENATE RESOLUTION 367—RECOGNIZING THE COMMUNITY SERVICES OF ARCHIE EDWARDS BLUES HERITAGE FOUNDATION, DESIGNATING THE FORTNIGHT BEGINNING NOVEMBER 29, 2002, AS THE "BLUES HERITAGE APPRECIATION FORTNIGHT", AND DESIGNATING FRIDAY, NOVEMBER 29, 2002, AS "BLUES FRIDAY"

Mr. HATCH (for himself and Mr. BARKLEY) submitted the following resolution; which was considered and agreed to:

S. RES. 367

Whereas Mr. Archie Edwards was a talented musician who devoted his life to playing the blues and inspiring others to learn and appreciate music;

Whereas Mr. Archie Edwards was a self-taught musician whose music was acclaimed throughout the United States, Canada, and Europe;

Whereas Mr. Archie Edwards, for 40 years, provided a haven in the District of Columbia for all those who loved the blues to play, listen, and socialize;

Whereas the Archie Edwards Blues Heritage Foundation is a nonprofit organization dedicated to preserving Mr. Edwards' memory and extending the positive influence of his music in the Washington, D.C. community;

Whereas the Archie Edwards Blues Heritage Foundation is committed to carrying on Mr. Edwards' legacy by maintaining an open forum for people in the community to meet, learn, and share the music he loved;

Whereas the Archie Edwards Blues Heritage Foundation supports and expands community outreach programs that provide entertainment and promote the blues to citizens in nursing homes, schools, hospitals, and other venues; and

Whereas the Archie Edwards Blues Heritage Foundation recognizes the importance that the blues has played in our country's heritage and has preserved and promoted the blues as a unique American art form: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the community services of the Archie Edwards Blues Heritage Foundation;

(2) recognizes the importance of blues in the history of American culture;

(3) designates the fortnight beginning November 29, 2002, as the "Blues Heritage Appreciation Fortnight"; and

(4) designates Friday, November 29, 2002, as "Blues Friday".

SENATE RESOLUTION 368—EXPRESSING THE SENSE OF THE SENATE CONCERNING THE DECLINE OF WORLD COFFEE PRICES AND ITS IMPACT ON DEVELOPING NATIONS

Mr. LEAHY (for himself, Mr. DODD, Mr. SPECTER, and Mrs. FEINSTEIN) submitted the following resolution; which was considered and agreed to:

S. RES. 368

Whereas since 1997 the price of coffee has declined nearly 70 percent on the world market and has recently reached its lowest level in a century;

Whereas the collapse of coffee prices has resulted in a widespread humanitarian crisis for 25,000,000 coffee growers and for more than 50 developing countries where coffee is a critical source of rural employment and foreign exchange earnings;

Whereas, according to a recent World Bank report, 600,000 permanent and temporary coffee workers in Central America have been left unemployed in the last two years;

Whereas the World Bank has referred to the coffee crisis as "the silent Mitch", equating the impact of record-low coffee prices upon Central American countries with the damage done to such countries by Hurricane Mitch in 1998;

Whereas 6 of 14 immigrants who died in the Arizona desert in May 2001 were small coffee farmers from Veracruz, Mexico;

Whereas The Washington Post, The New York Times, and The Wall Street Journal report that cultivation of illicit crops such as coca and opium poppy is increasing in traditional coffee-growing countries, such as Colombia and Peru, which have been adversely affected by low international coffee prices;

Whereas the economies of some of the poorest countries in the world, particularly those in Africa, are highly dependent on trade in coffee;

Whereas coffee accounts for approximately 80 percent of export revenues for Burundi, 54 percent of export revenues for Ethiopia, 34 percent of export revenues for Uganda, and 31 percent of export revenues for Rwanda;

Whereas, according to the Oxfam International Report "Mugged: Poverty in your Coffee Cup", in the Dak Lak province of Vietnam, one of the lowest-cost coffee producers in the world, the price farmers receive for their product covers as little as 60 percent of their costs of production;

Whereas on February 1, 2002, the International Coffee Organization (ICO) passed Resolution 407, which calls on exporting member countries to observe minimum standards for exportable coffee and to provide for the issuance of ICO certificates of origin according to those standards and also calls on importing member countries to "make their best endeavors to support the objectives of the programme";

Whereas both the Speciality Coffee Association of America (SCAA) and the National Coffee Association (NCA) support ICO Resolution 407 and have publicly advocated for the United States to rejoin the International Coffee Organization;

Whereas the United States Agency for International Development (USAID) has already established coffee sector assistance programs for Colombia, Bolivia, the Dominican Republic, East Timor, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Rwanda, Tanzania, and Uganda; and

Whereas House Report 107-663, highlights the coffee price crisis as a global issue and "urges USAID to focus its rural development and relief programs on regions severely affected by the coffee crisis, especially in Colombia": Now, therefore, be it

Resolved, That—

(1) it is the sense of the Senate that—

(A) the United States should adopt a global strategy to respond to the coffee crisis with coordinated activities in Latin America, Africa, and Asia to address the short-term humanitarian needs and long-term rural development needs of counties adversely affected by the collapse of coffee prices; and

(B) the President should explore measures to support and complement multilateral efforts to respond to the global coffee crisis; and

(2) the Senate urges private sector coffee buyers and roasters to work with the United

States Government to find a solution to the crisis which is economically, socially, and environmentally sustainable for all interested parties, and that will address the fundamental problem of oversupply in the world coffee market.

SENATE CONCURRENT RESOLUTION 160—PROVIDING FOR THE SINE DIE ADJOURNMENT OF THE ONE HUNDRED SEVENTH CONGRESS, SECOND SESSION

Mr. DASCHLE submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 160

Resolved by the Senate (the House of Representatives concurring), That when the Senate adjourns at the close of business on any day from Wednesday, November 20, 2002 through Saturday, November 23, 2002, or from Monday, November 25, 2002 through Wednesday, November 27, 2002, or on a motion offered pursuant to this concurrent resolution by its Majority Leader, or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House of Representatives adjourns on any legislative day through the remainder of the second session of the One Hundred Seventh Congress on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4979. Mr. REID (for Mr. BIDEN (for himself and Mr. SPECTER)) proposed an amendment to the bill S. 3079, to authorize the issuance of immigrant visas to, and the admission to the United States for permanent residence of, certain scientists, engineers, and technicians who have worked in Iraqi weapons of mass destruction programs.

SA 4980. Mr. REID (for Mr. INOUYE (for himself and Mr. CAMPBELL)) proposed an amendment to the bill S. 2711, to reauthorize and improve programs relating to Native Americans.

SA 4981. Mr. REID (for Mr. INOUYE) proposed an amendment to amendment SA 4980 proposed by Mr. REID (for Mr. INOUYE (for himself and Mr. CAMPBELL)) to the bill S. 2711, supra.

SA 4982. Mr. REID (for Mr. KERRY (for himself and Mr. HOLLINGS)) proposed an amendment to the bill H.R. 1989, to reauthorize various fishing conservation management programs, and for other purposes.

SA 4983. Mr. REID (for Mr. KERRY) proposed an amendment to the bill H.R. 1989, supra.

SA 4984. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 1606, to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for other purposes.

TEXT OF AMENDMENTS

SA. 4979. Mr. REID (for Mr. BIDEN (for himself and Mr. SPECTER)) proposed an amendment to the bill S. 3079, to authorize the issuance of immigrant visas to, and the admission to the United States for permanent residence of, certain scientists, engineers, and technicians who have worked in Iraqi weapons of mass destruction programs; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Iraqi Scientists Immigration Act of 2002".

SEC. 2. ADMISSION OF CRITICAL ALIENS.

(a) Section 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15), is amended—

(1) by striking "or" at the end of subparagraph (U);

(2) by striking the period at the end of subparagraph (V) and inserting "; or"; and

(3) by adding a new subparagraph (W), reading:

"(W) Subject to section 214(s), an alien—

"(i) who the Attorney General determines, in coordination with the Secretary of State, the Director of Central Intelligence and such other officials as he may deem appropriate, and in the Attorney General's unreviewable discretion, is an individual—

"(I) who has worked at any time in an Iraqi program to produce weapons of mass destruction or the means to deliver them;

"(II) who is in possession of critical and reliable information concerning any such Iraqi program;

"(III) who is willing to provide, or has provided, such information to the United States Government;

"(IV) who may be willing to provide, or has provided, such information to inspectors of the United Nations or of the International Atomic Energy Agency;

"(V) who will be or has been placed in danger as a result of providing such information; and

"(VI) whose admission would be in the public interest or in the interest of national security; or

"(ii) who is the spouse, married or unmarried son or daughter, parent, or other relative, as determined by the Attorney General in his unreviewable discretion, of an alien described in clause (i), if accompanying or following to join such alien, and whose admission the Attorney General, in coordination with the Secretary of State and the Director of Central Intelligence, determines in his unreviewable discretion is in the public interest or in the interest of national security."

(b) Section 214 of the Immigration and Nationality Act, 8 U.S.C. 1184, is amended by—

(1) redesignating subsections second (m) (as added by section 105 of Public Law 106–313), (n) (as added by section 107(e) of Public Law 106–386, (o) (as added by section 1513(c) of Public Law 106–386), second (o) (as added by section 1102(b) of the Legal Immigration Family Equity Act), and (p) (as added by section 1503(b) of the Legal Immigration Family Equity Act), as subsections (n), (o), (p), (q), and (r), respectively; and

(2) adding a new subsection (s) reading:

"(s) Numerical limitations and conditions of admission and stay for nonimmigrants admitted under section 101(a)(15)(W).

"(1) The number of aliens who may be admitted to the United States or otherwise granted status under section 101(a)(15)(W)(i) may not exceed a total of 500.

"(2) As a condition for the admission, and continued stay in lawful status, of any alien admitted to the United States or otherwise granted status as a nonimmigrant under section 101(a)(15)(W), the nonimmigrant—

"(A) shall report to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require;

"(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission or grant of status;

"(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of removal or for protection under the Convention Against Torture, any action for removal of the alien instituted before the alien obtains lawful permanent resident status;

"(D) shall cooperate fully with all requests for information from the United States Government including, but not limited to, fully and truthfully disclosing to the United States Government all information in the alien's possession concerning any Iraqi program to produce weapons of mass destruction or the means to deliver them; and

"(E) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.".

(c) Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255, is amended by—

(I) In subsection (c) striking "or" before "(8)" and inserting before the period, "or (9) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(W)";

(2) Redesignating subsection (l), related to "U" visa nonimmigrants, as subjection (m); and

(3) Adding a new subsection (n) reading:

"(n) Adjustment to permanent resident status of "W" nonimmigrants.

"(1) If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(W)(i) has complied with section 214(s) since such admission or grant of status, the Attorney General may, in coordination with the Secretary of State and the Director of Central Intelligence, and in his unreviewable discretion, adjust the status of the alien (and any alien who has accompanied or followed to join such alien pursuant to section 101(a)(15)(W)(ii) and who has complied with section 214(s) since admission or grant of nonimmigrant status) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

"(2) Upon the approval of adjustment of status of any alien under paragraph (1), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current.".

(d) Section 212(d) of the Immigration and Nationality Act, 8 U.S.C. 1182(d), is amended by inserting a new paragraph (d)(2) reading:

"(2) The Attorney General shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(W). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) in the case of such nonimmigrant if the Attorney General considers it to be in the public interest or in the interest of national security.".

(e) Section 248(1) of Immigration and Nationality Act, 8 U.S.C. 1258(1), is amended by striking "or (S)" and inserting "(S), or (W)".

SEC. 3. WEAPON OF MASS DESTRUCTION DEFINED.

(a) IN GENERAL.—In this Act, the term "weapon of mass destruction" has the meaning given the term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 110 Stat. 2727; 50 U.S.C. 2302(1)), as amended by subsection (b).

(b) TECHNICAL CORRECTION.—Section 1403(1)(B) of the Defense against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104-201; 110 Stat. 2717; 50 U.S.C. 2302(1)(B)) is amended by striking "a disease organism" and inserting "a biological agent, toxin, or vector (as those terms are defined in section 178 of title 18, United States Code)".

SA 4980. Mr. REID (for Mr. INOUYE (for himself and Mr. CAMPBELL)) proposed an amendment to the bill S. 2711, to reauthorize and improve programs relating to Native Americans; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Native American Omnibus Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

TITLE I—ECONOMIC DEVELOPMENT

Sec. 1001. Short title.
Sec. 1002. Findings and purpose.
Sec. 1003. Amendments to Indian Financing Act.

TITLE II—LAND SETTLEMENT PROVISIONS

Subtitle A—T'uf Shur Bien Preservation Trust Area

Sec. 2101. Short title.
Sec. 2102. Findings and purposes.
Sec. 2103. Definitions.
Sec. 2104. T'uf Shur Bien Preservation Trust Area.
Sec. 2105. Pueblo rights and interests in the Area.
Sec. 2106. Limitations on Pueblo rights and interests in the Area.
Sec. 2107. Management of the Area.
Sec. 2108. Jurisdiction over the Area.
Sec. 2109. Subdivisions and other property interests.
Sec. 2110. Extinguishment of claims.
Sec. 2111. Construction.
Sec. 2112. Judicial review.
Sec. 2113. Provisions relating to contributions and land exchange.
Sec. 2114. Authorization of appropriations.
Sec. 2115. Effective date.

Subtitle B—Pueblo de Cochiti Settlement

Sec. 2201. Modification of Pueblo de Cochiti settlement.

TITLE III—WATER SETTLEMENTS AND WATER-RELATED PROVISIONS

Subtitle A—Zuni Heaven Restoration Water Rights Settlement

Sec. 3101. Short title.
Sec. 3102. Findings and purposes.
Sec. 3103 Definitions.
Sec. 3104. Authorization, ratifications, and confirmations.
Sec. 3105. Trust lands.
Sec. 3106. Development fund.
Sec. 3107. Claims extinguishment; waivers and releases.
Sec. 3108. Miscellaneous provisions.
Sec. 3109. Effective date for waiver and release authorizations.

Subtitle B—Quinault Indian Nation

Sec. 3201. Quinault Indian Nation water feasibility study.

Subtitle C—Santee Sioux Tribe of Nebraska Rural Water System Feasibility Study

Sec. 3301. Study; report.
Sec. 3302. Authorization of appropriations.

TITLE IV—LAND PROVISIONS

Subtitle A—Agreement To Affirm Boundary Between Pubelo of Santa Clara and Pueblo of San ildefonso Aboriginal Land Within Garcia Canyon Tract

Sec. 4101. Definitions.
Sec. 4102. Trust for the Pueblo of Santa Clara, New Mexico.
Sec. 4103. Trust for the Pueblo of San Ildefonso, New Mexico.
Sec. 4104. Survey and legal descriptions.
Sec. 4105. Administration of trust land.
Sec. 4106. Effect.

Subtitle B—Additional Land Provisions

Sec. 4201. Indian Land Consolidation Act amendments.
Sec. 4202. Mississippi Band of Choctaw Indians.
Sec. 4203. Removal of restrictions on Ute Tribe of the Uintah and Ouray reservation land.
Sec. 4204. Reservation land of the Cow Creek Band of Umpqua Tribe of Indians.
Sec. 4205. Disposition of fee land of the Seminole Tribe of Florida.
Sec. 4206. Disposition of fee land of the Shakopee Mdewakanton Sioux Community.
Sec. 4207. Facilitation of construction of pipeline to provide water for emergency fire suppression and other purposes.
Sec. 4208. Agreement with Dry Prairie Rural Water Association, Incorporated.

TITLE V—LEASING PROVISIONS

Sec. 5001. Authorization of 99-year leases for Confederated Tribes of the Umatilla Indian Reservation.
Sec. 5002. Authorization of 99-year leases for Yurok Tribe and Hopland Band of Pomo Indians.
Sec. 5003. Lease of tribally-owned land by Assiniboine and Sioux Tribes of the Fort Peck Reservation.
Sec. 5004. Leases of restricted land.

TITLE VI—JUDGMENT FUND DISTRIBUTION

Subtitle A—Gila River Indian Community Judgment Fund Distribution

Sec. 6001. Short title.
Sec. 6002. Findings.
Sec. 6003. Definitions.

CHAPTER 1—GILA RIVER JUDGMENT FUND DISTRIBUTION

Sec. 6101. Distribution of judgment funds.
Sec. 6102. Responsibility of Secretary; applicable law.

CHAPTER 2—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

Sec. 6111. Plan for use and distribution of judgment funds awarded in Docket No. 228.
Sec. 6112. Plan for use and distribution of judgment funds awarded in Docket No. 236–N.

CHAPTER 3—EXPERT ASSISTANCE LOANS

Sec. 6121. Waiver of repayment of expert assistance loans to Gila River Indian Community.

Subtitle B—Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Fund Distribution

Sec. 6201. Short title.
Sec. 6202. Findings and purpose.
Sec. 6203. Definitions.
Sec. 6204. Distribution of judgment funds.
Sec. 6205. Applicable law.

TITLE VII—REPAYMENT OF EXPERT WITNESS LOANS

Sec. 7001. Waiver of repayment of expert assistance loans to the Pueblo of Santo Domingo.
Sec. 7002. Waiver of repayment of expert assistance loans to the Oglala Sioux Tribe.
Sec. 7003. Waiver of repayment of expert assistance loans to the Seminole Tribe of Oklahoma.

TITLE VIII—HEALTH-RELATED PROVISIONS

Sec. 8001. Rural health care facility, Fort Berthold Indian Reservation, North Dakota.
Sec. 8002. Health care funding allocation, Eagle Butte Service Unit.
Sec. 8003. Indian health demonstration project.
Sec. 8004. Alaska treatment centers and facilities.

TITLE IX—REAUTHORIZATION OF NATIVE AMERICAN PROGRAMS

Sec. 9001. Bosque Redondo Memorial Act.
Sec. 9002. Navajo-Hopi Land Settlement Cct of 1974.
Sec. 9003. Indian Health Care Improvement Act.
Sec. 9004. Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986.
Sec. 9005. Indian Child Protection and Family Violence Prevention Act.
Sec. 9006. Native Hawaiian Health Care Improvement Act.
Sec. 9007. Four Corners Interpretive Center Act.
Sec. 9008. Environmental dispute resolution fund.

TITLE X—MISCELLANEOUS PROVISIONS

Subtitle A—Cultural Provisions

Sec. 10101. Oklahoma Native American Cultural Center and Museum.
Sec. 10102. Rehabilitation of Celilo Indian Village.
Sec. 10103. Conveyance of Native Alaskan objects.

Subtitle B—Self-Determination Provisions

Sec. 10201. Indian Self-Determination Act amendments.

Subtitle C—Indian Arts and Crafts

Sec. 10301. Indian Arts and Crafts Act amendments.

Subtitle D—Certification of Rental Proceeds

Sec. 10401. Certification of rental proceeds.

TITLE I—ECONOMIC DEVELOPMENT

SEC. 1001. SHORT TITLE.

This title may be cited as the "Indian Financing Amendments Act of 2002".

SEC. 1002. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) was intended to provide

Native American borrowers with access to commercial sources of capital that otherwise would not be available through the guarantee or insurance of loans by the Secretary of the Interior;

(2) although the Secretary of the Interior has made loan guarantees and insurance available, use of those guarantees and that insurance by lenders to benefit Native American business borrowers has been limited;

(3) 27 years after the date of enactment of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.), the promotion and development of Native American-owned business remains an essential foundation for growth of economic and social stability of Native Americans;

(4) use by commercial lenders of the available loan insurance and guarantees may be limited by liquidity and other capital market-driven concerns; and

(5) it is in the best interest of the insured and guaranteed loan program of the Department of the Interior—

(A) to encourage the orderly development and expansion of a secondary market for loans guaranteed or insured by the Secretary of the Interior; and

(B) to expand the number of lenders originating loans under the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

(b) Purpose.—The purpose of this title is to reform and clarify the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) in order to—

(1) stimulate the use by lenders of secondary market investors for loans guaranteed or insured under a program administered by the Secretary of the Interior;

(2) preserve the authority of the Secretary to administer the program and regulate lenders;

(3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments;

(4) provide for the appointment by the Secretary of a qualified fiscal transfer agent to establish and administer a system for the orderly transfer of those loans; and

(5)(A) authorize the Secretary to promulgate regulations to encourage and expand a secondary market program for loans guaranteed or insured by the Secretary; and

(B) allow the pooling of those loans as the secondary market develops.

SEC. 1003. AMENDMENTS TO INDIAN FINANCING ACT.

(a) Limitation on Loan Amounts Without Prior Approval.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended in the last sentence by striking "$100,000" and inserting "$250,000".

(b) Sale or Assignment of Loans and Underlying Security.—Section 205 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended—

(1) by striking "Any loan guaranteed" and inserting the following:

"(a) In General.—Any loan guaranteed or insured"; and

(2) by adding at the end the following:

"(b) Initial Transfers.—

"(1) In general.—The lender of a loan guaranteed or insured under this title may transfer to any individual or legal entity—

"(A) all rights and obligations of the lender in the loan or in the unguaranteed or uninsured portion of the loan; and

"(B) any security given for the loan.

"(2) Additional requirements.—With respect to a transfer described in paragraph (1)—

"(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

"(B) the lender shall give notice of the transfer to the Secretary.

"(3) Responsibilities of transferee.—On any transfer under paragraph (1), the transferee shall—

"(A) be deemed to be the lender for the purpose of this title;

"(B) become the secured party of record; and

"(C) be responsible for—

"(i) performing the duties of the lender; and

"(ii) servicing the loan in accordance with the terms of the guarantee by the Secretary of the loan.

"(c) Secondary Transfers.—

"(1) In general.—Any transferee under subsection (b) of a loan guaranteed or insured under this title may transfer to any individual or legal entity—

"(A) all rights and obligations of the transferee in the loan or in the unguaranteed or uninsured portion of the loan; and

"(B) any security given for the loan.

"(2) Additional requirements.—With respect to a transfer described in paragraph (1)—

"(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

"(B) the transferor shall give notice of the transfer to the Secretary.

"(3) Acknowledgment by secretary.—On receipt of a notice of a transfer under paragraph (2)(B), the Secretary shall issue to the transferee an acknowledgement by the Secretary of—

"(A) the transfer; and

"(B) the interest of the transferee in the guaranteed or insured portion of the loan.

"(4) Responsibilities of lender.—Notwithstanding any transfer permitted by this subsection, the lender shall—

"(A) remain obligated on the guarantee agreement or insurance agreement between the lender and the Secretary;

"(B) continue to be responsible for servicing the loan in a manner consistent with that guarantee agreement or insurance agreement; and

"(C) remain the secured creditor of record.

"(d) Full Faith and Credit.—

"(1) In general.—The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this title after the date of enactment of this subsection.

"(2) Validity.—

"(A) In general.—Except as provided in subparagraph (B), the validity of a guarantee or insurance of a loan under this title shall be incontestable if the obligations of the guarantee or insurance held by a transferee have been acknowledged under subsection (c)(3).

"(B) Exception for fraud or misrepresentation.—Subparagraph (A) shall not apply in a case in which a transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation, in connection with a loan.

"(e) Damages.—Notwithstanding section 3302 of title 31, United States Code, the Secretary may recover from a lender of a loan under this title any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

"(f) Fees.—The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.

"(g) Central Registration of Loans.—On promulgation of final regulations under subsection (i), the Secretary shall—

"(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and

"(2) enter into 1 or more contracts with a fiscal transfer agent—

"(A) to act as the designee of the Secretary under this section; and

"(B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions, and issuance of acknowledgements, under this section.

"(h) Pooling of Loans.—

"(1) In general.—Nothing in this title prohibits the pooling of whole loans or interests in loans transferred under this section.

"(2) Regulations.—In promulgating regulations under subsection (i), the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.

"(i) Regulations.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promote transfers of loans and guaranteed and insured portions of loans under this section.".

TITLE II—LAND SETTLEMENT PROVISIONS

Subtitle A—T'uf Shur Bien Preservation Trust Area

SEC. 2101. SHORT TITLE.

This subtitle may be cited as the "T'uf Shur Bien Preservation Trust Area Act".

SEC. 2102. FINDINGS AND PURPOSES.

(a) Findings.—Congress finds that—

(1) in 1748, the Pueblo of Sandia received a grant from a representative of the King of Spain, which grant was recognized and confirmed by Congress in 1858 (11 Stat. 374); and

(2) in 1994, the Pueblo filed a civil action against the Secretary of the Interior and the Secretary of Agriculture in the United States District Court for the District of Columbia (Civil No. 1:94CV02624), asserting that Federal surveys of the grant boundaries erroneously excluded certain land within the Cibola National Forest, including a portion of the Sandia Mountain Wilderness.

(b) Purposes.—The purposes of this subtitle are—

(1) to establish the T'uf Shur Bien Preservation Trust Area in the Cibola National Forest;

(2) to confirm the status of national forest land and wilderness land in the Area while resolving issues associated with the civil action referred to in subsection (a)(2) and the opinions of the Solicitor of the Department of the Interior dated December 9, 1988 (M–36963; 96 I.D. 331) and January 19, 2001 (M–37002); and

(3) to provide the Pueblo, the parties to the civil action, and the public with a fair and just settlement of the Pueblo's claim.

SEC. 2103. DEFINITIONS.

In this subtitle:

(1) Area.—

(A) In general.—The term "Area" means the T'uf Shur Bien Preservation Trust Area, comprised of approximately 9890 acres of land in the Cibola National Forest, as depicted on the map.

(B) Exclusions.—The term "Area" does not include—

(i) the subdivisions;

(ii) the Pueblo-owned land;

(iii) the crest facilities; or

(iv) the special use permit area.

(2) CREST FACILITIES.—The term "crest facilities" means—

(A) all facilities and developments located on the crest of Sandia Mountain, including the Sandia Crest Electronic Site;

(B) electronic site access roads;

(C) the Crest House;

(D) the upper terminal, restaurant, and related facilities of Sandia Peak Tram Company;

(E) the Crest Observation Area;

(F) parking lots;

(G) restrooms;

(H) the Crest Trail (Trail No. 130);

(I) hang glider launch sites;

(J) the Kiwanis cabin; and

(K) the land on which the facilities described in subparagraphs (A) through (J) are located and the land extending 100 feet along terrain to the west of each such facility, unless a different distance is agreed to in writing by the Secretary and the Pueblo and documented in the survey of the Area.

(3) EXISTING USE.—The term "existing use" means a use that—

(A) is occurring in the Area as of the date of enactment of this Act; or

(B) is authorized in the Area after November 1, 1995, but before the date of enactment of this Act.

(4) LA LUZ TRACT.—The term "La Luz tract" means the tract comprised of approximately 31 acres of land owned in fee by the Pueblo and depicted on the map.

(5) LOCAL PUBLIC BODY.—The term "local public body" means a political subdivision of the State of New Mexico (as defined in New Mexico Code 6-5-1).

(6) MAP.—The term "map" means the Forest Service map entitled "T'uf Shur Bien Preservation Trust Area" and dated April 2000.

(7) MODIFIED USE.—

(A) IN GENERAL.—The term "modified use" means an existing use that, at any time after the date of enactment of this Act, is modified or reconfigured but not significantly expanded.

(B) INCLUSIONS.—The term "modified use" includes—

(i) a trail or trailhead being modified, such as to accommodate handicapped access;

(ii) a parking area being reconfigured; and

(iii) a special use authorization for a group recreation use being authorized for a different use area or time period.

(8) NEW USE.—

(A) IN GENERAL.—The term "new use" means—

(i) a use that is not occurring in the Area as of the date of enactment of this Act; and

(ii) an existing use that is being modified so as to be significantly expanded or altered in scope, dimension, or impact on the land, water, air, or wildlife resources of the Area.

(B) EXCLUSIONS.—The term "new use" does not include a use that—

(i) is categorically excluded from documentation requirements under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(ii) is carried out to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(9) PIEDRA LISA TRACT.—The term "Piedra Lisa tract" means the tract comprised of approximately 160 acres of land held in private ownership and depicted on the map.

(10) PUEBLO.—The term "Pueblo" means the Pueblo of Sandia in its governmental capacity.

(11) SECRETARY.—The term "Secretary" means the Secretary of Agriculture, acting through the Chief of the Forest Service.

(12) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the Agreement of Compromise and Settlement dated April 4, 2000, among the United States, the Pueblo, and the Sandia Peak Tram Company.

(13) SPECIAL USE PERMIT.—The term "special use permit" means the Special Use Permit issued December 1, 1993, by the Secretary to Sandia Peak Tram Company and Sandia Peak Ski Company.

(14) SPECIAL USE PERMIT AREA.—

(A) IN GENERAL.—The term "special use permit area" means the land and facilities subject to the special use permit.

(B) INCLUSIONS.—The term "special use permit area" includes—

(i) approximately 46 acres of land used as an aerial tramway corridor;

(ii) approximately 945 acres of land used as a ski area; and

(iii) the land and facilities described in Exhibit A to the special use permit, including—

(I) the maintenance road to the lower tram tower;

(II) water storage and water distribution facilities; and

(III) 7 helispots.

(15) SUBDIVISION.—The term "subdivision" means—

(A) the subdivision of—

(i) Sandia Heights Addition;

(ii) Sandia Heights North Unit I, II, or 3;

(iii) Tierra Monte;

(iv) Valley View Acres; or

(v) Evergreen Hills; and

(B) any additional plat or privately-owned property depicted on the map.

(16) TRADITIONAL OR CULTURAL USE.—The term "traditional or cultural use" means—

(A) a ceremonial activity (including the placing of ceremonial materials in the Area); and

(B) the use, hunting, trapping, or gathering of plants, animals, wood, water, and other natural resources for a noncommercial purpose.

SEC. 2104. T'UF SHUR BIEN PRESERVATION TRUST AREA.

(a) ESTABLISHMENT.—The T'uf Shur Bien Preservation Trust Area is established within the Cibola National Forest and the Sandia Mountain Wilderness as depicted on the map—

(1) to recognize and protect in perpetuity the rights and interests of the Pueblo in and to the Area, as specified in section 2105(a);

(2) to preserve in perpetuity the national forest and wilderness character of the Area; and

(3) to recognize and protect in perpetuity the longstanding use and enjoyment of the Area by the public.

(b) ADMINISTRATION AND APPLICABLE LAW.—

(1) IN GENERAL.—The Secretary shall continue to administer the Area as part of the National Forest System consistent with the provisions of this subtitle affecting management of the Area.

(2) TRADITIONAL OR CULTURAL USES.—Traditional or cultural uses by Pueblo members and members of other federally-recognized Indian tribes authorized to use the Area by the Pueblo under section 2105(a)(4) shall not be restricted except by—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.) (including regulations promulgated under that Act) as in effect on the date of enactment of this Act; and

(B) applicable Federal wildlife protection laws, as provided in section 2106(a)(2).

(3) LATER ENACTMENTS.—To the extent that any law enacted or amended after the date of enactment of this Act is inconsistent with this subtitle, the law shall not apply to the Area unless expressly made applicable by Congress.

(4) TRUST.—The use of the word "Trust" in the name of the Area—

(A) is in recognition of the specific rights and interests of the Pueblo in the Area; and

(B) does not confer on the Pueblo the ownership interest that exists in a case in which the Secretary of the Interior accepts the title to land held in trust for the benefit of an Indian tribe.

(c) MAP.—

(1) FILING.—As soon as practicable after the date of enactment of this Act, the Secretary shall file the map and a legal description of the Area with the Committee on Resources of the House of Representatives and with the Committee on Energy and Natural Resources of the Senate.

(2) PUBLIC AVAILABILITY.—The map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Washington, District of Columbia.

(3) EFFECT.—The map and legal description filed under paragraph (1) shall have the same effect as if the map and legal description were included in this subtitle, except that—

(A) technical and typographical errors shall be corrected;

(B) changes that may be necessary under subsection (b), (d), or (e) of section 2109 or subsection (b) or (c) of section 2113 shall be made; and

(C) to the extent that the map and the language of this subtitle conflict, the language of this subtitle shall control.

(d) NO CONVEYANCE OF TITLE.—No right, title, or interest of the United States in or to the Area or any part of the Area shall be conveyed to or exchanged with any person, trust, or governmental entity, including the Pueblo, without specific authorization of Congress.

(e) PROHIBITED USES.—

(1) IN GENERAL.—Notwithstanding any other provision of law—

(A) no use prohibited by the Wilderness Act (16 U.S.C. 1131 et seq.) as of the date of enactment of this Act shall be permitted in the wilderness portion of the Area; and

(B) none of the following uses shall be permitted in any portion of the Area:

(i) Gaming or gambling.

(ii) Mineral production.

(iii) Timber production.

(iv) Any new use to which the Pueblo objects under section 2105(a)(3).

(2) MINING CLAIMS.—The Area is closed to the location of mining claims under Section 2320 of the Revised Statutes (30 U.S.C. 23) (commonly known as the "Mining Law of 1872").

(f) NO MODIFICATION OF BOUNDARIES.—Establishment of the Area shall not—

(1) affect the boundaries of or repeal or disestablish the Sandia Mountain Wilderness or the Cibola National Forest; or

(2) modify the existing boundary of the Pueblo grant.

SEC. 2105. PUEBLO RIGHTS AND INTERESTS IN THE AREA.

(a) GENERAL.—The Pueblo shall have the following rights and interests in the Area:

(1) Free and unrestricted access to the Area for traditional or cultural uses, to the extent that those uses are not inconsistent with—

(A) the Wilderness Act (16 U.S.C. 1131 et seq.) (including regulations promulgated under that Act) as in effect on the date of enactment of this Act; or

(B) applicable Federal wildlife protection laws as provided in section 2106(a)(2).

(2) Perpetual preservation of the national forest and wilderness character of the Area under this subtitle.

(3) Rights in the management of the Area as specified in section 2107, including—

(A) the right to consent or withhold consent to a new use;

(B) the right to consultation regarding a modified use;

(C) the right to consultation regarding the management and preservation of the Area; and

(D) the right to dispute resolution procedures.

(4) Exclusive authority, in accordance with the customs and laws of the Pueblo, to administer access to the Area for traditional or cultural uses by members of the Pueblo and of other federally-recognized Indian tribes.

(5) Such other rights and interests as are recognized in sections 2104, 2105(c), 2107, 2108, and 2109.

(b) Access.— Except as provided in subsection (a)(4), access to and use of the Area for all other purposes shall continue to be administered by the Secretary.

(c) Compensable Interest.—

(1) In general.—If, by an Act of Congress enacted after the date of enactment of this Act, Congress diminishes the national forest or wilderness designation of the Area by authorizing a use prohibited by section 2104(e) in all or any portion of the Area, or denies the Pueblo access for any traditional or cultural use in all or any portion of the Area—

(A) the United States shall compensate the Pueblo as if the Pueblo had held a fee title interest in the affected portion of the Area and as though the United States had acquired such an interest by legislative exercise of the power of eminent domain; and

(B) the restrictions of sections 2104(e) and 2106(a) shall be disregarded in determining just compensation owed to the Pueblo.

(2) Effect.—Any compensation made to the Pueblo under paragraph (c) shall not affect the extinguishment of claims under section 2110.

SEC. 2106. LIMITATIONS ON PUEBLO RIGHTS AND INTERESTS IN THE AREA.

(a) Limitations.—The rights and interests of the Pueblo recognized in this subtitle do not include—

(1) any right to sell, grant, lease, convey, encumber, or exchange land or any interest in land in the Area (and any such conveyance shall not have validity in law or equity);

(2) any exemption from applicable Federal wildlife protection laws;

(3) any right to engage in a use prohibited by section 2104(e); or

(4) any right to exclude persons or governmental entities from the Area.

(b) Exception.—No person who exercises traditional or cultural use rights as authorized by section 2105(a)(4) may be prosecuted for a Federal wildlife offense requiring proof of a violation of a State law.

SEC. 2107. MANAGEMENT OF THE AREA.

(a) Process.—

(1) In general.—The Secretary shall consult with the Pueblo not less than twice each year, unless otherwise mutually agreed, concerning protection, preservation, and management of the Area (including proposed new uses and modified uses in the Area and authorizations that are anticipated during the next 6 months and were approved in the preceding 6 months).

(2) New uses.—

(A) Request for consent after consultation.—

(i) Withholding of consent.—If the Pueblo withholds consent for a new use within 30 days after completion of the consultation process, the Secretary shall not proceed with the new use.

(ii) Granting of consent.—If the Pueblo consents to the new use in writing or fails to respond within 30 days after completion of the consultation process, the Secretary may proceed with the notice and comment process and the environmental analysis.

(B) Final request for consent.—

(i) Request.—Before the Secretary (or a designee) signs a record of decision or decision notice for a proposed new use, the Secretary shall again request the consent of the Pueblo.

(ii) Withholding of consent.—If the Pueblo withholds consent for a new use within 30 days after receipt by the Pueblo of the proposed record of decision or decision notice, the new use shall not be authorized.

(ii) Failure to respond.—If the Pueblo fails to respond to the consent request within 30 days after receipt of the proposed record of decision or decision notice—

(I) the Pueblo shall be deemed to have consented to the proposed record of decision or decision notice; and

(II) the Secretary may proceed to issue the final record of decision or decision notice.

(3) Public involvement.—

(A) In general.—With respect to a proposed new use or modified use, the public shall be provided notice of—

(i) the purpose and need for the proposed new use or modified use;

(ii) the role of the Pueblo in the decision-making process; and

(iii) the position of the Pueblo on the proposal.

(B) Court challenge.—Any person may bring a civil action in the United States District Court for the District of New Mexico to challenge a determination by the Secretary concerning whether a use constitutes a new use or a modified use.

(b) Emergencies and Emergency Closure Orders.—

(1) Authority.—The Secretary shall retain the authority of the Secretary to manage emergency situations, to—

(A) provide for public safety; and

(B) issue emergency closure orders in the Area subject to applicable law.

(2) Notice.—The Secretary shall notify the Pueblo regarding emergencies, public safety issues, and emergency closure orders as soon as practicable.

(3) No consent.—An action of the Secretary described in paragraph (1) shall not require the consent of the Pueblo.

(c) Disputes Involving Forest Service Management and Pueblo Traditional Uses.—

(1) In general.—In a case in which the management of the Area by the Secretary conflicts with a traditional or cultural use, if the conflict does not pertain to a new use or modified use subject to the process specified in subsection (a), the process for dispute resolution specified in this subsection shall apply.

(2) Dispute resolution process.—

(A) In general.—In the case of a conflict described in paragraph (1)—

(i) the party identifying the conflict shall notify the other party in writing addressed to the Governor of the Pueblo or the Regional Forester, as appropriate, specifying the nature of the dispute; and

(ii) the Governor of the Pueblo or the Regional Forester shall attempt to resolve the dispute for a period of at least 30 days after notice has been provided before bringing a civil action in the United States District Court for the District of New Mexico.

(B) Disputes requiring immediate resolution.—In the case of a conflict that requires immediate resolution to avoid imminent, substantial, and irreparable harm—

(i) the party identifying the conflict shall notify the other party and seek to resolve the dispute within 3 days of the date of notification; and

(ii) if the parties are unable to resolve the dispute within 3 days—

(I) either party may bring a civil action for immediate relief in the United States District Court for the District of New Mexico; and

(II) the procedural requirements specified in subparagraph (A) shall not apply.

SEC. 2108. JURISDICTION OVER THE AREA.

(a) Criminal Jurisdiction.—

(1) In general.—Notwithstanding any other provision of law, jurisdiction over crimes committed in the Area shall be allocated as provided in this paragraph.

(2) Jurisdiction of the pueblo.—The Pueblo shall have jurisdiction over an offense committed by a member of the Pueblo or of another federally-recognized Indian tribe who is present in the Area with the permission of the Pueblo under section 2105(a)(4).

(3) Jurisdiction of the united states.—The United States shall have jurisdiction over—

(A) an offense described in section 1153 of title 18, United States Code, committed by a member of the Pueblo or another federally-recognized Indian tribe;

(B) an offense committed by any person in violation of the laws (including regulations) pertaining to the protection and management of national forests;

(C) enforcement of Federal criminal laws of general applicability; and

(D) any other offense committed by a member of the Pueblo against a person not a member of the Pueblo.

(4) Jurisdiction of the state of new mexico.—The State of New Mexico shall have jurisdiction over an offense under the law of the State committed by a person not a member of the Pueblo.

(5) Overlapping jurisdiction.—To the extent that the respective allocations of jurisdiction over the Area under paragraphs (2), (3), and (4) overlap, the governments shall have concurrent jurisdiction.

(6) Federal use of state law.—Under the jurisdiction of the United States described in paragraph (3)(D), Federal law shall incorporate any offense defined and punishable under State law that is not so defined under Federal law.

(b) Civil Jurisdiction.—

(1) In general.—Except as provided in paragraphs (2) and (3), the United States, the State of New Mexico, and local public bodies shall have the same civil adjudicatory, regulatory, and taxing jurisdiction over the Area as was exercised by those entities on the day before the date of enactment of this Act.

(2) Jurisdiction of the pueblo.—

(A) In general.—The Pueblo shall have exclusive civil adjudicatory jurisdiction over—

(i) a dispute involving only members of the Pueblo;

(ii) a civil action brought by the Pueblo against a member of the Pueblo; and

(iii) a civil action brought by the Pueblo against a member of another federally-recognized Indian tribe for a violation of an understanding between the Pueblo and the other tribe regarding use of or access to the Area for traditional or cultural uses.

(B) Regulatory jurisdiction.—The Pueblo shall have no regulatory jurisdiction over the Area, except that the Pueblo shall have exclusive authority to—

(i) regulate traditional or cultural uses by the members of the Pueblo and administer access to the Area by other federally-recognized Indian tribes for traditional or cultural uses, to the extent such regulation is consistent with this subtitle; and

(ii) regulate hunting and trapping in the Area by members of the Pueblo, to the extent that the hunting or trapping is related to traditional or cultural uses, except that such hunting and trapping outside of that portion of the Area in sections 13, 14, 23, 24, and the northeast quarter of section 25 of T12N, R4E, and section 19 of T12N, R5E, N.M.P.M., Sandoval County, New Mexico, shall be regulated by the Pueblo in a manner consistent with the regulations of the State of New Mexico concerning types of weapons and proximity of hunting and trapping to trails and residences.

(C) TAXING JURISDICTION.—The Pueblo shall have no authority to impose taxes within the Area.

(3) STATE AND LOCAL TAXING JURISDICTION.—The State of New Mexico and local public bodies shall have no authority within the Area to tax the uses or the property of the Pueblo, members of the Pueblo, or members of other federally-recognized Indian tribes authorized to use the Area under section 2105(a)(4).

SEC. 2109. SUBDIVISIONS AND OTHER PROPERTY INTERESTS.

(a) SUBDIVISIONS.—

(1) IN GENERAL.—The subdivisions are excluded from the Area.

(2) JURISDICTION.—

(A) IN GENERAL.—The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the subdivisions and property interests therein, and the laws of the Pueblo shall not apply to the subdivisions.

(B) STATE JURISDICTION.—The jurisdiction of the State of New Mexico and local public bodies over the subdivisions and property interests therein shall continue in effect, except that on application of the Pueblo a tract comprised of approximately 35 contiguous, nonsubdivided acres in the northern section of Evergreen Hills owned in fee by the Pueblo at the time of enactment of this Act, shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior.

(3) LIMITATIONS ON TRUST LAND.—Trust land described in paragraph (2)(B) shall be subject to all limitations on use pertaining to the Area contained in this subtitle.

(b) PIEDRA LISA.—

(1) IN GENERAL.—The Piedra Lisa tract is excluded from the Area notwithstanding any subsequent acquisition of the tract by the Pueblo.

(2) ACQUISITION OF TRACT.—If the Secretary or the Pueblo acquires the Piedra Lisa tract, the tract shall be transferred to the United States and is declared to be held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this subtitle.

(3) APPLICABILITY OF CERTAIN RESTRICTION.—The restriction contained in section 2106(a)(4) shall not apply outside of Forest Service System trails.

(4) JURISDICTION.—Until acquired by the Secretary or Pueblo, the jurisdiction of the State of New Mexico and local public bodies over the Piedra Lisa tract and property interests therein shall continue in effect.

(c) CREST FACILITIES.—

(1) IN GENERAL.—The land on which the crest facilities are located is excluded from the Area.

(2) JURISDICTION.—The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory or any other form of jurisdiction, over the land on which the crest facilities are located and property interests therein, and the laws of the Pueblo, shall not apply to that land. The preexisting jurisdictional status of that land shall continue in effect.

(d) SPECIAL USE PERMIT AREA.—

(1) IN GENERAL.—The land described in the special use permit is excluded from the Area.

(2) JURISDICTION.—

(A) IN GENERAL.—The Pueblo shall have no civil or criminal jurisdiction for any purpose, including adjudicatory, taxing, zoning, regulatory, or any other form of jurisdiction, over the land described in the special use permit, and the laws of the Pueblo shall not apply to that land.

(B) PREEXISTING STATUS.—The preexisting jurisdictional status of that land shall continue in effect.

(3) AMENDMENT TO PLAN.—In the event the special use permit, during its existing term or any future terms or extensions, requires amendment to include other land in the Area necessary to realign the existing or any future replacement tram line, associated structures, or facilities, the land subject to that amendment shall thereafter be excluded from the Area and shall have the same status under this subtitle as the land currently described in the special use permit.

(4) LAND DEDICATED TO AERIAL TRAMWAY AND RELATED USES.—Any land dedicated to aerial tramway and related uses and associated facilities that are excluded from the special use permit through expiration, termination or the amendment process shall thereafter be included in the Area, but only after final agency action no longer subject to any appeals.

(e) LA LUZ TRACT.—

(1) IN GENERAL.—The La Luz tract now owned in fee by the Pueblo is excluded from the Area and, on application by the Pueblo, shall be transferred to the United States and held in trust for the Pueblo by the United States and administered by the Secretary of the Interior subject to all limitations on use pertaining to the Area contained in this subtitle.

(2) NONAPPLICABILITY OF CERTAIN RESTRICTION.—The restriction contained in section 2106(a)(4) shall not apply outside of Forest Service System trails.

(f) EVERGREEN HILLS ACCESS.—The Secretary, consistent with section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210), shall ensure that Forest Service Road 333D, as depicted on the map, is maintained in an adequate condition consistent with the terms of section 1323(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3210).

(g) PUEBLO FEE LAND.—Those properties not specifically addressed in subsections (a) or (e) that are owned in fee by the Pueblo within the subdivisions are excluded from the Area and shall be subject to the jurisdictional provisions of subsection (a).

(h) RIGHTS-OF-WAY.—

(1) ROAD RIGHTS-OF-WAY.—

(A) IN GENERAL.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the County of Bernalillo, New Mexico, in perpetuity, the following irrevocable rights-of-way for roads identified on the map in order to provide for public access to the subdivisions, the special use permit land and facilities, the other leasehold and easement rights and interests of the Sandia Peak Tram Company and its affiliates, the Sandia Heights South Subdivision, and the Area—

(i) a right-of-way for Tramway Road;

(ii) a right-of-way for Juniper Hill Road North;

(iii) a right-of-way for Juniper Hill Road South;

(iv) a right-of-way for Sandia Heights Road; and

(v) a right-of-way for Juan Tabo Canyon Road (Forest Road No. 333).

(B) CONDITIONS.—The road rights-of-way shall be subject to the following conditions:

(i) Such rights-of-way may not be expanded or otherwise modified without the Pueblo's written consent, but road maintenance to the rights-of-way shall not be subject to Pueblo consent.

(ii) The rights-of-way shall not authorize uses for any purpose other than roads without the Pueblo's written consent.

(iii) Except as provided in the Settlement Agreement, existing rights-of-way or leasehold interests and obligations held by the Sandia Peak Tram Company and its affiliates, shall be preserved, protected, and unaffected by this Act.

(2) UTILITY RIGHTS-OF-WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant irrevocable utility rights-of-way in perpetuity across Pueblo land to appropriate utility or other service providers serving Sandia Heights Addition, Sandia Heights North Units I, II, and 3, the special use permit land, Tierra Monte, and Valley View Acres, including rights-of-way for natural gas, power, water, telecommunications, and cable television services. Such rights-of-way shall be within existing utility corridors as depicted on the map or, for certain water lines, as described in the existing grant of easement to the Sandia Peak Utility Company; provided that use of water line easements outside the utility corridors depicted on the map shall not be used for utility purposes other than water lines and associated facilities. Except where above-ground facilities already exist, all new utility facilities shall be installed underground unless the Pueblo agrees otherwise. To the extent that enlargement of existing utility corridors is required for any technologically-advanced telecommunication, television, or utility services, the Pueblo shall not unreasonably withhold agreement to a reasonable enlargement of the easements described above.

(3) FOREST SERVICE RIGHTS-OF-WAY.—In accordance with the Pueblo having given its consent in the Settlement Agreement, the Secretary of the Interior shall grant to the Forest Service the following irrevocable rights-of-way in perpetuity for Forest Service trails crossing land of the Pueblo in order to provide for public access to the Area and through Pueblo land—

(A) a right-of-way for a portion of the Crest Spur Trail (Trail No. 84), crossing a portion of the La Luz tract, as identified on the map;

(B) a right-of-way for the extension of the Foothills Trail (Trail No. 365A), as identified on the map; and

(C) a right-of-way for that portion of the Piedra Lisa North-South Trail (Trail No. 135) crossing the Piedra Lisa tract, if the Pueblo ever acquires the Piedra Lisa tract.

SEC. 2110. EXTINGUISHMENT OF CLAIMS.

(a) In General.—Except for the rights and interests in and to the Area specifically recognized in sections 2104, 2105, 2107, 2108, and 2109, all Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to land within the Area, any part thereof, and property interests therein, as well as related boundary, survey, trespass, and monetary damage claims, are permanently extinguished. The United States' title to the Area is confirmed.

(b) Subdivisions.—Any Pueblo claims to right, title and interest of any kind, including aboriginal claims, in and to the subdivisions and property interests therein (except for land owned in fee by the Pueblo as of the date of enactment of this Act), as well as related boundary, survey, trespass, and monetary damage claims, are permanently extinguished.

(c) Special Use and Crest Facilities Areas.—Any Pueblo right, title and interest of any kind, including aboriginal claims, and related boundary, survey, trespass, and monetary damage claims, are permanently extinguished in and to—

(1) the land described in the special use permit; and

(2) the land on which the crest facilities are located.

(d) Pueblo Agreement.—As provided in the Settlement Agreement, the Pueblo has agreed to the relinquishment and extinguishment of those claims, rights, titles and interests extinguished pursuant to subsection (a), (b) and (c).

(e) Consideration.—The recognition of the Pueblo's rights and interests in this Act constitutes adequate consideration for the Pueblo's agreement to the extinguishment of the Pueblo's claims in this section and the right-of-way grants contained in section 2109, and it is the intent of Congress that those rights and interests may only be diminished by a future Act of Congress specifically authorizing diminishment of such rights, with express reference to this subtitle.

SEC. 2111. CONSTRUCTION.

(a) Strict Construction.—This subtitle recognizes only enumerated rights and interests, and no additional rights, interests, obligations, or duties shall be created by implication.

(b) Existing Rights.—To the extent there exists within the Area at the date of enactment of this Act any valid private property rights associated with the Piedra Lisa tract or other private land that is not otherwise addressed in this subtitle, such rights are not modified or otherwise affected by this subtitle, nor is the exercise of any such right subject to the Pueblo's right to withhold consent to new uses in the Area as set forth in section 2105(a)(3)(A).

(c) Not Precedent.—The provisions of this subtitle creating certain rights and interests in the National Forest System are uniquely suited to resolve the Pueblo's claim and the geographic and societal situation involved, and shall not be construed as precedent for any other situation involving management of the National Forest System.

(d) Fish and Wildlife.—Except as provided in section 2108(b)(2)(B), nothing in this subtitle shall be construed as affecting the responsibilities of the State of New Mexico with respect to fish and wildlife, including the regulation of hunting, fishing, or trapping within the Area.

(e) Federal Land Policy and Management Act.—Section 316 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1746) is amended by adding at the end the following: "Any corrections authorized by this section which affect the boundaries of, or jurisdiction over, land administered by another Federal agency shall be made only after consultation with, and the approval of, the head of such other agency."

SEC. 2112. JUDICIAL REVIEW.

(a) Enforcement.—A civil action to enforce the provisions of this subtitle may be brought to the extent permitted under chapter 7 of title 5, United States Code. Judicial review shall be based on the administrative record and subject to the applicable standard of review set forth in section 706 of title 5, United States Code.

(b) Waiver.—A civil action may be brought against the Pueblo for declaratory judgment or injunctive relief under this subtitle, but no money damages, including costs or attorney's fees, may be imposed on the Pueblo as a result of such judicial action.

(c) Venue.—Venue for any civil action provided for in this section, as well as any civil action to contest the constitutionality of this subtitle, shall lie only in the United States District Court for the District of New Mexico.

SEC. 2113. PROVISIONS RELATING TO CONTRIBUTIONS AND LAND EXCHANGE.

(a) Contributions.—

(1) In general.—The Secretary may accept contributions from the Pueblo, or from other persons or governmental entities—

(A) to perform and complete a survey of the Area; or

(B) to carry out any other project or activity for the benefit of the Area in accordance with this subtitle.

(2) Deadline.—Not later than 1 year after the date of enactment of this Act, the Secretary shall complete the survey of the Area under paragraph (1)(A).

(b) Land Exchange.—

(1) In general.—Not later than 180 days after the date of enactment of this Act, after consultation with the Pueblo, the Secretary shall, in accordance with applicable laws, prepare and offer a land exchange of National Forest land outside the Area and contiguous to the northern boundary of the Pueblo's Reservation within sections 10, 11, and 14 of T12N, R4E, N.M.P.M., Sandoval County, New Mexico excluding Wilderness land, for land owned by the Pueblo in the Evergreen Hills subdivision in Sandoval County contiguous to National Forest land, and the La Luz tract in Bernalillo County.

(2) Acceptance of payment.—Notwithstanding section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. 1716(b)), the Secretary may either make or accept a cash equalization payment in excess of 25 percent of the total value of the land or interests transferred out of Federal ownership.

(3) Funds received.—Any funds received by the Secretary as a result of the exchange shall be deposited in the fund established under the Act of December 4, 1967, known as the Sisk Act (16 U.S.C. 484a), and shall be available to purchase non-Federal land within or adjacent to the National Forests in the State of New Mexico.

(4) Treatment of land exchanged or conveyed.—All land exchanged or conveyed to the Pueblo is declared to be held in trust for the Pueblo by the United States and added to the Pueblo's Reservation subject to all existing and outstanding rights and shall remain in its natural state and shall not be subject to commercial development of any kind. Land exchanged or conveyed to the Forest Service shall be subject to all limitations on use pertaining to the Area under this Act.

(5) Failure to make offer.—If the land exchange offer is not made by the date that is 180 days after the date of enactment of this Act, the Secretary shall submit to the Committee on Energy and Natural Resources of the United States Senate and the Committee on Resources of the United States House of Representatives, a report explaining the reasons for the failure to make the offer including an assessment of the need for any additional legislation that may be necessary for the exchange. If additional legislation is not necessary, the Secretary, consistent with this section, should proceed with the exchange pursuant to existing law.

(c) Land Acquisition.—

(1) In general.—The Secretary may acquire land owned by the Pueblo within the Evergreen Hills Subdivision in Sandoval County or any other privately held land inside of the exterior boundaries of the Area. The boundaries of the Cibola National Forest and the Area shall be adjusted to encompass any land acquired pursuant to this section.

(2) Acquisition by pueblo.—If the Pueblo acquires the Piedra Lisa tract, the Secretary shall compensate the Pueblo for the fair market value of—

(A) the right-of-way established pursuant to section 2109(h)(3)(C); and

(B) the conservation easement established by the limitations on use of the Piedra Lisa tract pursuant to section 2109(b).

(d) Reimbursement of Certain Costs.—

(1) In general.—The Pueblo, the County of Bernalillo, New Mexico, and any person that owns or has owned property inside of the exterior boundaries of the Area as designated on the map, and who has incurred actual and direct costs as a result of participating in the case of Pueblo of Sandia v. Babbitt, Civ. No. 94-2624 HHG (D.D.C.), or other proceedings directly related to resolving the issues litigated in that case, may apply for reimbursement in accordance with this section. Costs directly related to such participation which shall qualify for reimbursement shall be—

(A) dues or payments to a homeowner association for the purpose of legal representation; and

(B) legal fees and related expenses.

(2) Treatment of reimbursement.—Any reimbursement provided in this subsection shall be in lieu of that which might otherwise be available pursuant to the Equal Access to Justice Act (24 U.S.C. 2412).

(3) Payments.—The Secretary of the Treasury shall make reimbursement payments as provided in this section out of any money not otherwise appropriated.

(4) Applications.—Applications for reimbursement shall be filed within 180 days of the date of enactment of this Act with the Department of the Treasury, Financial Management Service, Washington, D.C.

(5) Maximum reimbursement.—In no event shall any 1 party be compensated in excess of $750,000 and the total amount reimbursed pursuant to this section shall not exceed $3,000,000.

SEC. 2114. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this subtitle, including such sums as are necessary for the Forest Service, in accordance with section 2113(c), to acquire ownership of, or other interests in or to, land within the external boundaries of the Area.

SEC. 2115. EFFECTIVE DATE.

The provisions of this subtitle shall take effect immediately on enactment of this Act.

Subtitle B—Pueblo de Cochiti Settlement

SEC. 2201. MODIFICATION OF PUEBLO DE COCHITI SETTLEMENT.

Section 1 of Public Law 102–358 (106 Stat. 960) is amended—

(1) by striking "implement the settlement" and inserting the following: "implement—

"(1) the settlement;";

(2) by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(2) the modifications regarding the use of the settlement funds as described in the agreement known as the 'First Amendment to Operation and Maintenance Agreement for Implementation of Cochiti Wetlands Solution', executed—

"(A) on October 22, 2001, by the Army Corps of Engineers;

"(B) on October 25, 2001, by the Pueblo de Cochiti of New Mexico; and

"(C) on November 8, 2001, by the Secretary of the Interior.".

TITLE III—WATER SETTLEMENTS AND WATER-RELATED PROVISIONS

Subtitle A—Zuni Heaven Restoration Water Rights Settlement

SEC. 3101. SHORT TITLE.

This subtitle may be cited as the "Zuni Indian Tribe Water Rights Settlement Act of 2002".

SEC. 3102. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) It is the policy of the United States, in keeping with its trust responsibility to Indian tribes, to promote Indian self-determination, religious freedom; political and cultural integrity, and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation.

(2) Quantification of rights to water and development of facilities needed to use tribal water supplies effectively is essential to the development of viable Indian reservation communities, particularly in arid western States.

(3) On August 28, 1984, and by actions subsequent thereto, the United States established a reservation for the Zuni Indian Tribe in Apache County, Arizona upstream from the confluence of the Little Colorado and Zuni Rivers for long-standing religious and sustenance activities.

(4) The water rights of all water users in the Little Colorado River basin in Arizona have been in litigation since 1979, in the Superior Court of the State of Arizona in and for the County of Apache in Civil No. 6417, In re The General Adjudication of All Rights to Use Water in the Little Colorado River System and Source.

(5) Recognizing that the final resolution of the Zuni Indian Tribe's water claims through litigation will take many years and entail great expense to all parties, continue to limit the Tribe's access to water with economic, social, and cultural consequences to the Tribe, prolong uncertainty as to the availability of water supplies, and seriously impair the long-term economic planning and development of all parties, the Tribe and neighboring non-Indians have sought to settle their disputes to water and reduce the burdens of litigation.

(6) After more than 4 years of negotiations, which included participation by representatives of the United States, the Zuni Indian Tribe, the State of Arizona, and neighboring non-Indian communities in the Little Colorado River basin, the parties have entered into a Settlement Agreement to resolve all of the Zuni Indian Tribe's water rights claims and to assist the Tribe in acquiring surface water rights, to provide for the Tribe's use of groundwater, and to provide for the wetland restoration of the Tribe's lands in Arizona.

(7) To facilitate the wetland restoration project contemplated under the Settlement Agreement, the Zuni Indian Tribe acquired certain lands along the Little Colorado River near or adjacent to its Reservation that are important for the success of the project and will likely acquire a small amount of similarly situated additional lands. The parties have agreed not to object to the United States taking title to certain of these lands into trust status; other lands shall remain in tribal fee status. The parties have worked extensively to resolve various governmental concerns regarding use of and control over those lands, and to provide a successful model for these types of situations, the State, local, and tribal governments intend to enter into an Intergovernmental Agreement that addresses the parties' governmental concerns.

(8) Pursuant to the Settlement Agreement, the neighboring non-Indian entities will assist in the Tribe's acquisition of surface water rights and development of groundwater, store surface water supplies for the Zuni Indian Tribe, and make substantial additional contributions to carry out the Settlement Agreement's provisions.

(9) To advance the goals of Federal Indian policy and consistent with the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and contribute funds for the rehabilitation of religious riparian areas and other purposes to enable the Tribe to use its water entitlement in developing its Reservation.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and neighboring non-Indians;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers;

(3) to authorize and direct the United States to take legal title and hold such title to certain lands in trust for the benefit of the Zuni Indian Tribe; and

(4) to authorize the actions, agreements, and appropriations as provided for in the Settlement Agreement and this subtitle.

SEC. 3103. DEFINITIONS.

In this subtitle:

(1) EASTERN LCR BASIN.—The term "Eastern LCR basin" means the portion of the Little Colorado River basin in Arizona upstream of the confluence of Silver Creek and the Little Colorado River, as identified on Exhibit 2.10 of the Settlement Agreement.

(2) FUND.—The term "Fund" means the Zuni Indian Tribe Water Rights Development Fund established by section 3106(a).

(3) INTERGOVERNMENTAL AGREEMENT.—The term "Intergovernmental Agreement" means the intergovernmental agreement between the Zuni Indian Tribe, Apache County, Arizona and the State of Arizona described in article 6 of the Settlement Agreement.

(4) PUMPING PROTECTION AGREEMENT.—The term "Pumping Protection Agreement" means an agreement, described in article 5 of the Settlement Agreement, between the Zuni Tribe, the United States on behalf of the Tribe, and a local landowner under which the landowner agrees to limit pumping of groundwater on his lands in exchange for a waiver of certain claims by the Zuni Tribe and the United States on behalf of the Tribe.

(5) RESERVATION; ZUNI HEAVEN RESERVATION.—The term "Reservation" or "Zuni Heaven Reservation", also referred to as "Kolhu:wala:wa", means the following property in Apache County, Arizona: Sections 26, 27, 28, 33, 34, and 35, Township 15 North, Range 26 East, Gila and Salt River Base and Meridian; and Sections 2, 3, 4, 9, 10, 11, 13, 14, 15, 16, 23, 26, and 27, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(7) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means that agreement dated June 7, 2002, together with all exhibits thereto. The parties to the Settlement Agreement include the Zuni Indian Tribe and its members, the United States on behalf of the Tribe and its members, the State of Arizona, the Arizona Game and Fish Commission, the Arizona State Land Department, the Arizona State Parks Board, the St. Johns Irrigation and Ditch Co., the Lyman Water Co., the Round Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, the Tucson Electric Power Company, the City of St. Johns, the Town of Eagar, and the Town of Springerville.

(8) SRP.—The term "SRP" means the Salt River Project Agricultural Improvement and Power District, a political subdivision of the State of Arizona.

(9) TEP.—The term "TEP" means Tucson Electric Power Company.

(10) TRIBE, ZUNI TRIBE, OR ZUNI INDIAN TRIBE.—The terms "Tribe", "Zuni Tribe", or "Zuni Indian Tribe" means the body politic and federally recognized Indian nation, and its members.

(11) ZUNI LANDS.—The term "Zuni Lands" means all the following lands, in the State of Arizona, that, on the effective date described in section 3109(a), are—

(A) within the Zuni Heaven Reservation;

(B) held in trust by the United States for the benefit of the Tribe or its members; or

(C) held in fee within the Little Colorado River basin by or for the Tribe.

SEC. 3104. AUTHORIZATION, RATIFICATIONS, AND CONFIRMATIONS.

(a) SETTLEMENT AGREEMENT.—To the extent the Settlement Agreement does not conflict with the provisions of this subtitle, such Settlement Agreement is hereby approved, ratified, confirmed, and declared to be valid. The Secretary is authorized and directed to execute the Settlement Agreement and any amendments approved by the parties necessary to make the Settlement Agreement consistent with this subtitle. The Secretary is further authorized to perform any actions required by the Settlement Agreement and any amendments to the Settlement Agreement that may be mutually agreed upon by the parties to the Settlement Agreement.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Zuni Indian Tribe Water Rights Development Fund established in section 3106(a), $19,250,000, to be allocated by the Secretary as follows:

(1) $3,500,000 for fiscal year 2004, to be used for the acquisition of water rights and associated lands, and other activities carried out, by the Zuni Tribe to facilitate the enforceability of the Settlement Agreement, including the acquisition of at least 2,350 acre-feet per year of water rights before the deadline described in section 3109(b).

(2) $15,750,000, of which $5,250,000 shall be made available for each of fiscal years 2004, 2005, and 2006, to take actions necessary to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas as provided for in the Settlement Agreement and under this subtitle.

(c) Other Agreements.—Except as provided in section 3109, the following 3 separate agreements, together with all amendments thereto, are approved, ratified, confirmed, and declared to be valid:

(1) The agreement between SRP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(2) The agreement between TEP, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

(3) The agreement between the Arizona State Land Department, the Zuni Tribe, and the United States on behalf of the Tribe, dated June 7, 2002.

SEC. 3105. TRUST LANDS.

(a) New Trust Lands.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, and after the requirements of section 3109(a) have been met, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 13: SW 1/4, S 1/2 NE 1/4 SE 1/4, W 1/2 SE 1/4, SE 1/4 SE 1/4;

(B) Section 23: N 1/2, N 1/2 SW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4, N 1/2 SW 1/4 SE 1/4, SE 1/4 SW 1/4 SE 1/4;

(C) Section 24: NW 1/4, SW 1/4, S 1/2 NE 1/4, N 1/2 SE 1/4; and

(D) Section 25: N 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4.

(2) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 19: W 1/2 E 1/2 NW 1/4, W 1/2 NW 1/4, W 1/2 NE 1/4 SW 1/4, NW 1/4 SW 1/4, S 1/2 SW 1/4;

(B) Section 29: SW 1/4 SW 1/4 NW 1/4, NW 1/4 NW 1/4 SW 1/4, S 1/2 N 1/2 SW 1/4, S 1/2 SW1/4, S 1/2 NW 1/4 SE 1/4, SW 1/4 SE 1/4;

(C) Section 30: W 1/2, SE 1/4; and

(D) Section 31: N 1/2 NE 1/4, N 1/2 S 1/2 NE 1/4, S 1/2 SE 1/4 NE 1/4, NW 1/4, E 1/2 SW 1/4, N 1/2 NW 1/4 SW 1/4, SE 1/4 NW 1/4 SW 1/4, E 1/2 SW 1/4 SW 1/4, SW 1/4 SW 1/4 SW 1/4.

(b) Future Trust Lands.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 3109(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands into trust for the benefit of the Zuni Tribe:

(1) In T. 14 N., R. 26E., Gila and Salt River Base and Meridian: Section 25: N 1/2 NE 1/4, N 1/2 S 1/2 NE 1/4, NW 1/4, N 1/2 NE 1/4 SW 1/4, NE 1/4 NW 1/4 SW 1/4.

(2) In T. 14 N., R. 27 E., Gila and Salt River Base and Meridian:

(A) Section 14: SE 1/4 SW 1/4, SE 1/4;

(B) Section 16: S 1/2 SW 1/4 SE 1/4;

(C) Section 19: S 1/2 SE 1/4 SE 1/4;

(D) Section 20: S 1/2 SW 1/4 SW 1/4, E 1/2 SE 1/4 SE 1/4;

(E) Section 21: N 1/2 NE 1/4, E 1/2 NE 1/4 NW 1/4, SE 1/4 NW 1/4, W 1/2 SW 1/4 NE 1/4, N 1/2 NE 1/4 SW 1/4, SW 1/4 NE 1/4 SW 1/4, E 1/2 NW 1/4 SW 1/4, SW 1/4 NW 1/4 SW 1/4, W 1/2 SW 1/4 SW 1/4;

(F) Section 22: SW 1/4 NE 1/4 NE 1/4, NW 1/4 NE 1/4, S 1/2 NE 1/4, N 1/2 NW 1/4, SE 1/4 NW1/4, N 1/2 SW 1/4 NW 1/4, SE 1/4 SW 1/4 NW 1/4, N 1/2 N 1/2 SE 1/4, N 1/2 NE 1/4 SW 1/4;

(G) Section 24: N 1/2 NE 1/4, S 1/2 SE 1/4;

(H) Section 29: N 1/2 N 1/2;

(I) Section 30: N 1/2 N 1/2, N 1/2 S 1/2 NW 1/4, N 1/2 SW 1/4 NE 1/4; and

(J) Section 36: SE 1/4 SE 1/4 NE 1/4, NE 1/4 NE 1/4 SE 1/4.

(3) In T. 14 N., R. 28 E., Gila and Salt River Base and Meridian:

(A) Section 18: S 1/2 NE 1/4, NE 1/4 SW 1/4, NE 1/4 NW 1/4 SW 1/4, S 1/2 NW 1/4 SW 1/4, S 1/2 SW 1/4, N 1/2 SE 1/4, N 1/2 SW 1/4 SE 1/4, SE 1/4 SE 1/4;

(B) Section 30: S 1/2 NE 1/4, W 1/2 NW 1/4 NE 1/4; and

(C) Section 32: N 1/2 NW 1/4 NE 1/4, SW 1/4 NE 1/4, S 1/2 SE 1/4 NE 1/4, NW 1/4, SW 1/4, N 1/2 SE 1/4, SW 1/4 SE 1/4, N 1/2 SE 1/4 SE 1/4, SW 1/4 SE 1/4 SE 1/4.

(c) New Reservation Lands.—Upon satisfaction of the conditions in paragraph 6.2 of the Settlement Agreement, after the requirements of section 3109(a) have been met, and upon acquisition by the Zuni Tribe, the Secretary shall take the legal title of the following lands in Arizona into trust for the benefit of the Zuni Tribe and make such lands part of the Zuni Indian Tribe Reservation in Arizona: Section 34, T. 14 N., R. 26 E., Gila and Salt River Base and Meridian.

(d) Limitation on Secretarial Discretion.—The Secretary shall have no discretion regarding the acquisitions described in subsections (a), (b), and (c).

(e) Lands Remaining in Fee Status.—The Zuni Tribe may seek to have the legal title to additional lands in Arizona, other than the lands described in subsection (a), (b), or (c), taken into trust by the United States for the benefit of the Zuni Indian Tribe pursuant only to an Act of Congress enacted after the date of enactment of this Act specifically authorizing the transfer for the benefit of the Zuni Tribe.

(f) Final Agency Action.—Any written certification by the Secretary under subparagraph 6.2.B of the Settlement Agreement constitutes final agency action under the Administrative Procedure Act and is reviewable as provided for under chapter 7 of title 5, United States Code.

(g) No Federal Water Rights.—Lands taken into trust pursuant to subsection (a), (b), or (c) shall not have Federal reserved rights to surface water or groundwater.

(h) State Water Rights.—The water rights and uses for the lands taken into trust pursuant to subsection (a) or (c) must be determined under subparagraph 4.1.A and article 5 of the Settlement Agreement. With respect to the lands taken into trust pursuant to subsection (b), the Zuni Tribe retains any rights or claims to water associated with these lands under State law, subject to the terms of the Settlement Agreement.

(i) Forfeiture and Abandonment.—Water rights that are appurtenant to lands taken into trust pursuant to subsection (a), (b), or (c) shall not be subject to forfeiture and abandonment.

(j) Ad Valorem Taxes.—With respect to lands that are taken into trust pursuant to subsection (a) or (b), the Zuni Tribe shall make payments in lieu of all current and future State, county, and local ad valorem property taxes that would otherwise be applicable to those lands if they were not in trust.

(k) Authority of Tribe.—For purposes of complying with this section and article 6 of the Settlement Agreement, the Tribe is authorized to enter into—

(1) the Intergovernmental Agreement between the Zuni Tribe, Apache County, Arizona, and the State of Arizona; and

(2) any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement.

(l) Federal Acknowledgement of Intergovernmental Agreements.—

(1) In general.—The Secretary shall acknowledge the terms of any intergovernmental agreement entered into by the Tribe under this section.

(2) No abrogation.—The Secretary shall not seek to abrogate, in any administrative or judicial action, the terms of any intergovernmental agreement that are consistent with subparagraph 6.2.A of the Settlement Agreement and this subtitle.

(3) Removal.—

(A) In general.—Except as provided in subparagraph (B), if a judicial action is commenced during a dispute over any intergovernmental agreement entered into under this section, and the United States is allowed to intervene in such action, the United States shall not remove such action to the Federal courts.

(B) Exception.—The United States may seek removal if—

(i) the action concerns the Secretary's decision regarding the issuance of rights-of-way under section 3108(c);

(ii) the action concerns the authority of a Federal agency to administer programs or the issuance of a permit under—

(I) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(II) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(III) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(IV) any other Federal law specifically addressed in intergovernmental agreements; or

(iii) the intergovernmental agreement is inconsistent with a Federal law for the protection of civil rights, public health, or welfare.

(m) Rule of Construction.—Nothing in this subtitle shall be construed to affect the application of the Act of May 25, 1918 (25 U.S.C. 211) within the State of Arizona.

(n) Disclaimer.—Nothing in this section repeals, modifies, amends, changes, or otherwise affects the Secretary's obligations to the Zuni Tribe pursuant to the Act entitled "An Act to convey certain lands to the Zuni Indian Tribe for religious purposes" approved August 28, 1984 (Public Law 98-408; 98 Stat. 1533) (and as amended by the Zuni Land Conservation Act of 1990 (Public Law 101-486; 104 Stat. 1174)).

SEC. 3106. DEVELOPMENT FUND.

(a) Establishment of the Fund.—

(1) In general.—There is established in the Treasury of the United States a fund to be known as the "Zuni Indian Tribe Water Rights Development Fund", to be managed and invested by the Secretary, consisting of—

(A) the amounts authorized to be appropriated in section 3104(b); and

(B) the appropriation to be contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement.

(2) Additional deposits.—The Secretary shall deposit in the Fund any other monies paid to the Secretary on behalf of the Zuni Tribe pursuant to the Settlement Agreement.

(b) Management of the Fund.—The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Zuni Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred to in this section as the "Trust Fund Reform Act"), this subtitle, and the Settlement Agreement.

(c) INVESTMENT OF THE FUND.—The Secretary shall invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, ch. 41, 25 U.S.C. 161);

(2) the first section of the Act of June 24, 1938 (52 Stat. 1037, ch. 648, 25 U.S.C. 162a); and

(3) subsection (b).

(d) AVAILABILITY OF AMOUNTS FROM THE FUND.—The funds authorized to be appropriated pursuant to section 3104(b)(2) and funds contributed by the State of Arizona pursuant to paragraph 7.6 of the Settlement Agreement shall be available for expenditure or withdrawal only after the requirements of section 3109(a) have been met.

(e) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) IN GENERAL.—The Zuni Tribe may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Zuni Tribe spend any funds in accordance with the purposes described in section 3104(b).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any monies withdrawn from the Fund under the plan are used in accordance with this subtitle.

(3) LIABILITY.—If the Zuni Tribe exercises the right to withdraw monies from the Fund, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) EXPENDITURE PLAN.—

(A) IN GENERAL.—The Zuni Tribe shall submit to the Secretary for approval an expenditure plan for any portion of the funds made available under this subtitle that the Zuni Tribe does not withdraw under this subsection.

(B) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Zuni Tribe remaining in the Fund will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this subtitle.

(5) ANNUAL REPORT.—The Zuni Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(f) FUNDS FOR ACQUISITION OF WATER RIGHTS.—

(1) WATER RIGHTS ACQUISITIONS.—Notwithstanding subsection (e), the funds authorized to be appropriated pursuant to section 3104(b)(1)—

(A) shall be available upon appropriation for use in accordance with section 3104(b)(1); and

(B) shall be distributed by the Secretary to the Zuni Tribe on receipt by the Secretary from the Zuni Tribe of a written notice and a tribal council resolution that describe the purposes for which the funds will be used.

(2) RIGHT TO SET OFF.—In the event the requirements of section 3109(a) have not been met and the Settlement Agreement has become null and void under section 3109(b), the United States shall be entitled to set off any funds expended or withdrawn from the amount appropriated pursuant to section 3104(b)(1), together with any interest accrued, against any claims asserted by the Zuni Tribe against the United States relating to water rights at the Zuni Heaven Reservation.

(3) WATER RIGHTS.—Any water rights acquired with funds described in paragraph (1) shall be credited against any water rights secured by the Zuni Tribe, or the United States on behalf of the Zuni Tribe, for the Zuni Heaven Reservation in the Little Colorado River General Stream Adjudication or in any future settlement of claims for those water rights.

(g) NO PER CAPITA DISTRIBUTIONS.—No part of the Fund shall be distributed on a per capita basis to members of the Zuni Tribe.

SEC. 3107. CLAIMS EXTINGUISHMENT; WAIVERS AND RELEASES.

(a) FULL SATISFACTION OF MEMBERS' CLAIMS.—

(1) IN GENERAL.—The benefits realized by the Tribe and its members under this subtitle, including retention of any claims and rights, shall constitute full and complete satisfaction of all members' claims for—

(A) water rights under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 3109(a) and any time thereafter; and

(B) injuries to water rights under Federal, State, and other laws (including claims for water rights in groundwater, surface water, and effluent, claims for damages for deprivation of water rights, and claims for changes to underground water table levels) for Zuni Lands from time immemorial through the effective date described in section 3109(a).

(2) NO RECOGNITION OR ESTABLISHMENT OF INDIVIDUAL WATER RIGHT.—Nothing in this subtitle recognizes or establishes any right of a member of the Tribe to water on the Reservation.

(b) TRIBE AND UNITED STATES AUTHORIZATION AND WATER QUANTITY WAIVERS.—The Tribe, on behalf of itself and its members and the Secretary on behalf of the United States in its capacity as trustee for the Zuni Tribe and its members, are authorized, as part of the performance of their obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraph 11.4 of the Settlement Agreement, for claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation, under Federal, State, or other law for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands from time immemorial through the effective date described in section 3109(a) and any time thereafter, except for claims within the Zuni Protection Area as provided in article 5 of the Settlement Agreement;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and including claims for damages for deprivation of water rights and any claims for changes to underground water table levels) for Zuni Lands from time immemorial through the effective date described in section 3109(a); and

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and including any claims for damages for deprivation of water rights and any claims for changes to underground water table levels) from time immemorial through the effective date described in section 3109(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors.

(c) TRIBAL WAIVERS AGAINST THE UNITED STATES.—The Tribe is authorized, as part of the performance of its obligations under the Settlement Agreement, to execute a waiver and release, subject to paragraphs 11.4 and 11.6 of the Settlement Agreement, for claims against the United States (acting in its capacity as trustee for the Zuni Tribe or its members, or otherwise acting on behalf of the Zuni Tribe or its members), including any agencies, officials, or employees thereof, for any and all—

(1) past, present, and future claims to water rights (including water rights in groundwater, surface water, and effluent) for Zuni Lands, from time immemorial through the effective date described in section 3109(a) and any time thereafter;

(2) past and present claims for injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) for Zuni Lands from time immemorial through the effective date described in section 3109(a);

(3) past, present, and future claims for water rights and injuries to water rights (including water rights in groundwater, surface water, and effluent and any claims for damages for deprivation of water rights) from time immemorial through the effective date described in section 3109(a), and any time thereafter, for lands outside of Zuni Lands but located within the Little Colorado River basin in Arizona, based upon aboriginal occupancy of lands by the Zuni Tribe or its predecessors;

(4) past and present claims for failure to protect, acquire, or develop water rights of, or failure to protect water quality for, the Zuni Tribe within the Little Colorado River basin in Arizona from time immemorial through the effective date described in section 3109(a); and

(5) claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this subtitle.

(d) TRIBAL WAIVER OF WATER QUALITY CLAIMS AND INTERFERENCE WITH TRUST CLAIMS.—

(1) CLAIMS AGAINST THE STATE AND OTHERS.—

(A) INTERFERENCE WITH TRUST RESPONSIBILITY.—The Tribe, on behalf of itself and its members, is authorized, as part of the performance of its obligations under the Settlement Agreement, to waive and release all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for claims of interference with the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this subtitle.

(B) INJURY OR THREAT OF INJURY TO WATER QUALITY.—The Tribe, on behalf of itself and its members, is authorized, as part of the performance of its obligations under the Settlement Agreement, to waive and release, subject to paragraphs 11.4, 11.6, and 11.7 of the Settlement Agreement, all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation under Federal, State, or other law, for—

(i) any and all past and present claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of

1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury to water quality accruing from time immemorial through the effective date described in section 3109(a), for lands within the Little Colorado River basin in the State of Arizona; and

(ii) any and all future claims, including natural resource damage claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, for injury or threat of injury to water quality, accruing after the effective date described in section 3109(a), for any lands within the Eastern LCR basin caused by—

(I) the lawful diversion or use of surface water;

(II) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(III) the Parties' performance of any obligations under the Settlement Agreement;

(IV) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(V) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(VI) any combination of the causes described in subclauses (I) through (V).

(2) CLAIMS OF THE UNITED STATES.—The Tribe, on behalf of itself and its members, is authorized to waive its right to request that the United States bring—

(A) any claims for injuries to water quality under the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.) or any other applicable statute, for lands within the Little Colorado River Basin in the State of Arizona, accruing from time immemorial through the effective date described in section 3109(a); and

(B) any future claims for injuries or threat of injury to water quality under the natural resource damage provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), or any other applicable statute, accruing after the effective date described in section 3109(a), for any lands within the Eastern LCR basin, caused by—

(i) the lawful diversion or use of surface water;

(ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(iii) the Parties' performance of any obligations under the Settlement Agreement;

(iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(vi) any combination of the causes described in clauses (i) through (v).

(3) LIMITATIONS.—Notwithstanding the authorization for the Tribe's waiver of future water quality claims in paragraph (1)(B)(ii) and the waiver in paragraph (2)(B), the Tribe, on behalf of itself and its members, retains any statutory claims for injury or threat of injury to water quality under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) and the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), as described in subparagraph 11.4(D)(3) and (4) of the Settlement Agreement, that accrue at least 30 years after the effective date described in section 3109(a).

(e) WAIVER OF UNITED STATES WATER QUALITY CLAIMS RELATED TO SETTLEMENT LAND AND WATER.—

(1) PAST AND PRESENT CLAIMS.—As part of the performance of its obligations under the Settlement Agreement, the United States waives and releases, subject to the retentions in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, all claims against the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation for—

(A) all past and present common law claims accruing from time immemorial through the effective date described in section 3109(a) arising from or relating to water quality in which the injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Little Colorado River basin in the State of Arizona; and

(B) all past and present natural resource damage claims accruing through the effective date described in section 3109(a) arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Little Colorado River basin in Arizona, only for those cases in which the United States, through the Secretary or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of this Act, in section 300.600(b)(2) of title 40, Code of Federal Regulations.

(2) FUTURE CLAIMS.—As part of the performance of its obligations under the Settlement Agreement, the United States waives and releases, subject to the retentions in paragraphs 11.4, 11.6 and 11.7 of the Settlement Agreement, the State of Arizona, or any agency or political subdivision thereof, or any other person, entity, corporation, or municipal corporation for—

(A) all future common law claims arising from or relating to water quality in which the injury or threat of injury asserted is to the Tribe's interest in water, trust land, and natural resources in the Eastern LCR basin in Arizona accruing after the effective date described in section 3109(a) caused by—

(i) the lawful diversion or use of surface water;

(ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area, as provided in article 5 of the Settlement Agreement;

(iii) the Parties' performance of any obligations under the Settlement Agreement;

(iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(vi) any combination of the causes described in clauses (i) through (v); and

(B) all future natural resource damage claims accruing after the effective date described in section 3109(a) arising from or relating to water quality in which the claim is based on injury to natural resources or threat to natural resources in the Eastern LCR basin in Arizona, only for those cases in which the United States, through the Secretary or other designated Federal official, would act on behalf of the Tribe as a natural resource trustee pursuant to the National Contingency Plan, as set forth, as of the date of enactment of this Act, in section 300.600(b)(2) of title 40, Code of Federal Regulations, caused by—

(i) the lawful diversion or use of surface water;

(ii) the lawful withdrawal or use of underground water, except within the Zuni Protection Area as provided in article 5 of the Settlement Agreement;

(iii) the Parties' performance of their obligations under this Settlement Agreement;

(iv) the discharge of oil associated with routine physical or mechanical maintenance of wells or diversion structures not inconsistent with applicable law;

(v) the discharge of oil associated with routine start-up and operation of well pumps not inconsistent with applicable law; or

(vi) any combination of the causes described in clauses (i) through (v).

(f) EFFECT.—Subject to subsections (b) and (e), nothing in this subtitle or the Settlement Agreement affects any right of the United States, or the State of Arizona, to take any actions, including enforcement actions, under any laws (including regulations) relating to human health, safety and the environment.

SEC. 3108. MISCELLANEOUS PROVISIONS.

(a) WAIVER OF SOVEREIGN IMMUNITY.—If any party to the Settlement Agreement or a Pumping Protection Agreement files a lawsuit only relating directly to the interpretation or enforcement of this subtitle, the Settlement Agreement, an agreement described in paragraph (1), (2), or (3) of section 3104(c), or a Pumping Protection Agreement, naming the United States or the Tribe as a party, or if any other landowner or water user in the Little Colorado River basin in Arizona files a lawsuit only relating directly to the interpretation or enforcement of Article 11, the rights of de minimis users in subparagraph 4.2.D or the rights of underground water users under Article 5 of the Settlement Agreement, naming the United States or the Tribe as a party—

(1) the United States, the Tribe, or both may be added as a party to any such litigation, and any claim by the United States or the Tribe to sovereign immunity from such suit is hereby waived, other than with respect to claims for monetary awards except as specifically provided for in the Settlement Agreement; and

(2) the Tribe may waive its sovereign immunity from suit in the Superior Court of Apache County, Arizona for the limited purposes of enforcing the terms of the Intergovernmental Agreement, and any intergovernmental agreement required to be entered into by the Tribe under the terms of the Intergovernmental Agreement, other than with respect to claims for monetary awards except as specifically provided in the Intergovernmental Agreement.

(b) TRIBAL USE OF WATER.—

(1) IN GENERAL.—With respect to water rights made available under the Settlement Agreement and used on the Zuni Heaven Reservation—

(A) such water rights shall be held in trust by the United States in perpetuity, and shall not be subject to forfeiture or abandonment;

(B) State law shall not apply to water uses on the Reservation;

(C) the State of Arizona may not regulate or tax such water rights or uses (except that the court with jurisdiction over the decree entered pursuant to the Settlement Agreement or the Norviel Decree Court may assess administrative fees for delivery of this water);

(D) subject to paragraph 7.7 of the Settlement Agreement, the Zuni Tribe shall use water made available to the Zuni Tribe under the Settlement Agreement on the Zuni Heaven Reservation for any use it deems advisable;

(E) water use by the Zuni Tribe or the United States on behalf of the Zuni Tribe for wildlife or instream flow use, or for irrigation to establish or maintain wetland on the Reservation, shall be considered to be consistent with the purposes of the Reservation; and

(F)(i) not later than 3 years after the deadline described in section 3109(b), the Zuni Tribe shall adopt a water code to be approved by the Secretary for regulation of water use on the lands identified in subsections (a) and (b) of section 3105 that is reasonably equivalent to State water law (including statutes relating to dam safety and groundwater management); and

(ii) until such date as the Zuni Tribe adopts a water code described in clause (i), the Secretary, in consultation with the State of Arizona, shall administer water use and water regulation on lands described in that clause in a manner that is reasonably equivalent to State law (including statutes relating to dam safety and groundwater management).

(2) LIMITATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Zuni Tribe or the United States shall not sell, lease, transfer, or transport water made available for use on the Zuni Heaven Reservation to any other place.

(B) EXCEPTION.—Water made available to the Zuni Tribe or the United States for use on the Zuni Heaven Reservation may be severed and transferred from the Reservation to other Zuni Lands if the severance and transfer is accomplished in accordance with State law (and once transferred to any lands held in fee, such water shall be subject to State law).

(c) RIGHTS-OF-WAY.—

(1) NEW AND FUTURE TRUST LAND.—The land taken into trust under subsections (a) and (b) of section 3105 shall be subject to existing easements and rights-of-way.

(2) ADDITIONAL RIGHTS-OF-WAY.—

(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary, in consultation with the Tribe, shall grant additional rights-of-way or expansions of existing rights-of-way for roads, utilities, and other accommodations to adjoining landowners if—

(i) the proposed right-of-way is necessary to the needs of the applicant;

(ii) the proposed right-of-way will not cause significant and substantial harm to the Tribe's wetland restoration project or religious practices; and

(iii) the proposed right-of-way acquisition will comply with the procedures in part 169 of title 25, Code of Federal Regulations, not inconsistent with this subsection and other generally applicable Federal laws unrelated to the acquisition of interests across trust lands.

(B) ALTERNATIVES.—If the criteria described in clauses (i) through (iii) of subparagraph (A) are not met, the Secretary may propose an alternative right-of-way, or other accommodation that complies with the criteria.

(d) CERTAIN CLAIMS PROHIBITED.—The United States shall make no claims for reimbursement of costs arising out of the implementation of this subtitle or the Settlement Agreement against any Indian-owned land within the Tribe's Reservation, and no assessment shall be made in regard to such costs against such lands.

(e) VESTED RIGHTS.—Except as described in paragraph 5.3 of the Settlement Agreement (recognizing the Zuni Tribe's use of 1,500 acre-feet per annum of groundwater) this subtitle and the Settlement Agreement do not create any vested right to groundwater under Federal or State law, or any priority to the use of groundwater that would be superior to any other right or use of groundwater under Federal or State law, whether through this subtitle, the Settlement Agreement, or by incorporation of any abstract, agreement, or stipulation prepared under the Settlement Agreement. Notwithstanding the preceding sentence, the rights of parties to the agreements referred to in paragraph (1), (2), or (3) of section 3104(c) and paragraph 5.8 of the Settlement Agreement, as among themselves, shall be as stated in those agreements.

(f) OTHER CLAIMS.—Nothing in the Settlement Agreement or this subtitle quantifies or otherwise affects the water rights, claims, or entitlements to water of any Indian tribe, band, or community, other than the Zuni Indian Tribe.

(g) NO MAJOR FEDERAL ACTION.—

(1) IN GENERAL.—Execution of the Settlement Agreement by the Secretary as provided for in section 3104(a) shall not constitute major Federal action under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

(2) SETTLEMENT AGREEMENT.—In implementing the Settlement Agreement, the Secretary shall comply with all aspects of—

(A) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(B) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(C) all other applicable environmental laws (including regulations).

SEC. 3109. EFFECTIVE DATE FOR WAIVER AND RELEASE AUTHORIZATIONS.

(a) IN GENERAL.—The waiver and release authorizations contained in subsections (b) and (c) of section 3107 shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of all the following findings:

(1) This subtitle has been enacted in a form approved by the parties in paragraph 3.1.A of the Settlement Agreement.

(2) The funds authorized by section 3104(b) have been appropriated and deposited into the Fund.

(3) The State of Arizona has appropriated and deposited into the Fund the amount required by paragraph 7.6 of the Settlement Agreement.

(4) The Zuni Indian Tribe has either purchased or acquired the right to purchase at least 2,350 acre-feet per annum of surface water rights, or waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(5) Pursuant to subparagraph 3.1.D of the Settlement Agreement, the severance and transfer of surface water rights that the Tribe owns or has the right to purchase have been conditionally approved, or the Tribe has waived this condition as provided in paragraph 3.2 of the Settlement Agreement.

(6) Pursuant to subparagraph 3.1.E of the Settlement Agreement, the Tribe and Lyman Water Company have executed an agreement relating to the process of the severance and transfer of surface water rights acquired by the Zuni Tribe or the United States, the pass-through, use, or storage of the Tribe's surface water rights in Lyman Lake, and the operation of Lyman Dam.

(7) Pursuant to subparagraph 3.1.F of the Settlement Agreement, all the parties to the Settlement Agreement have agreed and stipulated to certain Arizona Game and Fish abstracts of water uses.

(8) Pursuant to subparagraph 3.1.G of the Settlement Agreement, all parties to the Settlement Agreement have agreed to the location of an observation well and that well has been installed.

(9) Pursuant to subparagraph 3.1.H of the Settlement Agreement, the Zuni Tribe, Apache County, Arizona and the State of Arizona have executed an Intergovernmental Agreement that satisfies all of the conditions in paragraph 6.2 of the Settlement Agreement.

(10) The Zuni Tribe has acquired title to the section of land adjacent to the Zuni Heaven Reservation described as Section 34, Township 14 North, Range 26 East, Gila and Salt River Base and Meridian.

(11) The Settlement Agreement has been modified if and to the extent it is in conflict with this subtitle and such modification has been agreed to by all the parties to the Settlement Agreement.

(12) A court of competent jurisdiction has approved the Settlement Agreement by a final judgment and decree.

(b) DEADLINE FOR EFFECTIVE DATE.—If the publication in the Federal Register required under subsection (a) has not occurred by December 31, 2006, sections 3104 and 3105, and any agreements entered into pursuant to sections 3104 and 3105 (including the Settlement Agreement and the Intergovernmental Agreement) shall not thereafter be effective and shall be null and void. Any funds and the interest accrued thereon appropriated pursuant to section 3104(b)(2) shall revert to the Treasury, and any funds and the interest accrued thereon appropriated pursuant to paragraph 7.6 of the Settlement Agreement shall revert to the State of Arizona.

Subtitle B—Quinault Indian Nation

SEC. 3201. QUINAULT INDIAN NATION WATER FEASIBILITY STUDY.

(a) IN GENERAL.—The Secretary of the Interior may carry out a water source, quantity, and quality feasibility study for the Quinault Indian Nation, to identify ways to meet the current and future domestic and commercial water supply and distribution needs of the Quinault Indian Nation on the Olympic Peninsula, Washington.

(b) PUBLIC AVAILABILITY OF RESULTS.—As soon as practicable after completion of a feasibility study under subsection (a), the Secretary of the Interior shall—

(1) publish in the Federal Register a notice of the availability of the results of the feasibility study; and

(2) make available to the public, on request, the results of the feasibility study.

Subtitle C—Santee Sioux Tribe of Nebraska Rural Water System Feasibility Study

SEC. 3301. STUDY; REPORT.

(a) STUDY.—Pursuant to reclamation laws, the Secretary of the Interior (referred to in this subtitle as the "Secretary"), through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (referred to in this subtitle as the "Tribe"), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) REPORT.—Not later than 1 year after funds are made available to carry out this subtitle, the Secretary shall submit to Congress a report containing the results of the study required by subsection (a).

SEC. 3302. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $500,000 to carry out this subtitle.

TITLE IV—LAND PROVISIONS

Subtitle A—Agreement To Affirm Boundary Between Pubelo of Santa Clara and Pueblo of San ildefonso Aboriginal Land Within Garcia Canyon Tract

SEC. 4101. DEFINITIONS.

In this subtitle:

(1) AGREEMENT.—The term "Agreement" means the agreement entitled "Agreement to Affirm Boundary Between Pueblo of Santa Clara and Pueblo of San Ildefonso Aboriginal Lands Within Garcia Canyon Tract", entered into by the Governors on December 20, 2000.

(2) BOUNDARY LINE.—The term "boundary line" means the boundary line established under section 4104(a).

(3) GOVERNORS.—The term "Governors" means—

(A) the Governor of the Pueblo of Santa Clara, New Mexico; and

(B) the Governor of the Pueblo of San Ildefonso, New Mexico.

(4) INDIAN TRIBE.—The term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(5) PUEBLOS.—The term "Pueblos" means—

(A) the Pueblo of Santa Clara, New Mexico; and

(B) the Pueblo of San Ildefonso, New Mexico.

(6) TRUST LAND.—The term "trust land" means the land held by the United States in trust under section 4102(a) or 4103(a).

SEC. 4102. TRUST FOR THE PUEBLO OF SANTA CLARA, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of Santa Clara, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,484 acres of Bureau of Land Management land located in Rio Arriba County, New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located north of the boundary line;

(2) the southern half of T. 20 N., R. 7 E., sec. 23, New Mexico Principal Meridian;

(3) the southern half of T. 20 N., R. 7 E., sec. 24, New Mexico Principal Meridian;

(4) T. 20 N., R. 7 E., sec. 25, excluding the 5-acre tract in the southeast quarter owned by the Pueblo of San Ildefonso;

(5) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located north and east of the boundary line;

(6) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located north of the boundary line;

(7) the portion of T. 20 N., R. 8 E., sec. 19, New Mexico Principal Meridian, that is not included in the Santa Clara Pueblo Grant or the Santa Clara Indian Reservation; and

(8) the portion of T. 20 N., R. 8 E., sec. 30, that is not included in the Santa Clara Pueblo Grant or the San Ildefonso Grant.

SEC. 4103. TRUST FOR THE PUEBLO OF SAN ILDEFONSO, NEW MEXICO.

(a) IN GENERAL.—All right, title, and interest of the United States in and to the land described in subsection (b), including improvements on, appurtenances to, and mineral rights (including rights to oil and gas) to the land, shall be held by the United States in trust for the Pueblo of San Ildefonso, New Mexico.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 2,000 acres of Bureau of Land Management land located in Rio Arriba County and Santa Fe County in the State of New Mexico, and more particularly described as—

(1) the portion of T. 20 N., R. 7 E., sec. 22, New Mexico Principal Meridian, that is located south of the boundary line;

(2) the portion of T. 20 N., R. 7 E., sec. 26, New Mexico Principal Meridian, that is located south and west of the boundary line;

(3) the portion of T. 20 N., R. 7 E., sec. 27, New Mexico Principal Meridian, that is located south of the boundary line;

(4) T. 20 N., R. 7 E., sec. 34, New Mexico Principal Meridian; and

(5) the portion of T. 20 N., R. 7 E., sec. 35, New Mexico Principal Meridian, that is not included in the San Ildefonso Pueblo Grant.

SEC. 4104. SURVEY AND LEGAL DESCRIPTIONS.

(a) SURVEY.—Not later than 180 days after the date of enactment of this Act, the Office of Cadastral Survey of the Bureau of Land Management shall, in accordance with the Agreement, complete a survey of the boundary line established under the Agreement for the purpose of establishing, in accordance with sections 4102(b) and 4103(b), the boundaries of the trust land.

(b) LEGAL DESCRIPTIONS.—

(1) PUBLICATION.—On approval by the Governors of the survey completed under subsection (a), the Secretary shall publish in the Federal Register—

(A) a legal description of the boundary line; and

(B) legal descriptions of the trust land.

(2) TECHNICAL CORRECTIONS.—Before the date on which the legal descriptions are published under paragraph (1)(B), the Secretary may correct any technical errors in the descriptions of the trust land provided in sections 4102(b) and 4103(b) to ensure that the descriptions are consistent with the terms of the Agreement.

(3) EFFECT.—Beginning on the date on which the legal descriptions are published under paragraph (1)(B), the legal descriptions shall be the official legal descriptions of the trust land.

SEC. 4105. ADMINISTRATION OF TRUST LAND.

(a) IN GENERAL.—Effective beginning on the date of enactment of this Act—

(1) the land held in trust under section 4102(a) shall be declared to be a part of the Santa Clara Indian Reservation; and

(2) the land held in trust under section 4103(a) shall be declared to be a part of the San Ildefonso Indian Reservation.

(b) APPLICABLE LAW.—

(1) IN GENERAL.—The trust land shall be administered in accordance with any law (including regulations) or court order generally applicable to property held in trust by the United States for Indian tribes.

(2) PUEBLO LANDS ACT.—The following shall be subject to section 17 of the Act of June 7, 1924 (commonly known as the "Pueblo Lands Act") (25 U.S.C. 331 note):

(A) The trust land.

(B) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of Santa Clara in the Santa Clara Pueblo Grant.

(C) Any land owned as of the date of enactment of this Act or acquired after the date of enactment of this Act by the Pueblo of San Ildefonso in the San Ildefonso Pueblo Grant.

(c) USE OF TRUST LAND.—

(1) IN GENERAL.—Subject to the criteria developed under paragraph (2), the trust land may be used only for—

(A) traditional and customary uses; or

(B) stewardship conservation for the benefit of the Pueblo for which the trust land is held in trust.

(2) CRITERIA.—The Secretary shall work with the Pueblos to develop appropriate criteria for using the trust land in a manner that preserves the trust land for traditional and customary uses or stewardship conservation.

(3) LIMITATION.—Beginning on the date of enactment of this Act, the trust land shall not be used for any new commercial developments.

SEC. 4106. EFFECT.

Nothing in this subtitle—

(1) affects any valid right-of-way, lease, permit, mining claim, grazing permit, water right, or other right or interest of a person or entity (other than the United States) that is—

(A) in or to the trust land; and

(B) in existence before the date of enactment of this Act;

(2) enlarges, impairs, or otherwise affects a right or claim of the Pueblos to any land or interest in land that is—

(A) based on Aboriginal or Indian title; and

(B) in existence before the date of enactment of this Act;

(3) constitutes an express or implied reservation of water or water right with respect to the trust land; or

(4) affects any water right of the Pueblos in existence before the date of enactment of this Act.

Subtitle B—Additional Land Provisions

SEC. 4201. INDIAN LAND CONSOLIDATION ACT AMENDMENTS.

(a) TECHNICAL CORRECTION.—Section 206(c)(2)(B) of the Indian Land Consolidation Act (25 U.S.C. 2205(c)(2)(B)) is amended by striking "207(a)(6)(B) of this Act" and inserting "207(a)(6)".

(b) EFFECTIVE DATE.—Section 207(g) of the Indian Land Consolidation Act (25 U.S.C. 2206(g)) is amended by striking paragraph (5) and inserting the following:

"(5) EFFECTIVE DATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), this section shall not apply to the estate of an individual who dies before the date that is 1 year after the date on which the Secretary makes the certification required under paragraph (4).

"(B) APPROVAL.—Subsection (e) takes effect on November 7, 2000.".

(c) TRUST AND RESTRICTED LAND TRANSACTIONS.—Section 217(c) of the Indian Land Consolidation Act (25 U.S.C. 2216(c)) is amended—

(1) by striking the subsection heading and all that follows through the end of the first sentence and inserting the following:

"(c) ACQUISITION OF INTEREST BY SECRETARY.—

"(1) REQUEST.—

"(A) IN GENERAL.—An Indian, or the recognized tribal government of a reservation, that is in possession of any portion of the fee interest in a parcel of land described in subparagraph (B) may request that the interest be taken into trust by the Secretary.

"(B) LAND.—A parcel of land described in this subparagraph is any parcel of land—

"(i) that is located within a reservation; and

"(ii) at least a portion of the ownership interest in which is held by the Secretary, in trust or restricted status, on November 7, 2000."; and

(2) in the second sentence, by striking "Upon" and inserting the following:

"(2) INTEREST.—Upon".

SEC. 4202. MISSISSIPPI BAND OF CHOCTAW INDIANS.

Section 1(a)(2) of Public Law 106–228 (114 Stat. 462) is amended by striking "report entitled" and all that follows through "is hereby declared" and inserting the following: "report entitled 'Report of May 17, 2002, Clarifying and Correcting Legal Descriptions or Recording Information for Certain Lands placed into Trust and Reservation Status for the Mississippi Band of Choctaw Indians by Section 1(a)(2) of Pub. L. 106–228, as amended by Title VIII, Section 811 of Pub. L. 106–568', on file in the Office of the Superintendent, Choctaw Agency, Bureau of Indian Affairs, Department of the Interior, is declared".

SEC. 4203. REMOVAL OF RESTRICTIONS ON UTE TRIBE OF THE UINTAH AND OURAY RESERVATION LAND.

Section 3405(c) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (10 U.S.C. 7420 note; Public Law 105–261) is amended by striking paragraph (3) and inserting the following:

"(3) With respect to the land conveyed to the Tribe under subsection (b)—

"(A) the land shall not be subject to any Federal restriction on alienation; and

"(B) no grant, lease, exploration or development agreement, or other conveyance of the land (or any interest in the land) that is authorized by the governing body of the Tribe shall be subject to approval by the Secretary of the Interior or any other Federal official.".

SEC. 4204. RESERVATION LAND OF THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS.

Section 7 of the Cow Creek Band of Umpqua Tribe of Indians Recognition Act (25 U.S.C. 712e) is amended in the third sentence by inserting before the period at the end the following: ", and shall be treated as on-reservation land for the purpose of processing acquisitions of real property into trust".

SEC. 4205. DISPOSITION OF FEE LAND OF THE SEMINOLE TRIBE OF FLORIDA.

(a) TRANSACTIONS.—The Seminole Tribe of Florida may mortgage, lease, sell, convey, warrant, or otherwise transfer all or any part of any interest in any real property that—

(1) was held by the Tribe on September 1, 2002; and

(2) is not held in trust by the United States for the benefit of the Tribe.

(b) NO FURTHER APPROVAL REQUIRED.—Transactions under subsection (a) shall be valid without further approval, ratification, or authorization by the United States.

(c) TRUST LAND NOT AFFECTED.—Nothing in this section is intended or shall be construed to—

(1) authorize the Seminole Tribe of Florida to mortgage, lease, sell, convey, warrant, or otherwise transfer all or any part of an interest in any real property that is held in trust by the United States for the benefit of the Tribe; or

(2) affect the operation of any law governing mortgaging, leasing, selling, conveying, warranting, or otherwise transferring any interest in such trust land.

SEC. 4206. DISPOSITION OF FEE LAND OF THE SHAKOPEE MDEWAKANTON SIOUX COMMUNITY.

(a) IN GENERAL.—Notwithstanding any other provision of law, without further authorization by the United States, the Shakopee Mdewakanton Sioux Community in the State of Minnesota (referred to in this section as the "Community") may lease, sell, convey, warrant, or otherwise transfer all or any part of the interest of the Community in or to any real property that is not held in trust by the United States for the benefit of the Community.

(b) TRUST LAND NOT AFFECTED.—Nothing in this section—

(1) authorizes the Community to lease, sell, convey, warrant, or otherwise transfer all or part of an interest in any real property that is held in trust by the United States for the benefit of the Community; or

(2) affects the operation of any law governing leasing, selling, conveying, warranting, or otherwise transferring any interest in that trust land.

SEC. 4207. FACILITATION OF CONSTRUCTION OF PIPELINE TO PROVIDE WATER FOR EMERGENCY FIRE SUPPRESSION AND OTHER PURPOSES.

(a) IN GENERAL.—Notwithstanding any other provision of law, subject to valid existing rights under Federal and State law, the land described in subsection (b), fee title to which is held by the Barona Band of Mission Indians of California (referred to in this section as the "Band")—

(1) is declared to be held in trust by the United States for the benefit of the Band; and

(2) shall be considered to be a portion of the reservation of the Band.

(b) LAND.—The land referred to in subsection (a) is land comprising approximately 85 acres in San Diego County, California, and described more particularly as follows: San Bernardino Base and Meridian; T. 14 S., R. 1 E.; sec. 21: W½SE¼, 68 acres; NW¼NW¼, 17 acres.

(c) GAMING.—The land taken into trust by subsection (a) shall neither be considered to have been taken into trust for gaming, nor be used for gaming (as that term is used in the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

SEC. 4208. AGREEMENT WITH DRY PRAIRIE RURAL WATER ASSOCIATION, INCORPORATED.

Any agreement between the Tribe and Dry Prairie Rural Water Association, Incorporated (or any non-Federal successor entity) for the use of water to meet the needs of the Dry Prairie system that is entered into under section 5 of the Fort Peck Reservation Rural Water System Act of 2000 (114 Stat. 1454)—

(1) is approved by Congress; and

(2) shall be approved and executed by the Secretary.

TITLE V—LEASING PROVISIONS

SEC. 5001. AUTHORIZATION OF 99-YEAR LEASES FOR CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION.

(a) IN GENERAL.—Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)) is amended in the second sentence—

(1) by inserting "the reservation of the Confederated Tribes of the Umatilla Indian Reservation," before "the Burns Paiute Reservation,";

(2) by inserting "the" before "Yavapai-Prescott"; and

(3) by striking "Washington,," and inserting "Washington,".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to any lease entered into on, or renewed after, the date of enactment of this Act.

SEC. 5002. AUTHORIZATION OF 99-YEAR LEASES FOR YUROK TRIBE AND HOPLAND BAND OF POMO INDIANS.

(a) IN GENERAL.—The first section of the Act entitled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (25 U.S.C. 415(a)) is amended by inserting "lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria," after "Pueblo of Santa Clara,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any lease entered into or renewed after the date of the enactment of this Act.

SEC. 5003. LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.

The first section of the Act of August 9, 1955 (25 U.S.C. 415) is amended by adding at the end the following:

"(g) LEASE OF TRIBALLY-OWNED LAND BY ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION.—

"(1) IN GENERAL.—Notwithstanding subsection (a) and any regulations under part 162 of title 25, Code of Federal Regulations, subject to paragraph (2), the Assiniboine and Sioux Tribes of the Fort Peck Reservation may lease to the Northern Border Pipeline Company tribally-owned land on the Fort Peck Indian Reservation for 1 or more interstate gas pipelines.

"(2) CONDITIONS.—A lease entered into under paragraph (1)—

"(A) shall commence during fiscal year 2011 for an initial term of 25 years;

"(B) may be renewed for an additional term of 25 years; and

"(C) shall specify in the terms of the lease an annual rental rate—

"(i) which rate shall be increased by 3 percent per year on a cumulative basis for each 5-year period; and

"(ii) the adjustment of which in accordance with clause (i) shall be considered to satisfy any review requirement under part 162 of title 25, Code of Federal Regulations.".

SEC. 5004. LEASES OF RESTRICTED LAND.

Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)) is amended by adding at the end the following: "Notwithstanding any other provision of law, no approval by the Secretary shall be required for any new lease, or for renewal of any existing lease, of land under this subsection if the lease, including all periods covered by any renewal, is for an aggregate term of less than 7 years.".

TITLE VI—JUDGMENT FUND DISTRIBUTION

Subtitle A—Gila River Indian Community Judgment Fund Distribution

SEC. 6001. SHORT TITLE.

This subtitle may be cited as the "Gila River Indian Community Judgment Fund Distribution Act of 2002".

SEC. 6002. FINDINGS.

Congress finds that—

(1) on August 8, 1951, the Gila River Indian Community filed a complaint before the Indian Claims Commission in Gila River Pima-Maricopa Indian Community v. United States, Docket No. 236, for the failure of the United States to carry out its obligation to protect the use by the Community of water from the Gila River and the Salt River in the State of Arizona;

(2) except for Docket Nos. 236–C and 236–D, which remain undistributed, all 14 original dockets under Docket No. 236 have been resolved and distributed;

(3) in Gila River Pima-Maricopa Indian Community v. United States, 29 Ind. Cl. Comm. 144 (1972), the Indian Claims Commission held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–C;

(4) in Gila River Pima-Maricopa Indian Community v. United States, 684 F.2d 852 (1982), the United States Claims Court held that the United States, as trustee, was liable to the Community with respect to the claims made in Docket No. 236–D;

(5) with the approval of the Community under Community Resolution GR–98–98, the Community entered into a settlement with the United States on April 27, 1999, for claims made under Dockets Nos. 236–C and 236–D for an aggregate total of $7,000,000;

(6) on May 3, 1999, the United States Court of Federal Claims ordered that a final judgment be entered in consolidated Dockets Nos. 236–C and 236–D for $7,000,000 in favor of the Community and against the United States;

(7)(A) on October 6, 1999, the Department of the Treasury certified the payment of $7,000,000, less attorney fees, to be deposited in a trust account on behalf of the Community; and

(B) that payment was deposited in a trust account managed by the Office of Trust Funds Management of the Department of the Interior; and

(8) in accordance with the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit an Indian judgment fund use or distribution plan to Congress for approval.

SEC. 6003. DEFINITIONS.

In this subtitle:

(1) ADULT.—The term "adult" means an individual who—

(A) is 18 years of age or older as of the date on which the payment roll is approved by the Community; or

(B) will reach 18 years of age not later than 30 days after the date on which the payment roll is approved by the Community.

(2) COMMUNITY.—The term "Community" means the Gila River Indian Community.

(3) COMMUNITY-OWNED FUNDS.—The term "Community-owned funds" means—

(A) funds held in trust by the Secretary as of the date of enactment of this Act that may be made available to make payments under section 6101; or

(B) revenues held by the Community that—

(i) are derived from trust resources; and

(ii) qualify for an exemption under section 7 or 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

(4) IIM ACCOUNT.—The term "IIM account" means an individual Indian money account.

(5) JUDGMENT FUNDS.—The term "judgment funds" means the aggregate amount awarded to the Community by the Court of Federal Claims in Dockets Nos. 236–C and 236–D.

(6) LEGALLY INCOMPETENT INDIVIDUAL.—The term "legally incompetent individual" means an individual who has been determined to be incapable of managing his or her own affairs by a court of competent jurisdiction.

(7) MINOR.—The term "minor" means an individual who is not an adult.

(8) PAYMENT ROLL.—The term "payment roll" means the list of eligible, enrolled members of the Community who are eligible to receive a payment under section 6101(a), as prepared by the Community under section 6101(b).

(9) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

CHAPTER 1—GILA RIVER JUDGMENT FUND DISTRIBUTION

SEC. 6101. DISTRIBUTION OF JUDGMENT FUNDS.

(a) PER CAPITA PAYMENTS.—Notwithstanding the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) or any other provision of law (including any regulation promulgated or plan developed under such a law), the amounts paid in satisfaction of an award granted to the Gila River Indian Community in Dockets Nos. 236–C and 236–D before the United States Court of Federal Claims, less attorney fees and litigation expenses and including all accrued interest, shall be distributed in the form of per capita payments (in amounts as equal as practicable) to all eligible enrolled members of the Community.

(b) PREPARATION OF PAYMENT ROLL.—

(1) IN GENERAL.—The Community shall prepare a payment roll of eligible, enrolled members of the Community that are eligible to receive payments under this section in accordance with the criteria described in paragraph (2).

(2) CRITERIA.—

(A) INDIVIDUALS ELIGIBLE TO RECEIVE PAYMENTS.—Subject to subparagraph (B), the following individuals shall be eligible to be listed on the payment roll and eligible to receive a per capita payment under subsection (a):

(i) All enrolled Community members who are eligible to be listed on the per capita payment roll that was approved by the Secretary for the distribution of the funds awarded to the Community in Docket No. 236–N (including any individual who was inadvertently omitted from that roll).

(ii) All enrolled Community members who are living on the date of enactment of this Act.

(iii) All enrolled Community members who died—

(I) after the effective date of the payment plan for Docket No. 236–N; but

(II) on or before the date of enactment of this Act.

(B) INDIVIDUALS INELIGIBLE TO RECEIVE PAYMENTS.—The following individuals shall be ineligible to be listed on the payment roll and ineligible to receive a per capita payment under subsection (a):

(i) Any individual who, before the date on which the Community approves the payment roll, relinquished membership in the Community.

(ii) Any minor who relinquishes membership in the Community, or whose parent or legal guardian relinquishes membership on behalf of the minor, before the date on which the minor reaches 18 years of age.

(iii) Any individual who is disenrolled by the Community for just cause (such as dual enrollment or failure to meet the eligibility requirements for enrollment).

(iv) Any individual who is determined or certified by the Secretary to be eligible to receive a per capita payment of funds relating to a judgment—

(I) awarded to another community, Indian tribe, or tribal entity; and

(II) appropriated on or before the date of enactment of this Act.

(v) Any individual who is not enrolled as a member of the Community on or before the date that is 90 days after the date of enactment of this Act.

(c) NOTICE TO SECRETARY.—On approval by the Community of the payment roll, the Community shall submit to the Secretary a notice that indicates the total number of individuals eligible to share in the per capita distribution under subsection (a), as expressed in subdivisions that reflect—

(1) the number of shares that are attributable to eligible living adult Community members; and

(2) the number of shares that are attributable to deceased individuals, legally incompetent individuals, and minors.

(d) INFORMATION PROVIDED TO SECRETARY.—The Community shall provide to the Secretary enrollment information necessary to allow the Secretary to establish—

(1) estate accounts for deceased individuals described in subsection (c)(2); and

(2) IIM accounts for legally incompetent individuals and minors described in subsection (c)(2).

(e) DISBURSEMENT OF FUNDS.—

(1) IN GENERAL.—Not later than 30 days after the date on which the payment roll is approved by the Community and the Community has reconciled the number of shares that belong in each payment subdivision described in subsection (c), the Secretary shall disburse to the Community the funds necessary to make the per capita distribution under subsection (a) to eligible living adult members of the Community described in subsection (c)(1).

(2) ADMINISTRATION AND DISTRIBUTION.—On disbursement of the funds under paragraph (1), the Community shall bear sole responsibility for administration and distribution of the funds.

(f) SHARES OF DECEASED INDIVIDUALS.—

(1) IN GENERAL.—The Secretary, in accordance with regulations promulgated by the Secretary and in effect as of the date of enactment of this Act, shall distribute to the appropriate heirs and legatees of deceased individuals described in subsection (c)(2) the per capita shares of those deceased individuals.

(2) ABSENCE OF HEIRS AND LEGATEES.—If the Secretary and the Community make a final determination that a deceased individual described in subsection (c)(2) has no heirs or legatees, the per capita share of the deceased individual and the interest earned on that share shall—

(A) revert to the Community; and

(B) be deposited into the general fund of the Community.

(g) SHARES OF LEGALLY INCOMPETENT INDIVIDUALS.—

(1) IN GENERAL.—The Secretary shall deposit the shares of legally incompetent individuals described in subsection (c)(2) in supervised IIM accounts.

(2) ADMINISTRATION.—The IIM accounts described in paragraph (1) shall be administered in accordance with regulations and procedures established by the Secretary and in effect as of the date of enactment of this Act.

(h) SHARES OF MINORS.—

(1) IN GENERAL.—The Secretary shall deposit the shares of minors described in subsection (c)(2) in supervised IIM accounts.

(2) ADMINISTRATION.—

(A) IN GENERAL.—The Secretary shall hold the per capita share of a minor described in subsection (c)(2) in trust until such date as the minor reaches 18 years of age.

(B) Nonapplicable law.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held by the Secretary under this subtitle.

(C) Disbursement.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in subsection (c)(2) until such date as the minor reaches 18 years of age.

(i) Payment of Eligible Individuals Not Listed on Payment Roll.—

(1) In general.—An individual who is not listed on the payment roll, but is eligible to receive a payment under this subtitle, as determined by the Community, may be paid from any remaining judgment funds after the date on which—

(A) the Community makes the per capita distribution under subsection (a); and

(B) all appropriate IIM accounts are established under subsections (g) and (h).

(2) Insufficient funds.—If insufficient judgment funds remain to cover the cost of a payment described in paragraph (1), the Community may use Community-owned funds to make the payment.

(3) Minors, legally incompetent individuals, and deceased individuals.—In a case in which a payment described in paragraph (2) is to be made to a minor, a legally incompetent individual, or a deceased individual, the Secretary—

(A) is authorized to accept and deposit funds from the payment in an IIM account or estate account established for the minor, legally incompetent individual, or deceased individual; and

(B) shall invest those funds in accordance with applicable law.

(j) Use of Residual Funds.—On request by the governing body of the Community to the Secretary, and after passage by the governing body of the Community of a tribal council resolution affirming the intention of the governing body to have judgment funds disbursed to, and deposited in the general fund of, the Community, any judgment funds remaining after the date on which the Community completes the per capita distribution under subsection (a) and makes any appropriate payments under subsection (i) shall be disbursed to, and deposited in the general fund of, the Community.

(k) Reversion of Per-Capita Shares to Tribal Ownership.—

(1) In general.—In accordance with the first section of Public Law 87–283 (25 U.S.C. 164), the share for an individual eligible to receive a per-capita share under subsection (a) that is held in trust by the Secretary, and any interest earned on that share, shall be restored to Community ownership if, for any reason—

(A) subject to subsection (i), the share cannot be paid to the individual entitled to receive the share; and

(B) the share remains unclaimed for the 6-year period beginning on the date on which the individual became eligible to receive the share.

(2) Request by community.—In accordance with subsection (j), the Community may request that unclaimed funds described in paragraph (1)(B) be disbursed to, and deposited in the general fund of, the Community.

SEC. 6102. RESPONSIBILITY OF SECRETARY; APPLICABLE LAW.

(a) Responsibility for Funds.—After the date on which funds are disbursed to the Community under section 6101(e)(1), the United States and the Secretary shall have no trust responsibility for the investment, supervision, administration, or expenditure of the funds disbursed.

(b) Deceased and Legally Incompetent Individuals.—Funds subject to subsections (f) and (g) of section 6101 shall continue to be held in trust by the Secretary until the date on which those funds are disbursed under this subtitle.

(c) Applicability of Other Law.—Except as otherwise provided in this subtitle, all funds distributed under this subtitle shall be subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

CHAPTER 2—CONDITIONS RELATING TO COMMUNITY JUDGMENT FUND PLANS

SEC. 6111. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 228.

(a) Definition of Plan.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 228 of the United States Claims Court (52 Fed. Reg. 6887 (March 5, 1987)), as modified in accordance with Public Law 99–493 (100 Stat. 1241).

(b) Conditions.—Notwithstanding any other provision of law, the Community shall modify the plan to include the following conditions with respect to funds distributed under the plan:

(1) Applicability of other law relating to minors.—Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of this Act, by the Secretary.

(2) Share of minors in trust.—The Secretary shall hold a per capita share of a minor described in paragraph (1) in trust until such date as the minor reaches 18 years of age.

(3) Disbursal of funds for minors.—No judgment funds, nor any interest earned on judgment funds, shall be disbursed from the account of a minor described in paragraph (1) until such date as the minor reaches 18 years of age.

(4) Use of remaining judgment funds.—On request by the governing body of the Community, as manifested by the appropriate tribal council resolution, any judgment funds remaining after the date of completion of the per capita distribution under section 6101(a) shall be disbursed to, and deposited in the general fund of, the Community.

SEC. 6112. PLAN FOR USE AND DISTRIBUTION OF JUDGMENT FUNDS AWARDED IN DOCKET NO. 236–N.

(a) Definition of Plan.—In this section, the term "plan" means the plan for the use and distribution of judgment funds awarded to the Community in Docket No. 236–N of the United States Court of Federal Claims (59 Fed. Reg. 31092 (June 16, 1994)).

(b) Conditions.—

(1) Per capita aspect.—Notwithstanding any other provision of law, the Community shall modify the last sentence of the paragraph under the heading "Per Capita Aspect" in the plan to read as follows: "Upon request from the Community, any residual principal and interest funds remaining after the Community has declared the per capita distribution complete shall be disbursed to, and deposited in the general fund of, the Community.".

(2) General provisions.—Notwithstanding any other provision of law, the Community shall—

(A) modify the third sentence of the first paragraph under the heading "General Provisions" of the plan to strike the word "minors"; and

(B) insert between the first and second paragraphs under that heading the following: "Section 3(b)(3) of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1403(b)(3)) shall not apply to any per capita share of a minor that is held, as of the date of enactment of the Gila River Indian Community Judgment Fund Distribution Act of 2002, by the Secretary. The Secretary shall hold a per capita share of a minor in trust until such date as the minor reaches 18 years of age. No judgment funds, or any interest earned on judgment funds, shall be disbursed from the account of a minor until such date as the minor reaches 18 years of age.".

CHAPTER 3—EXPERT ASSISTANCE LOANS

SEC. 6121. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO GILA RIVER INDIAN COMMUNITY.

Notwithstanding any other provision of law—

(1) the balance of all outstanding expert assistance loans made to the Community under Public Law 88–168 (77 Stat. 301) and relating to Gila River Indian Community v. United States (United States Court of Federal Claims Docket Nos. 228 and 236 and associated subdockets) are canceled; and

(2) the Secretary shall take such action as is necessary—

(A) to document the cancellation of loans under paragraph (1); and

(B) to release the Community from any liability associated with those loans.

Subtitle B—Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Fund Distribution

SEC. 6201. SHORT TITLE.

This subtitle may be cited as the "Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Fund Distribution Act of 2002".

SEC. 6202. FINDINGS AND PURPOSE.

(a) Findings.—Congress finds that—

(1) on December 18, 1987, the Assiniboine and Sioux Tribes of the Fort Peck Reservation and 5 individual Fort Peck tribal members filed a complaint before the United States Claims Court (currently the Court of Federal Claims) in Assiniboine and Sioux Tribes of the Fort Peck Reservation, et al. v. The United States of America, Docket No. 773–87–L to recover interest earned on trust funds while those funds were held in special deposit and IMPL-agency accounts;

(2) in the case referred to in paragraph (1), the Court held that the United States was liable for any income derived from investment of the trust funds of the Tribe and individual members of the Tribe for the period during which those funds were held in special deposit and IMPL-agency accounts;

(3) the plaintiffs in the case referred to in paragraph (1) entered into a settlement with the United States for claims made under Docket No. 773–87–L on December 31, 1998, for payment by the United States of—

(A) $1,339,415.33, representing interest earned on funds while held in Special Deposit accounts at the Fort Peck Agency during the period August 13, 1946, through September 30, 1981;

(B) $2,749,354.41, representing—

(i) interest on the principal indebtedness for the period from August 13, 1946, through July 31, 1998; plus

(ii) $364.27 in per diem interest on the principal indebtedness for each day during the period commencing August 1, 1998, and ending on the date on which the judgment is paid; and

(C) $350,000, representing the litigation costs and attorney's fees that the Tribe incurred to prosecute those claims;

(4) the terms of the settlement were approved by the Court on January 8, 1999, and judgment was entered on January 12, 1999;

(5) on March 18, 1999, $4,522,551.84 was transferred to the Department of the Interior;

(6) that judgment amount was deposited in an escrow account established to provide—

(A) $350,000 for the payment of attorney's fees and expenses; and

(B) $4,172,551.84 for pending Court-ordered distribution to the Tribe and individual Indian trust beneficiaries;

(7) on January 31, 2001, the Court approved a joint stipulation that established procedures for—

(A) identification of the class of individual Indians having an interest in the judgment;

(B) notice to and certification of that class; and

(C) the distribution of the judgment amount to the Tribe and affected class of individual Indians;

(8)(A) on or about February 14, 2001, in accordance with the Court-approved stipulation, $643,186.73 was transferred to an account established by the Secretary for the benefit of the Tribe; and

(B) that transferred amount represents—

(i) 54.2 percent of the Tribe's estimated 26-percent share of the amount referred to in paragraph (6)(B); plus

(ii) 50 percent of the Tribe's estimated 26-percent share of interest and capital gains earned on the judgment amount from the period beginning March 18, 1999, and ending on December 31, 2000;

(9) under the Court-approved stipulation—

(A) that transferred amount is to remain available for use by the Tribe in accordance with a plan adopted under the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.);

(B) the Tribe will most likely receive additional payments from the distribution amount once the identification of all individuals eligible to share in the distribution amount is completed and the pro rata shares are calculated; and

(C) those additional payments would include—

(i) the balance of the share of the Tribe of the distribution amount and investment income earned on the distribution amount;

(ii) the portion of the distribution amount that represents income derived on funds in special deposit accounts that are not attributable to the Tribe or any individual Indian; and

(iii) the portion of the distribution amount that represents shares attributable to individual Indians that—

(I) cannot be located for purposes of accepting payment; and

(II) will not be bound by the judgment in the case referred to in paragraph (1); and

(10) pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary is required to submit to Congress for approval an Indian judgment fund use or distribution plan.

SEC. 6203. DEFINITIONS.

In this subtitle:

(1) Court.—The term "Court" means the United States Court of Federal Claims.

(2) Distribution amount.—The term "distribution amount" means the amount referred to in section 6202(a)(6)(B).

(3) Judgment amount.—The term "judgment amount" means the amount referred to in section 6202(a)(5).

(4) Principal indebtedness.—The term "principal indebtedness" means the sum referred to in section 6202(a)(3)(A).

(5) Tribe.—The term "Tribe" means the Assiniboine and Sioux Tribes of the Fort Peck Reservation.

SEC. 6204. DISTRIBUTION OF JUDGMENT FUNDS.

(a) In General.—Notwithstanding any provision of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) to the contrary, the share of the Tribe of the distribution amount, and such additional amounts as may be awarded to the Tribe by the Court with respect to the case referred to in section 6202(a)(1) (including any interest accrued on those amounts)—

(1) shall be made available for tribal health, education, housing and social services programs of the Tribe, including—

(A) educational and youth programs;

(B) programs for improvement of facilities and housing;

(C) programs to provide equipment for public utilities;

(D) programs to provide medical assistance or dental, optical, or convalescent equipment; and

(E) programs to provide senior citizen and community services; and

(2) shall not be available for per capita distribution to any member of the Tribe.

(b) Budget Specification.—The specific programs for which funds are made available under subsection (a)(1), and the amount of funds allocated to each of those programs, shall be specified in an annual budget developed by the Tribe and approved by the Secretary.

SEC. 6205. APPLICABLE LAW.

Except as provided in section 6204(a), all funds distributed under this subtitle are subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

TITLE VII—REPAYMENT OF EXPERT WITNESS LOANS

SEC. 7001. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO THE PUEBLO OF SANTO DOMINGO.

Notwithstanding any other provision of law—

(1) the balances of all expert assistance loans made to the Pueblo of Santo Domingo under Public Law 88-168 (77 Stat. 301), and relating to Pueblo of Santo Domingo v. United States (Docket No. 355 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

(2) the Secretary of the Interior shall take such action as is necessary to—

(A) document the cancellation under paragraph (1); and

(B) release the Pueblo of Santo Domingo from any liability associated with any loan described in paragraph (1).

SEC. 7002. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO THE OGLALA SIOUX TRIBE.

Notwithstanding any other provision of law—

(1) the balances of all outstanding expert assistance loans made to the Oglala Sioux Tribe under Public Law 88-168 (77 Stat. 301), and relating to Oglala Sioux Tribe v. United States (Docket No. 117 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

(2) the Secretary of the Interior shall take such action as is necessary to—

(A) document the cancellation under paragraph (1); and

(B) release the Oglala Sioux Tribe from any liability associated with any loan described in paragraph (1).

SEC. 7003. WAIVER OF REPAYMENT OF EXPERT ASSISTANCE LOANS TO THE SEMINOLE TRIBE OF OKLAHOMA.

Notwithstanding any other provision of law—

(1) the balances of all outstanding expert assistance loans made to the Seminole Tribe of Oklahoma under Public Law 88-168 (77 Stat. 301), and relating to Seminole Tribe of Oklahoma v. United States (Docket No. 247 of the United States Court of Federal Claims), including all principal and interest, are canceled; and

(2) the Secretary of the Interior shall take such action as is necessary to—

(A) document the cancellation under paragraph (1); and

(B) release the Seminole Tribe of Oklahoma from any liability associated with any loan described in paragraph (1).

TITLE VIII—HEALTH-RELATED PROVISIONS

SEC. 8001. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

The Three Affiliated Tribes and Standing Rock Sioux Tribe Equitable Compensation Act is amended—

(1) in section 3504 (106 Stat. 4732), by adding at the end the following:

"(c) Authorization of Appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this section."; and

(2) by striking section 3511 (106 Stat. 4739) and inserting the following:

"SEC. 3511. RURAL HEALTH CARE FACILITY, FORT BERTHOLD INDIAN RESERVATION, NORTH DAKOTA.

"There is authorized to be appropriated to the Secretary of Health and Human Services for the construction of a rural health care facility on the Fort Berthold Indian Reservation of the Three Affiliated Tribes, North Dakota, $20,000,000.".

SEC. 8002. HEALTH CARE FUNDING ALLOCATION, EAGLE BUTTE SERVICE UNIT.

Section 117 of the Indian Health Care Improvement Act (25 U.S.C. 1616j) is amended by adding at the end the following:

"(g) Cheyenne River Sioux Tribe Bonus Payment.—

"(1) In general.—Notwithstanding any other provision of law, to promote more efficient use of the health care funding allocation for fiscal year 2003, the Eagle Butte Service Unit of the Indian Health Service, at the request of the Cheyenne River Sioux Tribe, may carry out a program under which a health professional may be paid—

"(A) a base salary in an amount up to the highest grade and step available to a physician, pharmacist, or other health professional, as the case may be; and

"(B) a recruitment or retention bonus of up to 25 percent of the base salary rate of the health professional.

"(2) Monitoring and reporting.—If the Service implements the program under paragraph (1), the Service shall—

"(A) monitor the program closely; and

"(B) not later than September 30, 2003, submit to the Committee on Indian Affairs of the Senate and the Committee on Resources and the Committee on Energy and Commerce of the House of Representatives a report that includes an evaluation of the program.".

SEC. 8003. INDIAN HEALTH DEMONSTRATION PROJECT.

Section 10 of the Ponca Restoration Act (25 U.S.C. 983h) is amended by adding at the end the following:

"(e) Demonstration Project.—The Director of the Indian Health Service shall direct the Aberdeen Area Office of the Indian Health Service to carry out, in coordination with the Tribe, a demonstration project to determine—

"(1) the ability of an urban, restored facility of the Tribe to provide health services to members residing in Douglas County and Sarpy County, Nebraska, and Pottawattamie County, Iowa;

"(2) the viability of using third-party billing to enable a facility described in paragraph (1) to become self-sustaining; and

"(3) the effectiveness of using a computer-registered patient management system in the counties specified in paragraph (1).".

SEC. 8004. ALASKA TREATMENT CENTERS AND FACILITIES.

Section 704(b)(4)(A) of the Indian Health Care Improvement Act (25 U.S.C. 1665c(b)(4)(A)) is amended—

(1) in clause (i), by striking "and" at the end;

(2) in clause (ii), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(iii) the Yukon Kuskokwim Health Corporation, for the purpose of operating and maintaining a residential and outpatient child, youth, and family inhalant prevention and treatment program in Bethel, Alaska;

"(iv) the Southcentral Foundation, for the purpose of operating and maintaining a residential substance abuse, mental, and behavioral health treatment program for Alaska Native youth in need of those services in Anchorage, Alaska;

"(v) the Cook Inlet Tribal Council, for the purpose of operating and maintaining a residential treatment program, day treatment program, and continuing care program for alcohol and drug rehabilitation in Anchorage, Alaska; and

"(vi) the Southeast Alaska Regional Health Consortium, for the purpose of operating and maintaining a residential substance abuse treatment program for women with children in Sitka, Alaska.".

TITLE IX—REAUTHORIZATION OF NATIVE AMERICAN PROGRAMS

SEC. 9001. BOSQUE REDONDO MEMORIAL ACT.

Section 206 of the Bosque Redondo Memorial Act (16 U.S.C. 431 note; Public Law 106–511) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) In General.—There is authorized to be appropriated to carry out this title $2,000,000 for fiscal year 2001."; and

(2) in subsection (b), by striking "2002" and inserting "2006,".

SEC. 9002. NAVAJO-HOPI LAND SETTLEMENT ACT OF 1974.

Section 25(a)(8) of Public Law 93–531 (commonly known as the "Navajo-Hopi Land Settlement Act of 1974") (25 U.S.C. 640d–24(a)(8)) is amended by striking "annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000" and inserting "for each of fiscal years 2002 through 2006".

SEC. 9003. INDIAN HEALTH CARE IMPROVEMENT ACT.

(a) Indian Health Professional Personnel.—Title I of the Indian Health Care Improvement Act is amended by striking section 123 (25 U.S.C. 1616p) and inserting the following:

"SEC. 123. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as are necessary for each of fiscal years 2002 and 2003.".

(b) Health Services.—

(1) Authorization of appropriations.—

(A) Intermediate adolescent mental health services.—Section 209(m) of the Indian Health Care Improvement Act (25 U.S.C. 1621h(m)) is amended by striking paragraph (6) and inserting the following:

"(n) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(B) California contract health services demonstration program.—Section 211 of the Indian Health Care Improvement Act (25 U.S.C. 1621j) is amended by striking subsection (g) and inserting the following:

"(g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(C) Patient travel costs.—Section 213 of the Indian Health Care Improvement Act (25 U.S.C. 1621*l*) is amended by striking subsection (b) and inserting the following:

"(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(D) Epidemiology centers.—Section 214(b) of the Indian Health Care Improvement Act (25 U.S.C. 1621m(b)) is amended by striking paragraph (6) and inserting the following:

"(6) Authorization of appropriations.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2002 and 2003.".

(E) Comprehensive school health education programs.—Section 215 of the Indian Health Care Improvement Act (25 U.S.C. 1621n) is amended by striking subsection (g) and inserting the following:

"(g) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(F) Indian youth grant program.—Section 216 of the Indian Health Care Improvement Act (25 U.S.C. 1621o) is amended by striking subsection (e) and inserting the following:

"(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(2) Additional authorization of appropriations.—Title II of the Indian Health Care Improvement Act is amended by striking section 224 (25 U.S.C. 1621w) and inserting the following:

"SEC. 224. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title (other than sections 209(m), 211(g), 213(b), 214(b)(6), 215(g), and 216(e)) such sums as are necessary for each of fiscal years 2002 and 2003.".

(c) Health Facilities.—Title III of the Indian Health Care Improvement Act is amended by striking section 309 (25 U.S.C. 1638a) and inserting the following:

"SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as are necessary for each of fiscal years 2002 and 2003.".

(d) Access to Health Services.—Title IV of the Indian Health Care Improvement Act is amended by striking section 407 (25 U.S.C. 1647) and inserting the following:

"SEC. 407. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as are necessary for each of fiscal years 2002 and 2003.".

(e) Health Services for Urban Indians.—Title V of the Indian Health Care Improvement Act is amended by striking section 514 (25 U.S.C. 1660d) and inserting the following:

"SEC. 514. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as are necessary for each of fiscal years 2002 and 2003.".

(f) Organizational Improvements.—Title VI of the Indian Health Care Improvement Act is amended by striking section 603 (25 U.S.C. 1663) and inserting the following:

"SEC. 603. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title such sums as are necessary for each of fiscal years 2002 and 2003.".

(g) Substance Abuse Programs.—

(1) Authorization of appropriations.—

(A) Indian women treatment programs.—Section 703 of the Indian Health Care Improvement Act (25 U.S.C. 1665b) is amended by striking subsection (d) and inserting the following:

"(d) Authorization of Appropriations.—

"(1) In general.—Subject to paragraph (2), there are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.

"(2) Grants.—Of the funds made available under paragraph (1) for a fiscal year, 20 percent shall be used to provide grants to urban Indian organizations funded under title V.".

(B) Gallup alcohol and substance abuse treatment center.—Section 706 of the Indian Health Care Improvement Act (25 U.S.C. 1665e) is amended by striking subsection (d) and inserting the following:

"(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(C) Fetal Alcohol Syndrome and Fetal Alcohol Effect Grants.—Section 708(f)(2) of the Indian Health Care Improvement Act (25 U.S.C. 1665g) is amended by striking subsection (f) and inserting the following:

"(f) Authorization of Appropriations.—

"(1) In general.—Subject to paragraph (2), there are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.

"(2) Grants.—Of the funds made available under paragraph (1) for a fiscal year, 10 percent shall be used to provide grants to urban Indian organizations funded under title V (including to carry out demonstration projects that involve 1 or more Indian tribes, tribal organizations, or urban Indian organizations working with organizations such as the National Organization on Fetal Alcohol Syndrome to carry out subparagraphs (A) and (F) of subsection (a)(2)).".

(D) Thunder child treatment center.—Section 710 of the Indian Health Care Improvement Act (25 U.S.C. 1665i) is amended—

(i) by striking "(b) For the purposes of" and all that follows through "No funding" and inserting the following:

"(b) Authorization of Appropriations.—

"(1) In general.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.

"(2) Staffing and operation.—No funding"; and

(ii) in the third sentence, by striking "None of the funding" and inserting the following:

"(3) Administrative purposes.—None of the funding".

(E) Substance abuse counselor education demonstration project.—Section 711 of the Indian Health Care Improvement Act (25 U.S.C. 1665j) is amended by striking subsection (h) and inserting the following:

"(h) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003, to remain available until expended.".

(2) Additional authorization of appropriations.—Title VII of the Indian Health

Care Improvement Act is amended by striking section 714 (25 U.S.C. 1665m) and inserting the following:

"SEC. 714. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title (other than sections 703(d), 706(d), 708(f), 710(b), and 711(h)) such sums as are necessary for each of fiscal years 2002 and 2003.".

(h) MISCELLANEOUS.—

(1) HOME- AND COMMUNITY-BASED CARE DEMONSTRATION PROJECT.—Section 821 of the Indian Health Care Improvement Act (25 U.S.C. 1680k) is amended by striking subsection (i) and inserting the following:

"(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003, to remain available until expended.".

(2) AUTHORIZATION OF APPROPRIATIONS.—Title VIII of the Indian Health Care Improvement Act is amended by striking section 825 (25 U.S.C. 1680o) and inserting the following:

"SEC. 825. AUTHORIZATION OF APPROPRIATIONS.

"There are authorized to be appropriated to carry out this title (other than section 821) such sums as are necessary for each of fiscal years 2002 and 2003.".

SEC. 9004. INDIAN ALCOHOL AND SUBSTANCE ABUSE PREVENTION AND TREATMENT ACT OF 1986.

(a) TRIBAL ACTION PLANS.—

(1) IN GENERAL.—Section 4206(d) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2412(d)) is amended—

(A) by striking "(1) The Secretary" and inserting the following:

"(1) IN GENERAL.—The Secretary"; and

(B) by striking paragraph (2) and inserting the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2002 and 2003.".

(2) ADDITIONAL AUTHORIZATION.—Section 4206(f) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2412(f)) is amended—

(A) by striking "(f)(1) The Secretary" and inserting the following:

"(f) GRANTS FOR IN-SCHOOL TRAINING PROGRAMS.—

"(1) IN GENERAL.—The Secretary";

(B) in paragraph (2)—

(i) by striking "(2) Funds" and inserting the following:

"(2) USE OF FUNDS.—Funds"; and

(ii) by indenting subparagraphs (A) through (E) appropriately; and

(C) by striking paragraph (3) and inserting the following:

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2002 and 2003.".

(b) NEWSLETTER.—Section 4210 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2416) is amended by striking subsection (b) and inserting the following:

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(c) INDIAN EDUCATION PROGRAMS.—Section 4212(a) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2432(a)) is amended—

(1) in the first sentence, by striking "The Assistant Secretary of Indian Affairs" and inserting the following:

"(1) IN GENERAL.—The Assistant Secretary of Indian Affairs";

(2) in the second sentence, by striking "The Assistant Secretary shall" and inserting the following:

"(2) DEFRAYMENT OF COSTS.—The Assistant Secretary shall"; and

(3) by striking the third sentence and inserting the following:

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2002 and 2003.".

(d) EMERGENCY SHELTERS.—Section 4213(e) of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2433(e)) is amended—

(1) by striking paragraphs (1) through (3) and inserting the following:

"(1) IN GENERAL.—There are authorized to be appropriated to carry out planning and design, construction, and renovation of, or to purchase or lease land or facilities for, emergency shelters and halfway houses to provide emergency care for Indian youth, such sums as are necessary for each of fiscal years 2002 and 2003.

"(2) STAFFING AND OPERATION.—There is authorized to be appropriated for staffing and operation of emergency shelters and halfway houses described in paragraph (1) $7,000,000 for each of fiscal years 2002 and 2003.

"(3) ALLOCATION.—

"(A) IN GENERAL.—The Secretary of the Interior shall allocate funds made available under this subsection to Indian tribes on the basis of priority of need of the Indian tribes.

"(B) CONTRACTING AND GRANTS.—Funds allocated under subparagraph (A) shall be subject to contracting or available for grants under the Indian Self-Determination Act (25 U.S.C. 450f et seq.).";

(2) in paragraph (4), by striking "(4) Funds" and inserting the following:

"(4) CONDITIONS FOR USE.—Funds"; and

(3) in paragraph (5)—

(A) by striking "(5) Nothing in this Act may be construed" and inserting the following:

"(5) EFFECT ON OTHER AUTHORITY.—Nothing in this Act";

(B) in subparagraph (A)—

(i) by striking "to limit" and inserting "limits"; and

(ii) by striking "houses, or" and inserting "houses; or"; and

(C) in subparagraph (B), by striking "to require" and inserting "requires".

(e) ILLEGAL NARCOTICS TRAFFIC ON THE TOHONO O'ODHAM AND ST. REGIS RESERVATIONS; SOURCE ERADICATION.—Section 4216 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2442) is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated—

"(A) to carry out paragraph (1)(A), $1,000,000 for each of fiscal years 2002 and 2003; and

"(B) to carry out provisions of this subsection other than paragraph (1)(A), such sums as are necessary for each of fiscal years 2002 and 2003."; and

(2) in subsection (b), by striking paragraph (2) and inserting the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as are necessary for each of fiscal years 2002 and 2003.".

(f) BUREAU OF INDIAN AFFAIRS LAW ENFORCEMENT AND JUDICIAL TRAINING.—Section 4218 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2451) is amended by striking subsection (b) and inserting the following:

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

(g) JUVENILE DETENTION CENTERS.—Section 4220 of the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986 (25 U.S.C. 2453) is amended by striking subsection (b) and inserting the following:

"(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as are necessary for each of fiscal years 2002 and 2003.".

SEC. 9005. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT.

(a) INDIAN CHILD ABUSE TREATMENT GRANT PROGRAM.—Section 409 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3208) is amended by striking subsection (e) and inserting the following:

"(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $10,000,000 for each of fiscal years 2002 and 2003.".

(b) INDIAN CHILD RESOURCE AND FAMILY SERVICES CENTERS.—Section 410 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3209) is amended by striking subsection (h) and inserting the following:

"(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $3,000,000 for each of fiscal years 2002 and 2003.".

(c) INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION PROGRAM.—Section 411 of the Indian Child Protection and Family Violence Prevention Act (25 U.S.C. 3210) is amended by striking subsection (i) and inserting the following:

"(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $30,000,000 for each of fiscal years 2002 and 2003.".

SEC. 9006. NATIVE HAWAIIAN HEALTH CARE IMPROVEMENT ACT.

(a) NATIVE HAWAIIAN HEALTH CARE SYSTEMS.—Section 6 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11705) is amended by striking subsection (h) and inserting the following:

"(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2002 and 2003.".

(b) NATIVE HAWAIIAN HEALTH SCHOLARSHIPS.—Section 10 of the Native Hawaiian Health Care Improvement Act (42 U.S.C. 11709) is amended by striking subsection (c) and inserting the following:

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section for each of fiscal years 2002 and 2003.".

SEC. 9007. FOUR CORNERS INTERPRETIVE CENTER ACT.

Section 7 of the Four Corners Interpretive Center Act (Public Law 106–143; 113 Stat. 1706) is amended—

(1) in subsection (a)(2), by striking "2005" and inserting "2007";

(2) in subsection (b), by striking "2002" and inserting "2004"; and

(3) in subsection (c), by striking "2001" and inserting "2003".

SEC. 9008. ENVIRONMENTAL DISPUTE RESOLUTION FUND.

Section 13 of the Morris K. Udall Scholarship and Excellence in National Environmental and Native American Public Policy

Act of 1992 (20 U.S.C. 5609) is amended by striking subsection (b) and inserting the following:

"(b) ENVIRONMENTAL DISPUTE RESOLUTION FUND.—There is authorized to be appropriated to the Environmental Dispute Resolution Fund established by section 10 $4,000,000 for each of fiscal years 2004 through 2008, of which—

"(1) $3,000,000 shall be used to pay operations costs (including not more than $1,000 for official reception and representation expenses); and

"(2) $1,000,000 shall be used for grants or other appropriate arrangements to pay the costs of services provided in a neutral manner relating to, and to support the participation of non-Federal entities (such as State and local governments, tribal governments, nongovernmental organizations, and individuals) in, environmental conflict resolution proceedings involving Federal agencies.".

TITLE X—MISCELLANEOUS PROVISIONS

Subtitle A—Cultural Provisions

SEC. 10101. OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) In order to promote better understanding between Indian and non-Indian citizens of the United States, and in light of the Federal Government's continuing trust responsibilities to Indian tribes, it is appropriate, desirable, and a proper function of the Federal Government to provide grants for the development of a museum designated to display the heritage and culture of Indian tribes.

(2) In recognition of the unique status and history of Indian tribes in the State of Oklahoma and the role of the Federal Government in such history, it is appropriate and proper for the museum referred to in paragraph (1) to be located in the State of Oklahoma.

(b) GRANT.—

(1) IN GENERAL.—The Director shall offer to award financial assistance equaling not more than $33,000,000 and technical assistance to the Authority to be used for the development and construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma.

(2) AGREEMENT.—To be eligible to receive a grant under paragraph (1), the appropriate official of the Authority shall—

(A) enter into a grant agreement with the Director which shall specify the duties of the Authority under this section, including provisions for continual maintenance of the Center by the Authority without the use of Federal funds; and

(B) demonstrate, to the satisfaction of the Director, that the Authority has raised, or has commitments from private persons or State or local government agencies for, an amount that is equal to not less than 66 percent of the cost to the Authority of the activities to be carried out under the grant.

(3) LIMITATION.—The amount of any grant awarded under paragraph (1) shall not exceed 33 percent of the cost of the activities to be funded under the grant.

(4) IN-KIND CONTRIBUTION.—When calculating the cost share of the Authority under this Act, the Director shall reduce such cost share obligation by the fair market value of the approximately 300 acres of land donated by Oklahoma City for the Center, if such land is used for the Center.

(c) DEFINITIONS.—For the purposes of this Act:

(1) AUTHORITY.—The term "Authority" means the Native American Cultural and Educational Authority of Oklahoma, and agency of the State of Oklahoma.

(2) CENTER.—The term "Center" means the Native American Cultural Center and Museum authorized pursuant to this section.

(3) DIRECTOR.—The term "Director" means the Director of the Institute of Museum and Library Services.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director to grant assistance under subsection (b)(1), $8,250,000 for each of fiscal years 2003 through 2006.

SEC. 10102. REHABILITATION OF CELILO INDIAN VILLAGE.

Section 401(b)(3) of Public Law 100–581 (102 Stat. 2944) is amended by inserting "and Celilo Village" after "existing sites".

SEC. 10103. CONVEYANCE OF NATIVE ALASKAN OBJECTS.

Notwithstanding any provision of law affecting the disposal of Federal property, on the request of the Chugach Alaska Corporation or Sealaska Corporation, the Secretary of Agriculture shall convey to whichever of those corporations that has received title to a cemetery site or historical place on National Forest System land conveyed under section 14(h)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1613(h)(1)) all artifacts, physical remains, and copies of any available field records that—

(1)(A) are in the possession of the Secretary of Agriculture; and

(B) have been collected from the cemetery site or historical place; but

(2) are not required to be conveyed in accordance with the Native American Graves Protection Act and Repatriation Act (25 U.S.C. 3001 et seq.) or any other applicable law.

Subtitle B—Self-Determination Provisions

SEC. 10201. INDIAN SELF-DETERMINATION ACT AMENDMENTS.

(a) APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS.—Section 110 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450m–1) is amended by striking subsection (c) and inserting the following:

"(c) APPLICATION OF LAWS TO ADMINISTRATIVE APPEALS.—

"(1) IN GENERAL.—The Equal Access to Justice Act (5 U.S.C. 504 note; Public Law 96–481), section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, shall apply to an administrative appeal by a tribal organization that—

"(A) is pending on or filed after October 5, 1988; and

"(B) relates to a contract, a grant agreement, or any other agreement or compact authorized under—

"(i) this Act; or

"(ii) the Tribally Controlled Schools Act of 1988 (25 U.S.C. 2501 et seq.).

"(2) FEE.—

"(A) IN GENERAL.—In the case of any claim for a fee described in subparagraph (B), the fee shall be $125 per hour, unless an appropriate Federal agency determines by regulation that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.

"(B) DESCRIPTION OF CLAIM.—A claim described in this subparagraph is—

"(i) a claim by a person for a fee for services relating to an appeal described in paragraph (1) that are performed on or after March 29, 1996; or

"(ii) a claim by a person for a fee for services that—

"(I) is asserted on or after March 29, 1996; but

"(II) is for a fee for services relating to an appeal described in paragraph (1) performed before that date.".

(b) INCORPORATION OF SELF-DETERMINATION PROVISIONS.—Section 403 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458cc) is amended by striking subsection (l) and inserting the following:

"(l) INCORPORATION OF SELF-DETERMINATION PROVISIONS.—

"(1) IN GENERAL.—At the option of any participating Indian tribe, any or all of the provisions of title I or V shall be incorporated in a compact or funding agreement entered into under this title.

"(2) FORCE AND EFFECT.—A provision incorporated under paragraph (1) shall—

"(A) have the same force and effect as if included in this title; and

"(B) be deemed to—

"(i) supplement or supplant any related provision in this title, as appropriate; and

"(ii) apply to any agency subject to this title.

"(3) TIMING.—In any case in which an Indian tribe requests incorporation of a provision under paragraph (1) during the negotiation stage of a compact or funding agreement described in that paragraph, the incorporation shall—

"(A) be considered to be effective immediately; and

"(B) control the negotiation and any resulting compact or funding agreement.".

Subtitle C—Indian Arts and Crafts

SEC. 10301. INDIAN ARTS AND CRAFTS ACT AMENDMENTS.

Section 2(g) of the Act of August 27, 1935 (25 U.S.C. 305a(g)), is amended—

(1) in paragraph (1), by inserting "trademarks for" after "products and";

(2) in paragraph (3), by striking "and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and" and inserting a semicolon;

(3) in paragraph (4), by striking "to pursue or defend in the courts any appeal or proceeding with respect to any final determination of that office" and inserting "to file with the United States Patent and Trademark Office, and prosecute, an application for any trademark or other mark described in paragraph (1) that is owned by an individual Indian, Indian tribe, or Indian arts and crafts organization, for registration without charge in the United States Patent and Trademark Office"; and

(4) by inserting after the semicolon at the end the following: "(5)(A) to assign any trademark described in paragraph (2) that is owned by the Federal Government, and the goodwill associated with the trademark, to an individual Indian, Indian tribe, or Indian arts and crafts organization; and (B) to record any such assignment in the United States Patent and Trademark Office, without charge; and (6) to pursue or defend in the appropriate courts of the United States any appeal or proceeding with respect to any final determination of the United States Patent and Trademark Office;".

Subtitle D—Certification of Rental Proceeds

SEC. 10401. CERTIFICATION OF RENTAL PROCEEDS.

Notwithstanding any other provision of law, any actual rental proceeds from the lease of land acquired under section 1 of Public Law 91–229 (25 U.S.C. 488) certified by the Secretary of the Interior shall be deemed—

(1) to constitute the rental value of that land; and

(2) to satisfy the requirement for appraisal of that land.

SA 4981. Mr. REID (for Mr. Inouye) proposed an amendment to amendment SA 4980 proposed by Mr. Reid (for Mr. Inouye (for himself and Mr. Campbell)) to the bill S. 2711, to reauthorize and improve programs relating to Native Americans; as follows:

Beginning on page 1–1, strike line 1 and all that follows through page 1–8, line 21.

Beginning on page 2–8, strike line 9 and all that follows through page 2–12, line 9.

Beginning on page 4–9, strike line 3 and all that follows through page 4–10, line 22, and insert the following:

SEC. 4201. INDIAN LAND CONSOLIDATION ACT AMENDMENTS.

Section 217(c) of the Indian Land Consolidation Act (25 U.S.C. 2216(c)) is amended—

(1) by striking the subsection heading and all that follows through the end of the first sentence and inserting the following:

"(c) Acquisition of Interest by Secretary.—

"(1) Request.—

"(A) In general.—An Indian, or the recognized tribal government of a reservation, that is in possession of any portion of the fee interest in a parcel of land described in subparagraph (B) may request that the interest be taken into trust by the Secretary.

"(B) Land.—A parcel of land described in this subparagraph is any parcel of land—

"(i) that is located within a reservation; and

"(ii) at least a portion of the ownership interest in which is held by the Secretary, in trust or restricted status, on November 7, 2000."; and

(2) in the second sentence, by striking "Upon" and inserting the following:

"(2) Interest.—Upon".

On page 4–15, strike lines 6 through 16 and insert the following:

SEC. 4208. AGREEMENT WITH DRY PRAIRIE RURAL WATER ASSOCIATION, INCORPORATED.

(a) In General.—The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation (referred to in this section as the "Tribes") may, with the approval of the Secretary of the Interior, enter into a lease or other temporary conveyance of water rights recognized under the Fort Peck–Montana Compact (Montana Code Annotated 85–20–201) for the purpose of meeting the water needs of the Dry Prairie Rural Water Association, Incorporated (or any successor entity), pursuant to section 5 of the Fort Peck Reservation Rural Water System Act of 2000 (114 Stat. 1454).

(b) Conditions of Lease.—With respect to a lease or other temporary conveyance described in subsection (a)—

(1) the term of the lease or conveyance shall not exceed 100 years; and

(2)(A) the lease or conveyance may be approved by the Secretary of the Interior without monetary compensation to the Tribes; and

(B) the Secretary of the Interior shall not be subject to liability for any claim or cause of action relating to the compensation or consideration received by the Tribes under the lease or conveyance.

(c) No Permanent Alienation of Water.—Nothing in this section authorizes any permanent alienation of any water by the Tribes.

Beginning on page 10–4, strike line 19 and all that follows through page 10–9, line 14, and insert the following:

Subtitle B—Indian Probate Reform

SEC. 10201. SHORT TITLE.

This subtitle may be cited as the "Indian Probate Reform Act of 2002".

SEC. 10202. FINDINGS.

Congress makes the following findings:

(1) The General Allotment Act of 1887 (commonly known as the 'Dawes Act'), which authorized the allotment of Indian reservations, did not allow Indian allotment owners to provide for the testamentary disposition of the land that was allotted to those owners.

(2) The Dawes Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment.

(3) The Federal Government's reliance on the State law of intestate succession with respect to the descendency of allotments has resulted in numerous problems affecting Indian tribes, their members, and the Federal Government. Those problems include—

(A) the increasing fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

(B) the application of different rules of intestate succession to each of a decedent's interests in trust and restricted land if that land is located within the boundaries of more than 1 State, which application makes probate planning unnecessarily difficult and impedes efforts to provide probate planning assistance or advice;

(C) the absence of a uniform general probate code for trust and restricted land which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which is unfair to the owners of trust and restricted land and their heirs and devisees and which makes probate planning more difficult.

(4) Based on the problems identified in paragraph (3), a uniform Federal probate code would likely—

(A) reduce the number of unnecessary fractionated interests in trust or restricted land;

(B) facilitate efforts to provide probate planning assistance and advice;

(C) facilitate inter-tribal efforts to produce tribal probate codes pursuant to section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and

(D) provide essential elements of general probate law that are not applicable on the date of enactment of this subtitle to interests in trust or restricted land.

CHAPTER 1—INDIAN PROBATE REFORM

SEC. 10211. INDIAN PROBATE REFORM.

(a) Testamentary Disposition.—Subsection (a) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206(a)) is amended to read as follows:

"(a) Testamentary Disposition.—

"(1) General devise of an interest in trust or restricted land.—

"(A) In general.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, or a tribal probate code enacted pursuant to section 206, the owner of an interest in trust or restricted land may devise such an interest to the Indian tribe with jurisdiction over the land so devised, or to any Indian in trust or restricted status or as a passive trust interest (as provided for in section 207A).

"(B) Status.—The devise of an interest in trust or restricted land to an Indian under subparagraph (A) shall not alter the status of such an interest as a trust or restricted interest unless the testator provides that the interest is to be held as a passive trust interest.

"(2) Devise of trust or restricted land in passive trust or fee status.—

"(A) In general.—Except as provided in any applicable Federal law, any interest in trust or restricted land that is not devised pursuant to paragraph (1) may only be devised—

"(i) as a life estate to any non-Indian person (the remainder interest may only be devised pursuant to clause (ii), subparagraph (C), or paragraph (1)(A));

"(ii)(I) to the testator's lineal descendant or heir of the 1st or 2nd degree as a passive trust interest (to be known as an 'eligible passive trust devisee'); or

"(II) if the testator does not have an heir of the 1st or 2nd degree or a lineal descendant, to any lineal descendant of a testator's Indian grandparent as a passive trust interest (to be known as an 'eligible passive trust devisee'); or

"(iii) in fee status as provided for in subparagraph (C).

"(B) Presumed devise of passive trust interest.—Any devise to an eligible passive trust devisee, including the devise of a remainder interest from the devise of a life estate under subparagraph (A)(ii), that does not indicate whether the interest is devised as a passive trust interest or a fee interest shall be construed to devise a passive trust interest.

"(C) Devise of a fee interest.—Subject to subparagraph (D), any interest in trust or restricted land that is not devised pursuant to paragraph (1), or devised to an eligible passive trust devisee pursuant to subparagraph (A), may be devised to a non-Indian in fee status.

"(D) Limitation.—Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464) may only be devised pursuant to such section 4, subparagraph (A) of this paragraph, or paragraph (1) of this subsection.

"(3) Devise of a passive trust interest.—

"(A) In general.—The holder of an interest in trust or restricted land that is held as a passive trust interest may devise the interest as a passive trust interest only to—

"(i) any Indian or the Indian tribe that exercises jurisdiction over the interest;

"(ii) the holder's lineal descendants or heirs of the first or second degree;

"(iii) any living descendant of the decedent from whom the holder acquired the interest by devise or descent; and

"(iv) any person who owns a pre-existing interest or a passive trust interest in the same parcel of land if the pre-existing interest is held in trust or restricted status or in passive trust status.

"(B) Ineligible devisees and intestate succession.—A passive trust interest that is devised to a person who is not eligible under subparagraph (A) or that is not disposed of by a valid will shall pass pursuant to the applicable law of intestate succession as provided for in subsection (b).".

(b) Intestate Succession.—Subsection (b) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206(b)) is amended to read as follows:

"(b) Intestate Succession.—

"(1) Rules of descent.—

"(A) In general.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any interest in trust or restricted land that is not disposed of by a valid will shall—

"(i) descend according to a tribal probate code that is approved pursuant to section 206; or

"(ii) in the case of an interest in trust or restricted land to which such a code does not apply, be considered an 'intestate interest' and descend pursuant to paragraph (2), this Act, and other applicable Federal law.

"(B) CLASSIFICATIONS.—For purposes of applying this subsection, intestate interests referred to in subparagraph (A)(ii) shall be classified as either—

"(i) a devise or inheritance interest (an interest acquired by a decedent through devise or inheritance); or

"(ii) an acquired interest (an interest acquired by a decedent by any means other than devise or inheritance and an interest acquired by a decedent through devise or inheritance)—

"(I) if the decedent—

"(aa) acquired additional undivided interests in the same parcel as the interest, by a means other than devise or inheritance; or

"(bb) acquired land adjoining the parcel of land that includes the interest; or

"(II) if the parcel of land that includes the interest includes the decedent's spouse's residence.

"(2) INTESTATE SUCCESSION.—An interest in trust or restricted land described in paragraph (1)(A)(ii) (an intestate interest) shall descend as provided for in this paragraph:

"(A) SURVIVING INDIAN SPOUSE.—If a decedent is survived by an Indian spouse and the decedent's estate includes—

"(i) one or more acquired interests, the decedent's spouse shall receive all such acquired interests; or

"(ii) one or more devise or inheritance Interests, and—

"(I) the decedent is not survived by an Indian heir of the first or second degree, the decedent's spouse shall receive all such devise or inheritance interests; or

"(II) the decedent is survived by an Indian heir of the first or second degree, the decedent's devise or inheritance interest shall descend pursuant to paragraph (3)(A).

"(B) SURVIVING NON-INDIAN SPOUSE.—If a decedent is survived by a non-Indian spouse and the decedent's estate includes—

"(i) one or more acquired interests, the decedent's spouse shall receive a life estate in such acquired interest, and if the decedent is—

"(I) survived by an Indian heir of the 1st or 2nd degree, the remainder interests shall descend pursuant to paragraph (3)(A); or

"(II) not survived by an Indian heir of the 1st or 2nd degree, the remainder interest shall descend pursuant to paragraph (3)(C); or

"(ii) one or more devise or inheritance interests, and the decedent is—

"(I) survived by an Indian heir of the 1st or 2nd degree, such devise or inheritance interests shall descend pursuant to paragraph (3)(A); or

"(II) not survived by an Indian heir of the 1st or 2nd degree, such devise or inheritance interest shall descend pursuant to paragraph (3)(C).

"(C) NO SURVIVING SPOUSE.—If the decedent is not survived by a spouse, and the decedent's estate includes one or more acquired interests or one or more devise or inheritance interests and the decedent is—

"(i) survived by an Indian heir of the 1st or 2nd degree, the acquired interests or devise or inheritance interests shall descend pursuant to paragraph (3)(A); or

"(ii) not survived by an Indian heir of the 1st or 2nd degree, the acquired interests or devise or inheritance interests shall descend pursuant to paragraph (3)(C).

"(3) RULES APPLICABLE TO INTESTATE SUCCESSION.—

"(A) INDIAN HEIRS.—For purposes of this subsection, Indian heirs of the 1st or 2nd degree shall inherit in the following order:

"(i) The Indian children of the decedent, in equal shares, or if one or more of those Indian children do not survive the decedent, such Indian children of the decedent's deceased child shall inherit by right of representation.

"(ii) If the decedent has no Indian children or grandchildren (that take by representation under clause (i)), to the decedent's Indian brothers and sisters in equal shares.

"(iii) If the decedent has no Indian brothers or sisters, to the decedent's Indian parent or parents.

"(B) RIGHT OF REPRESENTATION.—For purpose of this subsection, in any case involving the determination of a right of representation—

"(i) each interest in trust land shall be equally divided into a number of shares that equals the sum of—

"(I) the number of surviving heirs in the nearest degree of kinship; and

"(II) the number of deceased persons in that same degree, if any, who left issue who survive the decedent;

"(ii) each surviving heir described in clause (i)(I) shall receive 1 share; and

"(iii)(I) each deceased person described in clause (i)(II) shall receive 1 share; and

"(II) that share shall be divided equally among the surviving issue of the deceased person.

"(C) NO INDIAN HEIRS.—

"(i) IN GENERAL.—For purposes of this subsection, if a decedent does not have an Indian heir of the 1st or 2nd degree, an interest shall descend to an Indian collateral heir who is a co-owner of an interest owned by the decedent if any.

"(ii) MULTIPLE COLLATERAL HEIRS.—If—

"(I) more than one Indian collateral heir owns an interest in an interest referred to in clause (i), the interest shall descend to the collateral heir that owns the largest undivided interest in the parcel; or

"(II) two or more collateral heirs own equal shares in an interest referred to in clause (i), the interest passing pursuant to this subsection shall be divided equally between those collateral heirs that own equal shares.

"(iii) NO OWNERSHIP.—If none of the decedent's collateral heirs own an interest in the interest referred to in clause (i), the interest shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to clause (iv).

"(iv) ACQUISITION OF INTEREST.—Notwithstanding clause (iii), an Indian co-owner of a parcel of trust or restricted land may acquire an interest subject to such clause by paying into the decedent's estate, before the close of the probate of the decedent's estate, the fair market value of the interest in such land. If more than 1 Indian co-owner (including the Indian tribe referred to in clause (iii)) offers to pay for such an interest, the highest bidder shall acquire the interest.

"(v) DEFINITION.—In this subparagraph, the term 'collateral heir' means the decedent's aunt, uncle, niece, nephew, and first cousin.

"(4) SPECIAL RULE RELATING TO SURVIVAL.—For purposes of this section, an individual who fails to survive a decedent by at least 120 hours is deemed to have predeceased the decedent for the purposes of intestate succession, and the heirs of the decedent shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by at least 120 hours, the individual shall be deemed to have failed to survive for the required time-period for the purposes of the preceding sentence.

"(5) PRETERMITTED SPOUSES AND CHILDREN.—

"(A) SPOUSES.—For the purposes of this section, if the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in trust or restricted land that the spouse would have otherwise received if the testator had died intestate. The preceding sentence shall not apply to an interest in trust or restricted land where—

"(i) the will is executed before the date of enactment of this subsection;

"(ii) the testator's spouse is a non-Indian and the testator has devised his or her interests in trust or restricted land to an Indian or Indians;

"(iii) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

"(iv) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

"(v) the testator provided for the spouse by a transfer of funds or property outside of the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

"(B) CHILDREN.—For the purposes of this section, if a testator executed his or her will prior to the birth or adoption of 1 or more children of the testator and the omission is the product of inadvertence rather than an intentional omission, those children shall share in the decedent's intestate interests in trust or restricted land as if the decedent had died intestate. Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (54 Stat 746), shall be treated as a decedent's child under this section.

"(6) DIVORCE.—

"(A) SURVIVING SPOUSE.—

"(i) IN GENERAL.—For the purposes of this section, an individual who is divorced from the decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife shall not be considered a divorce for the purposes of this subsection.

"(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed to prevent an entity responsible for adjudicating interests in trust or restricted land from giving force and effect to a property right settlement if one of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

"(B) EFFECT OF SUBSEQUENT DIVORCE ON A WILL OR DEVISE.—If after executing a will the testator is divorced or the marriage of the testator is annulled, upon the effective date of the divorce or annulment any disposition of interests in trust or restricted land made by the will to the former spouse shall be deemed to be revoked unless the will expressly provides otherwise. Property that is prevented from passing to a former spouse based on the preceding sentence shall pass as if the former spouse failed to survive the decedent. Any provision of a will that is revoked solely by operation of this paragraph shall be revived by the testator's remarriage to the former spouse.

“(7) Notice.—To the extent practicable, the Secretary shall notify the owners of trust and restricted land of the provisions of this Act. The notice may, at the discretion of the Secretary, be provided together with the notice required under section 207(g).”.

(c) Rule of Construction.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

“(h) Rule of Construction.—For purposes of subsections (a) and (b), any reference to ‘applicable Federal law’ shall be construed to include Public Law 91-627 (84 Stat. 1874, amending section 7 of the Act of August 9, 1946), Public Law 92-377 (86 Stat. 530), Public Law 92-443 (86 Stat. 744), Public Law 96-274 (94 Stat. 537), and Public Law 98-513 (98 Stat. 2411). Nothing in this section shall be construed to amend or alter such Public Laws or any other Federal law that provides for the devise and descent of any trust or restricted lands located on a specific Indian reservation.”.

(d) Passive Trust Status for Trust or Restricted Land.—The Indian Land Consolidation Act is amended by inserting after section 207 (25 U.S.C. 2206) the following:

“SEC. 207A. PASSIVE TRUST STATUS FOR TRUST OR RESTRICTED LAND.

“(a) Passive Trust.—The owner of an interest in trust or restricted land may submit an application to the Secretary requesting that such interest be held in passive trust interest status. Such application may authorize the Secretary to amend or alter any existing lease or agreement with respect to the interest that is the subject of the application.

“(b) Approval.—Upon the approval of an application by the Secretary under subsection (a), an interest in trust or restricted land shall be held as a passive trust interest in accordance with this section.

“(c) Requirements.—Except as provided in this section, an interest in trust or restricted land that is held as a passive trust interest under this section—

“(1) shall continue to be covered under any applicable tax-exempt status and continue to be subject to any restrictions on alienation until such interest is patented in fee status;

“(2) may, without the approval of the Secretary, be—

“(A) leased for a period of not to exceed 25 years;

“(B) mortgaged pursuant to the Act of March 29, 1956 (25 U.S.C. 483a); or

“(C) sold or conveyed to an Indian, the Indian tribe that exercises jurisdiction over the interest, or a co-owner of an interest in the same parcel of land if the co-owner owns a pre-existing trust, restricted interest, or a passive trust interest in the parcel; and

“(3) may be subject to an ordinance or resolution enacted under subsection (d).

“(d) Ordinance or Resolution for Removal of Status.—

“(1) In general.—The governing body of the Indian tribe that exercises jurisdiction over an interest in trust or restricted land that is held as a passive trust interest in accordance with this section may enact an ordinance or resolution to allow the owner of such an interest to apply to the Secretary for the removal of the trust or restricted status of such portion of such lands that are subject to the tribe's jurisdiction.

“(2) Review by secretary.—The Secretary shall review and may approve an ordinance or resolution enacted by an Indian tribe pursuant to paragraph (1) if the Secretary determines that the ordinance or resolution is consistent with this Act and will not increase fractionated ownership of Indian land.

“(e) Revenues or Royalties.—

“(1) In general.—Except as provided in paragraph (2), the Secretary shall not be responsible for the collection of or accounting for any lease revenues or royalties accruing to an interest held as a passive trust interest by any person under this section.

“(2) Exception.—Paragraph (1) shall not apply to an interest described in such paragraph if the Secretary approves an application to have such interest be taken into active trust status on behalf of an Indian or an Indian tribe pursuant to regulations enacted by the Secretary.

“(3) Rule of construction.—Nothing in this subsection shall be construed to alter the authority or responsibility of the Secretary, if any, with respect to an interest in trust or restricted land held in active trust status, including an undivided interest within the same parcel of land as an undivided passive trust interest.

“(f) Jurisdiction Over Passive Trust Interest.—An Indian tribe that exercises jurisdiction over an interest in trust or restricted land that is devised or held as a passive trust interest under this section shall continue to exercise jurisdiction over the land that is held as a passive trust interest and any person holding, leasing, or otherwise using such land shall be deemed to have consented to the jurisdiction of such a tribe with respect to the use of such land, including any impacts associated with any use of such lands.

“(g) Probate of Passive Trust Interests.—An interest in trust or restricted land that is held as a passive trust interest under this section shall be subject to probate by the Secretary pursuant to this Act and other laws applicable to the probate of trust or restricted land. Any interested party may file an application to commence the probate of an interest in trust or restricted land held as a passive trust interest.

“(h) Regulations.—The Secretary shall promulgate regulations to implement this section.”.

(e) Partition.—Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) is amended by adding at the end the following:

“(c) Partition.—

“(1) In general.—Notwithstanding any other provision of law, in accordance with this subsection and subject to paragraphs (2), (3), and (4)—

“(A) an Indian tribe may apply to the Secretary for the partition of a parcel of land that is—

“(i) located within the reservation of the Indian tribe; or

“(ii) otherwise under the jurisdiction of the Indian tribe; and

“(B) the Secretary may commence a process for partitioning a parcel of land as provided for in paragraphs (2)(B) and (6)(B), if—

“(i) an Indian tribe owns an undivided interest in the parcel of land and such tribe consents to the partition;

“(ii)(I) the tribe referred to in clause (i) meets the ownership requirement of clauses (i) or (ii) of paragraph (2)(B); or

“(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii); and

“(iii) the tribe referred to in paragraph (3), if any, consents to the partition.

For purposes of this subsection, the term ‘eligible Indian tribe’ means an Indian tribe described in subparagraph (A) and (B)(i).

“(2) Tribal ownership.—A parcel of land may be partitioned under this subsection if, with respect to the eligible Indian tribe involved—

“(A) the tribe owns an undivided interest in the parcel of land; and

“(B)(i) the tribe owns 50 percent or more of the undivided interest in the parcel;

“(ii) the tribe is the owner of the largest quantity of undivided interest in the parcel; or

“(iii) the owners of undivided interests equal to at least 50 percent of the undivided interests in the parcel (including any undivided interest owned by the tribe) consent or do not object to the partition.

“(3) Tribal consent.—A parcel of land that is located within the reservation of an Indian tribe or otherwise under the jurisdiction of an Indian tribe shall be partitioned under this subsection only if the Indian tribe does not object to the partition.

“(4) Applicability.—This subsection shall not apply to any parcel of land that is the bona fide residence of any person unless the person consents to the partition in writing.

“(5) Partition in kind.—

“(A) In general.—The Secretary shall commence the partition process described in subparagraph (B) if—

“(i) an eligible Indian tribe applies to partition a parcel of land under this paragraph; and

“(ii)(I) the Secretary determines that the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B); or

“(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii).

“(B) Partition process.—In carrying out any partition, the Secretary shall—

“(i) provide, to each owner of any undivided interest in the parcel to be partitioned, through publication or other appropriate means, notice of the proposed partition;

“(ii) make available to any interested party a copy of any proposed partition plan submitted by an Indian tribe or proposed by the Secretary; and

“(iii) review—

“(I) any proposed partition plan submitted by any owner of an undivided interest in the parcel; and

“(II) any comments or objections concerning a partition, or any proposed plan of partition, submitted by any owner or any other interested party.

“(C) Determination not to partition.—If the Secretary determines that a parcel of land cannot be partitioned in a manner that is fair and equitable to the owners of the parcel, the Secretary shall inform each owner of the parcel of—

“(i) the determination of the Secretary; and

“(ii) the right of the owner to appeal the determination.

“(D) Partition with consent of qualified Indian tribe.—If the Secretary determines that a parcel of land may be partitioned in a manner that is fair and equitable to the owners of the parcel, and the Indian tribe meets the applicable ownership requirements under clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

“(i) approve a plan of partition;

“(ii) provide notice to the owners of the parcel of the determination of the Secretary;

“(iii) make a copy of the plan of partition available to each owner of the parcel; and "(iv) inform each owner of the right to appeal the determination of the Secretary to partition the parcel in accordance with the plan.

"(E) PARTITION WITH CONSENT; IMPLIED CONSENT.—If the Secretary determines that a parcel may be partitioned in a manner that is fair and equitable to the owners of the parcel, but the Indian tribe involved does not meet the applicable ownership requirements under clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(i)(I) make a plan of partition available to the owners of the parcel; and

"(II) inform the owners that the parcel will be partitioned in accordance with the plan if the owners of 50 percent or more of undivided ownership interest in the parcel either—

"(aa) consent to the partition; or

"(bb) do not object to the partition by such deadline as may be established by the Secretary;

"(ii) if the owners of 50 percent or more of undivided ownership interest in the parcel consent to the partition or do not object by a deadline established by the Secretary under clause (i)(II)(bb), inform the owners of the parcel that—

"(I) the plan for partition is final; and

"(II) the owners have the right to appeal the determination of the Secretary to partition the parcel; and

"(iii) if the owners of 50 percent or more of the undivided ownership interest in the parcel object to the partition, inform the Indian tribe of the objection.

"(F) SUCCESSIVE PARTITION PLANS.—In carrying out subparagraph (E) in accordance with paragraph (2)(B)(iii), the Secretary may, in accordance with subparagraph (E)—

"(i) approve 1 or more successive plans of partition; and

"(ii) make those plans available to the owners of the parcel.

"(G) PLAN OF PARTITION—A plan of partition approved by the Secretary in accordance with subparagraph (D) or (E)—

"(i) may determine that 1 or more of the undivided interests in a parcel are not susceptible to a partition in kind;

"(ii) may provide for the sale or exchange of those undivided interests to—

"(I) 1 or more of the owners of undivided interests in the parcel; or

"(II) the Secretary in accordance with section 213; and

"(iii) shall provide that the sale of any undivided interest referred to in clause (ii) shall be for not less than the fair market value of the interest.

"(6) PARTITION BY SALE.—

"(A) IN GENERAL.—The Secretary shall commence the partition process described in subparagraph (B) if—

"(i) an eligible Indian tribe applies to partition a parcel of land under this subsection; and

"(ii)(I) the Secretary determines that the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B); or

"(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii).

"(B) PARTITION PROCESS.—In carrying out any partition of a parcel, the Secretary—

"(i) shall conduct a preliminary appraisal of the parcel;

"(ii) shall provide, to the owners of the parcel, through publication or other appropriate means—

"(I) notice of the application of the Indian tribe to partition the parcel; and

"(II) access to the preliminary appraisal conducted in accordance with clause (i);

"(iii) shall inform each owner of the parcel of the right to submit to the Secretary comments relating to the preliminary appraisal;

"(iv) may, based on comments received under clause (iii), modify the preliminary appraisal or provide for the conduct of a new appraisal; and

"(v) shall—

"(I) issue a final appraisal for the parcel;

"(II) provide to the owners of the parcel and the appropriate Indian tribes access to the final appraisal; and

"(III) inform the Indian tribes of the right to appeal the final appraisal.

"(C) PURCHASE BY QUALIFIED INDIAN TRIBE.—If an eligible Indian tribe agrees to pay fair market value for a partitioned parcel, as determined by the final appraisal of the parcel issued under subparagraph (B)(v)(I) (including any appraisal issued by the Secretary after an appeal by the Indian tribe under subparagraph (B)(v)(III)), and the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(i) provide to each owner of the parcel notice of the decision of the Indian tribe; and

"(ii) inform the owners of the right to appeal the decision (including the right to appeal any final appraisal of the parcel referred to in subparagraph (B)(v)(III)).

"(D) PARTITION WITH CONSENT; IMPLIED CONSENT.—

"(i) IN GENERAL.—If an eligible Indian tribe agrees to pay fair market value for a partitioned parcel, as determined by the final appraisal of the parcel issued under subparagraph (B)(v)(I) (including any appraisal issued by the Secretary after an appeal by the Indian tribe under subparagraph (B)(v)(III)), but does not meet the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(I) provide notice to the owners of the undivided interest in the parcel; and

"(II) inform the owners that the parcel will be partitioned by sale unless the partition is opposed by the owners of 50 percent or more of the undivided ownership interest in the parcel.

"(ii) FAILURE TO OBJECT TO PARTITION.—If the owners of 50 percent or more of undivided ownership interest in or to a parcel consent to the partition or the parcel, or do not object to the partition by such deadline as may be established by the Secretary, the Secretary shall inform the owners of the parcel of the right to appeal the determination of the Secretary (including the results of the final appraisal issued under subparagraph (B)(v)(I)).

"(iii) OBJECTION TO PARTITION.—If the owners of 50 percent or more of the undivided ownership interest in a parcel object to the partition of the parcel—

"(I) the Secretary shall notify the Indian tribe of the objection; and

"(II) the Indian tribe and the Secretary may agree to increase the amount offered to purchase the undivided ownership interests in the parcel.

"(7) ENFORCEMENT.—

"(A) IN GENERAL.—If, with respect to a parcel, a partition in kind is approved under subparagraph (D) or (E) of paragraph (5), or a partition by sale is approved under paragraph (6)(C), and the owner of an interest in or to the parcel fails or refuses to convey the interest to the Indian tribe, the Indian tribe or the United States may—

"(i) bring a civil action in the United States district court for the district in which the parcel is located; and

"(ii) request the court to issue an appropriate order for the partition in kind, or partition by sale to the Indian tribe, of the parcel.

"(B) FEDERAL ROLE.—With respect to any civil action brought under subparagraph (A)—

"(i) the United States—

"(I) shall receive notice of the civil action; and

"(II) may be a party to the civil action; and

"(ii) no civil action brought under this section shall be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is an indispensable party.".

SEC. 10212. OTHER AMENDMENTS.

(a) OTHER AMENDMENTS.—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended—

(1) in section 205(a) (25 U.S.C. 2204(a)), by striking "over 50 per centum of the undivided interests" and inserting "undivided interests equal to at least 50 percent of the undivided interest";

(2) in section 206 (25 U.S.C. 2205)—

(A) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) TRIBAL PROBATE CODES.—Except as provided in any applicable Federal law, the Secretary shall not approve a tribal probate code, or an amendment to such a code, that prevents the devise of an interest in trust or restricted land to—

"(A) an Indian lineal descendant of the original allottee; or

"(B) to an Indian who is not a member of the tribe that exercises jurisdiction over such an interest unless the code provides for the renouncing of interests (to eligible devisees pursuant to such a code), the opportunity for a devisee who is the testator's spouse or lineal descendant to reserve a life estate, and payment of fair market value in the manner prescribed under subsection (c)(2).";

(B) in subsection (c)(1)—

(i) by striking "section 207(a)(6)(A)" and inserting "sections 207(a)(2)(A)(ii), 207(a)(2)(C), and 207(a)(3)"; and

(ii) by striking the last sentence and inserting "The Secretary shall transfer such payments to any person or persons who would have received an interest in land if the interest had not been acquired by the tribe pursuant to this paragraph."; and

(C) in subsection (c)(2)—

(i) in subparagraph (A)—

(I) by striking "(A) IN GENERAL.—Paragraph" and inserting the following:

"(A) NONAPPLICABILITY TO CERTAIN INTERESTS.—

"(i) IN GENERAL.—Paragraph";

(II) by striking "if, while" and inserting the following: "if—

"(I) while";

(III) by striking the period and inserting "; or"; and

(IV) by adding at the end the following:

"(II) the interest is part of a family farm that is devised to a member of the decedent's family if the devisee agrees that the Indian tribe that exercises jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to an entity that is not a member of the family of the owner of the land.

"(ii) RECORDING OF INTEREST.—Upon the request of an Indian tribe described in clause (i)(II), a restriction relating to the acquisition by such tribe of an interest in the family farm involved shall be recorded as part of the deed relating to the interest involved.

"(iii) RULE OF CONSTRUCTION.—Nothing in clause (i)(II) shall be construed to prevent or limit the ability of an owner of land to which that clause applies to mortgage the land or to limit the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement pursuant to applicable law.

"(iv) DEFINITION.—In this paragraph, the term 'member of the decedent's family' means the decedent's lineal descendant, a lineal descendant of the grandparent of the decedent, the spouse of any such descendant, or the decedent's spouse."; and

(ii) in subparagraph (B), by striking "subparagraph (A)" and all that follows through "207(a)(6)(B)" and inserting "paragraph (1)";

(3) in section 207 (25 U.S.C. 2206)—

(A) in subsection (c)—

(i) by redesignating paragraph (3) as paragraph (4); and

(ii) by inserting after paragraph (2) the following:

"(3) ALIENATION OF JOINT TENANCY INTERESTS.—

"(A) IN GENERAL.—With respect to any interest held as a joint tenancy pursuant to this subsection—

"(i) nothing in this subsection shall be construed to alter the ability of the owner of such an interest to convey a life estate in the owner's undivided joint tenancy interest; and

"(ii) only the last remaining owner of such an interest may devise or convey more than a life estate in such an interest.

"(B) APPLICATION OF PROVISION.—This paragraph shall not apply to any conveyance, sale, or transfer that is part of an agreement referred to in subsection (e) or to a co-owner of a joint tenancy interest."; and

(B) in subsection (g)(5), by striking "this section" and inserting "subsections (a) and (b)";

(4) in section 213 (25 U.S.C. 2212)—

(A) in subsection (a)(2), by striking "(A) IN GENERAL.—" and all that follows through "subparagraph (A), the Secretary" and inserting "The Secretary";

(B) in subsection (b)(4), by inserting before the period the following: "through the use of policies and procedures designed to accommodate the voluntary sale of interests under the pilot program (established by this Act) though the elimination of duplicate conveyance documents, administrative proceedings, and transactions, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation"; and

(C) in subsection (c)—

(i) in paragraph (1)(A), by striking "landowner upon payment" and all that follows through the period and inserting the following: "landowner—

"(i) upon payment by the Indian landowner of the amount paid for the interest by the Secretary; or

"(ii) if the Indian referred to in this subparagraph provides assurance that the purchase price will be paid by pledging revenue from any source, including trust resources, and the Secretary determines that the purchase price will be paid in a timely and efficient manner.";

(ii) in paragraph (1)(B), by inserting "unless the interest is subject to a foreclosure of a mortgage pursuant to the Act of March 29, 1956 (25 U.S.C. 483a)" before the period; and

(iii) in paragraph (3), by striking "10 percent of more of the undivided interests" and inserting "an undivided interest";

(5) in section 214 (25 U.S.C. 2213), by striking subsection (b) and inserting the following:

"(b) APPLICATION OF REVENUE FROM ACQUIRED INTERESTS TO LAND CONSOLIDATION PILOT PROGRAM.—

"(1) IN GENERAL.—The Secretary shall have a lien on any revenue accruing to an interest described under subsection (a) until the Secretary provides for the removal of the lien under paragraph (3) or (4).

"(2) REQUIREMENTS.—Until Secretary removes the lien from an interest of land as provided for in paragraph (1)—

"(A) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary;

"(B) any revenue derived from any interest acquired by the Secretary pursuant to section 213 shall be paid into the fund created under section 216; and

"(C) the Secretary may approve a transaction covered under this section on behalf of a tribe notwithstanding any other provision of law, including section 16 of the Act of June 18, 1934 (commonly known as the 'Indian Reorganization Act') (25 U.S.C. 476).

"(3) FINDINGS BY SECRETARY.—The Secretary may remove a lien referred to in (1) if the Secretary makes a finding that—

"(A) the costs of administering the interest will equal or exceed the projected revenues for the parcel of land involved;

"(B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or

"(C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

"(4) REMOVAL OF LIEN.—Pursuant to the consultations referred to in section 213(b)(3), the Secretary shall periodically remove the lien referred to in paragraph (1) from interests in land acquired by the Secretary.";

(6) in section 216 (25 U.S.C. 2215)—

(A) in subsection (a), by striking paragraph (2) and inserting the following:

"(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213."; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking "Subject to paragraph (2), all" and inserting "All";

(II) in subparagraph (A), by striking "and" at the end;

(III) in subparagraph (B), by striking the period and inserting "; and"; and

(IV) by adding at the end the following:

"(C) be used to acquire undivided interests on the reservation where the income was derived."; and

(ii) by striking paragraph (2) and inserting the following:

"(2) USE OF FUNDS.—The Secretary may utilize the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land pursuant to section 205.";

(7) in section 217 (25 U.S.C. 2216)—

(A) in subsection (e)(3), by striking "prospective applicants for the leasing, use, or consolidation of" and insert "any person that is leasing, using or consolidating, or is applying to, lease, use, or consolidate,"; and

(B) by striking subsection (f) and inserting the following:

"(f) PURCHASE OF LAND BY TRIBE.—

"(1) IN GENERAL.—Before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of trust or restricted land, the Indian tribe that exercises jurisdiction over such a parcel shall have the opportunity to match any offer contained in such application, or where there is no purchase price offered, to acquire the interest in such land by paying the fair market value of such interest.

"(2) EXCEPTION FOR FAMILY FARMS.—Paragraph (1) shall not apply to a parcel of trust or restricted land that is part of a family farm that is conveyed to a member of the landowner's family (as defined in section 206(c)(2)(A)(iv)) if the tribe that exercises jurisdiction over the land is afforded the opportunity to purchase the interest if the interest is offered for sale to an entity that is not a member of the family of the owner of the land. Section 206(c)(2)(A) shall apply with respect to the recording and mortgaging of the trust or restricted land referred to in the preceding sentence."; and

(8) in section 219(b)(1)(A) (25 U.S.C. 2219(b)(1)(A)), by striking "100" and inserting "90".

(b) DEFINITION.—

(1) IN GENERAL.—Section 202(2) of the Indian Land Consolidation Act (25 U.S.C. 2201(2)) is amended—

(A) by striking "means any" and inserting the following: "means—

"(A) any";

(B) by striking "or any person who has been found to meet" and inserting the following:

"(B) any person who meets"; and

(C) by striking "if the Secretary" and all that follows through the semicolon and inserting ", except that the Secretary may promulgate regulations to exclude any definition (except for definitions in laws that are related to land such as agriculture, grazing, housing, Indian schools, economic development, cultural resources, natural resources, and other laws providing for programs with benefits intended to run to Indian landowners and any future land-related programs) if the Secretary determines that the definition is not consistent with the purposes of this Act, or

"(C) with respect to the ownership, devise, or descent of trust or restricted land in the State of California, any person who meets the definition of Indians of California as contained in section 1 of the Act of May 18, 1928 (25 U.S.C. 651), until otherwise provided by Congress pursuant to section 809(b) of Public Law 94-437 (25 U.S.C. 1679(b));".

(2) EFFECTIVE DATE.—Any exclusion referred to in the amendment made by paragraph (1)(C) shall apply only to those decedents who die after the Secretary of the Interior promulgates the regulation providing for such exclusion.

(c) MORTGAGES AND DEEDS OF TRUST.—The Act of March 29, 1956 (25 U.S.C. 483a) is amended in the first sentence of subsection (a) by inserting "(including land owned by any person in passive trust status pursuant to section 207A of the Indian Land Consolidation Act)" after "land" the first place that such appears.

(d) ISSUANCE OF PATENTS.—Section 5 of the Act of February 8, 1887 (25 U.S.C. 348) is amended by striking the second proviso and inserting the following: "*Provided*, That the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply thereto after those patents have been executed and delivered:".

(e) Transfers of Restricted Indian Land.—Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by striking ", in accordance with" and all that follows through the colon and inserting "in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):".

SEC. 10213. EFFECTIVE DATE.

This amendments made by this subtitle shall not apply to the estate of an individual who dies prior to the later of—

(1) the date that is 1 year after the date of enactment of this Act; or

(2) the date specified in section 207(g)(5) of the Indian Land Consolidation Act (25 U.S.C. 2206(g)(5)).

CHAPTER 2—INHERITANCE OF CERTAIN TRUST OR RESTRICTED LANDS

SEC. 10221. INHERITANCE OF CERTAIN TRUST OR RESTRICTED LANDS.

Section 5 of Public Law 98–513 (98 Stat. 2411) is amended to read as follows:

"Sec. 5. (a) Notwithstanding any other provision of this Act—

"(1) subject to paragraph (2), the owner of an interest in trust or restricted land within the reservation may not devise an interest (including a life estate under section 4) in such land that is less than two and one half acres (or the equivalent thereof) to more than one tribal member;

"(2) the owner of an interest in trust or restricted land within the reservation may devise an interest (including a life estate under section 4) in such land that is less than two and one half acres (or the equivalent thereof) to more than one tribal member if each additional tribal member already holds an interest to such land; and

"(3) any interest in trust or restricted land within the reservation that is less than two and one half acres (or the equivalent thereof) that—

"(A) would otherwise pass by intestate succession (including a life estate in such land under section 4); or

"(B) is devised to more than one tribal member that is not described in paragraph (2);

shall escheat to the tribe, to be held in the name of the United States in trust for the tribe.

"(b) Not later than 180 days after the date of enactment of the Indian Probate Reform Act of 2002, the Secretary shall provide notice to owners of trust or restricted lands within the Lake Traverse Reservation of the enactment of this section by direct mail, publication in the Federal Register, or through local newspapers. After providing such notice, the Secretary shall certify that the requirements of this subsection have been met and shall publish notice of such certification in the Federal Register.

"(c) The provisions of this section shall not be enforceable with respect to the estate of any person who dies prior to the day that is 365 days after the Secretary makes the required certification under subsection (b).".

Subtitle C—Settlement of Certain Foreign Claims

SEC. 10301. SETTLEMENT OF CERTAIN CLAIMS.

(a) Authorization for Payment.—Subject to subsection (b), the Secretary of the Treasury shall pay to the Pottawatomi Nation in Canada, notwithstanding any other provision of law, $1,830,000 from amounts appropriated under section 1304 of title 31, United States Code.

(b) Payment in Accordance With Stipulation for Recommendation of Settlement.—The payment appropriated under subsection (a) shall be made in accordance with the terms and conditions of the Stipulation for Recommendation of Settlement dated May 22, 2000, entered into between the Pottawatomi Nation in Canada and the United States (in this subtitle referred to as the "Stipulation for Recommendation of Settlement") and included in the report of the Chief Judge of the United States Court of Federal Claims regarding Congressional Reference No. 94–1037X submitted to the Senate on January 4, 2001, pursuant to the provisions of sections 1492 and 2509 of title 28, United States Code.

(c) Full Satisfaction of Claims.—The payment made under subsection (a) shall be in full satisfaction of all claims of the Pottawatomi Nation in Canada against the United States referred to or described in the Stipulation for Recommendation of Settlement.

(d) Nonapplicability.—Notwithstanding any other provision of law, the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) shall not apply to the payment appropriated under subsection (a).

Subtitle D—Certification of Rental Proceeds

SEC. 10401. CERTIFICATION OF RENTAL PROCEEDS.

Notwithstanding any other provision of law, any actual rental proceeds from the lease of land acquired under section 1 of Public Law 91–229 (25 U.S.C. 488) certified by the Secretary of the Interior shall be deemed—

(1) to constitute the rental value of that land; and

(2) to satisfy the requirement for appraisal of that land.

Subtitle E—Tribal Sovereignty

SEC. 10601. TRIBAL SOVEREIGNTY.

Section 16 of the Act of June 18, 1934 (25 U.S.C. 476), is amended by adding at the end the following:

"(h) Tribal Sovereignty.—Notwithstanding any other provision of this Act—

"(1) each Indian tribe shall retain inherent sovereign power to adopt governing documents under procedures other than those specified in this section; and

"(2) nothing in this Act invalidates any constitution or other governing document adopted by an Indian tribe after June 18, 1934, in accordance with the authority described in paragraph (1).".

SA 4982. Mr. REID (for Mr. Kerry (for himself and Mr. Hollings)) proposed an amendment to the bill H.R. 1989. To reauthorize various fishing conservation management programs, and for other purposes; as follows:

At the appropriate place, add the following:

SEC. . AUTHORITY TO ACCEPT VOLUNTEER SERVICES.

Section 303 (33 U.S.C. 892a), is amended by adding at the end the following:

"(d) Authority to Accept Volunteer Services.—To help fulfill the duties of the Administrator, including authorities under the Act of 1947 (33 U.S.C. 883a et seq.), this Act, or in response to a maritime emergency, the Administrator may—

"(1) establish a volunteer program;

"(2) enter into special agreements with qualified organizations to assist in the implementation of a volunteer program; and

"(3) provide funding under the special agreement to the qualified organization for the purposes of assisting in the administration of the volunteer programs and for procuring and maintaining insurance or other coverage for the organization and its members when conducting volunteer activities.

"(e) Legal Status of Volunteers.—Paragraphs (1) through (5) of section 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)) shall apply to volunteers providing services to the Administrator under subsection (c) of this section, except that any reference in that section to the Secretary of the Interior or the Secretary of Commerce shall be deemed to refer to the Administrator.

"(f) Qualified Organization.—In this section, the term 'qualified organization' means a non-governmental, not-for-profit organization, determined by the Administrator to have demonstrated expertise in boating safety and a commitment to improving the quality of hydrographic services and related oceanographic and meteorological information that is made available to mariners.".

SA 4983. Mr. REID (for Mr. Kerry) proposed an amendment to the bill H.R. 1989, to reauthorize various fishing conservation management programs, and for other purposes: as follows:

At the end of the bill, add the following:

TITLE VI—MISCELLANEOUS FISHERIES PROVISIONS

SEC. 601. REPORT ON OVERCAPACITY.

(a) In General.—The Secretary of Commerce shall, within 12 months after the date of enactment of his Act, and triennially thereafter, submit to the Congress a report—

(1) identifying and describing the 20 fisheries in United States waters with the most severe examples of excess harvesting capacity in the fisheries, based on value of each fishery and the amount of excess harvesting capacity as determined by the Secretary;

(2) in any such fisheries subject to a rebuilding program, identifying and describing the current capacity relative to the capacity that can be supported by the fishery: once the fishery is rebuilt;

(3) recommending measures for reducing excess harvesting capacity, including the retirement of any latent fishing permits that could contribute to further excess harvesting capacity in those fisheries; and

(4) identifying potential sources of funding for such measures.

(b) Basis for Recommendations.—The Secretary shall base the recommendations under subsection (a)(3) made with respect to a fishery on—

(1) the most cost-effective means of achieving voluntary reduction in capacity for the fishery using the potential for industry financing; and

(2) including measures to prevent the capacity that is being removed from the fishery from moving to other fisheries in the United States, in the waters of a foreign nation, or on the high seas.

SEC. 602. WEST COAST GROUNDFISH FISHERY CAPACITY REDUCTION.

(a) In General.—

(1) Purpose of section.—The purpose of this section is to establish a fishing capacity reduction program for the West Coast ground-fish fishery pursuant to section 212 of the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, and subsections (b) through (e) of section 312 of

the Magnuson-Stevens Act (16 U.S.C. 1861a (b) through (e)).

(2) Program implementation.—Within 90 days after the date of enactment of this Act, the Secretary shall implement the program by publishing a public notice in the Federal Register and issuing an invitation to bid for reduction payments that specifies the contractual terms and conditions under which bids shall be made and accepted under this section.

(3) Application of Magnuson-Stevens Act; regulations.—Section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), and subpart L of part 600 of title 50, Code of Federal Regulations, shall apply to the program implemented under this section only to the extent that—

(A) that section and that subpart are not inconsistent with any specific provision of this section; or

(B) made inapplicable to the program under paragraph (3) of this section.

(4) Inapplicable regulations.—Sections 600.1001, 600.1002, 600.1003, 600.1005, 600.1010(b), 600.1010(d)(1), 600.1011(d), the last sentence of section 600.1011(a), and the last sentence of section 600.1014(f) of title 50, Code of Federal Regulations, shall not apply to the program implemented under this section.

(5) Program deemed accepted.—The program implemented under this section is deemed to be accepted under section 600.1004 of title 50, Code of Federal Regulations.

(b) Eligibility.—

(1) In general.—A reduction fishery is eligible for capacity reduction under the program implemented under this section.

(2) Whiting catcher-processor exception.—Notwithstanding paragraph (1), no vessel harvesting and processing whiting in the catcher-processors sector (as defined in section 660.323(a)(4)(A) of title 50, Code of Federal Regulations) may participate in any capacity reduction referendum or industry fee established under this section.

(c) Application of Section 312 of Magnuson-Stevens Act.—Subsections (b) through (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) shall apply to the program implemented under this section, except that:

(1) The program may apply to multiple fisheries, as appropriate.

(2) A referendum on the industry fee system shall occur after bids have been submitted, and such bids have been accepted by the Secretary, as follows:

(A) The members of the reduction fishery, and persons who have been issued WA, OR, or CA Dungeness Crab and Pink Shrimp permits, shall be eligible to vote in the referendum to approve an industry fee system.

(B) Referendum votes cast in each fishery shall be weighted in proportion to the debt obligation of each fishery, as calculated in subsection (f) of this section.

(C) The industry fee system shall be approved if the referendum votes cast in favor of the proposed system constitute a simple majority of the participating voting.

(3) Notwithstanding section 553 of title 5, United States Code, and section 312(e) of the Magnuson-Stevens Act (16 U.S.C. 1861a(e)), the Secretary shall not prepare or publish proposed or final regulations for the implementation of the program under this section before the referendum is conducted.

(d) No Interference With Other Proposed Program Changes or Subsequent Regulations.—Nothing in this section shall be construed to prohibit—

(1) the Pacific Fishery Management Council from recommending, or the Secretary from approving, changes to any fishery management plan, in accordance with applicable law; or

(2) the Secretary from promulgating regulations (including regulations governing this program), after an industry fee system has been approved by the reduction fishery.

(e) Bids and Bid Acceptance.—

(1) In general.—The Secretary shall determine, and state in the public notice published under subsection (a)(2) of this section, all program implementation aspects the Secretary deems relevant.

(2) Bids are irrevocable.—Any bid submitted in response to the invitation to bid issued by the Secretary under this section shall be irrevocable.

(3) Bid acceptance procedure.—The Secretary shall use a bid acceptance procedure that ranks each bid in accordance with this paragraph and with additional criteria, if any, established by the Secretary.

(A) Bid score.—For each bid from a qualified bidder that meets the bidding requirements in the public notice or the invitation to bid, the Secretary shall determine a bid score by dividing the bid's dollar amount by the average annual total ex-vessel dollar value of landings of Pacific groundfish, Dungeness crab, and Pink Shrimp based on the 3 highest total annual revenues earned from Pacific groundfish, Dungeness crab, and Pink Shrimp that the bidder's reduction vessel landed during 1998, 1999, 2000, or 2001. For purposes of this subparagraph, the term "total annual revenue" means the revenue earned in a single year from the Pacific groundfish, Dungeness crab, and Pink shrimp fisheries.

(B) Bid ranking and acceptance.—The Secretary shall accept each qualified bid in rank order of bid score from the lowest to the highest until acceptance of the next qualified bid with the next lowest bid score would cause the reduction cost to exceed the reduction loan's maximum amount.

(4) Acceptance creates contract.—Acceptance of bid by the Secretary shall create a binding reduction contract between the United States and the person whose bid is accepted, the performance of which shall be subject only to the conclusion of a successful referendum.

(5) Relinquishment and revocation of permits.—A person whose bid is accepted by the Secretary under this section shall relinquish all permits in the reduction fishery and any Dungeness crab and Pink shrimp permits issued by Washington, Oregon, or California. The Secretary shall revoke the Pacific groundfish permit, as well as all Federal fishery licenses, fishery permits, area, and species endorsements, and any other fishery privileges issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) removed under the program.

(f) Program Industry Fee System Allocation.—

(1) In general.—The Secretary shall establish separate reduction loan sub-amounts and repayment fees for fish sellers in the reduction fishery and for fish sellers in each of the fee-share fisheries by—

(A) dividing the total ex-vessel dollar value during the bid scoring period of all reduction vessel landings from the reduction fishery and from each of the fee-share fisheries by the total such value of all such landings for all such fisheries; and

(B) multiplying the reduction loan amount by each of the quotients resulting from each of the divisions above.

(2) Reduction loan sub-amount.—Each of the resulting products shall be the reduction loan sub-amount for the reduction fishery and for each of the fee-share fisheries to which each of such products pertains.

(3) Seller payments.—Each fish seller in the reduction fishery and in each of the fee-share fisheries shall pay the fees required by the reduction loan-sub-amounts allocated to it under this subsection.

(4) State collection agreements.—The Secretary may enter into agreements with the States of Washington, Oregon, and California to collect any fees established under the section.

(g) Loan Term.—Notwithstanding section 1111(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279(b)(4)), the reduction loan's term shall not be less than 30 years.

(h) Sense of the Congress Regarding Additional Post-Reduction Program Actions.—It is the sense of the Congress that the States of Washington, Oregon, and California should revoke all relinquishment permits in each of the fee-share fisheries immediately after reduction payment, and otherwise to implement appropriate State fisheries management and conservation provisions in each of the fee-share fisheries that establishes a program that meets the requirements of section 312(b(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a(b)(1)(B)) as if it were applicable to fee-share fisheries.

(i) Definitions.—In this section:

(1) Fee-share fishery.—The term "fee-share fishery" means a fishery, other than the reduction fishery, whose members are eligible to vote in a referendum for an industry fee system under subsection (c)(2).

(2) Reduction fishery.—The term "reduction fishery" means that portion of a fishery holding limited entry fishing permits endorsed for the operation of a trawl gear and issued under the Federal Pacific Coast Groundfish Fishery Management Plan.

(3) Magnuson-Stevens act.—The term "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(4) Secretary.—The term "Secretary" means the Secretary of Commerce.

SEC. 603. NEW ENGLAND GROUNDFISH CAPACITY REDUCTION PLANNING.

The Secretary of Commerce, in consultation with the New England Regional Fishery Management Council, shall provide technical, planning, and other assistance requested by Northeast multispecies fishery participants, affected States and fishing communities, or other interested parties for the development of an industry-funded capacity reduction plan for the fishery (such as that authorized by section 211 of the 2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States), including planning for fisheries community transition to sustainable fisheries. The Secretary may provide technical and other assistance under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), the National Sea Grant College Program Act (33 U.S.C. 1121 et seq.), or other applicable law implemented by the Secretary, and may include—

(1) quantification of overcapacity in the rebuilt fishery;

(2) development of geographic and spatial information and analyses for planning and projections;

(3) provision of socio-economic or fishery data;

(4) analyses of socio-economic effects of capacity reduction options;

(5) public workshop planning and support or other mechanisms for public input;

(6) small business financial planning and advice; and

(7) identification of Federal assistance programs.

SEC. 604. CLARIFICATION OF FLEXIBILITY.

(a) IN GENERAL.—The Secretary of Commerce has the discretion under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) to extend the time for rebuilding an overfished stock beyond the time previously established by the Secretary in a fishery management plan in order to meet substantially increased biomass rebuilding targets subsequently established for the fishery by the Secretary based on the best scientific information available, if—

(1) the extension will apply only to those stocks for which the new biomass targets substantially exceed the targets previously established by 100 percent or more;

(2) the biomass rebuilding target previously applicable to such stock will be met or exceeded within the time for rebuilding previously established by the Secretary;

(3) the extension period is based on the biology of the stock, the rate of rebuilding, and the increase in the biomass rebuilding target, and is as short as possible;

(4) monitoring will ensure rebuilding continues;

(5) the extension meets the requirements of section 301(a)(1) of that Act (16 U.S.C. 1851(a)(1)); and

(6) the best scientific information available shows that the extension will allow continued rebuilding.

(b) AUTHORITY.—Nothing in this section shall be construed to amend the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.) or to limit or otherwise alter the authority of the Secretary under that Act.

SEC. 605. REVIEW OF DATA COLLECTION AND ASSESSMENT METHODS.

The Secretary of Commerce shall, commencing 60 days after the date of enactment of this Act and annually every 7 years thereafter, conduct an independent peer review of fishery management methods under this title, including evaluation and recommendations for—

(1) survey sampling methods and protocols (including inspection, calibration, and maintenance of sampling gear) used in the collection of fishery and fishery-independent data by or for the agency;

(2) stock assessment procedures (including methods for detecting and treating measurement error);

(3) risk assessment and management strategies;

(4) data collection quality control and validation methods; and

(5) an evaluation of the need to develop new assessment, survey, and collection techniques designed to accommodate incomplete or variable data or to evaluate or forecast effects of environmental fluctuations on fisheries.

SEC. 606. COOPERATIVE ENFORCEMENT AGREEMENTS.

(a) IN GENERAL.—The Governor of a State (as defined in section 3(35) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(35)) may apply to the Secretary of Commerce for execution of a cooperative enforcement agreement with the Secretary that will authorize the deputization of State law enforcement officers with marine law enforcement responsibilities to perform duties of the Secretary relating to law enforcement provisions under this title or any other marine resource laws enforced by the Secretary. Upon receiving an application meeting the requirements of this section, the Secretary shall enter into a joint enforcement agreement with the requesting State.

(b) REQUIREMENTS.—Joint enforcement agreements executed under subsection (a)—

(1) shall be consistent with the purposes and intent of section 311(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861(a)), to the extent applicable to the regulated activities; and

(2) may include specifications for joint management responsibilities as provided by the first section of Public Law 91-412 (15 U.S.C. 1525).

(c) ALLOCATIONS OF FUNDS.—The Secretary shall include in each cooperative enforcement agreement an allocation of funds to assist in management of the agreement. The allocation shall be equitably distributed among all States participating in cooperative enforcement agreement under this subsection, based upon consideration of the specific marine conservation enforcement needs of each participating State. Such agreement may provide for amounts to be withheld by the Secretary for the cost of any technical or other assistance provided by the State by the Secretary under the agreement.

SEC. 607. FISHERIES OUTREACH AND TRAINING.

The Secretary of Commerce shall establish a regional fisheries outreach program within the National Marine Fisheries Service to foster understanding and practical use of knowledge and technical expertise relevant to living marine resources. In establishing the program, the Secretary shall, in cooperation with the National Sea Grant College Program and the Regional Fishery Management Councils established under title III of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.), develop a comprehensive effort to improve communication, education, and outreach to fishing communities, the fishing industry, the conservation community and interested members of the public at the regional, State, and local levels. The program shall—

(1) establish a program of demonstrations, workshops, townhall and industry and other non-scientific meetings for public understanding of National Marine Fisheries Service research, technology, or other information relating the conservation and management of fishery and other living marine resources;

(2) establish outreach programs and procedures designed to improve the transparency and accessibility of fishery stock assessments to the public, including dissemination of explanatory materials through the Internet;

(3) provide periodic training of members, staff, and advisory committee members of the Regional Fishery Management Councils established under that title, on implementation of the National Standards established under title III of the Magnuson Stevens Fisheries Conservation and Management Act (16 U.S.C. 1851 et seq.), the requirements of National Environmental Policy Act and chapter 6 of title 5, United States Code, and any other law applicable to the development of fishery management plans;

(4) identify, with the fishing industry, methods of improving collection, quality, and reporting of fishery dependent data;

(5) study the response of the regulated industry to fishery management regulations and develop management approaches that consider such behavior;

(6) foster communications and technology-transfer programs among regions to improve fish conservation and management;

(7) establish means of communicating information to the general public in an accessible and understandable form (including web-based communications); and

(8) develop partnerships with other agencies, academic institutions, and other entities to meet the purposes of this section.

SEC. 608. COOPERATIVE RESEARCH AND MANAGEMENT PROGRAM.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with the Regional Fishery Management Councils established under title III of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.), shall establish a national cooperative research and management program to address needs identified under the Magnuson Stevens Fisheries Conservation and Management Act and under any other marine resource laws enforced by the Secretary. The program shall make funds available for cooperative research and management activities that are developed through partnerships among Federal and State managers and scientists, fishing industry participating, and educational institutions.

(b) ELIGIBLE PROJECTS.—The Secretary shall make funds available under the program for the support of projects to address critical needs identified by the Secretary in consultation with the Regional Fisheries Management Councils established under such title, that pertain to the collection and analysis of data and information on living marine resources, including data on landings, fishing effort, life history parameters, biology, habitat, economics and social sciences, including those information needs identified pursuant to section 401 of that Act (16 U.S.C. 1881) or the development of measures to promote innovative of cooperative management of fisheries, including development of innovative gear, methods, and technology. Such program shall promote and encourage efforts to mine and recover useful sources of data maintained by other Federal agencies, State agencies, or academic for use in such projects. In making funds available the Secretary shall give priority to the following projects.

(1) Projects to collect data to improve, supplement, or enhance stock assessments, including through the use of fishing vessels or acoustic or other innovative marine technology.

(2) Projects to improve calibration and accuracy of data collection gear and methods.

(3) Conservation engineering projects designed to reduce bycatch, minimize mortality of bycatch, or minimize fishery impacts on essential fish habitat.

(4) Projects to assess the amount and type of bycatch occurring in a fishery.

(5) Projects for the identification, conservation, or restoration of habitat areas of particular concern.

(6) Projects designed to identify ecosystem effects of fishing, to monitor marine ecosystem trends and dynamics, or to link climate forecasts to stock assessments or otherwise explore ecosystem-based approaches to governance.

(7) Projects designed to collect and compile economic and social data, including data to evaluate the long-term impact of conservation and management measures on fishing communities and data to evaluate economic motivation of harvesters.

(c) SELECTION OF PROJECTS.—Each research project shall be awarded by the Secretary on a competitive basis under procedures established by the Secretary in consultation with the Regional Fisheries Management Councils established under title III of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1851 et seq.). To the extent practicable, the projects selected should collectively conform to a coherent program of research leading to solving priority programs. Each Regional Fisheries Management Council established under that title shall establish a research steering committee to carry out this section.

(d) EXPERIMENTAL PERMITTING PROCESS.—The Secretary, in consultation with the Regional Fisheries Management Councils established under title III of that Act shall establish an expedited permitting process for projects approved under this section.

(e) GUIDELINES.—The Secretary, in consultation with the appropriate Regional Fisheries Management Council established under title III of that Act, shall establish guidelines to ensure that participation in a research project funded under this section does not result in loss of participant's catch history or unexpended days-at-sea as part of a limited entry system.

SEC. 609. COOPERATIVE MARINE EDUCATION AND RESEARCH.

For the purpose of developing adequate, coordinated, cooperative research and training programs for living marine resources, the Secretary of Commerce may establish a Cooperative Marine Education and Research Program. Under this program the Secretary is authorized to enter into cooperative agreements with universities and institutions of higher learning in order to conduct basic research in areas that support conservation and management of living marine resources. Research conducted under this program may include conservation engineering, research and development (including development of fishing gear and methods to reduce bycatch and habitat impacts) and biological research concerning the abundance and life history parameters of stocks of fish, the interdependence of fisheries or stocks of fish and other ecosystem components, and the linkages between fish habitat and fish production or abundance.

SEC. 610. GULF OF MEXICO FISHING QUOTA SYSTEMS.

Section 407 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1883) is amended—

(1) in subsection (c) by inserting at the end the following:

"(3) The initial referendum described in paragraph (1) shall be used to determine support for whether the sale, transfer, or lease of quota shares shall be allowed.".

(2) by inserting at the end the following:

"(e) In order to facilitate balanced and fair apportionment of fishing interests, a Governor of a State submitting names of individuals for appointment by the Secretary of Commerce to the Gulf of Mexico Fisheries Management Council under section 302(b)(2) of this Act during Fiscal Years 2003–2004 shall include at least one nominee each from the commercial fishing sector and the recreational fishing sector (including the for-hire fishing sector). If the Secretary determines that a submission from such a Governor does not meet the requirements of subsection (a), the Secretary shall—

"(1) for an at-large seat, select a nominee from a list submitted by a State that complies with this subsection; and

"(2) for a seat assigned to that State, select no nominee for that seat until the Governor complies with this subsection.".

SEC. 611. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the provisions of this title—

(1) for science review and outreach—

(A) $10,000,000 for fiscal year 2003;

(B) $11,000,000 for fiscal year 2004;

(C) $12,000,000 for fiscal year 2005;

(D) $13,000,000 for fiscal year 2006; and

(E) $14,000,000 for fiscal year 2007;

(2) for cooperative enforcement—

(A) $27,000,000 for fiscal year 2003;

(B) $29,000,000 for fiscal year 2004;

(C) $31,000,000 for fiscal year 2005;

(D) $33,000,000 for fiscal year 2006; and

(E) $35,000,000 for fiscal year 2007; and

(3) for cooperative research—

(A) $30,000,000 for fiscal year 2003;

(B) $35,000,000 for fiscal year 2004;

(C) $40,000,000 for fiscal year 2005;

(D) $45,000,000 for fiscal year 2006; and

(E) $50,000,000 for fiscal year 2007.

TITLE VII—MISCELLANEOUS

SEC. 701. CHESAPEAKE BAY OFFICE.

(a) REAUTHORIZATION OF OFFICE.—Section 307 of the National Oceanic and Atmospheric Administration Authorization Act of 1992 (15 U.S.C. 1511d) is amended to read as follows:

"SEC. 307. CHESAPEAKE BAY OFFICE.

"(a) ESTABLISHMENT.—(1) The Secretary of Commerce shall establish, within the National Oceanic and Atmospheric Administration, an office to be known as the Chesapeake Bay Office (in this section referred to as the 'Office').

"(2) The Office shall be headed by a Director who shall be appointed by the Secretary of Commerce, in consultation with the Chesapeake Executive Council. Any individual appointed as Director shall have knowledge and experience in research or resource management efforts in the Chesapeake Bay.

"(3) The Director may appoint such additional personnel for the Office as the Director determines necessary to carry out this section.

"(b) FUNCTIONS.—The Office, in consultation with the Chesapeake Executive Council, shall—

"(1) provide technical assistance to the Administrator, to other Federal departments and agencies, and to State and local government agencies in—

"(A) assessing the processes that shape the Chesapeake Bay system and affect its living resources;

"(B) identifying technical and management alternatives for the restoration and protection of living resources and the habitats they depend upon; and

"(C) monitoring the implementation and effectiveness of management plans;

"(2) develop and implement a strategy for the National Oceanic and Atmospheric Administration that integrates the science, research, monitoring, data collection, regulatory, and management responsibilities of the Secretary of Commerce in such a manner as to assist the cooperative, intergovernmental Chesapeake Bay Program to meet the commitments of the Chesapeake Bay Agreement;

"(3) coordinate the programs and activities of the various organizations within the National Oceanic and Atmospheric Administration, the Chesapeake Bay Regional Sea Grant Programs, and the Chesapeake Bay units of the National Estuarine Research Reserve System, including—

"(A) programs and activities in—

"(i) coastal and estuarine research, monitoring, and assessment;

"(ii) fisheries research and stock assessments;

"(iii) data management;

"(iv) remote sensing;

"(v) coastal management;

"(vi) habitat conservation and restoration; and

"(vii) atmospheric deposition; and

"(B) programs and activities of the Cooperative Oxford Laboratory of the National Ocean Service with respect to—

"(i) nonindigenous species;

"(ii) estuarine and marine species pathology;

"(iii) human pathogens in estuarine and marine environments; and

"(iv) ecosystem health;

"(4) coordinate the activities of the National Oceanic and Atmospheric Administration with the activities of the Environmental Protection Agency and other Federal, State, and local agencies;

"(5) establish an effective mechanism which shall ensure that projects have undergone appropriate peer review and provide other appropriate means to determine that projects have acceptable scientific and technical merit for the purpose of achieving maximum utilization of available funds and resources to benefit the Chesapeake Bay area;

"(6) remain cognizant of ongoing research, monitoring, and management projects and assist in the dissemination of the results and findings of those projects; and

"(7) submit a biennial report to the Congress and the Secretary of Commerce with respect to the activities of the Office and on the progress made in protecting and restoring the living resources and habitat of the Chesapeake Bay, which report shall include an action plan consisting of—

"(A) a list of recommended research, monitoring, and data collection activities necessary to continue implementation of the strategy described in paragraph (2); and

"(B) proposals for—

"(i) continuing any new National Oceanic and Atmospheric Administration activities in the Chesapeake Bay; and

"(ii) the integration of those activities with the activities of the partners in the Chesapeake Bay Program to meet the commitments of the Chesapeake 2000 agreement and subsequent agreements.

"(c) CHESAPEAKE BAY FISHERY AND HABITAT RESTORATION SMALL WATERSHED GRANTS PROGRAM.—

"(1) IN GENERAL.—The Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration (in this section referred to as the 'Director'), in cooperation with the Chesapeake Executive Council, shall carry out a community-based fishery and habitat restoration small grants and technical assistance program in the Chesapeake Bay watershed.

"(2) PROJECTS.—

"(A) SUPPORT.—The Director shall make grants under this subsection to pay the Federal share of the cost of projects that are carried out by entities eligible under paragraph (3) for the restoration of fisheries and habitats in the Chesapeake Bay.

"(B) FEDERAL SHARE.—The Federal share under subparagraph (A) shall not exceed 75 percent.

"(C) TYPES OF PROJECTS.—Projects for which grants may be made under this subsection include—

"(i) the improvement of fish passageways;

"(ii) the creation of natural or artificial reefs or substrata for habitats;

"(iii) the restoration of wetland or sea grass;

"(iv) the production of oysters for restoration projects; and "(v) the prevention, identification, and control of nonindigenous species.

"(3) ELIGIBLE ENTITIES.—The following entities are eligible to receive grants under this subsection:

"(A) The government of a political subdivision of a State in the Chesapeake Bay watershed, and the government of the District of Columbia.

"(B) An organization in the Chesapeake Bay watershed (such as an educational institution or a community organization)—

"(i) that is described in section 501(c) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of that Code; and

"(ii) that will administer such grants in coordination with a government referred to in subparagraph (A).

"(4) ADDITIONAL REQUIREMENTS.—The Director may prescribe any additional requirements, including procedures, that the Director considers necessary to carry out the program under this subsection.

"(d) CHESAPEAKE EXECUTIVE COUNCIL.—For purposes of this section, 'Chesapeake Executive Council' means the representatives from the Commonwealth of Virginia, the State of Maryland, the Commonwealth of Pennsylvania, the Environmental Protection Agency, the District of Columbia, and the Chesapeake Bay Commission, who are signatories to the Chesapeake Bay Agreement, and any future signatories to that Agreement.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Commerce for the Chesapeake Bay Office $6,000,000 for each of fiscal years 2002 through 2006.".

(b) CONFORMING AMENDMENT.—Section 2 of the National Oceanic and Atmospheric Administration Marine Fisheries Program Authorization Act (Public Law 98–210; 97 Stat. 1409) is amended by striking subsection (e).

(c) MULTIPLE SPECIES MANAGEMENT STRATEGY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Chesapeake Bay Office of the National Oceanic and Atmospheric Administration shall begin a 5-year study, in cooperation with the scientific community of the Chesapeake Bay, appropriate State and interstate resource management entities, and appropriate Federal agencies—

(A) to determine and expand the understanding of the role and response of living resources in the Chesapeake Bay ecosystem; and

(B) to develop a multiple species management strategy for the Chesapeake Bay.

(2) REQUIRED ELEMENTS OF STUDY.—In order to improve the understanding necessary for the development of the strategy under paragraph (1)(B), the study shall—

(A) determine the current status and trends of fish and shellfish that live in the Chesapeake Bay and its tributaries and are selected for study;

(B) evaluate and assess interactions among the fish and shellfish referred to in subparagraph (A) and other living resources, with particular attention to the impact of changes within and among trophic levels; and

(C) recommend management actions to optimize the return of a healthy and balanced ecosystem for the Chesapeake Bay.

SEC. 702. CONVEYANCE OF NOAA LABORATORY IN TIBURON, CALIFORNIA.

(a) IN GENERAL.—Except as provided in subsection (c), the Secretary of Commerce may convey to the Board of Trustees of the California State University, by suitable instrument, in accordance with this section, by as soon as practicable, but not later than 180 days after the date of the enactment of this Act, and without consideration, all right, title, and interest of the United States in the balance of the National Oceanic and Atmosphere Administration property known as the Tiburon Laboratory, located in Tiburon, California, as described in Exhibit A of the notarized, revocable license between the Administration and Romberg Tiburon Center for Environmental Studies at San Francisco State University dated November 5, 2001 (license number 01ABF779–N).

(b) CONDITIONS.—As a condition of any conveyance by the Secretary under this section the Secretary may require the following:

(1) The property conveyed shall be administered by the Romberg Tiburon Center for Environmental Studies at San Francisco State University and used only for the following purposes:

(A) To enhance estuarine scientific research and estuary restoration activities within San Francisco Bay.

(B) To administer and coordinate management activities at the San Francisco Bay National Estuarine Research Reserve.

(C) To conduct education and interpretation and outreach activities to enhance public awareness and appreciation of estuary resources, and for other purposes.

(2) The Board shall—

(A) take title to the property as is;

(B) assume full responsibility for all facility maintenance and repair, security, fire prevention, utilities, signs, and grounds maintenance;

(C) allow the Secretary to have all necessary ingress and egress over the property of the Board to access Department of Commerce building and related facilities, equipment, improvements, modifications, and alterations; and

(D) not erect or allow to be erected any structure or structures or obstruction of whatever kind that interfere with the access to or operation of property retained for the United States under subsection (c)(1), unless prior written consent has been provided by the Secretary to the Board.

(c) RETAINED INTERESTS.—The Secretary shall retain for the United States—

(1) all right, title, and interest in and to the portion of the property referred to in subsection (a) comprising Building 86, identified as Parcel C on Exhibit A of the license referred to in subsection (a), including all facilities, equipment, fixtures, improvements, modifications, or alterations made by the Secretary;

(2) rights-of-way and easements that are determined by the Secretary to be reasonable and convenient to ensure all necessary ingress, egress, utilities, drainage, and sewage disposal for the property retained under paragraph (1), including access to the existing boat launch ramp (or equivalent) and parking that is suitable to the Secretary;

(3) the exclusive right to install, maintain, repair, replace, and remove its facilities, fixtures, and equipment on the retained property, and to authorize other persons to take any such action;

(4) the right to grade, condition, and install drainage facilities, and to seed soil on the retained property, if necessary; and

(5) the right to remove all obstructions from the retained property that may constitute a hindrance to the establishment and maintenance of the retained property.

(d) EQUIVALENT ALTERNATIVE.—

(1) IN GENERAL.—At any time, either the Secretary or the Board may request of each other to enter into negotiations pursuant to which the Board may convey if appropriate to the United States, in exchange for property conveyed by the United States under subsection (a), another building that is equivalent in function to the property, retained under subsection (c) that is acceptable to the Secretary.

(2) LOCATION.—Property conveyed by the Board under this subsection is not required to be located on the property referred to in subsection (a).

(3) COSTS.—If the Secretary and the Board engage in a property exchange under this subsection, all costs for repair, removal, and moving of facilities, equipment, fixtures, improvements, modifications, or alterations, including power, control, and utilities, that are necessary for the exchange—

(A) shall be the responsibility of the Secretary, if the action to seek an equivalent alternative was requested by the Secretary in response to factors unrelated to the activities of the Board or its operatives in the operation of its facilities; or

(B) shall be the responsibility of the Board, if the Secretary's request for an equivalent alternative was in response to changes or modifications made by the Board or its operatives that adversely affected the Secretary's interest in the property retained under subsection (c).

(e) ADDITIONAL CONDITIONS.—As conditions of any conveyance under subsection (a)—

(1) the Secretary shall require that—

(A) the Board remediate, or have remediated, at its sole cost, all hazardous or toxic substance contamination found on the property conveyed under subsection (a), whether known or unknown at the time of the conveyance of later discovered; and

(B) the Board of Trustees hold harmless the Secretary for any and all costs, liabilities, or claims by third parties that arise out of any hazardous or toxic substance contamination found on the property conveyed under subsection (a) that are not directly attributable to the installation, operation, or maintenance of the Secretary's facilities, equipment, fixtures, improvements, modifications, or alternations;

(2) the Secretary shall remediate, at the sole cost of the United States, all hazardous or toxic substance contamination on the property retained under subsection (c) that is found to have occurred as a direct result of the installation, operation, or maintenance of the Secretary's facilities, equipment, fixtures, improvements, modifications, or alternations; and

(3) if the Secretary decides to terminate future occupancy and interest of the property retained under subsection (c), the Secretary may—

(A) provide written notice to the Board at least 60 days prior to the scheduled date when the property will be vacated;

(B) remove facilities, equipment, fixtures, improvements, modifications, or alternations and restore the property to as good a condition as existed at the time the property was retained under subsection (c), taking into account ordinary wear and tear and exposure to natural elements or phenomena; or

(C) surrender all facilities, equipment, fixtures, improvements, modifications, or alterations to the Board in lieu of restoration, whereupon title shall vest in the Board of Trustees, and whereby all obligations of restoration under this subsection shall be waived, and all interests retained under subsection (e) shall be revoked.

(f) REVERSIONARY INTEREST.—

(1) IN GENERAL.—All right, title, and interest in and to all property and interests conveyed by the United States under this section shall revert to the United States on the date on which the Board uses any of the property for any purpose other than the purposes described in subsection (b)(1).

(2) ADMINISTRATION OF REVERTED PROPERTY.—Any property that reverts to the United States under this subsection shall be under the administrative jurisdiction of the Administrator of General Services.

(3) ANNUAL CERTIFICATION.—One year after the date of a conveyance made pursuant to subsection (a), and annually thereafter, the Board shall certify to the Administrator of General Services or his or her designee that the Board and its designees are in compliance with the conditions of conveyance under subsections (b) and (e).

(g) DEFINITIONS.—In this section:

(1) BOARD.—The term "Board" means the Board of Trustees of the California State University.

(2) CENTER.—The term "Center" means the Romberg Tiburon Center for Environmental Studies at San Francisco State University.

(3) SECRETARY.—The term "Secretary" means the Secretary of Commerce.

SEC. 1703. ARCTIC RESEARCH CENTER.

(a) ESTABLISHMENT.—The Secretary of Commerce, in consultation with the Secretaries of Energy and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, shall establish a joint research facility, to be known as the Barrow Arctic Research Center, to support climate change and other scientific research activities in the Arctic.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretaries of Commerce, Energy, and the Interior, the Director of the National Science Foundation, and the Administrator of the Environmental Protection Agency, **$35,000,000** for the planning, design, construction, and support of the Borrow Arctic Research Center.

SEC. 704. EMERGENCY ASSISTANCE FOR SUBSISTENCE WHALE HUNTERS.

Notwithstanding any provision of law, the use of a vessel to tow a whale taken in a traditional subsistence whale hunt permitted by Federal law and conducted in waters off the coast of Alaska is authorized, if such towing is performed upon a request for emergency assistance made by a subsistence whale hunting organization formally recognized by an agency of the United States Government, or made by a member of such an organization, to prevent the loss of a whale.

SEC. 705. INTERNATIONAL PACIFIC RESEARCH AND COOPERATION.

The Secretary of Commerce, in cooperation with the Administrator of the National Aeronautics and Space Administration, shall conduct international research in the Pacific region that will increase understanding of the nature and predictability of climate variability in the Asia-Pacific sector, including regional aspects of global environmental change. Such research activities shall be conducted in cooperation with other nations of the region. There are authorized to be appropriated for purposes of this section **$3,500,000** to the National Oceanic and Atmospheric Administration.

SEC. 706. TREATY ON PACIFIC COAST ALBACORE TUNA.

(a) FOREIGN FISHING UNDER TREATY; IMPLEMENTATION.—Section 201 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1821) is amended by adding at the end the following

"(j) TREATY ON PACIFIC COAST ALBACORE TUNA VESSELS.—

"(1) Notwithstanding subsection (a) and section 307(2)(B), foreign fishing may be conducted pursuant to the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed May 26, 1981, and any amendments thereto.

"(2) The Secretary of Commerce may promulgate regulations necessary to discharge Federal obligations under the Treaty between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, signed May 26, 1981, including its Annexes and any amendments thereto. The proposed rulemaking and public participation requirements of section 553 of title 5, United States Code, shall not apply to collection of information or record-keeping requirements established by regulations promulgated under this subsection.".

(b) TECHNICAL AMENDMENT.—Section 307(2)(B) of such Act (16 U.S.C. 1857(2)(B)) is amended by striking "201(i)," and inserting "201(i) and foreign fishing permitted under section 201(j),".

SA 4984. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 1606, to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for such other purposes; as follows:

On page 3, line 14, strike "such sums as may be necessary" and insert "a total of $10 million for fiscal years 2003 and 2004."

PRIVILEGE OF THE FLOOR

Mr. HUTCHINSON. Mr. President, I also ask unanimous consent that my entire Washington staff, as well as Tracie Spingarn, an interpreter for the learning impaired, be granted floor privileges for the duration of my remarks this morning.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

AMENDING THE PEACE CORPS ACT TO PROMOTE GLOBAL ACCEPTANCE OF THE PRINCIPLES OF INTERNATIONAL PEACE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 12 introduced earlier today by Senator DODD.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 12) to amend the Peace Corps Act to promote global acceptance of the principles of international peace.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 12) was read the third time and passed, as follows:

S. 12

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Peace Corps Charter for the 21st Century Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Peace Corps was established in 1961 to promote world peace and friendship through the service of American volunteers abroad.

(2) The three goals codified in the Peace Corps Act which have guided the Peace Corps and its volunteers over the years, can work in concert to promote global acceptance of the principles of international peace and nonviolent coexistence among peoples of diverse cultures and systems of government.

(3) The Peace Corps has operated in 135 countries with 165,000 Peace Corps volunteers since its establishment.

(4) The Peace Corps has sought to fulfill three goals, as follows: to help people in developing nations meet basic needs, to promote understanding of America's values and ideals abroad, and to promote an understanding of other peoples by Americans.

(5) After more than 40 years of operation, the Peace Corps remains the world's premier international service organization dedicated to promoting grassroots development.

(6) The Peace Corps remains committed to sending well trained and well supported Peace Corps volunteers overseas to promote peace, friendship, and international understanding.

(7) The Peace Corps is an independent agency, and therefore no Peace Corps personnel or volunteers should be used to accomplish any other goal than the goals established by the Peace Corps Act.

(8) The Crisis Corps has been an effective tool in harnessing the skills and talents for returned Peace Corps volunteers and should be expanded to utilize to the maximum extent the talent pool of returned Peace Corps volunteers.

(9) The Peace Corps is currently operating with an annual budget of **$275,000,000** in 70 countries with 7,000 Peace Corps volunteers.

(10) There is deep misunderstanding and misinformation about American values and ideals in many parts of the world, particularly those with substantial Muslim populations, and a greater Peace Corps presence in such places could foster greater understanding and tolerance.

(11) Congress has declared that the Peace Corps should be expanded to sponsor a minimum of 10,000 Peace Corps volunteers.

(12) President George W. Bush has called for the doubling of the number of Peace Corps volunteers in service.

(13) Any expansion of the Peace Corps shall not jeopardize the quality of the Peace Corps volunteer experience, and therefore can only be accomplished by an appropriate increase in field and headquarters support staff.

(14) In order to ensure that proposed expansion of the Peace Corps preserves the integrity of the program and the security of volunteers, the integrated Planning and Budget System supported by the Office of Planning and Policy Analysis should continue its focus on strategic planning.

(15) A streamlined, bipartisan National Peace Corps Advisory Council composed of distinguished returned Peace Corps volunteers and other individuals, with diverse backgrounds and expertise, can be a source of ideas and suggestions that may be useful to the Director of the Peace Corps as he discharges his duties and responsibilities as head of the agency.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(2) DIRECTOR.—The term "Director" means the Director of the Peace Corps.

(3) PEACE CORPS VOLUNTEER.—The term "Peace Corps volunteer" means a volunteer or a volunteer leader under the Peace Corps Act.

(4) RETURNED PEACE CORPS VOLUNTEER.—The term "returned Peace Corps volunteer" means a person who has been certified by the Director as having served satisfactorily as a Peace Corps volunteer.

SEC. 4. RESTATEMENT OF INDEPENDENCE OF THE PEACE CORPS.

(a) IN GENERAL.—Section 2A of the Peace Corps Act (22 U.S.C. 2501–1) is amended by adding at the end the following new sentence: "As an independent agency, all recruiting of volunteers shall be undertaken primarily by the Peace Corps.".

(b) DETAILS AND ASSIGNMENTS.—Section 5(g) of the Peace Corps Act (22 U.S.C. 2504(g)) is amended by inserting after "*Provided*, That" the following: "such detail or assignment does not contradict the standing of Peace Corps volunteers as being independent: *Provided further*, That".

SEC. 5. REPORTS AND CONSULTATIONS.

(a) ANNUAL REPORTS; CONSULTATIONS ON NEW INITIATIVES.—Section 11 of the Peace Corps Act (22 U.S.C. 2510) is amended by striking the section heading and the text of section 11 and inserting the following:

"SEC. 11. ANNUAL REPORTS; CONSULTATIONS ON NEW INITIATIVES.

"(a) ANNUAL REPORTS.—The Director shall transmit to Congress, at least once in each fiscal year, a report on operations under this Act. Each report shall contain information—

"(1) describing efforts undertaken to improve coordination of activities of the Peace Corps with activities of international voluntary service organizations, such as the United Nations volunteer program, and of host country voluntary service organizations, including—

"(A) a description of the purpose and scope of any development project which the Peace Corps undertook during the preceding fiscal year as a joint venture with any such international or host country voluntary service organizations; and

"(B) recommendations for improving coordination of development projects between the Peace Corps and any such international or host country voluntary service organizations;

"(2) describing—

"(A) any major new initiatives that the Peace Corps has under review for the upcoming fiscal year, and any major initiatives that were undertaken in the previous fiscal year that were not included in prior reports to the Congress;

"(B) the rationale for undertaking such new initiatives;

"(C) an estimate of the cost of such initiatives; and

"(D) the impact on the safety of volunteers;

"(3) describing in detail the Peace Corp's plans for doubling the number of volunteers from 2002 levels, including a five-year budget plan for reaching that goal; and

"(4) describing standard security procedures for any country in which the Peace Corps operates programs or is considering doing so, as well as any special security procedures contemplated because of changed circumstances in specific countries, and assessing whether security conditions would be enhanced—

"(A) by colocating volunteers with international or local nongovernmental organizations; or

"(B) with the placement of multiple volunteers in one location.

"(b) CONSULTATIONS ON NEW INITIATIVES.—The Director of the Peace Corps should consult with the appropriate congressional committees with respect to any major new initiatives not previously discussed in the latest annual report submitted to Congress under subsection (a) or in budget presentations. Wherever possible, such consultations should take place prior to the initiation of such initiatives, but in any event as soon as practicable thereafter.".

(b) ONE TIME REPORT ON STUDENT LOAN FORGIVENESS PROGRAMS.—Not later than 30 days after the date of enactment of this Act, the Director shall submit to the appropriate congressional committees a report—

(1) describing the student loan forgiveness programs currently available to Peace Corps volunteers upon completion of their service; and

(2) comparing such programs with other Government-sponsored student loan forgiveness programs; and

(3) recommending any additional student loan forgiveness programs which could attract more applicants from more low and middle income applicants facing high student loan obligations.

SEC. 6. SPECIAL VOLUNTEER RECRUITMENT AND PLACEMENT FOR COUNTRIES WHOSE GOVERNMENTS ARE SEEKING TO FOSTER GREATER UNDERSTANDING BETWEEN THEIR CITIZENS AND THE UNITED STATES.

(a) REPORT.—Not later than 60 days after the date of enactment of this Act, the Director shall submit a report to the appropriate congressional committees describing the initiatives that the Peace Corps intends to pursue with eligible countries where the presence of Peace Corps volunteers would facilitate a greater understanding that there exists a universe of commonly shared human values and aspirations. Such report shall include—

(1) a description of the recruitment strategies to be employed by the Peace Corps to recruit and train volunteers with the appropriate language skills and interest in serving in such countries; and

(2) a list of the countries that the Director has determined should be priorities for special recruitment and placement of Peace Corps volunteers.

(b) USE OF RETURNED PEACE CORPS VOLUNTEERS.—Notwithstanding any other provision of law, the Director is authorized and strongly urged to utilize the services of returned Peace Corps volunteers having language and cultural expertise, including those returned Peace Corps volunteers who may have served previously in countries with substantial Muslim populations, in order to open or reopen Peace Corps programs in such countries.

SEC. 7. GLOBAL INFECTIOUS DISEASES INITIATIVE.

(a) IN GENERAL.—The Director, in cooperation with international public health experts such as the Centers for Disease Control and Prevention, the National Institutes of Health, the World Health Organization, the Pan American Health Organization, and local public health officials shall develop a program of training for all Peace Corps volunteers in the areas of education, prevention, and treatment of infectious diseases in order to ensure that all Peace Corps volunteers make a contribution to the global campaign against such diseases.

(b) DEFINITIONS.—In this section:

(1) AIDS.—The term "AIDS" means the acquired immune deficiency syndrome.

(2) HIV.—The term "HIV" means the human immunodeficiency virus, the pathogen that causes AIDS.

(3) HIV/AIDS.—The term "HIV/AIDS" means, with respect to an individual, an individual who is infected with HIV or living with AIDS.

(4) INFECTIOUS DISEASES.—The term "infectious diseases" means HIV/AIDS, tuberculosis, and malaria.

SEC. 8. PEACE CORPS ADVISORY COUNCIL.

Section 12 of the Peace Corps Act (22 U.S.C. 2511; relating to the Peace Corps National Advisory Council) is amended—

(1) by amending subsection (b)(2)(D) to read as follows:

"(D) make recommendations for utilizing the expertise of returned Peace Corps volunteers in fulfilling the goals of the Peace Corps.";

(2) in subsection (c)—

(A) in paragraph (2)(A)—

(i) in the first sentence, by striking "fifteen" and inserting "seven"; and

(ii) by striking the second sentence and inserting the following: "Four of the members shall be former Peace Corps volunteers, at least one of whom shall have been a former staff member abroad or in the Washington headquarters, and not more than four shall be members of the same political party.";

(B) by amending subparagraph (D) to read as follows:

"(D) The members of the Council shall be appointed to 2-year terms.";

(C) by striking subparagraphs (B) and (H); and

(D) by redesignating subparagraphs (C), (D), (E), (F), (G), and (I) as subparagraphs (B), (C), (D), (E), (F), and (G), respectively;

(3) by amending subsection (g) to read as follows:

"(g) CHAIR.—The President shall designate one of the voting members of the Council as Chair, who shall serve in that capacity for a period not to exceed two years.";

(4) by amending subsection (h) to read as follows:

"(h) MEETINGS.—The Council shall hold a regular meeting during each calendar quarter at a date and time to be determined by the Chair of the Council."; and

(5) by amending subsection (i) to read as follows:

"(i) REPORT.—Not later than July 30, 2003, and annually thereafter, the Council shall submit a report to the President and the Director of the Peace Corps describing how the Council has carried out its functions under subsection (b)(2).".

SEC. 9. READJUSTMENT ALLOWANCES.

The Peace Corps Act is amended—

(1) in section 5(c) (22 U.S.C. 2504(c)), by striking "$125" and inserting "$275"; and

(2) in section 6(1) (22 U.S.C. 2505(1)), by striking "$125" and inserting "$275".

SEC. 10. PROGRAMS AND PROJECTS OF RETURNED PEACE CORPS VOLUNTEERS TO PROMOTE THE GOALS OF THE PEACE CORPS.

(a) PURPOSE.—The purpose of this section is to provide support for returned Peace Corps volunteers to develop and carry out programs and projects to promote the third purpose of the Peace Corps Act, as set forth in section 2(a) of that Act (22 U.S.C. 2501(a)), by promoting a better understanding of other peoples on the part of the American people.

(b) GRANTS TO CERTAIN NONPROFIT CORPORATIONS.—

(1) GRANT AUTHORITY.—To carry out the purpose of this section, and subject to the availability of appropriations, the Chief Executive Officer of the Corporation for National and Community Service (referred to in this section as the "Corporation") shall award grants on a competitive basis to private nonprofit corporations for the purpose of enabling returned Peace Corps volunteers to use their knowledge and expertise to develop and carry out the programs and projects described in subsection (a).

(2) PROGRAMS AND PROJECTS.—Such programs and projects may include—

(A) educational programs designed to enrich the knowledge and interest of elementary school and secondary school students in the geography and cultures of other countries where the volunteers have served;

(B) projects that involve partnerships with local libraries to enhance community knowledge about other peoples and countries; and

(C) audio-visual projects that utilize materials collected by the volunteers during their service that would be of educational value to communities.

(3) ELIGIBILITY FOR GRANTS.—To be eligible to compete for grants under this section, a nonprofit corporation shall have a board of directors composed of returned Peace Corps volunteers with a background in community service, education, or health. The nonprofit corporation shall meet all appropriate Corporation management requirements, as determined by the Corporation.

(c) GRANT REQUIREMENTS.—Such grants shall be made pursuant to a grant agreement between the Corporation and the nonprofit corporation that requires that—

(1) the grant funds will only be used to support programs and projects described in subsection (a) pursuant to proposals submitted by returned Peace Corps volunteers (either individually or cooperatively with other returned volunteers);

(2) the nonprofit corporation will give consideration to funding individual programs or projects by returned Peace Corps volunteers, in amounts of not more than $100,000, under this section;

(3) not more than 20 percent of the grant funds made available to the nonprofit corporation will be used for the salaries, overhead, or other administrative expenses of the nonprofit corporation;

(4) the nonprofit corporation will not receive grant funds for programs or projects under this section for a third or subsequent year unless the nonprofit corporation makes available, to carry out the programs or projects during that year, non-Federal contributions—

(A) in an amount not less than $2 for every $3 of Federal funds provided through the grant; and

(B) provided directly or through donations from private entities, in cash or in kind, fairly evaluated, including plant, equipment, or services; and

(5) the nonprofit corporation shall manage, monitor, and submit reports to the Corporation on each program or project for which the nonprofit corporation receives a grant under this section.

(d) STATUS OF THE FUND.—Nothing in this section shall be construed to make any nonprofit corporation supported under this section an agency or establishment of the Federal Government or to make the members of the board of directors or any officer or employee of such nonprofit corporation an officer or employee of the United States.

(e) FACTORS IN AWARDING GRANTS.—In determining the number of nonprofit corporations to receive grants under this section for any fiscal year, the Corporation—

(1) shall take into consideration the need to minimize overhead costs that direct resources from the funding of programs and projects; and

(2) shall seek to ensure a broad geographical distribution of grants for programs and projects under this section.

(f) CONGRESSIONAL OVERSIGHT.—Grant recipients under this section shall be subject to the appropriate oversight procedures of Congress.

(g) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section $10,000,000. Such sum shall be in addition to funds made available to the Corporation under Federal law other than this section.

(2) AVAILABILITY.—Amounts appropriated pursuant to paragraph (1) are authorized to remain available until expended.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

Section 3(b)(1) of the Peace Corps Act (22 U.S.C. 2502(b)(1)) is amended—

(1) by striking "2002, and" and inserting "2002,"; and

(2) by inserting before the period the following: ", $362,000,000 for fiscal year 2004, $404,000,000 for fiscal year 2005, $446,000,000 for fiscal year 2006, and $488,000,000 for fiscal year 2007".

Mr. REID. Mr. President, let me say that this bill was introduced by Senator DODD, who is a very proud former member of the Peace Corps. He has been the protector of the Peace Corps. In addition to his father, the Peace Corps is where he got his love of public service. That is where he learned to speak Spanish so well.

IRAQI SCIENTISTS IMMIGRATION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 3079, and that the Senate proceed to its consideration.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 3079) to authorize the issuance of immigrant visas to, and the admission to the United States for permanent residence of, certain scientists, engineers, and technicians who have worked in Iraqi weapons of mass destruction programs.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the Biden substitute amendment at the desk be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4979) in the nature of a substitute was agreed to, as follows:

AMENDMENT NO. 4979

(Purpose: To provide a complete substitute)

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Iraqi Scientists Immigration Act of 2002".

SEC. 2. ADMISSION OF CRITICAL ALIENS.

(a) Section 101(a)(15) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15), is amended—

(1) by striking "or" at the end of the subparagraph (U);

(2) by striking the period at the end of the subparagraph (V) and inserting "; or"; and

(3) by adding a new subparagraph (W), reading:

"(W) Subject to section 214(s), an alien—

"(i) who the Attorney General determines, in coordination with the Secretary of State, the Director of Central Intelligence and such other officials as he may deem appropriate, and in the Attorney General's unreviewable discretion, is an individual—

"(I) who has worked at any time in an Iraqi program to produce weapons of mass destruction or the means to deliver them;

"(II) who is in possession of critical and reliable information concerning any such Iraqi program;

"(III) who is willing to provide, or has provided, such information to the United States Government;

"(IV) who may be willing to provide, or has provided, such information to inspectors of the United Nations or of the International Atomic Energy Agency;

"(V) who will be or has been placed in danger as a result of providing such information; and

"(VI) whose admission would be in the public interest or in the interest of national security; or

"(ii) who is the spouse, married or unmarried son or daughter, parent, or other relative, as determined by the Attorney General in his unreviewable discretion, of an alien described in clause (i), if accompanying or following to join such alien, and whose admission the Attorney General, in coordination with the Secretary of State and the Director of Central Intelligence, determines in his unreviewable discretion is in the public interest or in the interest of national security."

(b) Section 214 of the Immigration and Nationality Act, 8 U.S.C. 1184, is amended by—

(1) redesignating subsections second (m) (as added by section 105 of Public Law 106–313), (n) (as added by section 107(e) of Public Law 106–386), (o) (as added by section 1513(c) of Public Law 106–386), second (o) (as added by section 1102(b) of the Legal Immigration Family Equity Act), and (p) (as added by section 1503(b) of the Legal Immigration Family Equity Act), as subsections (n), (o), (p), (q), and (r), respectively; and

(2) adding a new subsection (s) reading:

"(s) Numerical limitations and conditions of admission and stay for nonimmigrants admitted under section 101(a)(15)(W).

"(1) The number of aliens who may be admitted to the United States or otherwise granted status under section 101(a)(15)(W)(i) may not exceed a total of 500.

"(2) As a condition for the admission, and continued stay in lawful status, of any alien admitted to the United States or otherwise granted status as a nonimmigrant under section 101(a)(15)(W), the nonimmigrant—

"(A) shall report to the Attorney General such information concerning the alien's whereabouts and activities as the Attorney General may require;

"(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission or grant of status;

"(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of removal or for protection under the Convention Against Torture, any action for removal of the alien instituted before the alien obtains lawful permanent resident status;

"(D) shall cooperate fully with all requests for information from the United States Government including, but not limited to, fully and truthfully disclosing to the United States Government including, but not limited to, fully and truthfully disclosing to the United States Government all information in the alien's possession concerning any Iraqi program to produce weapons of mass destruction or the means to deliver them; and

"(E) shall abide by any other condition, limitation, or restriction imposed by the Attorney General."

(c) Section 245 of the Immigration and Nationality Act, §U.S.C. 1255, is amended by—

(1) In subsection (c), striking "or" before "(8)" and inserting before the period, "or (9) an alien who was admitted as a nonimmigrant described in section 101(a)(15)(W)";

(2) Redesignating subsection (1), relating to "U" visa nonimmigrants, as subsection (m); and

(3) Adding a new subsection (n) reading:

"(n) Adjustment to permanent resident status of 'W' nonimmigrants.

"(1) If, in the opinion of the Attorney General, a nonimmigrant admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(W)(i) has complied with section 214(s) since such admission or grant of status, the Attorney General may, in coordination with the Secretary of State and the Director of Central Intelligence, and in his unreviewable discretion, adjust the status of the alien (and any alien who has accompanied or followed to join such alien pursuant to section 101(a)(15)(W)(ii) and who has complied with section 214(s) since admission or grant of nonimmigrant status) to that of an alien lawfully admitted for permanent resident if the alien is not described in section 212(a)(3)(E).

"(2) Upon the approval of adjustment of status of any alien under paragraph (1), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current."

(d) Section 212(d) of the Immigrantion and Nationality Act, §U.S.C. 1182(d), is amended by inserting a new paragraph (d)(2) reading:

"(2) The Attorney General shall determine whether a ground of inadmissibility exists with respect to a nonimmigrant described in section 101(a)(15)(W). The Attorney General, in the Attorney General's discretion, may waive the application of subsection (a) in the case of such a nonimmigrant if the Attorney General considers it to be in the public interest or in the interest of national security."

(e) Section 248(1) of the Immigration and Nationality Act, 8 U.S.C. 1258(I), is amended by striking "or (S)" and inserting "(S), or (W)".

SEC. 3. WEAPON OF MASS DESTRUCTION DEFINED.

(a) IN GENERAL.—In this Act, the term "weapon of mass destruction" has the meaning given the term in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 110 Stat. 2717; 50 U.S.C. 2302(1)), as amended by subsection (b).

(b) TECHNICAL CORRECTION.—Section 1403(1)(B) of the Defense Against Weapons of Mass Destruction Act of 1996 (title XIV of Public Law 104–201; 110 Stat. 2717; 50 U.S.C. 2302(1)(B)) is amended by striking "a disease organism" and inserting "a biological agent, toxin, or vector (as those terms are defined in section 178 of title 18, United States Code)".

The bill (S. 3079), as amended, was read the third time and passed.

INDIAN FINANCING AMENDMENTS ACT OF 2002

Mr. REID. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on the bill (S. 2017) to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 2017) entitled "An Act to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

TITLE I—INDIAN FINANCING ACT AMENDMENTS

Sec. 101. Short title.
Sec. 102. Findings and purpose.
Sec. 103. Amendments to Indian Financing Act.

TITLE II—YANKTON SIOUX AND SANTEE SIOUX TRIBES EQUITABLE COMPENSATION

Sec. 201. Short title.
Sec. 202. Findings.
Sec. 203. Definitions.
Sec. 204. Yankton Sioux Tribe Development Trust Fund.
Sec. 205. Santee Sioux Tribe Development Trust Fund.
Sec. 206. Tribal plans.
Sec. 207. Eligibility of tribe for certain programs and services.
Sec. 208. Statutory construction.
Sec. 209. Authorization of appropriations.
Sec. 210. Extinguishment of claims.

TITLE III—OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM

Sec. 301. Oklahoma Native American Cultural Center and Museum.

TITLE IV—TRANSMISSION OF POWER FROM INDIAN LANDS IN OKLAHOMA

Sec. 401. Transmission of power from Indian lands in Oklahoma.

TITLE V—PECHANGA TRIBE

Sec. 501. Land of Pechanga Band of Luiseno Mission Indians.

TITLE VI—CHEROKEE, CHOCTAW, AND CHICKASAW NATIONS CLAIMS SETTLEMENT ACT

Sec. 601. Short title.
Sec. 602. Findings.
Sec. 603. Purposes.
Sec. 604. Definitions.
Sec. 605. Settlement and claims; appropriations; allocation of funds.
Sec. 606. Tribal trust funds.
Sec. 607. Attorney fees.
Sec. 608. Release of other tribal claims and filing of claims.
Sec. 609. Effect on claims.

TITLE VII—SEMINOLE TRIBE

Sec. 701. Approval not required to validate certain land transactions.

TITLE VIII—JICARILLA APACHE RESERVATION RURAL WATER SYSTEM

Sec. 801. Short title.
Sec. 802. Purposes.
Sec. 803. Definitions.
Sec. 804. Jicarilla Apache Reservation rural water system.
Sec. 805. General authority.
Sec. 806. Project requirements.
Sec. 807. Authorization of appropriations.
Sec. 808. Prohibition on use of funds for irrigation purposes.
Sec. 809. Water rights.

TITLE IX—ROCKY BOY'S RURAL WATER SYSTEM

Sec. 901. Short title.
Sec. 902. Findings and purposes.
Sec. 903. Definitions.
Sec. 904. Rocky Boy's rural water system.
Sec. 905. Noncore system.
Sec. 906. Limitation on availability of construction funds.
Sec. 907. Connection charges.
Sec. 908. Authorization of contracts.
Sec. 909. Tiber Reservoir allocation to the tribe.
Sec. 910. Use of Pick-Sloan power.
Sec. 911. Water conservation plan.
Sec. 912. Water rights.
Sec. 913. Chippewa Cree Water System Operation, Maintenance, and Replacement Trust Fund.
Sec. 914. Authorization of appropriations.

TITLE X—MISCELLANEOUS

Sec. 1001. Santee Sioux Tribe, Nebraska, water system study.
Sec. 1002. Yurok Tribe and Hopland Band included in long term leasing.

TITLE I—INDIAN FINANCING ACT AMENDMENTS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Indian Financing Amendments Act of 2002".

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) was intended to provide Native American borrowers with access to commercial sources of capital that otherwise would not be available through the guarantee or insurance of loans by the Secretary of the Interior;

(2) although the Secretary of the Interior has made loan guarantees and insurance available, use of those guarantees and that insurance by lenders to benefit Native American business borrowers has been limited;

(3) 27 years after the date of enactment of the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.), the promotion and development of Native American-owned business remains an essential foundation for growth of economic and social stability of Native Americans;

(4) use by commercial lenders of the available loan insurance and guarantees may be limited by liquidity and other capital market-driven concerns; and

(5) it is in the best interest of the insured and guaranteed loan program of the Department of the Interior—

(A) to encourage the orderly development and expansion of a secondary market for loans guaranteed or insured by the Secretary of the Interior; and

(B) to expand the number of lenders originating loans under the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.).

(b) PURPOSE.—The purpose of this Act is to reform and clarify the Indian Financing Act of 1974 (25 U.S.C. 1451 et seq.) in order to—

(1) stimulate the use by lenders of secondary market investors for loans guaranteed or insured under a program administered by the Secretary of the Interior;

(2) preserve the authority of the Secretary to administer the program and regulate lenders;

(3) clarify that a good faith investor in loans insured or guaranteed by the Secretary will receive appropriate payments;

(4) provide for the appointment by the Secretary of a qualified fiscal transfer agent to establish and administer a system for the orderly transfer of those loans; and

(5)(A) authorize the Secretary to promulgate regulations to encourage and expand a secondary market program for loans guaranteed or insured by the Secretary; and

(B) allow the pooling of those loans as the secondary market develops.

SEC. 103. AMENDMENTS TO INDIAN FINANCING ACT.

(a) LIMITATION ON LOAN AMOUNTS WITHOUT PRIOR APPROVAL.—Section 204 of the Indian Financing Act of 1974 (25 U.S.C. 1484) is amended in the last sentence by striking "$100,000" and inserting "$250,000".

(b) SALE OR ASSIGNMENT OF LOANS AND UNDERLYING SECURITY.—Section 205 of the Indian Financing Act of 1974 (25 U.S.C. 1485) is amended—

(1) by striking "Any loan guaranteed" and inserting the following:

"(a) IN GENERAL.—Any loan guaranteed or insured"; and

(2) by adding at the end the following:

"(b) INITIAL TRANSFERS.—

"(1) IN GENERAL.—The lender of a loan guaranteed or insured under this title may transfer to any individual or legal entity—

"(A) all rights and obligations of the lender in the loan or in the unguaranteed or uninsured portion of the loan; and

"(B) any security given for the loan.

"(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—

"(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

"(B) the lender shall give notice of the transfer to the Secretary.

"(3) RESPONSIBILITIES OF TRANSFEREE.—On any transfer under paragraph (1), the transferee shall—

"(A) be deemed to be the lender for the purpose of this title;

"(B) become the secured party of record; and

"(C) be responsible for—

"(i) performing the duties of the lender; and

"(ii) servicing the loan in accordance with the terms of the guarantee by the Secretary of the loan.

"(c) SECONDARY TRANSFERS.—

"(1) IN GENERAL.—Any transferee under subsection (b) of a loan guaranteed or insured under this title may transfer to any individual or legal entity—

"(A) all rights and obligations of the transferee in the loan or in the unguaranteed or uninsured portion of the loan; and

"(B) any security given for the loan.

"(2) ADDITIONAL REQUIREMENTS.—With respect to a transfer described in paragraph (1)—

"(A) the transfer shall be consistent with such regulations as the Secretary shall promulgate under subsection (i); and

"(B) the transferor shall give notice of the transfer to the Secretary.

"(3) ACKNOWLEDGMENT BY SECRETARY.—On receipt of a notice of a transfer under paragraph (2)(B), the Secretary shall issue to the transferee an acknowledgement by the Secretary of—

"(A) the transfer; and

"(B) the interest of the transferee in the guaranteed or insured portion of the loan.

"(4) RESPONSIBILITIES OF LENDER.—Notwithstanding any transfer permitted by this subsection, the lender shall—

"(A) remain obligated on the guarantee agreement or insurance agreement between the lender and the Secretary;

"(B) continue to be responsible for servicing the loan in a manner consistent with that guarantee agreement or insurance agreement; and

"(C) remain the secured creditor of record.

"(d) FULL FAITH AND CREDIT.—

"(1) IN GENERAL.—The full faith and credit of the United States is pledged to the payment of all loan guarantees and loan insurance made under this title after the date of enactment of this subsection.

"(2) VALIDITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the validity of a guarantee or insurance of a loan under this title shall be incontestable if the obligations of the guarantee or insurance held by a transferee have been acknowledged under subsection (c)(3).

"(B) EXCEPTION FOR FRAUD OR MISREPRESENTATION.—Subparagraph (A) shall not apply in a case in which a transferee has actual knowledge of fraud or misrepresentation, or participates in or condones fraud or misrepresentation, in connection with a loan.

"(e) DAMAGES.—Notwithstanding section 3302 of title 31, United States Code, the Secretary may recover from a lender of a loan under this title any damages suffered by the Secretary as a result of a material breach of the obligations of the lender with respect to a guarantee or insurance by the Secretary of the loan.

"(f) FEES.—The Secretary may collect a fee for any loan or guaranteed or insured portion of a loan that is transferred in accordance with this section.

"(g) CENTRAL REGISTRATION OF LOANS.—On promulgation of final regulations under subsection (i), the Secretary shall—

"(1) provide for a central registration of all guaranteed or insured loans transferred under this section; and

"(2) enter into 1 or more contracts with a fiscal transfer agent—

"(A) to act as the designee of the Secretary under this section; and

"(B) to carry out on behalf of the Secretary the central registration and fiscal transfer agent functions, and issuance of acknowledgements, under this section.

"(h) POOLING OF LOANS.—

"(1) IN GENERAL.—Nothing in this title prohibits the pooling of whole loans or interests in loans transferred under this section.

"(2) REGULATIONS.—In promulgating regulations under subsection (i), the Secretary may include such regulations to effect orderly and efficient pooling procedures as the Secretary determines to be necessary.

"(i) REGULATIONS.—Not later than 180 days after the date of enactment of this subsection, the Secretary shall develop such procedures and promulgate such regulations as are necessary to facilitate, administer, and promote transfers of loans and guaranteed and insured portions of loans under this section.".

TITLE II—YANKTON SIOUX AND SANTEE SIOUX TRIBES EQUITABLE COMPENSATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Yankton Sioux Tribe and Santee Sioux Tribe Equitable Compensation Act".

SEC. 202. FINDINGS.

Congress finds that—

(1) by enacting the Act of December 22, 1944, commonly known as the "Flood Control Act of 1944" (58 Stat. 887, chapter 665; 33 U.S.C. 701–1 et seq.) Congress approved the Pick-Sloan Missouri River Basin program (referred to in this section as the "Pick-Sloan program")—

(A) to promote the general economic development of the United States;

(B) to provide for irrigation above Sioux City, Iowa;

(C) to protect urban and rural areas from devastating floods of the Missouri River; and

(D) for other purposes;

(2) the waters impounded for the Fort Randall and Gavins Point projects of the Pick-Sloan program have inundated the fertile, wooded bottom lands along the Missouri River that constituted the most productive agricultural and pastoral lands of, and the homeland of, the members of the Yankton Sioux Tribe and the Santee Sioux Tribe;

(3) the Fort Randall project (including the Fort Randall Dam and Reservoir) overlies the western boundary of the Yankton Sioux Tribe Indian Reservation;

(4) the Gavins Point project (including the Gavins Point Dam and Reservoir) overlies the eastern boundary of the Santee Sioux Tribe;

(5) although the Fort Randall and Gavins Point projects are major components of the Pick-Sloan program, and contribute to the economy of the United States by generating a substantial amount of hydropower and impounding a substantial quantity of water, the reservations of the Yankton Sioux Tribe and the Santee Sioux Tribe remain undeveloped;

(6) the United States Army Corps of Engineers took the Indian lands used for the Fort Randall and Gavins Point projects by condemnation proceedings;

(7) the Federal Government did not give the Yankton Sioux Tribe and the Santee Sioux Tribe an opportunity to receive compensation for direct damages from the Pick-Sloan program, even though the Federal Government gave 5 Indian reservations upstream from the reservations of those Indian tribes such an opportunity;

(8) the Yankton Sioux Tribe and the Santee Sioux Tribe did not receive just compensation for the taking of productive agricultural Indian lands through the condemnation referred to in paragraph (6);

(9) the settlement agreement that the United States entered into with the Yankton Sioux Tribe and the Santee Sioux Tribe to provide compensation for the taking by condemnation referred to in paragraph (6) did not take into account the increase in property values over the years between the date of taking and the date of settlement; and

(10) in addition to the financial compensation provided under the settlement agreements referred to in paragraph (9)—

(A) the Yankton Sioux Tribe should receive an aggregate amount equal to $23,023,743 for the loss value of 2,851.40 acres of Indian land taken for the Fort Randall Dam and Reservoir of the Pick-Sloan program; and

(B) the Santee Sioux Tribe should receive an aggregate amount equal to $4,789,010 for the loss value of 593.10 acres of Indian land located near the Santee village.

SEC. 203. DEFINITIONS.

In this title:

(1) INDIAN TRIBE.—The term "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(2) SANTEE SIOUX TRIBE.—The term "Santee Sioux Tribe" means the Santee Sioux Tribe of Nebraska.

(3) YANKTON SIOUX TRIBE.—The term "Yankton Sioux Tribe" means the Yankton Sioux Tribe of South Dakota.

SEC. 204. YANKTON SIOUX TRIBE DEVELOPMENT TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "Yankton Sioux Tribe Development Trust Fund" (referred to in this section as the "Fund"). The Fund shall consist of any amounts deposited in the Fund under this title.

(b) FUNDING.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a)—

(1) $23,023,743; and

(2) an additional amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(c) INVESTMENT OF TRUST FUND.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in the Secretary of Treasury's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) WITHDRAWAL OF INTEREST.—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and transfer that amount to the Secretary of the Interior for use in accordance with paragraph (2). Each amount so transferred shall be available without fiscal year limitation.

(2) PAYMENTS TO YANKTON SIOUX TRIBE.—

(A) IN GENERAL.—The Secretary of the Interior shall use the amounts transferred under paragraph (1) only for the purpose of making payments to the Yankton Sioux Tribe, as such payments are requested by that Indian tribe pursuant to tribal resolution.

(B) LIMITATION.—Payments may be made by the Secretary of the Interior under subparagraph (A) only after the Yankton Sioux Tribe has adopted a tribal plan under section 206.

(C) USE OF PAYMENTS BY YANKTON SIOUX TRIBE.—The Yankton Sioux Tribe shall use the payments made under subparagraph (A) only for carrying out projects and programs under the tribal plan prepared under section 206.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsections (c) and (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 205. SANTEE SIOUX TRIBE DEVELOPMENT TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury of the United States a fund to be known as the "Santee Sioux Tribe Development Trust Fund" (referred to in this section as the "Fund"). The Fund shall consist of any amounts deposited in the Fund under this title.

(b) FUNDING.—On the first day of the 11th fiscal year that begins after the date of enactment of this Act, the Secretary of the Treasury shall, from the General Fund of the Treasury, deposit into the Fund established under subsection (a)—

(1) $4,789,010; and

(2) an additional amount that equals the amount of interest that would have accrued on the amount described in paragraph (1) if such amount had been invested in interest-bearing obligations of the United States, or in obligations guaranteed as to both principal and interest by the United States, on the first day of the first fiscal year that begins after the date of enactment of this Act and compounded annually thereafter.

(c) INVESTMENT OF TRUST FUND.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in the Secretary of Treasury's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. The Secretary of the Treasury shall deposit interest resulting from such investments into the Fund.

(d) PAYMENT OF INTEREST TO TRIBE.—

(1) WITHDRAWAL OF INTEREST.—Beginning on the first day of the 11th fiscal year after the date of enactment of this Act and, on the first day of each fiscal year thereafter, the Secretary of the Treasury shall withdraw the aggregate amount of interest deposited into the Fund for that fiscal year and transfer that amount to the Secretary of the Interior for use in accordance with paragraph (2). Each amount so transferred shall be available without fiscal year limitation.

(2) PAYMENTS TO SANTEE SIOUX TRIBE.—

(A) IN GENERAL.—The Secretary of the Interior shall use the amounts transferred under paragraph (1) only for the purpose of making payments to the Santee Sioux Tribe, as such payments are requested by that Indian tribe pursuant to tribal resolution.

(B) LIMITATION.—Payments may be made by the Secretary of the Interior under subparagraph (A) only after the Santee Sioux Tribe has adopted a tribal plan under section 206.

(C) USE OF PAYMENTS BY SANTEE SIOUX TRIBE.—The Santee Sioux Tribe shall use the payments made under subparagraph (A) only for carrying out projects and programs under the tribal plan prepared under section 206.

(e) TRANSFERS AND WITHDRAWALS.—Except as provided in subsections (c) and (d)(1), the Secretary of the Treasury may not transfer or withdraw any amount deposited under subsection (b).

SEC. 206. TRIBAL PLANS.

(a) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the tribal council of each of the Yankton Sioux and Santee Sioux Tribes shall prepare a plan for the use of the payments to the tribe under section 204(d) or 205(d) (referred to in this subsection as a "tribal plan").

(b) CONTENTS OF TRIBAL PLAN.—Each tribal plan shall provide for the manner in which the tribe covered under the tribal plan shall expend payments to the tribe under section 204(d) or 205(d) to promote—

(1) economic development;

(2) infrastructure development;

(3) the educational, health, recreational, and social welfare objectives of the tribe and its members; or

(4) any combination of the activities described in paragraphs (1), (2), and (3).

(c) TRIBAL PLAN REVIEW AND REVISION.—

(1) IN GENERAL.—Each tribal council referred to in subsection (a) shall make available for review and comment by the members of the tribe a copy of the tribal plan for the Indian tribe before the tribal plan becomes final, in accordance with procedures established by the tribal council.

(2) UPDATING OF TRIBAL PLAN.—Each tribal council referred to in subsection (a) may, on an annual basis, revise the tribal plan prepared by that tribal council to update the tribal plan. In revising the tribal plan under this paragraph, the tribal council shall provide the members of the tribe opportunity to review and comment on any proposed revision to the tribal plan.

(3) CONSULTATION.—In preparing the tribal plan and any revisions to update the plan, each tribal council shall consult with the Secretary of the Interior and the Secretary of Health and Human Services.

(4) ANNUAL REPORTS.—Each tribe shall submit an annual report to the Secretary describing any expenditures of funds withdrawn by that tribe under this title.

(d) PROHIBITION ON PER CAPITA PAYMENTS.—No portion of any payment made under this title may be distributed to any member of the Yankton Sioux Tribe or the Santee Sioux Tribe of Nebraska on a per capita basis.

SEC. 207. ELIGIBILITY OF TRIBE FOR CERTAIN PROGRAMS AND SERVICES.

(a) IN GENERAL.—No payment made to the Yankton Sioux Tribe or Santee Sioux Tribe pursuant to this title shall result in the reduction or denial of any service or program to which, pursuant to Federal law—

(1) the Yankton Sioux Tribe or Santee Sioux Tribe is otherwise entitled because of the status of the tribe as a federally recognized Indian tribe; or

(2) any individual who is a member of a tribe under paragraph (1) is entitled because of the status of the individual as a member of the tribe.

(b) EXEMPTIONS FROM TAXATION.—No payment made pursuant to this title shall be subject to any Federal or State income tax.

(c) POWER RATES.—No payment made pursuant to this title shall affect Pick-Sloan Missouri River Basin power rates.

SEC. 208. STATUTORY CONSTRUCTION.

Nothing in this title may be construed as diminishing or affecting any water right of an Indian tribe, except as specifically provided in another provision of this title, any treaty right that is in effect on the date of enactment of this Act, or any authority of the Secretary of the Interior or the head of any other Federal agency under a law in effect on the date of enactment of this Act.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this title, including such sums as may be necessary for the administration of the Yankton Sioux Tribe Development Trust Fund under section 204 and the Santee Sioux Tribe Development Trust Fund under section 205.

SEC. 210. EXTINGUISHMENT OF CLAIMS.

Upon the deposit of funds under sections 204(b) and 205(b), all monetary claims that the Yankton Sioux Tribe or the Santee Sioux Tribe of Nebraska has or may have against the United States for loss of value or use of land related to lands described in section 202(a)(10) resulting from the Fort Randall and Gavins Point projects of the Pick-Sloan Missouri River Basin program shall be extinguished.

TITLE III—OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM

SEC. 301. OKLAHOMA NATIVE AMERICAN CULTURAL CENTER AND MUSEUM.

(a) FINDINGS.—Congress makes the following findings:

(1) In order to promote better understanding between Indian and non-Indian citizens of the United States, and in light of the Federal Government's continuing trust responsibilities to Indian tribes, it is appropriate, desirable, and a

proper function of the Federal Government to provide grants for the development of a museum designated to display the heritage and culture of Indian tribes.

(2) In recognition of the unique status and history of Indian tribes in the State of Oklahoma and the role of the Federal Government in such history, it is appropriate and proper for the museum referred to in paragraph (1) to be located in the State of Oklahoma.

(b) GRANT.—

(1) IN GENERAL.—The Secretary shall offer to award financial assistance equaling not more than $33,000,000 and technical assistance to the Authority to be used for the development and construction of a Native American Cultural Center and Museum in Oklahoma City, Oklahoma.

(2) AGREEMENT.—To be eligible to receive a grant under paragraph (1), the appropriate official of the Authority shall—

(A) enter into a grant agreement with the Secretary which shall specify the duties of the Authority under this section, including provisions for continual maintenance of the Center by the Authority without the use of Federal funds; and

(B) demonstrate, to the satisfaction of the Secretary, that the Authority has raised, or has commitments from private persons or State or local government agencies for, an amount that is equal to not less than 66 percent of the cost to the Authority of the activities to be carried out under the grant.

(3) LIMITATION.—The amount of any grant awarded under paragraph (1) shall not exceed 33 percent of the cost of the activities to be funded under the grant.

(4) IN-KIND CONTRIBUTION.—When calculating the cost share of the Authority under this title, the Secretary shall reduce such cost share obligation by the fair market value of the approximately 300 acres of land donated by Oklahoma City for the Center, if such land is used for the Center.

(c) DEFINITIONS.—For the purposes of this title:

(1) AUTHORITY.—The term "Authority" means the Native American Cultural and Educational Authority of Oklahoma, an agency of the State of Oklahoma.

(2) CENTER.—The term "Center" means the Native American Cultural Center and Museum authorized pursuant to this section.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to grant assistance under subsection (b)(1), $8,250,000 for each of fiscal years 2003 through 2006.

TITLE IV—TRANSMISSION OF POWER FROM INDIAN LANDS IN OKLAHOMA

SEC. 401. TRANSMISSION OF POWER FROM INDIAN LANDS IN OKLAHOMA.

To the extent the Southwestern Power Administration makes transmission capacity available without replacing the present capacity of existing users of the Administration's transmission system, the Administrator of the Southwestern Power Administration shall take such actions as may be necessary, in accordance with all applicable Federal law, to make the transmission services of the Administration available for the transmission of electric power generated at facilities located on land within the jurisdictional area of any Oklahoma Indian tribe (as determined by the Secretary of the Interior) recognized by the Secretary as eligible for trust land status under 25 CFR Part 151. The owner or operator of the generation facilities concerned shall reimburse the Administrator for all costs of such actions in accordance with standards applicable to payment of such costs by other users of the Southwestern Power Administration transmission system.

TITLE V—PECHANGA TRIBE

SEC. 501. LAND OF PECHANGA BAND OF LUISENO MISSION INDIANS.

(a) LIMITATION ON CONVEYANCE.—Land described in subsection (b) (or any interest in that land) shall not be voluntarily or involuntarily transferred or otherwise made available for condemnation until the date on which—

(1)(A) the Secretary of the Interior renders a final decision on the fee to trust application pending on the date of the enactment of this title concerning the land; and

(B) final decisions have been rendered regarding all appeals relating to that application decision; or

(2) the fee to trust application described in paragraph (1)(A) is withdrawn.

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) is land located in Riverside County, California, that is held in fee by the Pechanga Band of Luiseno Mission Indians, as described in Document No. 211130 of the Office of the Recorder, Riverside County, California, and recorded on May 15, 2001.

(c) RULE OF CONSTRUCTION.—Nothing in this section designates, or shall be used to construe, any land described in subsection (b) (or any interest in that land) as an Indian reservation, Indian country, Indian land, or reservation land (as those terms are defined under any Federal law (including a regulation)) for any purpose under any Federal law.

TITLE VI—CHEROKEE, CHOCTAW, AND CHICKASAW NATIONS CLAIMS SETTLEMENT ACT

SEC. 601. SHORT TITLE.

This title may be cited as the "Cherokee, Choctaw, and Chickasaw Nations Claims Settlement Act".

SEC. 602. FINDINGS.

The Congress finds the following:

(1) It is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to encourage the resolution of disputes over historical claims through mutually agreed-to settlements between Indian Nations and the United States.

(2) There are pending before the United States Court of Federal Claims certain lawsuits against the United States brought by the Cherokee, Choctaw, and Chickasaw Nations seeking monetary damages for the alleged use and mismanagement of tribal resources along the Arkansas River in eastern Oklahoma.

(3) The Cherokee Nation, a federally recognized Indian tribe with its present tribal headquarters south of Tahlequah, Oklahoma, having adopted its most recent constitution on June 26, 1976, and having entered into various treaties with the United States, including but not limited to the Treaty at Hopewell, executed on November 28, 1785 (7 Stat. 18), and the Treaty at Washington, D.C., executed on July 19, 1866 (14 Stat. 799), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(4) The Choctaw Nation, a federally recognized Indian tribe with its present tribal headquarters in Durant, Oklahoma, having adopted its most recent constitution on July 9, 1983, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Hopewell, executed on January 3, 1786 (7 Stat. 21), and the Treaty at Washington, D.C., executed on April 28, 1866 (7 Stat. 21), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(5) The Chickasaw Nation, a federally recognized Indian tribe with its present tribal headquarters in Ada, Oklahoma, having adopted its most recent constitution on August 27, 1983, and having entered into various treaties with the United States of America, including but not limited to the Treaty at Hopewell, executed on January 10, 1786 (7 Stat. 24), and the Treaty at Washington, D.C., executed on April 28, 1866 (7 Stat. 21), has maintained a continuous government-to-government relationship with the United States since the earliest years of the Union.

(6) In the first half of the 19th century, the Cherokee, Choctaw, and Chickasaw Nations were forcibly removed from their homelands in the southeastern United States to lands west of the Mississippi in the Indian Territory that were ceded to them by the United States. From the "Three Forks" area near present day Muskogee, Oklahoma, downstream to the point of confluence with the Canadian River, the Arkansas River flowed entirely within the territory of the Cherokee Nation. From that point of confluence downstream to the Arkansas territorial line, the Arkansas River formed the boundary between the Cherokee Nation on the left side of the thread of the river and the Choctaw and Chickasaw Nations on the right.

(7) Pursuant to the Act of April 30, 1906 (34 Stat. 137), tribal property not allotted to individuals or otherwise disposed of, including the bed and banks of the Arkansas River, passed to the United States in trust for the use and benefit of the respective Indian Nations in accordance with their respective interests therein.

(8) For more than 60 years after Oklahoma statehood, the Bureau of Indian Affairs believed that Oklahoma owned the Riverbed from the Arkansas State line to Three Forks, and therefore took no action to protect the Indian Nations' Riverbed resources such as oil, gas, and Drybed Lands suitable for grazing and agriculture.

(9) Third parties with property near the Arkansas River began to occupy the Indian Nations' Drybed Lands—lands that were under water at the time of statehood but that are now dry due to changes in the course of the river.

(10) In 1966, the Indian Nations sued the State of Oklahoma to recover their lands. In 1970, the Supreme Court of the United States decided in the case of Choctaw Nation vs. Oklahoma (396 U.S. 620), that the Indian Nations retained title to their respective portions of the Riverbed along the navigable reach of the river.

(11) In 1987, the Supreme Court of the United States in the case of United States vs. Cherokee Nation (480 U.S. 700) decided that the riverbed lands did not gain an exemption from the Federal Government's navigational servitude and that the Cherokee Nation had no right to compensation for damage to its interest by exercise of the Government's servitude.

(12) In 1989, the Indian Nations filed lawsuits against the United States in the United States Court of Federal Claims (Case Nos. 218–89L and 630–89L), seeking damages for the United States' use and mismanagement of tribal trust resources along the Arkansas River. Those actions are still pending.

(13) In 1997, the United States filed quiet title litigation against individuals occupying some of the Indian Nations' Drybed Lands. That action, filed in the United States District Court for the Eastern District of Oklahoma, was dismissed without prejudice on technical grounds.

(14) Much of the Indian Nations' Drybed Lands have been occupied by a large number of adjacent landowners in Oklahoma. Without Federal legislation, further litigation against thousands of such landowners would be likely and any final resolution of disputes would take many years and entail great expense to the United States, the Indian Nations, and the individuals and entities occupying the Drybed Lands and would seriously impair long-term economic planning and development for all parties.

(15) The Councils of the Cherokee and Choctaw Nations and the Legislature of the Chickasaw Nation have each enacted tribal resolutions which would, contingent upon the passage of this title and the satisfaction of its terms and in exchange for the moneys appropriated hereunder—

(A) settle and forever release their respective claims against the United States asserted by them in United States Court of Federal Claims Case Nos. 218–89L and 630–89L; and

(B) forever disclaim any and all right, title, and interest in and to the Disclaimed Drybed Lands, as set forth in those enactments of the respective councils of the Indian Nations.

(16) The resolutions adopted by the respective Councils of the Cherokee, Choctaw, and Chickasaw Nations each provide that, contingent upon the passage of the settlement legislation and satisfaction of its terms, each Indian Nation agrees to dismiss, release, and forever discharge its claims asserted against the United States in the United State Court of Federal Claims, Case Nos. 218–89L and 630–89L, and to forever disclaim any right, title, or interest of the Indian Nation in the Disclaimed Drybed Lands, in exchange for the funds appropriated and allocated to the Indian Nation under the provisions of the settlement legislation, which funds the Indian Nation agrees to accept in full satisfaction and settlement of all claims against the United States for the damages sought in the aforementioned claims asserted in the United States Court of Federal Claims, and as full and fair compensation for disclaiming its right, title, and interest in the Disclaimed Drybed Lands.

(17) In those resolutions, each Indian Nation expressly reserved all of its beneficial interest and title to all other Riverbed lands, including minerals, as determined by the Supreme Court in Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970), and further reserved any and all right, title, or interest that each Nation may have in and to the water flowing in the Arkansas River and its tributaries.

SEC. 603. PURPOSES.

The purposes of this title are to resolve all claims that have been or could have been brought by the Cherokee, Choctaw, and Chickasaw Nations against the United States, and to confirm that the Indian Nations are forever disclaiming any right, title, or interest in the Disclaimed Drybed Lands, which are contiguous to the channel of the Arkansas River as of the date of the enactment of this title in certain townships in eastern Oklahoma.

SEC. 604. DEFINITIONS.

For the purposes of this title, the following definitions apply:

(1) DISCLAIMED DRYBED LANDS.—The term "Disclaimed Drybed Lands" means all Drybed Lands along the Arkansas River that are located in Township 10 North in Range 24 East, Townships 9 and 10 North in Range 25 East, Township 10 North in Range 26 East, and Townships 10 and 11 North in Range 27 East, in the State Oklahoma.

(2) DRYBED LANDS.—The term "Drybed Lands" means those lands which, on the date of enactment of this title, lie above and contiguous to the mean high water mark of the Arkansas River in the State of Oklahoma. The term "Drybed Lands" is intended to have the same meaning as the term "Upland Claim Area" as used by the Bureau of Land Management Cadastral Survey Geographic Team in its preliminary survey of the Arkansas River. The term "Drybed Lands" includes any lands so identified in the "Holway study."

(3) INDIAN NATION; INDIAN NATIONS.—The term "Indian Nation" means the Cherokee Nation, Choctaw Nation, or Chickasaw Nation, and the term "Indian Nations" means all 3 tribes collectively.

(4) RIVERBED.—The term "Riverbed" means the Drybed Lands and the Wetbed Lands and includes all minerals therein.

(5) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(6) WETBED LANDS.—The term "Wetbed Lands" means those Riverbed lands which lie below the mean high water mark of the Arkansas River in the State of Oklahoma as of the date of the enactment of this title, exclusive of the Drybed Lands. The term Wetbed Land is intended to have the same meaning as the term "Present Channel Claim Areas" as utilized by the Bureau of Land Management Cadastral Survey Geographic Team in its preliminary survey of the Arkansas River.

SEC. 605. SETTLEMENT AND CLAIMS; APPROPRIATIONS; ALLOCATION OF FUNDS.

(a) EXTINGUISHMENT OF CLAIMS.—Pursuant to their respective tribal resolutions, and in exchange for the benefits conferred under this title, the Indian Nations shall, on the date of enactment of this title, enter into a consent decree with the United States that waives, releases, and dismisses all the claims they have asserted or could have asserted in their cases numbered 218–89L and 630–89L pending in the United States Court of Federal Claims against the United States, including but not limited to claims arising out of any and all of the Indian Nations' interests in the Disclaimed Drybed Lands and arising out of construction, maintenance and operation of the McClellan-Kerr Navigation Way. The Indian Nations and the United States shall lodge the consent decree with the Court of Federal Claims within 30 days of the enactment of this title, and shall move for entry of the consent decree at such time as all appropriations by Congress pursuant to the authority of this title have been made and deposited into the appropriate tribal trust fund account of the Indian Nations as described in section 606. Upon entry of the consent decree, all the Indian Nations' claims and all their past, present, and future right, title, and interest to the Disclaimed Drybed Lands, shall be deemed extinguished. No claims may be asserted in the future against the United States pursuant to sections 1491, 1346(a)(2), or 1505 of title 28, United States Code, for actions taken or failed to have been taken by the United States for events occurring prior to the date of the extinguishment of claims with respect to the Riverbed.

(b) RELEASE OF TRIBAL CLAIMS TO CERTAIN DRYBED LANDS.—

(1) IN GENERAL.—Upon the deposit of all funds authorized for appropriation under subsection (c) for an Indian Nation into the appropriate trust fund account described in section 606—

(A) all claims now existing or which may arise in the future with respect to the Disclaimed Drybed lands and all right, title, and interest that the Indian Nations and the United States as trustee on behalf of the Indian Nation may have to the Disclaimed Drybed Lands, shall be deemed extinguished;

(B) any interest of the Indian Nations or the United States as trustee on their behalf in the Disclaimed Drybed Lands shall further be extinguished pursuant to the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, 1 Stat. 137), and all subsequent amendments thereto (as codified at 25 U.S.C. 177);

(C) to the extent parties other than the Indian Nations have transferred interests in the Disclaimed Drybed Lands in violation of the Trade and Intercourse Act, Congress does hereby approve and ratify such transfers of interests in the Disclaimed Drybed Lands to the extent that such transfers otherwise are valid under law; and

(D) the Secretary is authorized to execute an appropriate document citing this title, suitable for filing with the county clerks, or such other county official as appropriate, of those counties wherein the foregoing described lands are located, disclaiming any tribal or Federal interest on behalf of the Indian Nations in such Disclaimed Drybed Lands. The Secretary is authorized to file with the counties a plat or map of the disclaimed lands should the Secretary determine that such filing will clarify the extent of lands disclaimed. Such a plat or map may be filed regardless of whether the map or plat has been previously approved for filing, whether or not the map or plat has been filed, and regardless of whether the map or plat constitutes a final determination by the Secretary of the extent of the Indian Nations' original claim to the Disclaimed Drybed Lands. The disclaimer filed by the United States shall constitute a disclaimer of the Disclaimed Drybed Lands for purposes of the Trade and Intercourse Act (25 U.S.C. 177).

(2) SPECIAL PROVISIONS.—Notwithstanding any provision of this title—

(A) the Indian Nations do not relinquish any right, title, or interest in any lands which constitute the Wetbed Lands subject to the navigational servitude exercised by the United States on the Wetbed Lands. By virtue of the exercise of the navigational servitude, the United States shall not be liable to the Indian Nations for any loss they may have related to the minerals in the Wetbed Lands;

(B) no provision of this title shall be construed to extinguish or convey any water rights of the Indian Nations in the Arkansas River or any other stream or the beneficial interests or title of any of the Indian Nations in and to lands held in trust by the United States on the date of enactment of this title which lie above or below the mean high water mark of the Arkansas River, except for the Disclaimed Drybed Lands; and

(C) the Indian Nations do not relinquish any right, title, or interest in any lands or minerals of certain unallotted tracts which are identified in the official records of the Eastern Oklahoma Regional Office, Bureau of Indian Affairs. The disclaimer to be filed by the Secretary of the Interior under section 605(b)(1) of this title shall reflect the legal description of the unallotted tracts retained by the Nations.

(3) SETOFF.—In the event the Court of Federal Claims does not enter the consent decree as set forth in subsection (a), the United States shall be entitled to setoff against any claims of the Indian Nations as set forth in subsection (a), any funds transferred to the Indian Nations pursuant to section 606, and any interest accrued thereon up to the date of setoff.

(4) QUIET TITLE ACTIONS.—Notwithstanding any other provision of law, neither the United States nor any department of the United States nor the Indian Nations shall be made parties to any quiet title lawsuit or other lawsuit to determine ownership of or an interest in the Disclaimed Drybed Lands initiated by any private person or private entity after execution of the disclaimer set out in section 605(b)(1). The United States will have no obligation to undertake any future quiet title actions or actions for the recovery of lands or funds relating to any Drybed Lands retained by the Indian Nation or Indian Nations under this title, including any lands which are Wetbed Lands on the date of enactment of this title, but which subsequently lie above the mean high water mark of the Arkansas River and the failure or declination to initiate any quiet title action or to manage any such Drybed Lands shall not constitute a breach of trust by the United States or be compensable to the Indian Nation or Indian Nations in any manner.

(5) LAND TO BE CONVEYED IN FEE.—To the extent that the United States determines that it is able to effectively maintain the McClellan-Kerr

Navigation Way without retaining title to lands above the high water mark of the Arkansas River as of the date of enactment of this title, said lands, after being declared surplus, shall be conveyed in fee to the Indian Nation within whose boundary the land is located. The United States shall not be obligated to accept such property in trust.

(c) AUTHORIZATION FOR SETTLEMENT APPROPRIATIONS.—There is authorized to be appropriated an aggregate sum of $40,000,000 as follows:

(1) $10,000,000 for fiscal year 2004.

(2) $10,000,000 for fiscal year 2005.

(3) $10,000,000 for fiscal year 2006.

(4) $10,000,000 for fiscal year 2007.

(d) ALLOCATION AND DEPOSIT OF FUNDS.—After payment pursuant to section 607, the remaining funds authorized for appropriation under subsection (c) shall be allocated among the Indian Nations as follows:

(1) 50 percent to be deposited into the trust fund account established under section 606 for the Cherokee Nation.

(2) 37.5 percent to be deposited into the trust fund account established under section 606 for the Choctaw Nation.

(3) 12.5 percent to be deposited into the trust fund account established under section 606 for the Chickasaw Nation.

SEC. 606. TRIBAL TRUST FUNDS.

(a) ESTABLISHMENT, PURPOSE, AND MANAGEMENT OF TRUST FUNDS.—

(1) ESTABLISHMENT.—There are hereby established in the United States Treasury 3 separate tribal trust fund accounts for the benefit of each of the Indian Nations, respectively, for the purpose of receiving all appropriations made pursuant to section 605(c), and allocated pursuant to section 605(d).

(2) AVAILABILITY OF AMOUNTS IN TRUST FUND ACCOUNTS.—Amounts in the tribal trust fund accounts established by this section shall be available to the Secretary for management and investment on behalf of the Indian Nations and distribution to the Indian Nations in accordance with this title. Funds made available from the tribal trust funds under this section shall be available without fiscal year limitation.

(b) MANAGEMENT OF FUNDS.—

(1) LAND ACQUISITION.—

(A) TRUST LAND STATUS PURSUANT TO REGULATIONS.—The funds appropriated and allocated to the Indian Nations pursuant to sections 205(c) and (d), and deposited into trust fund accounts pursuant to section 606(a), together with any interest earned thereon, may be used for the acquisition of land by the Indian Nations. The Secretary may accept such lands into trust for the beneficiary Indian Nation pursuant to the authority provided in section 5 of the Act of June 18, 1934 (25 U.S.C. 465) and in accordance with the Secretary's trust land acquisition regulations at part 151 of title 25, Code of Federal Regulations, in effect at the time of the acquisition, except for those acquisitions covered by paragraph (1)(B).

(B) REQUIRED TRUST LAND STATUS.—Any such trust land acquisitions on behalf of the Cherokee Nation shall be mandatory if the land proposed to be acquired is located within Township 12 North, Range 21 East, in Sequoyah County, Township 11 North, Range 18 East, in McIntosh County, Townships 11 and 12 North, Range 19 East, or Township 12 North, Range 20 East, in Muskogee County, Oklahoma, and not within the limits of any incorporated municipality as of January 1, 2002, if—

(i) the land proposed to be acquired meets the Department of the Interior's minimum environmental standards and requirements for real estate acquisitions set forth in 602 DM 2.6, or any similar successor standards or requirements for real estate acquisitions in effect on the date of acquisition; and

(ii) the title to such land meets applicable Federal title standards in effect on the date of the acquisition.

(C) OTHER EXPENDITURE OF FUNDS.—The Indian Nations may elect to expend all or a portion of the funds deposited into its trust account for any other purposes authorized under paragraph (2).

(2) INVESTMENT OF TRUST FUNDS; NO PER CAPITA PAYMENT.—

(A) NO PER CAPITA PAYMENTS.—No money received by the Indian Nations hereunder may be used for any per capita payment.

(B) INVESTMENT BY SECRETARY.—Except as provided in this section and section 607, the principal of such funds deposited into the accounts established hereunder and any interest earned thereon shall be invested by the Secretary in accordance with current laws and regulations for the investing of tribal trust funds.

(C) USE OF PRINCIPAL FUNDS.—The principal amounts of said funds and any amounts earned thereon shall be made available to the Indian Nation for which the account was established for expenditure for purposes which may include construction or repair of health care facilities, law enforcement, cultural or other educational activities, economic development, social services, and land acquisition. Land acquisition using such funds shall be subject to the provisions of subsections (b) and (d).

(3) DISBURSEMENT OF FUNDS.—The Secretary shall disburse the funds from a trust account established under this section pursuant to a budget adopted by the Council or Legislature of the Indian Nation setting forth the amount and an intended use of such funds.

(4) ADDITIONAL RESTRICTION ON USE OF FUNDS.—None of the funds made available under this title may be allocated or otherwise assigned to authorized purposes of the Arkansas River Multipurpose Project as authorized by the River and Harbor Act of 1946, as amended by the Flood Control Act of 1948 and the Flood Control Act of 1950.

SEC. 607. ATTORNEY FEES.

(a) PAYMENT.—At the time the funds are paid to the Indian Nations, from funds authorized to be appropriated pursuant to section 605(c), the Secretary shall pay to the Indian Nations' attorneys those fees provided for in the individual tribal attorney fee contracts as approved by the respective Indian Nations.

(b) LIMITATIONS.—Notwithstanding subsection (a), the total fees payable to attorneys under such contracts with an Indian Nation shall not exceed 10 percent of that Indian Nation's allocation of funds appropriated under section 605(c).

SEC. 608. RELEASE OF OTHER TRIBAL CLAIMS AND FILING OF CLAIMS.

(a) EXTINGUISHMENT OF OTHER TRIBAL CLAIMS.—

(1) IN GENERAL.—As of the date of enactment of this title—

(A) all right, title, and interest of any Indian nation or tribe other than any Indian Nation defined in section 604 (referred to in this section and section 609 as a "claimant tribe") in or to the Disclaimed Drybed Lands, and any such right, title, or interest held by the United States on behalf of such a claimant tribe, shall be considered to be extinguished in accordance with section 177 of title 25, United States Code (section 2116 of the Revised Statutes);

(B) if any party other than a claimant tribe holds transferred interests in or to the Disclaimed Drybed Lands in violation of section 177 of title 25, United States Code (section 2116 of the Revised Statutes), Congress approves and ratifies those transfers of interests to the extent that the transfers are in accordance with other applicable law; and

(C) the documents described in section 605(b)(1)(D) shall serve to identify the geographic scope of the interests extinguished by subparagraph (A).

(2) QUIET TITLE ACTIONS.—

(A) IN GENERAL.—Notwithstanding any other provision of law, after the date of enactment of this title, neither the United States (or any department or agency of the United States) nor any Indian Nation shall be included as a party to any civil action brought by any private person or private entity to quiet title to, or determine ownership of an interest in or to, the Disclaimed Drybed Lands.

(B) FUTURE ACTIONS.—As of the date of enactment of this title, the United States shall have no obligation to bring any civil action to quiet title to, or to recover any land or funds relating to, the Drybed Lands (including any lands that are Wetbed Lands as of the date of enactment of this title but that are located at any time after that date above the mean high water mark of the Arkansas River).

(C) NO BREACH OF TRUST.—The failure or declination by the United States to initiate any civil action to quiet title to or manage any Drybed Lands under this paragraph shall not—

(i) constitute a breach of trust by the United States; or

(ii) be compensable to a claimant tribe in any manner.

(b) CLAIMS OF OTHER INDIAN TRIBES.—

(1) LIMITED PERIOD FOR FILING CLAIMS.—

(A) IN GENERAL.—Not later than 180 days after the date of enactment of this title, any claimant tribe that claims that any title, interest, or entitlement held by the claimant tribe has been extinguished by operation of section 605(a) or subsection 608(a) may file a claim against the United States relating to the extinguishment in the United States Court of Federal Claims.

(B) FAILURE TO FILE.—After the date described in subparagraph (A), a claimant tribe described in that subparagraph shall be barred from filing any claim described in that subparagraph.

(2) SPECIAL HOLDING ACCOUNT.—

(A) ESTABLISHMENT.—There is established in the Treasury, in addition to the accounts established by section 606(a), an interest-bearing special holding account for the benefit of the Indian Nations.

(B) DEPOSITS.—Notwithstanding any other provision of this title or any other law, of any funds that would otherwise be deposited in a tribal trust account established by section 606(a), 10 percent shall—

(i) be deposited in the special holding account established by subparagraph (A); and

(ii) be held in that account for distribution under paragraph (3).

(3) DISTRIBUTION OF FUNDS.—

(A) IN GENERAL.—Funds deposited in the special holding account established by paragraph (2)(A) shall be distributed in accordance with subparagraphs (B) through (D).

(B) CLAIM FILED.—If a claim under paragraph (1)(A) is filed by the deadline specified in that paragraph, on final adjudication of that claim—

(i) if the final judgment awards to a claimant an amount that does not exceed the amount of funds in the special holding account under paragraph (2) attributable to the Indian Nation from the allocation of which under section 605(d) the funds in the special holding account are derived—

(I) that amount shall be distributed from the special holding account to the claimant tribe that filed the claim; and

(II) any remaining amount in the special holding account attributable to the claim shall be transferred to the appropriate tribal trust account for the Indian Nation established by section 606(a); and

(ii) if the final judgment awards to a claimant an amount that exceeds the amount of funds in

the special holding account attributable to the Indian Nation from the allocation of which under section 605(d) the funds in the special holding account are derived—

(I) the balance of funds in the special holding account attributable to the Indian Nation shall be distributed to the claimant tribe that filed the claim; and

(II) payment of the remainder of the judgment amount awarded to the claimant tribe shall be made from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code.

(C) NO CLAIMS FILED.—If no claims under paragraph (1)(A) are filed by the deadline specified that paragraph—

(i) any funds held in the special holding account under paragraph (2) and attributed to that Indian Nation shall be deposited in the appropriate tribal trust account established by section 6(a); and

(ii) after the date that is 180 days after the date of enactment of this title, paragraph (2)(B) shall not apply to appropriations attributed to that Indian Nation.

(c) DECLARATION WITH RESPECT TO SCOPE OF RIGHTS, TITLE, AND INTERESTS.—Congress declares that—

(1) subsection (b) is intended only to establish a process by which alleged claims may be resolved; and

(2) nothing in this section acknowledges, enhances, or establishes any prior right, title, or interest of any claimant tribe in or to the Arkansas Riverbed.

SEC. 609. EFFECT ON CLAIMS.

This title shall not be construed to resolve any right, title, or interest of any Indian nation or of any claimant tribe, except their past, present, or future claims relating to right, title, or interest in or to the Riverbed and the obligations and liabilities of the United States thereto.

TITLE VII—SEMINOLE TRIBE

SEC. 701. APPROVAL NOT REQUIRED TO VALIDATE CERTAIN LAND TRANSACTIONS.

(a) TRANSACTIONS.—The Seminole Tribe of Florida may mortgage, lease, sell, convey, warrant, or otherwise transfer all or any part of any interest in any real property that—

(1) was held by the Tribe on September 1, 2002; and

(2) is not held in trust by the United States for the benefit of the Tribe.

(b) NO FURTHER APPROVAL REQUIRED.—Transactions under subsection (a) shall be valid without further approval, ratification, or authorization by the United States.

(c) TRUST LAND NOT AFFECTED.—Nothing in this section is intended or shall be construed to—

(1) authorize the Seminole Tribe of Florida to mortgage, lease, sell, convey, warrant, or otherwise transfer all or any part of an interest in any real property that is held in trust by the United States for the benefit of the Tribe; or

(2) affect the operation of any law governing mortgaging, leasing, selling, conveying, warranting, or otherwise transferring any interest in such trust land.

TITLE VIII—JICARILLA APACHE RESERVATION RURAL WATER SYSTEM

SEC. 801. SHORT TITLE.

This title may be cited as the "Jicarilla Apache Reservation Rural Water System Act".

SEC. 802. PURPOSES.

The purposes of this title are as follows:

(1) To ensure a safe and adequate rural, municipal, and water supply and wastewater systems for the residents of the Jicarilla Apache Reservation in the State of New Mexico in accordance with Public Law 106–243.

(2) To authorize the Secretary of the Interior, through the Bureau of Reclamation, in consultation and collaboration with the Jicarilla Apache Nation—

(A) to plan, design, and construct the water supply, delivery, and wastewater collection systems on the Jicarilla Apache Reservation in the State of New Mexico; and

(B) to include service connections to facilities within the town of Dulce and the surrounding area, and to individuals as part of the construction.

(3) To require the Secretary, at the request of the Jicarilla Apache Nation, to enter into a self-determination contract with the Jicarilla Apache Nation under title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f et seq.) under which—

(A) the Jicarilla Apache Nation shall plan, design, and construct the water supply, delivery, and wastewater collection systems, including service connections to communities and individuals; and

(B) the Bureau of Reclamation shall provide technical assistance and oversight responsibility for such project.

(4) To establish a process in which the Jicarilla Apache Nation shall assume title and responsibility for the ownership, operation, maintenance, and replacement of the system.

SEC. 803. DEFINITIONS.

As used in this title:

(1) BIA.—The term "BIA" means the Bureau of Indian Affairs, an agency within the Department of the Interior.

(2) IRRIGATION.—The term "irrigation" means the commercial application of water to land for the purpose of establishing or maintaining commercial agriculture in order to produce field crops and vegetables for sale.

(3) RECLAMATION.—The term "Reclamation" means the Bureau of Reclamation, an agency within the Department of the Interior.

(4) REPORT.—The term "Report" means the report entitled "Planning Report/Environmental Assessment, Water and Wastewater Improvements, Jicarilla Apache Nation, Dulce, New Mexico", dated September 2001, which was completed pursuant to Public Law 106–243.

(5) RESERVATION.—The term "Reservation" means the Jicarilla Apache Reservation in the State of New Mexico, including all lands and interests in land that are held in trust by the United States for the Tribe.

(6) RURAL WATER SUPPLY PROJECT.—The term "Rural Water Supply Project" means a municipal, domestic, rural, and industrial water supply and wastewater facility area and project identified to serve a group of towns, communities, cities, tribal reservations, or dispersed farmsteads with access to clean, safe domestic and industrial water, to include the use of livestock.

(7) STATE.—The term "State" means the State of New Mexico.

(8) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Bureau of Reclamation.

(9) TRIBE.—The term "Tribe" means the Jicarilla Apache Nation.

SEC. 804. JICARILLA APACHE RESERVATION RURAL WATER SYSTEM.

(a) CONSTRUCTION.—The Secretary, in consultation and collaboration with the Tribe, shall plan, design, and construct the Rural Water Supply Project to improve the water supply, delivery, and wastewater facilities to the town of Dulce, New Mexico, and surrounding communities for the purpose of providing the benefits of clean, safe, and reliable water supply, delivery, and wastewater facilities.

(b) SCOPE OF PROJECT.—The Rural Water Supply Project shall consist of the following:

(1) Facilities to provide water supply, delivery, and wastewater services for the community of Dulce, the Mundo Ranch Development, and surrounding areas on the Reservation.

(2) Pumping and treatment facilities located on the Reservation.

(3) Distribution, collection, and treatment facilities to serve the needs of the Reservation, including, but not limited to, construction, replacement, improvement, and repair of existing water and wastewater systems, including systems owned by individual tribal members and other residents on the Reservation.

(4) Appurtenant buildings and access roads.

(5) Necessary property and property rights.

(6) Such other electrical power transmission and distribution facilities, pipelines, pumping plants, and facilities as the Secretary deems necessary or appropriate to meet the water supply, economic, public health, and environmental needs of the Reservation, including, but not limited to, water storage tanks, water lines, maintenance equipment, and other facilities for the Tribe on the Reservation.

(c) COST SHARING.—

(1) TRIBAL SHARE.—Subject to paragraph (3) and subsection (d), the tribal share of the cost of the Rural Water Supply Project is comprised of the costs to design and initiate construction of the wastewater treatment plant, to replace the diversion structure on the Navajo River, and to construct raw water settling ponds, a water treatment plant, water storage plants, a water transmission pipeline, and distribution pipelines, and has been satisfied.

(2) FEDERAL SHARE.—Subject to paragraph (3) and subsection (d), the Federal share of the cost of the Rural Water Supply Project shall be all remaining costs of the project identified in the Report.

(3) OPERATION AND MAINTENANCE.—The Federal share of the cost of operation and maintenance of the Rural Water Supply Project shall continue to be available for operation and maintenance in accordance with the Indian Self-Determination Act, as set forth in this title.

(d) OPERATION, MAINTENANCE, AND REPLACEMENT AFTER COMPLETION.—Upon determination by the Secretary that the Rural Water Supply Project is substantially complete, the Tribe shall assume responsibility for and liability related to the annual operation, maintenance, and replacement cost of the project in accordance with this title and the Operation, Maintenance, and Replacement Plan under chapter IV of the Report.

SEC. 805. GENERAL AUTHORITY.

The Secretary is authorized to enter into contracts, grants, cooperative agreements, and other such agreements and to promulgate such regulations as may be necessary to carry out the purposes and provisions of this title and the Indian Self-Determination Act (Public Law 93–638; 25 U.S.C. 450 et seq.).

SEC. 806. PROJECT REQUIREMENTS.

(a) PLANS.—

(1) PROJECT PLAN.—Not later than 60 days after funds are made available for this purpose, the Secretary shall prepare a recommended project plan, which shall include a general map showing the location of the proposed physical facilities, conceptual engineering drawings of structures, and general standards for design for the Rural Water Supply Project.

(2) OM&R PLAN.—The Tribe shall develop an operation, maintenance, and replacement plan, which shall provide the necessary framework to assist the Tribe in establishing rates and fees for customers of the Rural Water Supply Project.

(b) CONSTRUCTION MANAGER.—The Secretary, through Reclamation and in consultation with the Tribe, shall select a project construction manager to work with the Tribe in the planning, design, and construction of the Rural Water Supply Project.

(c) MEMORANDUM OF AGREEMENT.—The Secretary shall enter into a memorandum of agreement with the Tribe that commits Reclamation

and BIA to a transition plan that addresses operations and maintenance of the Rural Water Supply Project while the facilities are under construction and after completion of construction.

(d) OVERSIGHT.—The Secretary shall have oversight responsibility with the Tribe and its constructing entity and shall incorporate value engineering analysis as appropriate to the Rural Water Supply Project.

(e) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance as may be necessary to the Tribe to plan, develop, and construct the Rural Water Supply Project, including, but not limited to, operation and management training.

(f) SERVICE AREA.—The service area of the Rural Water Supply Project shall be within the boundaries of the Reservation.

(g) OTHER LAW.—The planning, design, construction, operation, and maintenance of the Rural Water Supply Project shall be subject to the provisions of the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

(h) REPORT.—During the year that construction of the Rural Water Supply Project begins and annually until such construction is completed, the Secretary, through Reclamation and in consultation with the Tribe, shall report to Congress on the status of the planning, design, and construction of the Rural Water Supply Project.

(i) TITLE.—Title to the Rural Water Supply Project shall be held in trust for the Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

SEC. 807. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title $45,000,000 (January 2002 dollars) plus or minus such amounts, if any, as may be justified by reason of changes in construction costs as indicated by engineering cost indexes applicable to the types of construction involved for the planning, design, and construction of the Rural Water Supply Project as generally described in the Report dated September 2001.

(b) CONDITIONS.—Funds may not be appropriated for the construction of any project authorized under this title until after—

(1) an appraisal investigation and a feasibility study have been completed by the Secretary and the Tribe; and

(2) the Secretary has determined that the plan required by section 806(a)(2) is completed.

(c) NEPA.—The Secretary shall not obligate funds for construction until after the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the Rural Water Supply Project.

SEC. 808. PROHIBITION ON USE OF FUNDS FOR IRRIGATION PURPOSES.

None of the funds made available to the Secretary for planning or construction of the Rural Water Supply Project may be used to plan or construct facilities used to supply water for the purposes of irrigation.

SEC. 809. WATER RIGHTS.

The water rights of the Tribe are part of and included in the Jicarilla Apache Tribe Water Rights Settlement Act (Public Law 102–441). These rights are adjudicated under New Mexico State law as a partial final judgment and decree entered in the Eleventh Judicial District Court of New Mexico. That Act and decree provide for sufficient water rights under "historic and existing uses" to supply water for the municipal water system. These water rights are recognized depletions within the San Juan River basin and no new depletions are associated with the Rural Water Supply Project. In consultation with the United States Fish and Wildlife Service, Reclamation has determined that there shall be no significant impact to endangered species as a result of water depletions associated with this project. No other water rights of the Tribe shall be impacted by the Rural Water Supply Project.

TITLE IX—ROCKY BOY'S RURAL WATER SYSTEM

SEC. 901. SHORT TITLE.

This title may be cited as the "Rocky Boy's/North Central Montana Regional Water System Act of 2002".

SEC. 902. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the water systems serving residents of the Rocky Boy's Reservation in the State of Montana—

(A) do not meet minimum health and safety standards;

(B) pose a threat to public health and safety; and

(C) are inadequate to supply the water needs of the Chippewa Cree Tribe;

(2) the United States has a responsibility to ensure that adequate and safe water supplies are available to meet the economic, environmental, water supply, and public health needs of the Reservation;

(3) the entities administering the rural and municipal water systems in North Central Montana are having difficulty complying with regulations promulgated under the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

(4) The study, defined in section 903(k), identifies Lake Elwell, near Chester, Montana, as an available, reliable, and safe rural and municipal water supply for serving the needs of the Reservation and North Central Montana.

(b) PURPOSES.—The purposes of this title are—

(1) to ensure a safe and adequate rural, municipal, and industrial water supply for the residents of the Rocky Boy's Reservation in the State of Montana;

(2) to assist the citizens residing in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, but outside the Reservation, in developing safe and adequate rural, municipal, and industrial water supplies;

(3) to authorize the Secretary of the Interior—

(A) acting through the Commissioner of Reclamation to plan, design, and construct the core and noncore systems of the Rocky Boy's/North Central Montana Regional Water System in the State of Montana; and

(B) acting through the Bureau of Indian Affairs to operate, maintain, and replace the core system and the on-Reservation water distribution systems, including service connections to communities and individuals; and

(4) to authorize the Secretary, at the request of the Chippewa Cree Tribe, to enter into self-governance agreements with the Tribe under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.), under which the Tribe—

(A) through the Bureau of Reclamation, will plan, design, and construct the core system of the Rocky Boy's/North Central Montana Regional Water System, and

(B) through the Bureau of Indian Affairs, will operate, maintain, and replace (including service connections to communities and individuals) the core system and the on-Reservation water distribution systems.

SEC. 903. DEFINITIONS.

In this title:

(a) AUTHORITY.—The term "Authority" means the North Central Montana Regional Water Authority established under State law, Mont. Code Ann. Sec. 75–6–301, et. seq. (2001), to allow public agencies to join together to secure and provide water for resale.

(b) CORE SYSTEM.—The term "core system" means a component of the water system as described in section 904(d) and the final engineering report.

(c) FINAL ENGINEERING REPORT.—The term "final engineering report" means the final engineering report prepared for the Rocky Boy's/North Central Montana Regional Water System, as approved by the Secretary of the Interior.

(d) FUND.—The term "fund" means the Chippewa Cree Water System Operation, Maintenance, and Replacement Trust Fund.

(e) ON-RESERVATION WATER DISTRIBUTION SYSTEMS.—The term "on-reservation water distribution systems" means that portion of the Rocky Boy's/North Central Montana Regional Water system served by the core system and within the boundaries of the Rocky Boy's Reservation. The on-reservation water distribution systems are described in section 904(f) and the final engineering report.

(f) NONCORE SYSTEM.—The term "noncore system" means the rural water system for Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, described in section 905(c) and the final engineering report.

(g) RESERVATION.—

(1) IN GENERAL.—The term "Reservation" means the Rocky Boy's Reservation in the State of Montana.

(2) INCLUSIONS.—The term "Reservation" includes all land and interests in land that are held in trust by the United States for the Tribe at the time of the enactment of this title.

(h) ROCKY BOY'S/NORTH CENTRAL MONTANA REGIONAL WATER SYSTEM.—The term "Rocky Boy's/North Central Montana Regional Water System" means—

(1) the core system;

(2) the on-reservation water distribution systems; and

(3) the non-core system.

(i) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(j) STATE.—The term "State" means the State of Montana.

(k) STUDY.—The term "study" means the study entitled "North Central Montana Regional Water System Planning/Environmental Report" dated May 2000.

(l) TRIBE.—The term "Tribe" means—

(1) the Chippewa Cree Tribe of the Rocky Boy's Reservation; and

(2) all officers, agents, and departments of the Tribe.

SEC. 904. ROCKY BOY'S RURAL WATER SYSTEM.

(a) FINAL ENGINEERING REPORT.—The following reports will serve as the basis for the final engineering report for the Rocky Boy's/North Central Montana Regional Water System—

(1) pursuant to Public Law 104–204, a study, described in section 903(k), that was conducted to study the water and related resources in North Central Montana and to evaluate alternatives for providing a municipal, rural and industrial supply of water to the citizens residing in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, residing both on and off the Reservation; and

(2) pursuant to section 202 of Public Law 106–163, the Tribe has conducted, through a self-governance agreements with the Secretary of Interior, acting through the Bureau of Reclamation, a feasibility study to evaluate alternatives for providing a municipal, rural and industrial supply of water to the Reservation.

(3) The Secretary of Interior may require, through the agreements described in subsection (g) and section 905(d), that the final engineering report include appropriate additional study and analyses.

(b) CORE SYSTEM.—

(1) IN GENERAL.—The Secretary is authorized to plan, design, construct, operate, maintain, and replace the core system.

(2) FEDERAL SHARE.—

(A) The Federal share of the cost of planning, design, and construction of the core system shall be—

(i) 100 percent of the Tribal share of costs as identified in section 914; and

(ii) 80 percent of the authority's share of the total cost for the core system as identified in section 914; and

(iii) funded through annual appropriations to the Bureau of Reclamation.

(3) AGREEMENTS.—Federal funds made available to carry out this subsection may be obligated and expended only in accordance with the Agreements entered into under subsection (g).

(c) OPERATION, MAINTENANCE, AND REPLACEMENT (OM&R) CORE SYSTEM.—The cost of operation, maintenance, and replacement of the core system shall be allocated as follows—

(1) 100 percent of the Tribe's share of the OM&R costs, as negotiated in the Agreements, shall be funded through the Chippewa Cree Water System Operation, Maintenance, and Replacement Trust Fund established in section 913;

(2) 100 percent of the Authority's share of the OM&R costs, as negotiated in the Cooperative Agreements, shall be funded by the Authority and fully reimbursable to the Secretary.

Federal funds made available to carry out this subsection may be obligated and expended only in accordance with the Agreements entered into under subsection (g) and section 905(d).

(d) CORE SYSTEM COMPONENTS.—As described in the final engineering report, the core system shall consist of—

(1) intake, pumping, water storage, and treatment facilities;

(2) transmission pipelines, pumping stations, and storage facilities;

(3) appurtenant buildings, maintenance equipment, and access roads;

(4) all property and property rights necessary for the facilities described in this subsection;

(5) all interconnection facilities at the core pipeline to the noncore system; and

(6) electrical power transmission and distribution facilities necessary for services to core system facilities.

(e) AUTHORITY TO ACQUIRE PROPERTY.—Where, in carrying out the provisions of this title for construction of the core system, it becomes necessary to acquire any rights or property, the Authority, acting pursuant to State law, Mont. Code Ann. Sec. 75-6-313 (2001), is hereby authorized to acquire the same by condemnation under judicial process, and to pay such sums which may be needed for that purpose. Nothing in this section shall apply to land held in trust by the United States.

(f) ON-RESERVATION WATER DISTRIBUTION SYSTEMS.—

(1) IN GENERAL.—The Secretary is authorized to operate, maintain, and replace the water distribution systems of the Reservation.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT.—The cost of operation, maintenance, and replacement of the on-reservation water distribution systems shall be allocated as follows:

(A) Up to 100 percent of the Tribe's share of the OM&R costs, as negotiated in the Agreements, shall be funded through the Chippewa Cree Water System Operation, Maintenance, and Replacement Trust Fund established in section 913; and

(3) AGREEMENTS.—Federal funds made available to carry out this subsection may be obligated and expended only in accordance with the Agreements entered into under subsection (g).

(4) COMPONENTS.—As described in the final engineering report, the on-reservation water distribution systems shall consist of—

(A) water systems in existence on the date of enactment of this title that may be purchased, improved, and repaired in accordance with the Agreements entered into under subsection (g);

(B) water systems owned by individual members of the Tribe and other residents of the Reservation;

(C) any water distribution system that is upgraded to current standards, disconnected from low-quality wells; and

(D) connections.

(5) CONSTRUCTION OF NEW FACILITIES, OR EXPANSION OR REHABILITATION OF CURRENT FACILITIES.—The Tribe shall use $10,000,000 of the $15,000,000 appropriated pursuant to the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106-163), plus accrued interest, in the purchase, construction, expansion, or rehabilitation of the on-reservation water distribution systems.

(g) AGREEMENTS.—Federal funds made available to carry out subsections (b), (c), and (f) may be obligated and expended only in accordance with the agreements entered into under this subsection.

(1) IN GENERAL.—At the request of the Tribe, the Secretary shall enter into self-governance agreements under title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.) with the Tribe, in accordance with this title—

(A) through the Bureau of Reclamation, to plan, design, and construct the core system; and

(B) through the Bureau of Indian Affairs, to operate, maintain, and replace the core system and the on-Reservation water distribution systems.

(2) PROJECT OVERSIGHT ADMINISTRATION.—The amount of Federal funds that may be used to provide technical assistance and conduct the necessary construction oversight, inspection, and administration of activities in paragraph (1)(A) shall be negotiated with the Tribe and shall be an allowable project cost.

(h) SERVICE AREA.—The service area of the Rocky Boy's Rural Water System shall be the core system and the Reservation.

(i) TITLE TO CORE SYSTEM.—Title to the core system—

(1) shall be held in trust by the United States for the Tribe; and

(2) shall not be transferred unless a transfer is authorized by an Act of Congress enacted after the date of enactment of this title.

(j) TECHNICAL ASSISTANCE.—The Secretary is authorized to provide such technical assistance as is necessary to enable the Tribe to—

(1) plan, design, and construct the core system, including management training. Such technical assistance shall be deemed as a core system project construction cost; and

(2) operate, maintain, and replace the core system and the on-reservation water distribution systems. Such technical assistance shall be deemed as a core system and an on-reservation water distribution systems operation, maintenance, and replacement cost, as appropriate.

SEC. 905. NONCORE SYSTEM.

(a) IN GENERAL.—The Secretary is authorized to enter into Cooperative Agreements with the Authority to provide Federal funds for the planning, design, and construction of the noncore system in Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties, Montana, outside the Reservation.

(b) FEDERAL SHARE.—

(1) PLANNING, DESIGN, AND CONSTRUCTION.—The Federal share of the cost of planning, design, and construction of the noncore system shall be 80 percent and will be funded through annual appropriations to the Bureau of Reclamation.

(2) OPERATION, MAINTENANCE, AND REPLACEMENT OF NON-CORE SYSTEM COMPONENTS.—The cost of operation, maintenance, and replacement associated with water deliveries to the noncore system shall not be a Federal responsibility and shall be borne by the Authority.

(3) COOPERATIVE AGREEMENTS.—Federal funds made available to carry out this section may be obligated and expended only in accordance with the Cooperative Agreements entered into under subsection (d).

(c) COMPONENTS.—As described in the final engineering report, the components of the noncore system on which Federal funds may be obligated and expended under this section shall include—

(1) storage, pumping, and pipeline facilities;

(2) appurtenant buildings, maintenance equipment, and access roads;

(3) all property and property rights necessary for the facilities described in this subsection;

(4) electrical power transmission and distribution facilities necessary for service to noncore system facilities; and

(5) other facilities and services customary to the development of a rural water distribution system in the State.

(d) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—The Secretary is authorized to enter into the Cooperative Agreements with the Authority to provide Federal funds and necessary assistance for the planning, design, and construction of the non-core system. The Secretary is further authorized to enter into a tripartite Cooperative Agreement with the Authority and the Tribe addressing the allocation of operation, maintenance and replacement costs for the core system and action that can be undertaken to keep those costs within reasonable levels.

(2) MANDATORY PROVISIONS.—The Cooperative Agreements under paragraph (1) shall specify, in a manner that is acceptable to the Secretary and the Authority—

(A) the responsibilities of each party to the agreements for—

(i) the final engineering report;

(ii) engineering and design;

(iii) construction;

(iv) water conservation measures;

(v) environmental and cultural resource compliance activities; and

(vi) administration of contracts relating to performance of the activities described in clauses (i) through (v);

(B) the procedures and requirements for approval and acceptance of the design and construction and for carrying out other activities described in subparagraph (A); and

(C) the rights, responsibilities, and liabilities of each party to the agreements.

(3) PROJECT OVERSIGHT ADMINISTRATION.—The amount of Federal funds that may be used to provide technical assistance and to conduct the necessary construction oversight, inspection, and administration of activities in paragraph (1) shall be negotiated with the Authority, and shall be an allowable project cost.

(e) SERVICE AREA.—

(1) IN GENERAL.—Except as provided in paragraph (2), the service area of the noncore system shall be generally defined as the area—

(A) north of the Missouri River and Dutton, Montana;

(B) south of the border between the United States and Canada;

(C) west of Havre, Montana;

(D) east of Cut Bank Creek in Glacier County, Montana; and

(E) as further defined in the final engineering report, referenced in section 904(a).

(2) EXCLUSIONS FROM SERVICE AREA.—The service area of the noncore system shall not include the area inside the Reservation.

(f) LIMITATION ON USE OF FEDERAL FUNDS.—The operation, maintenance, and replacement expenses for the noncore system—

(1) shall not be a Federal responsibility;

(2) shall be borne by the Authority; and

(3) the Secretary may not obligate or expend any Federal funds for the OM&R of the noncore system.

(g) TITLE TO NONCORE SYSTEM.—Title to the noncore system shall be held by the Authority.

(h) AUTHORITY TO ACQUIRE PROPERTY.—Where, in carrying out the provisions of this title for construction of the noncore system, it becomes necessary to acquire any rights or property, the Authority, acting pursuant to State law, Mont. Code Ann. Sec. 75–6–313 (2001), is hereby authorized to acquire the same by condemnation under judicial process, and to pay such sums which may be needed for that purpose. Nothing in this section shall apply to land held in trust by the United States.

SEC. 906. LIMITATION ON AVAILABILITY OF CONSTRUCTION FUNDS.

The Secretary shall not obligate funds for construction of the core system or the noncore system until—

(1) the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) are met with respect to the core system and the noncore system;

(2) the date that is 90 days after the date of submission to Congress of a final engineering report approved and transmitted by the Secretary; and

(3) the Secretary publishes a written finding that the water conservation plan developed under section 911(a) includes prudent and reasonable water conservation measures for the operation of the Rocky Boy's/North Central Montana Regional Water System that have been shown to be economically and financially feasible.

SEC. 907. CONNECTION CHARGES.

The cost of connection of nontribal community water distribution systems and individual service systems to transmission lines of the core system and noncore system shall be the responsibility of the entities receiving water from the transmission lines.

SEC. 908. AUTHORIZATION OF CONTRACTS.

The Secretary is authorized to enter into contracts with the Authority for water from Lake Elwell providing for the repayment of its respective share of the construction, operation, maintenance and replacement costs of Tiber dam and reservoir, as determined by the Secretary, in accordance with Federal Reclamation Law (Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplemental thereto).

SEC. 909. TIBER RESERVOIR ALLOCATION TO THE TRIBE.

(a) NO DIMINISHMENT OF STORAGE.—In providing for the delivery of water to the noncore system, the Secretary shall not diminish the 10,000 acre-feet per year of water stored for the Tribe pursuant to section 201 of the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163) in Lake Elwell, Lower Marias Unit, Upper Missouri Division, Pick-Sloan Missouri Basin Program, Montana.

(b) DRAW OF SUPPLY; PURCHASE OF ADDITIONAL WATER.—In providing for delivery of water to Rocky Boy's Indian Reservation for the purposes of this title, the Tribe shall draw its supply from the 10,000 acre-feet per year of water stored for the Tribe pursuant to section 201 of the Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Act of 1999 (Public Law 106–163) in Lake Elwell, Lower Marias Unit, Upper Missouri Division, Pick-Sloan Missouri Basin Program, Montana. Nothing in this title shall prevent the Tribe from entering into contracts with the Secretary for the purchase of additional water from Lake Elwell.

SEC. 910. USE OF PICK-SLOAN POWER.

The Secretary of the Interior, in cooperation with the Secretary of Energy, is directed to make Pick-Sloan Missouri Basin Program preference power available, for the purposes of this title. Power shall be made available when pumps are energized and/or upon completion of the Project.

SEC. 911. WATER CONSERVATION PLAN.

(a) IN GENERAL.—The Tribe and the Authority shall develop and incorporate into the final engineering report a water conservation plan that contains—

(1) a description of water conservation objectives;

(2) a description of appropriate water conservation measures; and

(3) a time schedule for implementing the water conservation measures to meet the water conservation objectives.

(b) PURPOSE.—The water conservation plan under subsection (a) shall be designed to ensure that users of water from the core system, on-reservation water distribution systems, and the noncore system will use the best practicable technology and management techniques to conserve water.

(c) COORDINATION OF PROGRAMS.—Section 210(a) and (c) of the Reclamation Reform Act of 1982 (43 U.S.C. 390jj(a) and (c)) shall apply to activities under Section 911 of this title.

SEC. 912. WATER RIGHTS.

This title does not—

(1) impair the validity of or preempt any provision of State water law or any interstate compact governing water;

(2) alter the right of any State to any appropriated share of the water of any body of surface or ground water, whether determined by any past or future interstate compact or by any past or future legislative or final judicial allocation;

(3) preempt or modify any Federal or State law or interstate compact concerning water quality or disposal;

(4) confer on any non-Federal entity the authority to exercise any Federal right to the water of any stream or to any ground water resource; or

(5) affect any right of the Tribe to water, located within or outside the external boundaries of the Reservation, based on a treaty, compact, Executive Order, Agreements, Act of Congress, aboriginal title, the decision in Winters v. United States, 207 U.S. 564 (1908) (commonly known as the 'Winters Doctrine'), or other law.

SEC. 913. CHIPPEWA CREE WATER SYSTEM OPERATION, MAINTENANCE, AND REPLACEMENT TRUST FUND.

(a) ESTABLISHMENT OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the "Chippewa Cree Water System Operation, Maintenance, and Replacement Trust Fund", to be managed and invested by the Secretary.

(b) CONTENTS OF FUND.—The Fund shall consist of—

(1) the amount of $15,000,000 as the Federal share, as authorized to be appropriated in section 914(c);

(2) the Tribe shall deposit into the Fund $5,000,000 of the $15,000,000 appropriated pursuant to the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163); and

(3) such interest as may accrue, until expended according to subsections (d) and (f).

(c) MANAGEMENT OF THE FUND.—The Secretary shall manage the Fund, make investments from the Fund, and make monies available from the Fund for distribution to the Tribe consistent with the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.) (referred to in this section as the "Trust Fund Reform Act"), and this title.

(d) USE OF FUND.—The Tribe shall use accrued interest, only, from the Fund for operation, maintenance, and replacement of the core system and the on-reservation distribution, only, pursuant to an operation, maintenance and replacement plan approved by the Secretary.

(e) INVESTMENT OF FUND.—The Secretary shall, after consulting with the Tribe on the investment of the Fund, invest amounts in the Fund in accordance with—

(1) the Act of April 1, 1880 (21 Stat. 70, chapter 41; 25 U.S.C. 161);

(2) the first section of the Act of February 12, 1929 (25 U.S.C. 161a);

(3) the first section of the Act of June 24, 1938 (25 U.S.C. 162a); and

(4) subsection (b).

(f) EXPENDITURES AND WITHDRAWAL.—

(1) TRIBAL MANAGEMENT PLAN.—

(A) WITHDRAWAL BY TRIBE.—The Tribe may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan as described in the Trust Fund Reform Act.

(B) REQUIREMENTS.—In addition to the requirements under the Trust Fund Reform Act, the tribal management plan shall require that the Tribe spend any funds only in accordance with the purposes described in subsections 913(d) and (f).

(2) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan to ensure that any monies withdrawn from the Fund under the plan are used in accordance with this title.

(3) LIABILITY.—If the Tribe exercises the right to withdraw monies from the Fund pursuant to the Trust Fund Reform Act, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the expenditure or investment of the monies withdrawn.

(4) OPERATION, MAINTENANCE, AND REPLACEMENT PLAN.—Expenditures of accrued interest, only, from the Fund may be made for operation, maintenance, and replacement plan approved by the Secretary.

(A) IN GENERAL.—The Tribe shall submit to the Secretary for approval an operation, maintenance, and replacement plan for any funds made available to it under this section.

(B) DESCRIPTION.—The plan shall describe the manner in which, and the purposes for which, funds made available to the Tribe will be used.

(C) APPROVAL.—On receipt of an expenditure plan under subparagraph (A), the Secretary shall, in a timely manner, approve the plan if the Secretary determines that the plan is reasonable and consistent with this title.

(5) AVAILABILITY.—Funds made available from the fund under this section shall be available without fiscal year limitation.

(6) ANNUAL REPORT.—The Tribe shall submit to the Secretary an annual report that describes all expenditures from the Fund during the year covered by the report.

(g) NO PER CAPITA DISTRIBUTIONS.—No part of the Fund shall be distributed on a per capita basis to members of the Tribe.

SEC. 914. AUTHORIZATION OF APPROPRIATIONS.

(a) CORE SYSTEM.—There is authorized to be appropriated $129,280,000 to the Bureau of Reclamation for the planning, design, and construction of the core system. The Tribal portion of the costs shall be 76 percent. The Authority's portion of the costs shall be 24 percent.

(b) ON-RESERVATION WATER DISTRIBUTION SYSTEMS.—The Tribe shall use $10,000,000 of the $15,000,000 appropriated pursuant to the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Public Law 106–163), plus accrued interest, in the purchase, construction, expansion or rehabilitation of the on-reservation water distribution systems.

(c) CHIPPEWA CREE WATER SYSTEM OPERATION, MAINTENANCE, AND REPLACEMENT TRUST

FUND.—For the Federal contribution to the Fund, established in section 913, there is authorized to be appropriated to the Bureau of Indian Affairs the sum of $7,500,000 each year for fiscal year 2005 and 2006.

(d) NONCORE SYSTEM.—There is authorized to be appropriated $73,600,000 to the Bureau of Reclamation for the planning, design, and construction of the noncore system.

(e) COST INDEXING.—The sums authorized to be appropriated under this section may be increased or decreased by such amounts as are justified by reason of ordinary fluctuations in development costs incurred after the date of enactment of this title, as indicated by engineering cost indices applicable for the type of construction involved.

TITLE X—MISCELLANEOUS

SEC. 1001. SANTEE SIOUX TRIBE, NEBRASKA, WATER SYSTEM STUDY.

(a) STUDY.—Pursuant to reclamation laws, the Secretary of the Interior (hereafter in this section referred to as the "Secretary"), through the Bureau of Reclamation and in consultation with the Santee Sioux Tribe of Nebraska (hereafter in this section referred to as the "Tribe"), shall conduct a feasibility study to determine the most feasible method of developing a safe and adequate municipal, rural, and industrial water treatment and distribution system for the Santee Sioux Tribe of Nebraska that could serve the tribal community and adjacent communities and incorporate population growth and economic development activities for a period of 40 years.

(b) COOPERATIVE AGREEMENT.—At the request of the Tribe, the Secretary shall enter into a cooperative agreement with the Tribe for activities necessary to conduct the study required by subsection (a) regarding which the Tribe has unique expertise or knowledge.

(c) REPORT.—Not later than 1 year after funds are made available to carry out this section, the Secretary shall transmit to Congress a report containing the results of the study required by subsection (a).

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $500,000 to carry out this section.

SEC. 1002. YUROK TRIBE AND HOPLAND BAND INCLUDED IN LONG TERM LEASING.

(a) IN GENERAL.—The first section of the Act entitled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (25 U.S.C. 415(a)) is amended by inserting "lands held in trust for the Yurok Tribe, lands held in trust for the Hopland Band of Pomo Indians of the Hopland Rancheria," after "Pueblo of Santa Clara,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any lease entered into or renewed after the date of the enactment of this title.

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the House amendment and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN PROBATE REFORM ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 766, S. 1340.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1340) to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust and restricted lands.

There being no objection, the Senate proceeded to consider the bill which was reported by the Committee on Indian Affairs with an amendment, as follows:

[Strike the part shown in black brackets and insert the part shown in Italic.]

S. 1340

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Indian Probate Reform Act of 2001".

[SEC. 2. AMENDMENTS TO THE INDIAN LAND CONSOLIDATION ACT.

[(a) IN GENERAL.—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended by adding at the end the following:

["Subtitle B—Indian Probate Reform

["SEC. 231. FINDINGS.

["Congress makes the following findings:

["(1) The General Allotment Act of 1887 (commonly known as the "Dawes Act"), which authorized the allotment of Indian reservations, did not allow Indian allotment owners to provide for the testamentary disposition of the land that was allotted to such owners.

["(2) The Dawes Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment.

["(3) The Federal Government's reliance on the State law of intestate succession with respect to the descendency of allotments has resulted in numerous problems to Indian tribes, their members, and the Federal Government. These problems include—

["(A) the increasing fractionated ownership of trust and restricted land as these lands are inherited by successive generations of owners as tenants in common;

["(B) the application of different rules of intestate succession to each of a decedent's interests in trust and restricted land if such land is located within the boundaries of different States which makes probate planning unnecessarily difficult and impedes efforts to provide probate planning assistance or advice;

["(C) the absence of a uniform general probate code for trust and restricted land which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

["(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which is unfair to the owners of trust and restricted land and their heirs and devisees and which makes probate planning more difficult.

["(4) Based on the problems identified in paragraph (3), a uniform Federal probate code would likely—

["(A) reduce the number of unnecessary fractionated interests in trust or restricted land;

["(B) facilitate efforts to provide probate planning assistance and advice;

["(C) facilitate inter-tribal efforts to produce tribal probate codes pursuant to section 206; and

["(D) provide essential elements of general probate law that are not applicable on the date of enactment of this subtitle to interests in trust or restricted land.

["SEC. 232. RULES RELATING TO INTESTATE INTERESTS AND PROBATE.

["(a) IN GENERAL.—Any interest in trust or restricted land that is not disposed of by a valid will shall—

["(1) descend according to a tribal probate code that is approved pursuant to section 206; or

["(2) in the case of an interest in trust or restricted land to which such a code does not apply, be considered an 'intestate interest' and descend pursuant to subsection (b), this Act, and other applicable Federal law.

["(b) INTESTATE SUCCESSION.—An interest in trust or restricted land described in subsection (a)(2) (intestate interest) shall descend as provided for in this subsection in the following order:

["(1) SURVIVING INDIAN SPOUSE.—

["(A) SOLE HEIR.—A surviving Indian spouse of the decedent shall receive all of the decedent's intestate interests if no Indian child or grandchild of the decedent survives the decedent.

["(B) OTHER HEIRS.—A surviving Indian spouse of the decedent shall receive a one-half interest in each of the decedent's intestate interests if the decedent is also survived by Indian children or grandchildren.

["(C) HEIRS OF THE FIRST OR SECOND DEGREE OTHER THAN SURVIVING INDIAN SPOUSE.—The one-half interest in each of the decedent's intestate interests that do not descend to the surviving Indian spouse under subparagraph (B) shall descend in the following order:

["(i) To the Indian children of the decedent in equal shares, or to the Indian grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the Indian children of the decedent do not survive the decedent.

["(ii) If the decedent is not survived by Indian children or grandchildren, to the surviving Indian parent of the decedent, or to both of the surviving Indian parents of the decedent as joint tenants with the right of survivorship.

["(iii) If the decedent is not survived by any person who is eligible to inherit under clause (i) or (ii), to the surviving Indian brothers and sisters of the decedent.

["(iv) If the decedent is not survived by any person who is eligible to inherit under clause (i), (ii), or (iii), the intestate interests shall descend, or may be acquired, as provided for in section 207(a)(3)(B), 207(a)(4), or 207(a)(5).

["(2) NO SURVIVING INDIAN SPOUSE.—If the decedent is not survived by an Indian spouse, the intestate interests of the decedent shall descend to the individuals described in subparagraphs (A) through (D) who survive the decedent in the following order:

["(A) To the Indian children of the decedent in equal shares, or to the Indian grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the Indian children of the decedent do not survive the decedent.

["(B) If the decedent is not survived by Indian children or grandchildren, to the surviving Indian parent of the decedent, or to both of the surviving Indian parents of the decedent as joint tenants with the right of survivorship.

["(C) If the decedent is not survived by any person who is eligible to inherit under subparagraph (A) or (B), to the surviving Indian brothers and sisters of the decedent.

[“(D) If the decent is not survived by any person who is eligible to inherit under subparagraph (A), (B), or (C), the intestate interests shall descend, or may be acquired, as provided for in section 207(a)(3)(B), 207(a)(4), or 207(a)(5).

[“(3) Surviving non-Indian spouse.—

[“(A) No descendants.—A surviving non-Indian spouse of the decedent shall receive a life estate in each of the intestate interests of the decedent pursuant to section 207(b)(2) if the decedent is not survived by any children or grandchildren.

[“(B) Descendants.—A surviving non-Indian spouse of the decedent shall receive a life estate in one-half of the intestate interests of the decedent pursuant to section 207(b)(2) if the decedent is survived by at least one of the children or grandchildren of the decedent.

[“(C) Descendants other than surviving non-Indian spouse.—The one-half life estate interest in each of the decedent's intestate interests that do not descend to the surviving non-Indian spouse under subparagraph (B) shall descend to the children of the decedent in equal shares, or to the grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the children of the decedent do not survive the decedent.

[“(4) No surviving spouse or Indian heirs.—If the decedent is not survived by a spouse, a life estate in the intestate interests of the decedent shall descend in the following order:

[“(A) To the children of the decedent in equal shares, or to the grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the children of the decedent do not survive the decedent.

[“(B) If the decedent has no surviving children or grandchildren, to the surviving parents of the decedent.

[“(5) Remainder interest from life estates.—The remainder interest from a life estate established under paragraphs (3) and (4) shall descend in the following order:

[“(A) To the Indian children of the decedent in equal shares, or to the Indian grandchildren of the decedent, if any, in equal shares by right of representation if 1 or more of the children of the decedent do not survive the decedent.

[“(B) If there are no surviving Indian children or grandchildren of the decedent, to the surviving Indian parent of the decedent or to both of the surviving Indian parents of the decedent as joint tenant with the right of survivorship.

[“(C) If there is no surviving Indian child, grandchild, or parent, to the surviving Indian brothers or sisters of the decedent in equal shares.

[“(D) If there is no surviving Indian descendant or parent, brother or sister, the intestate interests of the decedent shall descend, or may be acquired, as provided for in section 207(a)(3)(B), 207(a)(4), or 207(a)(5).

[“(c) Special Rule Relating to Survival.—For purposes of this section, an individual who fails to survive a decedent by at least 120 hours is deemed to have predeceased the decedent for purposes of intestate succession, and the heirs of the decedent shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by at least 120 hours, such individual shall be deemed to have failed to survive for the required time-period for purposes of the preceding sentence.

[“(d) Pretermitted Spouses and Children.—

[“(1) Spouses.—For purposes of this section, if the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in trust or restricted land that such spouse would have otherwise received if the testator had died intestate. The preceding sentence shall not apply to an interest in trust or restricted lands where—

[“(A) the will is executed before the date specified in section 234(a);

[“(B) the testator's spouse is a non-Indian and the testator has devised his or her interests in trust or restricted land to an Indian or Indians;

[“(C) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

[“(D) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

[“(E) the testator provided for the spouse by a transfer of funds or property outside of the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

[“(2) Children.—For purposes of this section, if a testator executed his or her will prior to the birth of 1 or more children of the testator and the omission is the product of inadvertence rather than an intentional omission, such children shall share in the decedent's intestate interests in trust or restricted lands as if the decedent had died intestate. Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (54 Stat 746) shall be treated as a decedent's child under this section.

[“(e) Divorce.—

[“(1) Surviving spouse.—

[“(A) In general.—For purposes of this section, an individual who is divorced from the decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, such individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife shall not be considered a divorce for purposes of this subsection.

[“(B) Rule of construction.—Nothing in subparagraph (A) shall be construed to prevent an entity responsible for adjudicating interests in trust or restricted land from giving force and effect to a property right settlement if one of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

[“(2) Effect of subsequent divorce on a will or devise.—If after executing a will the testator is divorced or the marriage of the testator is annulled, upon the effective date of the divorce or annulment any disposition of interests in trust or restricted land made by the will to the former spouse shall be deemed to be revoked unless the will expressly provides otherwise. Property that is prevented from passing to a former spouse based on the preceding sentence shall pass as if the former spouse failed to survive the decedent. Any provision of a will that is revoked solely by operation of this paragraph shall be revived by the testator's remarriage to the former spouse.

[“(f) Notice.—To the extent practicable, the Secretary shall notify the owners of trust and restricted land of the provisions of this title. Such notice may, at the discretion of the Secretary, be provided together with the notice required under section 207(g).

[“SEC. 233. COLLECTION OF PAST-DUE AND OVER-DUE CHILD SUPPORT

[“The Secretary shall establish procedures to provide for the collection of past-due or over-due support obligations entered by a tribal court or any other court of competent jurisdiction from the revenue derived from an interests in trust or restricted land.

[“SEC. 234. EFFECTIVE DATE.

[“(a) In General.—The provisions of this title shall not apply to the estate of an individual who dies prior to the later of—

[“(1) the date that is 1 year after the date of enactment of this subtitle; or

[“(2) the date specified in section 207(g)(5).”.

[(b) Other Amendments.—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended—

[(1) by inserting after section 202, the following:

[“Subtitle A—General Land Consolidation”;

[(2) in section 206 (25 U.S.C. 2205)—

[(A) in subsection (a)(3)—

[(i) by striking “The Secretary” and inserting the following:

[“(A) In general.—The Secretary”; and

[(ii) by adding at the end the following:

[“(B) Tribal probate codes.—A tribal probate code shall not prevent the devise of an interest in trust or restricted land to nonmembers of the tribe unless the code—

[“(i) provides for the renouncing of interests, reservation of life estates, and payment of fair market value in the manner prescribed under subsection (c)(2); and

[“(ii) does not prohibit the devise of an interest in an allotment to an Indian person if such allotment was originally allotted to the lineal ancestor of the devisee.”; and

[(B) in subsection (c)(2)—

[(i) in subparagraph (A)—

[(I) by striking “In general.—Paragraph” and inserting the following:

[“(A) Nonapplicability to certain interests.—

[“(i) In general.—Paragraph”;

[(II) by striking “if, while” and inserting the following: “if—

[“(I) while”;

[(III) by striking the period and inserting “; or”;

[(IV) by adding at the end thereof the following:

[“(II) the interest is part of a family farm that is devised to a member of the decedent's family if the devisee agrees that the Indian tribe that exercises jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to an entity that is not a member of the family of the owner of the land.

[“(ii) Rule of construction.—Nothing in clause (i)(II) shall be construed to prevent or limit the ability of an owner of land to which such clause applies to mortgage such land or to limit the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement pursuant to applicable law.”; and

[(ii) in subparagraph (B), by striking “207(a)(6)(B)” and inserting “207(a)(6)”;

[(3) in section 207 (25 U.S.C. 2206)—

[(A) in subsection (a)(6), by striking subparagraph (A) and inserting the following:

[“(A) Devise to others.—

[“(i) In general.—Notwithstanding paragraph (2), an owner of trust or restricted land—

[“(I) who does not have an Indian spouse or an Indian lineal descendant may devise his or her interests in such land to his or her spouse, lineal descendant, heirs of the first or second degree, or collateral heirs of the first or second degree;

["(II) who does not have a spouse or an Indian lineal descendent may devise his or her interests in such land to his or her lineal descendant, heirs of the first or second degree, or collateral heirs of the first or second degree; or

["(III) who does not have a spouse or lineal descendant may devise his or her interests in such land to his or her heirs of the first or second degree, or collateral heirs of the first or second degree.

["(ii) RULE OF CONSTRUCTION.—Any devise of an interest in trust or restricted land under clause (i) to a non-Indian will be construed to devise a life estate unless the devise explicitly states that the testator intends for the devisee to take the interest in fee.

["(B) UNEXERCISED RIGHTS OF REDEMPTION.—

["(i) IN GENERAL.—This subparagraph (B) shall only apply to interests in trust or restricted land that are held in trust or restricted status as of the date of enactment of the Indian Probate Reform Act of 2001, and interests in any parcel of land, at least a portion of which is in trust or restricted status as of such date of enactment, that is subject to a tax sale, tax foreclosure proceeding, or similar proceeding.

["(ii) EXERCISE OF RIGHT.—If the owner of such an interest referred to in clause (i) fails or refuses to exercise any right of redemption that is available to that owner under applicable law, the Indian tribe that exercises jurisdiction over the trust or restricted land referred to in such clause may exercise such right of redemption.

["(iii) PENALTIES AND ASSESSMENTS.—To the extent permitted under the Constitution of the United States, an Indian tribe acquiring an interest under clause (i) may acquire such an interest without being required to pay—

["(I) penalties; or

["(II) past due assessments that exceed the fair market value of the interest."; and

[(B) in subsection (g)(5), by striking "this section" and inserting "subsections (a) and (b)"; and

[(4) in section 217 (25 U.S.C. 2216)—

[(A) in subsection (e)(3), by striking "prospective applicants for the leasing, use, or consolidation of" and insert "any person that is leasing, using or consolidating, or is applying to, lease, use, or consolidate,"; and

[(B) in subsection (f)—

[(i) by striking "After the expiration of the limitation period provided for in subsection (b)(2) and prior" and inserting "Prior"; and

[(ii) by striking "sold, exchanged, or otherwise conveyed under this section".

[(c) ISSUANCE OF PATENTS.—Section 5 of the Act of February 8, 1887 (24 Stat. 348) is amended by striking the second proviso and inserting the following: "*Provided*, That the rules of intestate succession under the Indian Land Consolidation Act, or a tribal probate code approved under such Act and regulations, shall apply thereto after such patents have been executed and delivered:".]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Probate Reform Act of 2002".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The General Allotment Act of 1887 (commonly known as the 'Dawes Act'), which authorized the allotment of Indian reservations, did not allow Indian allotment owners to provide for the testamentary disposition of the land that was allotted to those owners.

(2) The Dawes Act provided that allotments would descend according to State law of intestate succession based on the location of the allotment.

(3) The Federal Government's reliance on the State law of intestate succession with respect to the descendency of allotments has resulted in numerous problems affecting Indian tribes, their members, and the Federal Government. Those problems include—

(A) the increasing fractionated ownership of trust and restricted land as that land is inherited by successive generations of owners as tenants in common;

(B) the application of different rules of intestate succession to each of a decedent's interests in trust and restricted land if that land is located within the boundaries of more than 1 State, which application makes probate planning unnecessarily difficult and impedes efforts to provide probate planning assistance or advice;

(C) the absence of a uniform general probate code for trust and restricted land which makes it difficult for Indian tribes to work cooperatively to develop tribal probate codes; and

(D) the failure of Federal law to address or provide for many of the essential elements of general probate law, either directly or by reference, which is unfair to the owners of trust and restricted land and their heirs and devisees and which makes probate planning more difficult.

(4) Based on the problems identified in paragraph (3), a uniform Federal probate code would likely—

(A) reduce the number of unnecessary fractionated interests in trust or restricted land;

(B) facilitate efforts to provide probate planning assistance and advice;

(C) facilitate inter-tribal efforts to produce tribal probate codes pursuant to section 206 of the Indian Land Consolidation Act (25 U.S.C. 2205); and

(D) provide essential elements of general probate law that are not applicable on the date of enactment of this subtitle to interests in trust or restricted land.

SEC. 3. INDIAN PROBATE REFORM.

(a) TESTAMENTARY DISPOSITION.—Subsection (a) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206(a)) is amended to read as follows:

"(a) TESTAMENTARY DISPOSITION.—

"(1) GENERAL DEVISE OF AN INTEREST IN TRUST OR RESTRICTED LAND.—

"(A) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, or a tribal probate code enacted pursuant to section 206, the owner of an interest in trust or restricted land may devise such an interest to the Indian tribe with jurisdiction over the land so devised, or to any Indian in trust or restricted status or as a passive trust interest (as provided for in section 207A).

"(B) STATUS.—The devise of an interest in trust or restricted land to an Indian under subparagraph (A) shall not alter the status of such an interest as a trust or restricted interest unless the testator provides that the interest is to be held as a passive trust interest.

"(2) DEVISE OF TRUST OR RESTRICTED LAND IN PASSIVE TRUST OR FEE STATUS.—

"(A) IN GENERAL.—Any interest in trust or restricted land that is not devised pursuant to paragraph (1) may only be devised—

"(i) as a life estate to any non-Indian person (the remainder interest may only be devised pursuant to clause (ii), subparagraph (C), or paragraph (1)(A));

"(ii)(I) to the testator's lineal descendant or heir of the 1st or 2nd degree as a passive trust interest (to be known as an 'eligible passive trust devisee'); or

"(II) if the testator does not have an heir of the 1st or 2nd degree or a lineal descendant, to any lineal descendant of a testator's grandparent as a passive trust interest (to be known as an 'eligible passive trust devisee'); or

"(iii) in fee status as provided for in subparagraph (C).

"(B) PRESUMED DEVISE OF PASSIVE TRUST INTEREST.—Any devise to an eligible passive trust devisee, including the devise of a remainder interest from the devise of a life estate under subparagraph (A)(ii), that does not indicate whether the interest is devised as a passive trust interest or a fee interest shall be construed to devise a passive trust interest.

"(C) DEVISE OF A FEE INTEREST.—Subject to subparagraph (D), any interest in trust or restricted land that is not devised pursuant to paragraph (1), or devised to an eligible passive trust devisee pursuant to subparagraph (A), may be devised to a non-Indian in fee status.

"(D) LIMITATION.—Any interest in trust or restricted land that is subject to section 4 of the Act of June 18, 1934 (25 U.S.C. 464) may only be devised pursuant to such section 4, subparagraph (A) of this paragraph, or paragraph (1) of this subsection.

"(3) DEVISE OF A PASSIVE TRUST INTEREST.—

"(A) IN GENERAL.—The holder of an interest in trust or restricted land that is held as a passive trust interest may devise the interest as a passive trust interest only to—

"(i) any Indian or the Indian tribe that exercises jurisdiction over the interest;

"(ii) the holder's lineal descendants or heirs of the first or second degree;

"(iii) any living descendant of the decedent from whom the holder acquired the interest by devise or descent; and

"(iv) any person who owns a pre-existing interest or a passive trust interest in the same parcel of land if the pre-existing interest is held in trust or restricted status or in passive trust status.

"(B) INELIGIBLE DEVISEES AND INTESTATE SUCCESSION.—A passive trust interest that is devised to a person who is not eligible under subparagraph (A) or that is not disposed of by a valid will shall pass pursuant to the applicable law of intestate succession as provided for in subsection (b).".

(b) INTESTATE SUCCESSION.—Subsection (b) of section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206(b)) is amended to read as follows:

"(b) INTESTATE SUCCESSION.—

"(1) RULES OF DESCENT.—

"(A) IN GENERAL.—Subject to any applicable Federal law relating to the devise or descent of trust or restricted property, any interest in trust or restricted land that is not disposed of by a valid will shall—

"(i) descend according to a tribal probate code that is approved pursuant to section 206; or

"(ii) in the case of an interest in trust or restricted land to which such a code does not apply, be considered an 'intestate interest' and descend pursuant to paragraph (2), this Act, and other applicable Federal law.

"(B) CLASSIFICATIONS.—For purposes of applying this subsection, intestate interests referred to in subparagraph (A)(ii) shall be classified as either—

"(i) a devise or inheritance interest (an interest acquired by a decedent through devise or inheritance); or

"(ii) an acquired interest (an interest acquired by a decedent by any means other than devise or inheritance and an interest acquired by a decedent through devise or inheritance)—

"(I) if the decedent—

"(aa) acquired additional undivided interests in the same parcel as the interest, by a means other than devise or inheritance; or

"(bb) acquired land adjoining the parcel of land that includes the interest; or

"(II) if the parcel of land that includes the interest includes the decedent's spouse's residence.

"(2) INTESTATE SUCCESSION.—An interest in trust or restricted land described in paragraph (1)(A)(ii) (an intestate interest) shall descend as provided for in this paragraph:

"(A) SURVIVING INDIAN SPOUSE.—If a decedent is survived by an Indian spouse and the decedent's estate includes—

"(i) one or more acquired interests, the decedent's spouse shall receive all such acquired interests;

"(ii) one or more devise or inheritance Interests, and—

"(I) the decedent is not survived by an Indian heir of the first or second degree, the decedent's spouse shall receive all such devise or inheritance interests; or

"(II) the decedent is survived by an Indian heir of the first or second degree, the decedent's devise or inheritance interest shall descend pursuant to paragraph (3)(A).

"(B) SURVIVING NON-INDIAN SPOUSE.—If a decedent is survived by a non-Indian spouse and the decedent's estate includes—

"(i) one or more acquired interests, the decedent's spouse shall receive a life estate in such acquired interest, and if the decedent is—

"(I) survived by an Indian heir of the 1st or 2nd degree, the remainder interests shall descend pursuant to paragraph (3)(A); or

"(II) not survived by an Indian heir of the 1st or 2nd degree, the remainder interest shall descend pursuant to paragraph (3)(C); or

"(ii) one or more devise or inheritance interests, and the decedent is—

"(I) survived by an Indian heir of the 1st or 2nd degree, such devise or inheritance interests shall descend pursuant to paragraph (3)(A); or

"(II) not survived by an Indian heir of the 1st or 2nd degree, such devise or inheritance interest shall descend pursuant to paragraph (3)(C).

"(C) NO SURVIVING SPOUSE.—If the decedent is not survived by a spouse, and the decedent's estate includes one or more acquired interests or one or more devise or inheritance interests and the decedent is—

"(i) survived by an Indian heir of the 1st or 2nd degree, the acquired interests or devise or inheritance interests shall descend pursuant to paragraph (3)(A);

"(ii) not survived by an Indian heir of the 1st or 2nd degree, the acquired interests or devise or inheritance interests shall descend pursuant to paragraph (3)(C).

"(3) RULES APPLICABLE TO INTESTATE SUCCESSION.—

"(A) INDIAN HEIRS.—For purposes of this subsection, Indian heirs of the 1st or 2nd degree shall inherit in the following order:

"(i) The Indian children of the decedent, in equal shares, or if one or more of those Indian children do not survive the decedent, such Indian children of the decedent's deceased child shall inherit by right of representation;

"(ii) If the decedent has no Indian children or grandchildren (that take by representation under clause (i)), to the decedent's Indian brothers and sisters in equal shares.

"(iii) If the decedent has no Indian brothers or sisters, to the decedent's Indian parent or parents.

"(B) RIGHT OF REPRESENTATION.—For purpose of this subsection, in any case involving the determination of a right of representation—

"(i) each interest in trust land shall be equally divided into a number of shares that equals the sum of—

"(I) the number of surviving heirs in the nearest degree of kinship; and

"(II) the number of deceased persons in that same degree, if any, who left issue who survive the decedent;

"(ii) each surviving heir described in clause (i)(I) shall receive 1 share; and

"(iii)(I) each deceased person described in clause (i)(II) shall receive 1 share; and

"(II) that share shall be divided equally among the surviving issue of the deceased person.

"(C) NO INDIAN HEIRS.—

"(i) IN GENERAL.—For purposes of this subsection, if a decedent does not have an Indian heir of the 1st or 2nd degree, an interest shall descend to an Indian collateral heir who is a co-owner of an interest owned by the decedent if any.

"(ii) MULTIPLE COLLATERAL HEIRS.—If—

"(I) more than one Indian collateral heir owns an interest in an interest referred to in clause (i), the interest shall descend to the collateral heir that owns the largest undivided interest in the parcel; or

"(II) two or more collateral heirs own equal shares in an interest referred to in clause (i), the interest passing pursuant to this subsection shall be divided equally between those collateral heirs that own equal shares.

"(iii) NO OWNERSHIP.—If none of the decedent's collateral heirs own an interest in the interest referred to in clause (i), the interest shall descend to the Indian tribe that exercises jurisdiction over the parcel of trust or restricted lands involved, subject to clause (iv).

"(iv) ACQUISITION OF INTEREST.—Notwithstanding clause (iii), an Indian co-owner of a parcel of trust or restricted land may acquire an interest subject to such clause by paying into the decedent's estate, before the close of the probate of the decedent's estate, the fair market value of the interest in such land. If more than 1 Indian co-owner (including the Indian tribe referred to in clause (iii)) offers to pay for such an interest, the highest bidder shall acquire the interest.

"(v) DEFINITION.—In this subparagraph, the term 'collateral heir' means the decedent's aunt, uncle, niece, nephew, and first cousin.

"(4) SPECIAL RULE RELATING TO SURVIVAL.—For purposes of this section, an individual who fails to survive a decedent by at least 120 hours is deemed to have predeceased the decedent for the purposes of intestate succession, and the heirs of the decedent shall be determined accordingly. If it is not established by clear and convincing evidence that an individual who would otherwise be an heir survived the decedent by at least 120 hours, the individual shall be deemed to have failed to survive for the required time-period for the purposes of the preceding sentence.

"(5) PRETERMITTED SPOUSES AND CHILDREN.—

"(A) SPOUSES.—For the purposes of this section, if the surviving spouse of a testator married the testator after the testator executed his or her will, the surviving spouse shall receive the intestate share in trust or restricted land that the spouse would have otherwise received if the testator had died intestate. The preceding sentence shall not apply to an interest in trust or restricted land where—

"(i) the will is executed before the date of enactment of this subsection;

"(ii) the testator's spouse is a non-Indian and the testator has devised his or her interests in trust or restricted land to an Indian or Indians;

"(iii) it appears from the will or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

"(iv) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

"(v) the testator provided for the spouse by a transfer of funds or property outside of the will and an intent that the transfer be in lieu of a testamentary provision is demonstrated by the testator's statements or is reasonably inferred from the amount of the transfer or other evidence.

"(B) CHILDREN.—For the purposes of this section, if a testator executed his or her will prior to the birth or adoption of 1 or more children of the testator and the omission is the product of inadvertence rather than an intentional omission, those children shall share in the decedent's intestate interests in trust or restricted land as if the decedent had died intestate. Any person recognized as an heir by virtue of adoption under the Act of July 8, 1940 (54 Stat 746), shall be treated as a decedent's child under this section.

"(6) DIVORCE.—

"(A) SURVIVING SPOUSE.—

"(i) IN GENERAL.—For the purposes of this section, an individual who is divorced from the decedent, or whose marriage to the decedent has been annulled, shall not be considered to be a surviving spouse unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death. A decree of separation that does not terminate the status of husband and wife shall not be considered a divorce for the purposes of this subsection.

"(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed to prevent an entity responsible for adjudicating interests in trust or restricted land from giving force and effect to a property right settlement if one of the parties to the settlement dies before the issuance of a final decree dissolving the marriage of the parties to the property settlement.

"(B) EFFECT OF SUBSEQUENT DIVORCE ON A WILL OR DEVISE.—If after executing a will the testator is divorced or the marriage of the testator is annulled, upon the effective date of the divorce or annulment any disposition of interests in trust or restricted land made by the will to the former spouse shall be deemed to be revoked unless the will expressly provides otherwise. Property that is prevented from passing to a former spouse based on the preceding sentence shall pass as if the former spouse failed to survive the decedent. Any provision of a will that is revoked solely by operation of this paragraph shall be revived by the testator's remarriage to the former spouse.

"(7) NOTICE.—To the extent practicable, the Secretary shall notify the owners of trust and restricted land of the provisions of this Act. The notice may, at the discretion of the Secretary, be provided together with the notice required under section 207(g).".

(c) RULE OF CONSTRUCTION.—Section 207 of the Indian Land Consolidation Act (25 U.S.C. 2206) is amended by adding at the end the following:

"(h) RULE OF CONSTRUCTION.—For purposes of subsections (a) and (b), any reference to 'applicable Federal law' shall be construed to include Public Law 91-627 (84 Stat. 1874, amending section 7 of the Act of August 9, 1946), Public Law 92-377 (86 Stat. 530), and Public Law 92-443 (86 Stat. 744). Nothing in this section shall be construed to amend or alter such Public Laws or any other Federal law that provides for the devise and descent of any trust or restricted lands located on a specific Indian reservation.".

(d) PASSIVE TRUST STATUS FOR TRUST OR RESTRICTED LAND.—The Indian Land Consolidation Act is amended by inserting after section 207 (25 U.S.C. 2206) the following:

"SEC. 207A. PASSIVE TRUST STATUS FOR TRUST OR RESTRICTED LAND.

"(a) PASSIVE TRUST.—The owner of an interest in trust or restricted land may submit an application to the Secretary requesting that such interest be held in passive trust interest status. Such application may authorize the Secretary to amend or alter any existing lease or agreement with respect to the interest that is the subject of the application.

"(b) APPROVAL.—Upon the approval of an application by the Secretary under subsection (a), an interest in trust or restricted land shall be held as a passive trust interest in accordance with this section.

"(c) REQUIREMENTS.—Except as provided in this section, an interest in trust or restricted land that is held as a passive trust interest under this section—

"(1) shall continue to be covered under any applicable tax-exempt status and continue to be subject to any restrictions on alienation until such interest is patented in fee status;

"(2) may, without the approval of the Secretary, be—

"(A) leased;

"(B) mortgaged pursuant to the Act of March 29, 1956 (25 U.S.C. 483a); or

"(C) sold or conveyed to an Indian, the Indian tribe that exercises jurisdiction over the interest, or a co-owner of an interest in the same parcel of land if the co-owner owns a pre-existing trust, restricted interest, or a passive trust interest in the parcel; and

"(3) may be subject to an ordinance or resolution enacted under subsection (d).

"(d) ORDINANCE OR RESOLUTION FOR REMOVAL OF STATUS.—

"(1) IN GENERAL.—The governing body of the Indian tribe that exercises jurisdiction over an interest in trust or restricted land that is held as a passive trust interest in accordance with this section may enact an ordinance or resolution to allow the owner of such an interest to apply to the Secretary for the removal of the trust or restricted status of such portion of such lands that are subject to the tribe's jurisdiction.

"(2) REVIEW BY SECRETARY.—The Secretary shall review and may approve an ordinance or resolution enacted by an Indian tribe pursuant to paragraph (1) if the Secretary determines that the ordinance or resolution is consistent with this Act and will not increase fractionated ownership of Indian land.

"(e) REVENUES OR ROYALTIES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall not be responsible for the collection of or accounting for any lease revenues or royalties accruing to an interest held as a passive trust interest by any person under this section.

"(2) EXCEPTION.—Paragraph (1) shall not apply to an interest described in such paragraph if the Secretary approves an application to have such interest be taken into active trust status on behalf of an Indian or an Indian tribe pursuant to regulations enacted by the Secretary.

"(3) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to alter the authority or responsibility of the Secretary, if any, with respect to an interest in trust or restricted land held in active trust status, including an undivided interest within the same parcel of land as an undivided passive trust interest.

"(f) JURISDICTION OVER PASSIVE TRUST INTEREST.—An Indian tribe that exercises jurisdiction over an interest in trust or restricted land that is devised or held as a passive trust interest under this section shall continue to exercise jurisdiction over the land that is held as a passive trust interest and any person holding, leasing, or otherwise using such land shall be deemed to have consented to the jurisdiction of such a tribe with respect to the use of such land, including any impacts associated with any use of such lands.

"(g) PROBATE OF PASSIVE TRUST INTERESTS.—An interest in trust or restricted land that is held as a passive trust interest under this section shall be subject to probate by the Secretary pursuant to this Act and other laws applicable to the probate of trust or restricted land. Any interested party may file an application to commence the probate of an interest in trust or restricted land held as a passive trust interest.

"(h) REGULATIONS.—The Secretary shall promulgate regulations to implement this section.".

(e) PARTITION.—Section 205 of the Indian Land Consolidation Act (25 U.S.C. 2204) is amended by adding at the end the following:

"(c) PARTITION.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, in accordance with this subsection and subject to paragraphs (2), (3), and (4)—

"(A) an Indian tribe may apply to the Secretary for the partition of a parcel of land that is—

"(i) located within the reservation of the Indian tribe; or

"(ii) otherwise under the jurisdiction of the Indian tribe; and

"(B) the Secretary may commence a process for partitioning a parcel of land as provided for in paragraphs (2)(B) and (6)(B), if—

"(i) an Indian tribe owns an undivided interest in the parcel of land and such tribe consents to the partition;

"(ii)(I) the tribe referred to in clause (i) meets the ownership requirement of clauses (i) or (ii) of paragraph (2)(B); or

"(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii); and

"(iii) the tribe referred to in paragraph (3), if any, consents to the partition.

For purposes of this subsection, the term 'eligible Indian tribe' means an Indian tribe described in subparagraph (A) and (B)(i).

"(2) TRIBAL OWNERSHIP.—A parcel of land may be partitioned under this subsection if, with respect to the eligible Indian tribe involved—

"(A) the tribe owns an undivided interest in the parcel of land; and

"(B)(i) the tribe owns 50 percent or more of the undivided interest in the parcel;

"(ii) the tribe is the owner of the largest quantity of undivided interest in the parcel; or

"(iii) the owners of undivided interests equal to at least 50 percent of the undivided interests in the parcel (including any undivided interest owned by the tribe) consent or do not object to the partition.

"(3) TRIBAL CONSENT.—A parcel of land that is located within the reservation of an Indian tribe or otherwise under the jurisdiction of an Indian tribe shall be partitioned under this subsection only if the Indian tribe does not object to the partition.

"(4) APPLICABILITY.—This subsection shall not apply to any parcel of land that is the bona fide residence of any person unless the person consents to the partition in writing.

"(5) PARTITION IN KIND.—

"(A) IN GENERAL.—The Secretary shall commence the partition process described in subparagraph (B) if—

"(i) an eligible Indian tribe applies to partition a parcel of land under this paragraph; and

"(ii)(I) the Secretary determines that the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B); or

"(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii).

"(B) PARTITION PROCESS.—In carrying out any partition, the Secretary shall—

"(i) provide, to each owner of any undivided interest in the parcel to be partitioned, through publication or other appropriate means, notice of the proposed partition;

"(ii) make available to any interested party a copy of any proposed partition plan submitted by an Indian tribe or proposed by the Secretary; and

"(iii) review—

"(I) any proposed partition plan submitted by any owner of an undivided interest in the parcel; and

"(II) any comments or objections concerning a partition, or any proposed plan of partition, submitted by any owner or any other interested party.

"(C) DETERMINATION NOT TO PARTITION.—If the Secretary determines that a parcel of land cannot be partitioned in a manner that is fair and equitable to the owners of the parcel, the Secretary shall inform each owner of the parcel of—

"(i) the determination of the Secretary; and

"(ii) the right of the owner to appeal the determination.

"(D) PARTITION WITH CONSENT OF QUALIFIED INDIAN TRIBE.—If the Secretary determines that a parcel of land may be partitioned in a manner that is fair and equitable to the owners of the parcel, and the Indian tribe meets the applicable ownership requirements under clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(i) approve a plan of partition;

"(ii) provide notice to the owners of the parcel of the determination of the Secretary;

"(iii) make a copy of the plan of partition available to each owner of the parcel; and

"(iv) inform each owner of the right to appeal the determination of the Secretary to partition the parcel in accordance with the plan.

"(E) PARTITION WITH CONSENT; IMPLIED CONSENT.—If the Secretary determines that a parcel may be partitioned in a manner that is fair and equitable to the owners of the parcel, but the Indian tribe involved does not meet the applicable ownership requirements under clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(i)(I) make a plan of partition available to the owners of the parcel; and

"(II) inform the owners that the parcel will be partitioned in accordance with the plan if the owners of 50 percent or more of undivided ownership interest in the parcel either—

"(aa) consent to the partition; or

"(bb) do not object to the partition by such deadline as may be established by the Secretary;

"(ii) if the owners of 50 percent or more of undivided ownership interest in the parcel consent to the partition or do not object by a deadline established by the Secretary under clause (i)(II)(bb), inform the owners of the parcel that—

"(I) the plan for partition is final; and

"(II) the owners have the right to appeal the determination of the Secretary to partition the parcel; and

"(iii) if the owners of 50 percent or more of the undivided ownership interest in the parcel object to the partition, inform the Indian tribe of the objection.

"(F) SUCCESSIVE PARTITION PLANS.—In carrying out subparagraph (E) in accordance with paragraph (2)(B)(iii), the Secretary may, in accordance with subparagraph (E)—

"(i) approve 1 or more successive plans of partition; and

"(ii) make those plans available to the owners of the parcel.

"(G) PLAN OF PARTITION—A plan of partition approved by the Secretary in accordance with subparagraph (D) or (E)—

"(i) may determine that 1 or more of the undivided interests in a parcel are not susceptible to a partition in kind;

"(ii) may provide for the sale or exchange of those undivided interests to—

"(I) 1 or more of the owners of undivided interests in the parcel; or

"(II) the Secretary in accordance with section 213; and

"(iii) shall provide that the sale of any undivided interest referred to in clause (ii) shall be

for not less than the fair market value of the interest.

"(6) PARTITION BY SALE.—

"(A) IN GENERAL.—The Secretary shall commence the partition process described in subparagraph (B) if—

"(i) an eligible Indian tribe applies to partition a parcel of land under this subsection; and

"(ii)(I) the Secretary determines that the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B); or

"(II) the Secretary determines that it is reasonable to believe that the partition would be in accordance with paragraph (2)(B)(iii).

"(B) PARTITION PROCESS.—In carrying out any partition of a parcel, the Secretary—

"(i) shall conduct a preliminary appraisal of the parcel;

"(ii) shall provide, to the owners of the parcel, through publication or other appropriate means—

"(I) notice of the application of the Indian tribe to partition the parcel; and

"(II) access to the preliminary appraisal conducted in accordance with clause (i);

"(iii) shall inform each owner of the parcel of the right to submit to the Secretary comments relating to the preliminary appraisal;

"(iv) may, based on comments received under clause (iii), modify the preliminary appraisal or provide for the conduct of a new appraisal; and

"(v) shall—

"(I) issue a final appraisal for the parcel;

"(II) provide to the owners of the parcel and the appropriate Indian tribes access to the final appraisal; and

"(III) inform the Indian tribes of the right to appeal the final appraisal.

"(C) PURCHASE BY QUALIFIED INDIAN TRIBE.—If an eligible Indian tribe agrees to pay fair market value for a partitioned parcel, as determined by the final appraisal of the parcel issued under subparagraph (B)(v)(I) (including any appraisal issued by the Secretary after an appeal by the Indian tribe under subparagraph (B)(v)(III)), and the Indian tribe meets the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(i) provide to each owner of the parcel notice of the decision of the Indian tribe; and

"(ii) inform the owners of the right to appeal the decision (including the right to appeal any final appraisal of the parcel referred to in subparagraph (B)(v)(III)).

"(D) PARTITION WITH CONSENT; IMPLIED CONSENT.—

"(i) IN GENERAL.—If an eligible Indian tribe agrees to pay fair market value for a partitioned parcel, as determined by the final appraisal of the parcel issued under subparagraph (B)(v)(I) (including any appraisal issued by the Secretary after an appeal by the Indian tribe under subparagraph (B)(v)(III)), but does not meet the applicable ownership requirements of clause (i) or (ii) of paragraph (2)(B), the Secretary shall—

"(I) provide notice to the owners of the undivided interest in the parcel; and

"(II) inform the owners that the parcel will be partitioned by sale unless the partition is opposed by the owners of 50 percent or more of the undivided ownership interest in the parcel.

"(ii) FAILURE TO OBJECT TO PARTITION.—If the owners of 50 percent or more of undivided ownership interest in or to a parcel consent to the partition or the parcel, or do not object to the partition by such deadline as may be established by the Secretary, the Secretary shall inform the owners of the parcel of the right to appeal the determination of the Secretary (including the results of the final appraisal issued under subparagraph (B)(v)(I)).

"(iii) OBJECTION TO PARTITION.—If the owners of 50 percent or more of the undivided ownership interest in a parcel object to the partition of the parcel—

"(I) the Secretary shall notify the Indian tribe of the objection; and

"(II) the Indian tribe and the Secretary may agree to increase the amount offered to purchase the undivided ownership interests in the parcel.

"(7) ENFORCEMENT.—

"(A) IN GENERAL.—If, with respect to a parcel, a partition in kind is approved under subparagraph (D) or (E) of paragraph (5), or a partition by sale is approved under paragraph (6)(C), and the owner of an interest in or to the parcel fails or refuses to convey the interest to the Indian tribe, the Indian tribe or the United States may—

"(i) bring a civil action in the United States district court for the district in which the parcel is located; and

"(ii) request the court to issue an appropriate order for the partition in kind, or partition by sale to the Indian tribe, of the parcel.

"(B) FEDERAL ROLE.—With respect to any civil action brought under subparagraph (A)—

"(i) the United States—

"(I) shall receive notice of the civil action; and

"(II) may be a party to the civil action; and

"(ii) no civil action brought under this section shall be dismissed, and no relief requested shall be denied, on the ground that the civil action is against the United States or that the United States is an indispensable party.".

SEC. 4. OTHER AMENDMENTS.

(a) OTHER AMENDMENTS.—The Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) is amended—

(1) in section 205(a) (25 U.S.C. 2204(a)), by striking "over 50 per centum of the undivided interests" and inserting "undivided interests equal to at least 50 percent of the undivided interest";

(2) in section 206 (25 U.S.C. 2205)—

(A) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) TRIBAL PROBATE CODES.—The Secretary shall not approve a tribal probate code, or an amendment to such a code, that prevents the devise of an interest in trust or restricted land to—

"(A) an Indian lineal descendant of the original allottee; or

"(B) to an Indian who is not a member of the tribe that exercises jurisdiction over such an interest;

unless the code provides for the renouncing of interests (to eligible devisees pursuant to such a code), the opportunity for a devisee who is the testator's spouse or lineal descendant to reserve a life estate, and payment of fair market value in the manner prescribed under subsection (c)(2).";

(B) in subsection (c)(1)—

(i) by striking "section 207(a)(6)(A)" and inserting "sections 207(a)(2)(A)(ii), 207(a)(2)(C), and 207(a)(3)"; and

(ii) by striking the last sentence and inserting "The Secretary shall transfer such payments to any person or persons who would have received an interest in land if the interest had not been acquired by the tribe pursuant to this paragraph."; and

(C) in subsection (c)(2)—

(i) in subparagraph (A)—

(I) by striking "(A) IN GENERAL.—Paragraph" and inserting the following:

"(A) NONAPPLICABILITY TO CERTAIN INTERESTS.—

"(i) IN GENERAL.—Paragraph";

(II) by striking "if, while" and inserting the following: "if—

"(I) while";

(III) by striking the period and inserting "; or"; and

(IV) by adding at the end the following:

"(II) the interest is part of a family farm that is devised to a member of the decedent's family if the devisee agrees that the Indian tribe that exercises jurisdiction over the land will have the opportunity to acquire the interest for fair market value if the interest is offered for sale to an entity that is not a member of the family of the owner of the land.

"(ii) RECORDING OF INTEREST.—Upon the request of an Indian tribe described in clause (i)(II), a restriction relating to the acquisition by such tribe of an interest in the family farm involved shall be recorded as part of the deed relating to the interest involved.

"(iii) RULE OF CONSTRUCTION.—Nothing in clause (i)(II) shall be construed to prevent or limit the ability of an owner of land to which that clause applies to mortgage the land or to limit the right of the entity holding such a mortgage to foreclose or otherwise enforce such a mortgage agreement pursuant to applicable law.

"(iv) DEFINITION.—In this paragraph, the term 'member of the decedent's family' means the decedent's lineal descendant, a lineal descendant of the grandparent of the decedent, the spouse of any such descendant, or the decedent's spouse."; and

(ii) in subparagraph (B), by striking "subparagraph (A)" and all that follows through "207(a)(6)(B)" and inserting "paragraph (1)"; and

(3) in section 207 (25 U.S.C. 2206)—

(A) in subsection (c)—

(i) by redesignating paragraph (3) as paragraph (4); and

(ii) by inserting after paragraph (2) the following:

"(3) ALIENATION OF JOINT TENANCY INTERESTS.—

"(A) IN GENERAL.—With respect to any interest held as a joint tenancy pursuant to this subsection—

"(i) nothing in this subsection shall be construed to alter the ability of the owner of such an interest to convey a life estate in the owner's undivided joint tenancy interest; and

"(ii) only the last remaining owner of such an interest may devise or convey more than a life estate in such an interest.

"(B) APPLICATION OF PROVISION.—This paragraph shall not apply to any conveyance, sale, or transfer that is part of an agreement referred to in subsection (e) or to a co-owner of a joint tenancy interest."; and

(B) in subsection (g)(5), by striking "this section" and inserting "subsections (a) and (b)";

(4) in section 213 (25 U.S.C. 2212)—

(A) in subsection (a)(2), by striking "(A) IN GENERAL.—" and all that follows through "subparagraph (A), the Secretary" and inserting "The Secretary";

(B) in subsection (b)(4), by inserting before the period the following: "through the use of policies and procedures designed to accommodate the voluntary sale of interests under the pilot program (established by this Act) though the elimination of duplicate conveyance documents, administrative proceedings, and transactions, notwithstanding the existence of any otherwise applicable policy, procedure, or regulation"; and

(C) in subsection (c)—

(i) in paragraph (1)(A), by striking "landowner upon payment" and all that follows through the period and inserting the following: "landowner—

"(i) upon payment by the Indian landowner of the amount paid for the interest by the Secretary; or

"(ii) if the Indian referred to in this subparagraph provides assurance that the purchase price will be paid by pledging revenue from any source, including trust resources, and the Secretary determines that the purchase price will be paid in a timely and efficient manner.";

(ii) in paragraph (1)(B), by inserting "unless the interest is subject to a foreclosure of a mortgage pursuant to the Act of March 29, 1956 (25 U.S.C. 483a)" before the period; and

(iii) in paragraph (3), by striking "10 percent of more of the undivided interests" and inserting "an undivided interest";

(5) in section 214 (25 U.S.C. 2213), by striking subsection (b) and inserting the following:

"(b) Application of Revenue From Acquired Interests to Land Consolidation Pilot Program.—

"(1) In general.—The Secretary shall have a lien on any revenue accruing to an interest described under subsection (a) until the Secretary provides for the removal of the lien under paragraph (3) or (4).

"(2) Requirements.—Until Secretary removes the lien from an interest of land as provided for in paragraph (1)—

"(A) any lease, resource sale contract, right-of-way, or other document evidencing a transaction affecting the interest shall contain a clause providing that all revenue derived from the interest shall be paid to the Secretary;

"(B) any revenue derived from any interest acquired by the Secretary pursuant to section 213 shall be paid into the fund created under section 216; and

"(C) the Secretary may approve a transaction covered under this section on behalf of a tribe notwithstanding any other provision of law, including section 16 of the Act of June 18, 1934 (commonly referred to as the Indian Reorganization Act, (25 U.S.C. 476)).

"(3) Findings by secretary.—The Secretary may remove a lien referred to in (1) if the Secretary makes a finding that—

"(A) the costs of administering the interest will equal or exceed the projected revenues for the parcel of land involved;

"(B) in the discretion of the Secretary, it will take an unreasonable period of time for the parcel of land to generate revenue that equals the purchase price paid for the interest; or

"(C) a subsequent decrease in the value of land or commodities associated with the parcel of land make it likely that the interest will be unable to generate revenue that equals the purchase price paid for the interest in a reasonable time.

"(4) Removal of lien.—Pursuant to the consultations referred to in section 213(b)(3), the Secretary shall periodically remove the lien referred to in paragraph (1) from interests in land acquired by the Secretary.";

(6) in section 216 (25 U.S.C. 2215)—

(A) in subsection (a), strike paragraph (2) and insert the following:

"(2) collect all revenues received from the lease, permit, or sale of resources from interests acquired under section 213 or paid by Indian landowners under section 213."; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) in the matter preceding subparagraph (A), by striking "Subject to paragraph (2), all" and inserting "All";

(II) in subparagraph (A), by striking "and" at the end;

(III) in subparagraph (B), by striking the period and inserting "; and"; and

(IV) by adding at the end the following:

"(C) be used to acquire undivided interests on the reservation where the income was derived."; and

(ii) by striking paragraph (2) and inserting the following:

"(2) Use of funds.—The Secretary may utilize the revenue deposited in the Acquisition Fund under paragraph (1) to acquire some or all of the undivided interests in any parcels of land pursuant to section 205.";

(7) in section 217 (25 U.S.C. 2216)—

(A) in subsection (e)(3), by striking "prospective applicants for the leasing, use, or consolidation of" and insert "any person that is leasing, using or consolidating, or is applying to, lease, use, or consolidate,"; and

(B) by striking subsection (f) and inserting the following:

"(f) Purchase of Land by Tribe.—

"(1) In general.—Before the Secretary approves an application to terminate the trust status or remove the restrictions on alienation from a parcel of trust or restricted land, the Indian tribe that exercises jurisdiction over such a parcel shall have the opportunity to match any offer contained in such application, or where there is no purchase price offered, to acquire the interest in such land by paying the fair market value of such interest.

"(2) Exception for family farms.—Paragraph (1) shall not apply to a parcel of trust or restricted land that is part of a family farm that is conveyed to a member of the landowner's family (as defined in section 206(c)(2)(A)(iv)) if the tribe that exercises jurisdiction over the land is afforded the opportunity to purchase the interest if the interest is offered for sale to an entity that is not a member of the family of the owner of the land. Section 206(c)(2)(A) shall apply with respect to the recording and mortgaging of the trust or restricted land referred to in the preceding sentence."; and

(8) in section 219(b)(1)(A) (25 U.S.C. 2219(b)(1)(A)), by striking "100" and inserting "90".

(b) Definition.—

(1) In general.—Section 202(2) of the Indian Land Consolidation Act (25 U.S.C. 2201(2)) is amended—

(A) by striking "means any" and inserting the following: "means—

"(A) any";

(B) by striking "or any person who has been found to meet" and inserting the following: "or

"(B) any person who meets"; and

(C) by striking "if the Secretary" and all that follows through the semicolon and inserting ", except that the Secretary may promulgate regulations to exclude any definition if the Secretary determines that the definition is not consistent with the purposes of this Act, or

"(C) with respect to the ownership, devise, or descent of trust or restricted land in the State of California, any person who meets the definition of Indians of California as contained in section 1 of the Act of May 18, 1928 (25 U.S.C. 651), until otherwise provided by Congress pursuant to section 809(b) of Public Law 94-437 (25 U.S.C. 1679(b));".

(2) Effective date.—Any exclusion referred to in the amendment made by paragraph (1)(C) shall apply only to those decedents who die after the Secretary of the Interior promulgates the regulation providing for such exclusion.

(c) Mortgages and Deeds of Trust.—The Act of March 29, 1956 (25 U.S.C. 483a) is amended in the first sentence of subsection (a) by inserting "(including land owned by any person in passive trust status pursuant to section 207A of the Indian Land Consolidation Act)" after "land" the first place that such appears.

(d) Issuance of Patents.—Section 5 of the Act of February 8, 1887 (25 U.S.C. 348) is amended by striking the second proviso and inserting the following: "Provided, That the rules of intestate succession under the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act) shall apply thereto after those patents have been executed and delivered:".

(e) Transfers of Restricted Indian Land.—Section 4 of the Act of June 18, 1934 (25 U.S.C. 464), is amended in the first proviso by striking ", in accordance with" and all that follows through the colon and inserting "in accordance with the Indian Land Consolidation Act (25 U.S.C. 2201 et seq.) (including a tribal probate code approved under that Act or regulations promulgated under that Act):".

SEC. 5. EFFECTIVE DATE.

This amendment made by this Act shall not apply to the estate of an individual who dies prior to the later of—

(1) the date that is 1 year after the date of enactment of this Act; or

(2) the date specified in section 207(g)(5) of the Indian Land Consolidation Act (25 U.S.C. 2206(g)(5)).

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment be agreed to, the bill, as amended, be read the third time and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1340), as amended, was read the third time and passed.

EXECUTIVE SESSION

NOMINATION DISCHARGED

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session and that the Rules Committee be discharged from further consideration of the following nomination and that the Senate then proceed to its consideration: Bruce James to be Public Printer. Further, I ask unanimous consent that the nomination be confirmed; that the motion to reconsider be laid upon the table; that any statements relating to the nomination be printed in the RECORD; that the President be immediately notified of the Senate's action; and that the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nomination considered and confirmed is as follows:

Bruce R. James, of Nevada, to be Public Printer.

Mr. REID. Mr. President, Bruce James is from Nevada. He was in business and was very successful. He retired in Nevada after having been successful in business. He is a devout Republican. In fact, he ran against me at one time in a primary, but he made the mistake of having JOHN ENSIGN in the primary. He is a fine man. I have been to his home. He has a lovely wife. He really feels he wants to spend some time in public service. He made his money in printing, so he should be a great Public Printer. I wish him and his family the best of luck as they move to Washington.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

NATIONAL FLOOD INSURANCE PROGRAM

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. 13, introduced earlier today by Senator SARBANES.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 13) to extend authorization for the national flood insurance program.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times and passed; that the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 13) was read three times and passed, as follows:

S. 13

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION FOR THE NATIONAL FLOOD INSURANCE PROGRAM.

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) is amended—

(1) in section 1309(a)(2) (42 U.S.C. 4016(a)(2)), by striking "December 31, 2002" and inserting "December 31, 2003";

(2) in section 1319 (42 U.S.C. 4026), by striking "December 31, 2002" and inserting "December 31, 2003";

NATIONAL RUNAWAY PREVENTION MONTH

Mr. REID. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from the consideration of S. Res. 339, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 339) designating November 2002 as "National Runaway Prevention Month."

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc; that the motion to reconsider be laid upon the table; and that any statements relating to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 339) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 339

Whereas the prevalence of runaway and homeless youth in our Nation is staggering, with studies suggesting that between 1,300,000 and 2,800,000 young people live on the streets of the United States each year;

Whereas running away from home is widespread, with 1 out of every 7 children in the United States running away before the age of 18;

Whereas youth that end up on the streets are often those who have been "thrown out" of their homes by their families, who have been physically, sexually, and emotionally abused at home, who have been discharged by State custodial systems without adequate transition plans, who have lost their parents through death or divorce, and who are too poor to secure their own basic needs;

Whereas effective programs supporting runaway youth and assisting young people in remaining at home with their families succeed because of partnerships created among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and businesses;

Whereas preventing young people from running away and supporting youth in high-risk situations is a family, community, and national responsibility;

Whereas the future well-being of the Nation is dependent on the value placed on young people and the opportunities provided for youth to acquire the knowledge, skills, and abilities necessary to develop into safe, healthy, and productive adults;

Whereas the National Network for Youth and its members advocate on behalf of runaway and homeless youth and provide an array of community-based support services that address the critical needs of such youth;

Whereas the National Runaway Switchboard provides crisis intervention and referrals to reconnect runaway youth to their families and to link young people to local resources that provide positive alternatives to running away; and

Whereas the National Network for Youth and National Runaway Switchboard are cosponsoring National Runaway Prevention Month to increase public awareness of the life circumstances of youth in high-risk situations and the need for safe, healthy, and productive alternatives, resources, and supports for youth, families, and communities: Now, therefore, be it

Resolved, That the Senate designates November 2002, as "National Runaway Prevention Month".

CONGRATULATING PEOPLE OF BRAZIL ON FREE AND FAIR ELECTIONS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 365 submitted earlier today by Senators Chafee and Dodd.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 365) congratulating the people of Brazil on the completion of peaceful, free and fair elections in Brazil and the election of President da Silva.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution and preamble be agreed to en bloc; the motions to reconsider be laid upon the table en bloc, and any statements relating thereto be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 365) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 365), with its preamble, reads as follows:

S. RES. 365

Whereas, in October 2002, the people of Brazil completed peaceful, free, and fair elections of a President and other officials of their country;

Whereas Luiz Inacio "Lula" da Silva, candidate of Brazil's Worker's Party, was elected President of Brazil on October 27, 2002, receiving 52,793,364 votes, representing 61.27 percent of the votes cast;

Whereas Brazil utilized a new nationwide computerized voting system, which enabled the tallying of approximately 100,000,000 votes in less than 10 hours, including votes cast in areas that are accessible only by boat or plane;

Whereas Brazil has a population of 174,500,000, making it the eighth most populous nation in the world and the most populous nation in Latin America;

Whereas Brazil's diversified economy is the eighth largest in the world, and Brazil's gross domestic product, which was $540,000,000,000 in 2001, is the largest in Latin America;

Whereas Brazil plays a critical regional leadership role in Latin America within the Organization of American States, the Inter-American Treaty of Reciprocal Assistance (commonly known as the "Rio Treaty"), the Latin American Integration Association, and Mercosur/Mercosul (Southern Common Market), and is one of the guarantors of the Peru-Ecuador peace process;

Whereas Brazil has been a member of the United Nations Security Council four times, most recently from 1998 through 2000, has contributed troops to several United Nations peacekeeping missions, and is an active participant in international cooperation and commerce as a party to numerous international treaties and conventions;

Whereas the economic relationship between Brazil and the United States is substantial and growing, with United States direct foreign investment increasing from less than $19,000,000,000 in 1994 to an estimated $35,000,000,000 in 2000, United States exports to Brazil increasing from $8,100,000,000 in 1994 to $15,900,000,000 in 2001, and United States imports from Brazil increasing from $8,700,000,000 in 1994 to $14,500,000,000 in 2001;

Whereas Brazil will play a critical role in the continuing negotiations related to the creation of a Free Trade Area of the Americans, which the United States and Brazil will co-chair during the next two years;

Whereas the United States and Brazil have a long history of friendly relations beginning when the United States became the first country to recognize Brazil's independence in 1822;

Whereas Brazil led the parties to the Inter-American Treaty of Reciprocal Assistance in stating on September 11, 2001, that the attacks on the United States on that date were attacks on all American States;

Whereas there are an estimated 50,000 United States citizens residing in Brazil, and some 150,000 United States citizens visit Brazil each year;

Whereas the United States and Brazil have entered into many agreements together, including the Education Partnership Agreement, the Technical Safeguards Agreement, the Common Agenda on the Environment, and agreements to cooperate in matters relating to energy, the international space station, national parks, and government reform; and

Whereas cooperation between the United States and Brazil on several counter-narcotics efforts, including the United States training of Brazilian counter-narcotics agents and Operation Cobra in northern Brazil, has increased significantly in recent years: Now, therefore, be it

Resolved, That the Senate—

(1) congratulates the people of Brazil on successfully completing peaceful, free, and fair elections on October 6, 2002, and October 22, 2002;

(2) congratulates President-elect Luiz Inacio "Lula" da Silva on his electoral victory and welcomes him as a democratic partner in the numerous bilateral and multilateral efforts to which the United States and Brazil are parties;

(3) endorses President Bush's invitation of President-elect da Silva to Washington, District of Columbia, which will result in a meeting between the two leaders on December 10, 2002;

(4) urges President Bush and President-elect da Silva to pursue policies on economic, security, drug enforcement, and other matters of mutual interest to Brazil and the United States that will continue to strengthen the relationship between the people and governments of the two countries; and

(5) pledges the Senate's continued support for a strong and friendly economic, political, and cultural relationship between the United States and Brazil based on shared values.

URGING ARAB GOVERNMENTS NOT TO CONTROL TELEVISION STATIONS TO BROADCAST PROGRAMS THAT LEND LEGITIMACY TO PROTOCOLS OF ELDERS OF ZION

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to S. Res. 366 introduced earlier today by Senators NELSON of Florida and SMITH of Oregon.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 366) urging the Government of Egypt and other Arab governments not to allow their government-controlled television stations to broadcast any program that lends legitimacy to the Protocols of the Elders of Zion, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution and preamble be agreed to en bloc; the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 366) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 366), with its preamble, reads as follows:

S. RES. 366

Whereas in November 2002, a number of government-controlled television stations in Egypt began broadcasting a multi-part series, "Horseman Without a Horse", based on the Protocols of the Elders of Zion and conspiracy myths about Jewish global domination;

Whereas the Protocols of the Elders of Zion are a notorious forgery, written by Russian anti-Semites in the early 20th century, which purport to reveal a plot for Jewish domination of the world;

Whereas the Protocols of the Elders of Zion have been a staple of anti-Semitic and anti-Israel propaganda for decades and have long since been discredited by all reputable scholars;

Whereas the broadcast of this series takes place in the context of a sustained pattern of vitriolic anti-Semitic commentary and depictions in the Egyptian government-sponsored press, which has gone unanswered by the Government of Egypt; and

Whereas the Department of State has urged Egypt and other Arab states not to broadcast this program, saying "We don't think government TV stations should be broadcasting programs that we consider racist and untrue": Now, therefore, be it

Resolved, That the Senate—

(1) condemns any publication or program that lends legitimacy to the Protocols of the Elders of Zion;

(2) believes the use of such heinous propaganda, especially in the Arab world, serves to incite popular sentiment against Jewish people and the State of Israel rather than promoting religious tolerance and preparing Arab populations for the prospect of peace with Israel;

(3) commends the Department of State for its denunciation of the "Horseman Without a Horse" television series and its efforts to discourage Arab states from broadcasting it; and

(4) urges the Government of Egypt and other Arab governments—

(A) not to allow their government-controlled television stations to broadcast this program or any other racist and untrue material; and

(B) to speak out against such incitement by vigorously and publicly condemning anti-Semitism as a form of bigotry.

Mr. NELSON of Florida. Mr. President, I rise to introduce a resolution dealing with a problem we are facing in the Middle East—that of resurgent anti-Semitism. I am joined by my friend and colleague from Oregon, Sen. SMITH, in offering this resolution.

Right now, throughout this month, a multi-part series is being broadcast on Egyptian state television entitled, "Horseman Without a Horse." This program is based on a notorious anti-Semitic document known as "The Protocols of the Elders of Zion."

"The Protocols of the Elders of Zion," written in the early 20th century by Russian anti-Semites, purports to be a record of secret meetings at which Jewish leaders hatched a plan for global Jewish domination. All reputable scholars have discredited the document, but it has proven tougher to stamp out than the most resilient weed.

Time and again, various anti-Semitic leaders have used the Protocols of the Elders of Zion to justify outrageous acts of persecution against the Jewish people. The perpetrators of pogroms in Russia cited it. Hitler used it. So did Stalin. It has become a staple of anti-Semitic propaganda.

The places these myths are most likely to surface nowadays are in the Arab world. With depressing regularity, we see Jews portrayed in the Arab media as bloodthirsty, conniving, and manipulative. The editorial cartoons of Jews that appear in Egyptian newspapers alone would be shocking to nearly any American who saw them.

Now comes a television program about Jewish plots to control the world, broadcast nationwide on Egyptian government-sponsored television stations. It is likely the series will air in other Arab countries as well.

Some would argue that this demonizations is an unavoidable hyproduct of the Arab-Israeli conflict. But perpetrating anti-Semitic myths is never acceptable. Arab governments can be expected to have their differences with Israel, and to seek to resolve those differences through negotiations. They can even be expected to criticize Israeli policies. But the gratuitous demonization of Jews serves on to incite popular sentiment against Jewish people, and by extension, the State of Israel. Instead, these governments should be seeking to promote religious tolerance, and to prepare their populations for peace with Israel.

Egypt is a friend and ally of the United States. It is a significant recipient of U.S. foreign assistance because successive administrations of both parties have found the alliance to serve our national interests. But we have a right to expect better from our friends. We have a right to expect that they will not intentionally promote false and racist views that incite religious intolerance. As the State Department spokesman, Richard Boucher, said recently, "We don't think government TV stations should be broadcasting programs that we consider racist and untrue."

Anti-Semitism is a form of racism, and we need to condemn it whenever it occurs. The resolution I am offering today with Sen. SMITH condemns any effort that lends legitimacy to the Protocols of the Elders of Zion, supports the State Department's criticism of the Egyptian television series "Horseman Without a Horse", and urges the Government of Egypt and other Arab governments to refrain from broadcasting racist and untrue material, and to speak out against such incitement.

I look forward to working with my colleagues to pass this import resolution.

ARCHIE EDWARDS BLUES HERITAGE FOUNDATION

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 367 introduced earlier today by Senators HATCH and BARKLEY.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 367) recognizing the community services of the Archie Edwards Blues Heritage Foundation, designating the fortnight beginning November 29, 2002, as the "Blues Heritage Appreciation Fortnight", and designating Friday, November 29, 2002, as "Blues Friday."

There being no objection, the Senate proceeded to consider the resolution.

Mr. REID. I ask unanimous consent that the resolution and the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 367) was agreed to.

The preamble was agreed to.

The resolution (S. Res. 367), with its preamble, reads as follows:

S. RES. 367

Whereas Mr. Archie Edwards was a talented musician who devoted his life to playing the blues and inspiring others to learn and appreciate music;

Whereas Mr. Archie Edwards was a self-taught musician whose music was acclaimed throughout the United States, Canada, and Europe;

Whereas Mr. Archie Edwards, for 40 years, provided a haven in the District of Columbia for all those who loved the blues to play, listen, and socialize;

Whereas the Archie Edwards Blues Heritage Foundation is a nonprofit organization dedicated to preserving Mr. Edwards' memory and extending the positive influence of his music in the Washington, D.C. community;

Whereas the Archie Edwards Blues Heritage Foundation is committed to carrying on Mr. Edwards' legacy by maintaining an open forum for people in the community to meet, learn, and share the music he loved;

Whereas the Archie Edwards Blues Heritage Foundation supports and expands community outreach programs that provide entertainment and promote the blues to citizens in nursing homes, schools, hospitals, and other venues; and

Whereas the Archie Edwards Blues Heritage Foundation recognizes the importance that the blues has played in our country's heritage and has preserved and promoted the blues as a unique American art form: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the community services of the Archie Edwards Blues Heritage Foundation;

(2) recognizes the importance of blues in the history of American culture;

(3) designates the fortnight beginning November 29, 2002, as the "Blues Heritage Appreciation Fortnight"; and

(4) designates Friday, November 29, 2002, as "Blues Friday".

CALLING FOR EFFECTIVE MEASURES TO END SEXUAL EXPLOITATION OF REFUGEES

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to H. Con. Res. 349.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 349) calling for effective measures to end sexual exploitation of refugees.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. I ask unanimous consent that the concurrent resolution be agreed to, the preamble be agreed to, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 349) was agreed to.

The preamble was agreed to.

DECLINING WORLD COFFEE PRICES

Mr. REID. I ask consent that the Senate proceed to the consideration of S. Res. 368, introduced earlier today by Senators LEAHY, DODD, SPECTER, and FEINSTEIN.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S.R. 368) expressing the sense of the Senate concerning the decline of world coffee prices and its impact on developing nations.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 368) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 368

Whereas since 1997 the price of coffee has declined nearly 70 percent on the world market and has recently reached its lowest level in a century;

Whereas the collapse of coffee prices has resulted in a widespread humanitarian crisis for 25,000,000 coffee growers and for more than 50 developing countries where coffee is a critical source of rural employment and foreign exchange earnings;

Whereas, according to a recent World Bank report, 600,000 permanent and temporary coffee workers in Central America have been left unemployed in the last two years;

Whereas the World Bank has referred to the coffee crisis as 'the silent Mitch', equating the impact of record-low coffee prices upon Central American countries with the damage done to such countries by Hurricane Mitch in 1998;

Whereas 6 of 14 immigrants who died in the Arizona desert in may 2001 were small coffee farmers from Veracruz, Mexico;

Whereas The Washington Post, The New York Times, and The Wall Street Journal report that cultivation of illicit crops such as coca and opium poppy is increasing in traditional coffee-growing countries, such as Colombia and Peru, which have been adversely affected by low international coffee prices;

Whereas the economies of some of the poorest countries in the world, particularly those in Africa, are highly dependent on trade in coffee;

Whereas coffee accounts for approximately 80 percent of export revenues for Burundi, 54 percent of export revenues for Ethiopia, 34 percent of export revenues for Uganda, and 31 percent of export revenues for Rwanda;

Whereas, according to the Oxfam International Report 'Mugged: Poverty in your Coffee Cup', in the Dak Lak province of Vietnam, one of the lowest-cost coffee producers in the world, the price farmers receive for their product covers as little as 60 percent of their costs of production;

Whereas on February 1, 2002, the International Coffee Organization (ICO) passed Resolution 407, which calls on exporting member countries to observe minimum standards for exportable coffee and to provide for the issuance of ICO certificates of origin according to those standards and also calls on importing member countries to 'make their best endeavors to support the objectives of the programme';

Whereas both the Specialty Coffee Association of America (SCAA) and the National Coffee Association (NCA) support ICO Resolution 407 and have publicly advocated for the United States to rejoin the International Coffee Organization;

Whereas the United States Agency for International Development (USAID) has already established coffee sector assistance programs for Colombia, Bolivia, the Dominican Republic, East Timor, El Salvador, Ethiopia, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru, Rwanda, Tanzania, and Uganda; and

Whereas House Report 107-663, highlights the coffee price crisis as a global issue and 'urges USAID to focus its rural development and relief programs on regions severely affected by the coffee crisis, especially in Colombia': Now, therefore, be it

Resolved, That—

(1) it is the sense of the Senate that—

(A) the United States should adopt a global strategy to respond to the coffee crisis with coordinated activities in Latin America, Africa, and Asia to address the short-term humanitarian needs and long-term rural development needs of countries adversely affected by the collapse of coffee prices; and

(B) the President should explore measures to support and complement multilateral efforts to respond to the global coffee crisis; and

(2) the Senate urges private sector coffee buyers and roasters to work with the United States Government to find a solution to the crisis which is economically, socially, and environmentally sustainable for all interested parties, and that will address the fundamental problem of oversupply in the world coffee market.

PROTECTION OF FAMILY FARMERS ACT OF 2002

Mr. REID. I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 628, H.R. 5472.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

> A bill (H.R. 5472) to extend for 6 months the period for which chapter 12 title 11 of the United States Code is enacted.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, I am pleased that the Senate is passing H.R. 5472, to extend family farmer bankruptcy protection until July 1, 2003.

Unfortunately, too many family farmers have been left in legal limbo in bankruptcy courts across the country because Chapter 12 of the Bankruptcy Code is still a temporary measure. This is the fifth time that this Congress must act to restore or extend basic bankruptcy safeguards for family farmers because Chapter 12 is still a temporary provision despite its first passage into law in 1986. Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming.

In 2000 and 2001, for example, the Senate, then controlled by the other party, failed to take up a House-passed bill to retroactively renew Chapter 12 and, as a result, family farmers lost Chapter 12 bankruptcy protection for 8 months. Another lapse of Chapter 12 lasted more than 6 months in this Congress. Enough is enough. It is time for Congress to make Chapter 12 a permanent part of the Bankruptcy Code to provide a stable safety net for our nation's family farmers.

I strongly supported Senator CARNAHAN's bipartisan amendment to make Chapter 12 a permanent part of the Bankruptcy Code as part of the Senate-passed farm bill. The Senate unanimously approved the Carnahan amendment by a 93–0 vote. Unfortunately, the House majority objected to including the Carnahan amendment in the farm bill conference report and agreed to an extension of Chapter 12 only through the end of this year.

In the bipartisan bankruptcy reform conference, we again tried to make Chapter 12 permanent and update and expand its coverage. During our conference negotiations, we adopted most of the Senate-passed provisions, including those authored by Senator GRASSLEY to make Chapter 12 permanent and those authored by Senator FEINGOLD to strengthen Chapter 12 to help our family farmers with the difficulties they face. Just last week, however, the House majority again scuttled our bipartisan efforts by failing to pass the rule to consider the bipartisan conference report on the Bankruptcy Abuse Prevention and Consumer Protection Act.

This week, Senator GRASSLEY and I introduced the family farmer provisions in the bipartisan bankruptcy conference report in S. 3174, the "Protection of Family Farmers and Family Fisherman Act of 2002." Our bipartisan bill makes Chapter 12 a permanent part of the Bankruptcy Code so family farmer bankruptcy protection will no longer lapse and force farmers into a legal limbo. Family farmers deserve these enhanced and permanent protections to help them prevent foreclosures and forced auctions. I know Senator GRASSLEY, Senator CARNAHAN, Senator FEINGOLD and others on both sides of the aisle strongly support permanent and expanded bankruptcy protection for family farmers. I hope the Senate and the House will quickly pass our bipartisan bill in the next Congress.

In the meantime, I look forward to the President signing into law this legislation to extend basic bankruptcy protection for our family farmers through the first six months of next year.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed and the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 5472) was read the third time and passed.

DESIGNATING RECEIPTS COLLECTED FROM MINERAL LEASING

Mr. REID. Mr. President, I ask unanimous consent that the Armed Services Committee be discharged from further consideration of H.R. 2187 and the Senate now proceed to the consideration of the bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

> A bill (H.R. 2187) to amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2187) was read the third time and passed.

CONSENTING TO CERTAIN AMENDMENTS TO THE NEW HAMPSHIRE-VERMONT INTERSTATE SCHOOL COMPACT

Mr. REID. I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 760, H.R. 3180.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

> A bill (H.R. 3180) to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 3180) was read the third time and passed.

Mr. LEAHY. Mr. President, I am very pleased that H.R. 3180, legislation to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact, has been adopted by the Senate. This legislation was passed out of the Senate Judiciary Committee last week and I am pleased my colleagues have joined me in supporting its passage today.

There are a handful of Vermont communities that share a school district with their neighbors across the border in New Hampshire. Congress first approved of the New Hampshire-Vermont Interstate School Compact in 1969 to allow these interstate districts to be put in place. H.R. 3180 amends the original Compact by providing these interstate districts with local flexibility regarding how to conduct bond votes for their school construction projects.

Last year, residents of the Dresden School District, one of two interstate school districts formed under this Compact, voted to change the way bond votes are conducted in their communities. The Vermont and New Hampshire Legislatures approved these changes, as did the U.S. House of Representatives when it passed H.R. 3180, sponsored by Representative CHARLIE BASS of New Hampshire and my colleague from Vermont, Representative BERNIE SANDERS, after a 425 to 0 vote to suspend the rules.

This bill will allow local schools to make local choices about the best way to spend their dollars. While I regret that this simple piece of legislation was not agreed to sooner, I applaud its passage today.

INDIAN PROGRAMS REAUTHORIZATION AND TECHNICAL AMENDMENT

Mr. REID. Mr. President, I ask unanimous consent the Senate proceed to Calendar No. 556, S. 2711.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2711) to reauthorize and improve programs relating to Native Americans.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause.

Mr. REID. Mr. President, I ask unanimous consent the committee substitute amendment be withdrawn and a substitute amendment by Senator INOUYE at the desk be considered, the Inouye amendment to the Inouye substitute amendment be considered and agreed to, the Inouye substitute amendment, as amended, be agreed to, the bill, as amended, be read a third time and passed, and the motion to reconsider be laid on the table, all with no intervening action or debate, and any statements be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was withdrawn.

The Senate proceeded to consider amendment No. 4980, in the nature of a substitute.

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The amendment (No. 4981) to amendment No. 4980 was agreed to.

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The amendment (No. 4980), in the nature of a substitute as amended, was agreed to.

The bill (S. 2711), as amended, was read the third time and passed, as follows:

[The bill will be printed in a future edition of the RECORD].

FISHERIES CONSERVATION ACT OF 2002

Mr. REID. I ask unanimous consent the Senate proceed to Calendar No. 753, H.R. 1989.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1989) to reauthorize various fishing conservation management programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

H.R. 1989

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the "Fisheries Conservation Act of 2001".

[TITLE I—INTERJURISDICTIONAL FISHERIES ACT OF 1986

[SEC. 101. REAUTHORIZATION OF INTERJURISDICTIONAL FISHERIES ACT OF 1986.

[Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

[(1) by amending subsection (a) to read as follows:

["(a) GENERAL APPROPRIATIONS.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

["(1) $4,900,000 for fiscal year 2002;

["(2) $5,400,000 for each of fiscal years 2003 and 2004; and

["(3) $5,900,000 for each of fiscal years 2005 and 2006."; and

[(2) in subsection (c) by striking "$700,000 for fiscal year 1997, and $750,000 for each of the fiscal years 1998, 1999, and 2000" and inserting "$800,000 for fiscal year 2002, $850,000 for each of fiscal years 2003 and 2004, and $900,000 for each of fiscal years 2005 and 2006".

[SEC. 102. PURPOSES OF THE INTERJURISDICTIONAL FISHERIES ACT OF 1986.

[Section 302 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4101) is amended by striking "and" after the semicolon at the end of paragraph (1), striking the period at the end of paragraph (2) and inserting "; and", and adding at the end the following:

["(3) to promote and encourage research in preparation for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of interjurisdictional fishery resources throughout their range.".

[TITLE II—ANADROMOUS FISH CONSERVATION ACT

[SEC. 201. REAUTHORIZATION OF ANADROMOUS FISH CONSERVATION ACT.

[Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

["AUTHORIZATION OF APPROPRIATIONS

["SEC. 4. (a)(1) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

["(A) $4,500,000 for fiscal year 2002;

["(B) $4,750,000 for each of fiscal years 2003 and 2004; and

["(C) $5,000,000 for each of fiscal years 2005 and 2006.

["(2) Sums appropriated under this subsection are authorized to remain available until expended.

["(b) Not more than $625,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.".

[SEC. 202. RESEARCH ON AND USE OF ECOSYSTEMS AND INTERSPECIES APPROACHES TO THE CONSERVATION AND MANAGEMENT.

[The first section of the Anadromous Fish Conservation Act (16 U.S.C. 757a) is amended in subsection (b) by inserting "(1)" after "(b)", and by adding at the end the following:

["(2) In carrying out responsibilities under this section, the Secretary shall conduct, promote, and encourage research in preparation for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of anadromous and Great Lakes fishery resources.".

[TITLE III—ATLANTIC COASTAL FISHERIES

[SEC. 301. REAUTHORIZATION OF ATLANTIC STRIPED BASS CONSERVATION ACT.

[Section 7(a) of the Atlantic Striped Bass Conservation Act (16 U.S.C. 1851 note) is amended by striking "and 2003" and inserting "2003, 2004, 2005, and 2006".

[SEC. 302. REAUTHORIZATION OF ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT.

[Section 811(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5108) is amended by striking "2005" and inserting "2006".

[SEC. 303. AMENDMENTS TO ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT.

[(a) FINDINGS.—Section 802(a) of the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101(a)) is amended by adding at the end the following:

["(7) The understanding of the interactions of species in the maritime environment and the development of ecosystems-based approaches to fishery conservation and management lead to better stewardship and sustainability of coastal fishery resources.

["(8) Federal and State scientists should gather information on the interaction of species in the marine environment and provide this scientific information to Federal and State managers.".

[(b) PURPOSE.—Section 802(b) of such Act (16 U.S.C. 5101(b)) is amended to read as follows:

["(b) PURPOSE.—The purpose of this title is to support and encourage the development, implementation, and enforcement of effective interstate conservation and management of Atlantic coastal fishery resources through the use of sound science and multispecies, adaptive, and ecosystem-based management measures.".

[(c) STATE-FEDERAL COOPERATION IN MULTISPECIES AND ECOSYSTEMS INTERACTION RESEARCH.—Section 804(a) of such Act (16 U.S.C. 5103(a)) is amended by inserting "multispecies and ecosystems interaction research;" after "biological and socioeconomic research;".

[(d) ASSISTANCE FOR RESEARCH REGARDING INTERRELATIONSHIPS AMONG ATLANTIC COASTAL FISHERY RESOURCES AND THEIR ECOSYSTEMS.—Section 808 of such Act (16 U.S.C. 5107) is amended by striking "and" after the semicolon at the end of paragraph (1), redesignating paragraph (2) as paragraph (3), and inserting after paragraph (1) the following:

["(2) research to understand the interrelationships among Atlantic coastal fishery resources and their ecosystems; and".

[TITLE IV—ATLANTIC TUNAS CONVENTION ACT OF 1975

[SEC. 401. REAUTHORIZATION OF THE ATLANTIC TUNAS CONVENTION ACT OF 1975.

[Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

["AUTHORIZATION OF APPROPRIATIONS

["SEC. 10. (a) IN GENERAL.—There are authorized to be appropriated to carry out this Act including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

["(1) For each of fiscal years 2002, 2003, and 2004, $5,480,000.

["(2) For each of fiscal years 2005 and 2006, $5,495,000.

["(b) ALLOCATION.—Of amounts available under this section for each fiscal year—

["(1) $150,000 are authorized for the advisory committee established under section 4 and the species working groups established under section 4A; and

["(2) $4,240,000 are authorized for research activities under this Act and the Act of September 4, 1980 (16 U.S.C. 971i).".

[TITLE V—NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995

[SEC. 501. REAUTHORIZATION OF THE NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995.

[Section 211 of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5610) is amended by striking "2001" and inserting "2006".

[TITLE VI—EXTENSION OF DEADLINE FOR SUBMISSION OF OCEAN POLICY REPORT

[SEC. 601. EXTENSION OF DEADLINE.

[(a) Extension of Deadline.—The Oceans Act of 2000 (Public Law 106–256) is amended—

[(1) in section 3(f)(1) (114 Stat. 647) by striking "18 months" and inserting "27 months";

[(2) in section 3(i) (114 Stat. 648) by striking "30 days" and inserting "90 days"; and

[(3) in section 4(a) (114 Stat. 648; 33 U.S.C. 857–19 note) by striking "120 days" and inserting "90 days".

[(b) Authorization of Appropriations.—Section 3(j) of such Act (114 Stat. 648) is amended by striking "$6,000,000" and inserting "$8,500,000".

[(c) Technical Corrections.—Section 3(e) of such Act (114 Stat. 646) is amended—

[(1) in paragraph (1) by striking the colon in the third sentence and inserting a period;

[(2) by inserting immediately after such period the following:

["(2) Notice; Minutes; Public Availability of Documents.—"; and

[(3) by redesignating the subsequent paragraphs in order as paragraphs (3) and (4), respectively.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fisheries Conservation Act of 2002".

TITLE I—INTERJURISDICTIONAL FISHERIES ACT OF 1986

SEC. 101. REAUTHORIZATION OF INTERJURISDICTIONAL FISHERIES ACT OF 1986.

Section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is amended—

(1) by amending subsection (a) to read as follows:

"(a) General Appropriations.—There are authorized to be appropriated to the Department of Commerce for apportionment to carry out the purposes of this title—

"(1) $4,900,000 for fiscal year 2002;

"(2) $5,400,000 for each of fiscal years 2003 and 2004; and

"(3) $5,900,000 for each of fiscal years 2005 and 2006."; and

(2) in subsection (c) by striking "$700,000 for fiscal year 1997, and $750,000 for each of the fiscal years 1998, 1999, and 2000" and inserting "$800,000 for fiscal year 2002, $850,000 for each of fiscal years 2003 and 2004, and $900,000 for each of fiscal years 2005 and 2006".

SEC. 102. PURPOSES OF THE INTERJURISDICTIONAL FISHERIES ACT OF 1986.

Section 302 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4101) is amended—

(1) by striking "and" after the semicolon at the end of paragraph (1);

(2) by striking "range." in paragraph (2) and inserting "range; and"; and

(3) adding at the end the following:

"(3) to promote and encourage research in preparation for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of interjurisdictional fishery resources throughout their range.".

TITLE II—ANADROMOUS FISH CONSERVATION ACT

SEC. 201. REAUTHORIZATION OF ANADROMOUS FISH CONSERVATION ACT.

Section 4 of the Anadromous Fish Conservation Act (16 U.S.C. 757d) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 4. (a)(1) There are authorized to be appropriated to carry out the purposes of this Act not to exceed the following sums:

"(A) $4,500,000 for fiscal year 2002;

"(B) $4,750,000 for each of fiscal years 2003 and 2004; and

"(C) $5,000,000 for each of fiscal years 2005 and 2006.

"(2) Sums appropriated under this subsection are authorized to remain available until expended.

"(b) Not more than $625,000 of the funds appropriated under this section in any one fiscal year shall be obligated in any one State.".

SEC. 202. RESEARCH ON AND USE OF ECOSYSTEMS AND INTERSPECIES APPROACHES TO THE CONSERVATION AND MANAGEMENT.

The first section of the Anadromous Fish Conservation Act (16 U.S.C. 757a) is amended in subsection (b) by inserting "(1)" after "(b)", and by adding at the end the following:

"(2) In carrying out responsibilities under this section, the Secretary shall conduct, promote, and encourage research in preparation for the implementation of the use of ecosystems and interspecies approaches to the conservation and management of anadromous and Great Lakes fishery resources.".

TITLE III—ATLANTIC TUNAS CONVENTION ACT OF 1975

SEC. 301. REAUTHORIZATION OF THE ATLANTIC TUNAS CONVENTION ACT OF 1975.

Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 10. (a) In General.—There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

"(1) For each of fiscal years 2002, 2003, and 2004, $5,480,000.

"(2) For each of fiscal years 2005 and 2006, $5,495,000.

"(b) Allocation.—Of amounts available under this section for each fiscal year—

"(1) $150,000 are authorized for the advisory committee established under section 4 and the species working groups established under section 4A; and

"(2) $4,240,000 are authorized for research activities under this Act and the Act of September 4, 1980 (16 U.S.C. 971i).".

TITLE IV—NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995

SEC. 401. REAUTHORIZATION OF THE NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF 1995.

Section 211 of the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5610) is amended by striking "2001" and inserting "2006".

TITLE V—EXTENSION OF DEADLINE FOR SUBMISSION OF OCEAN POLICY REPORT

SEC. 501. EXTENSION OF DEADLINE.

(a) Extension of Deadline.—The Oceans Act of 2000 (Public Law 106–256) is amended—

(1) in section 3(i) (114 Stat. 648) by striking "30 days" and inserting "90 days"; and

(2) in section 4(a) (114 Stat. 648; 33 U.S.C. 857–19 note) by striking "120 days" and inserting "90 days".

(b) Authorization of Appropriations.—Section 3(j) of such Act (114 Stat. 648) is amended by striking "$6,000,000" and inserting "$8,500,000".

(c) Technical Corrections.—Section 3(e) of such Act (114 Stat. 646) is amended—

(1) by striking "it:" in paragraph (1) and inserting "it.";

(2) by inserting immediately after such period the following:

"(2) Notice; minutes; public availability of documents.—"; and

(3) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively.

Ms. SNOWE. Mr. President, I am pleased that today the Senate is considering passage of H.R. 1989 and urge my colleagues to join me in supporting this bill.

The Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., the "Act", and the National Standards Guidelines developed and implemented by the Secretary of Commerce set forth specific standards for establishing, amending, and re-setting fishery rebuilding plans and timelines developed under that Act's rebuilding provisions, codified in, among other provisions, 16 U.S.C. 1854(e). New information and scientific analyses become available through time, and there can be a need to amend and adjust rebuilding plans and timelines based on such new information and analyses. In certain instances, such information and analyses indicating that biomass rebuilding targets can and should be substantially increased. These increases in biomass targets, especially in the midst of an on-going rebuilding plan, may, in appropriate circumstances, require flexibility to ensure that the rebuilding program accomplishes the full range of the Act's goals and national standards. The Secretary of Commerce, who is charged with implementing the Act, has the discretion to provide flexibility in a rebuilding plan or timeline when the biomass target for a fish species or stock is substantially increased. The flexibility confirmed in Section 604 of H.R. 1989 clarifies the Secretary's discretion contained in the Act and does not limit or otherwise constrain additional areas for flexibility in rebuilding contained within the Act.

This section clarifies the flexibility that Congress provided the Secretary in the Sustainable Fisheries Act of 1996. This flexibility is necessary due to the unanticipated event of biomass targets being substantially increased during a rebuilding period. Schedules for ending overfishing and rebuilding overfished fisheries are required by the Sustainable Fisheries Act and must be specified. The Sustainable Fisheries Act does, however, provide the Councils and the Secretary with a significant degree of flexibility in determining time frames for ending overfishing and rebuilding depleted fisheries.

For instance, the requirement that schedules for ending overfishing and rebuilding fisheries be "as short as possible" and the conditional 10-year rebuilding period deadline provide valuable standards to help guide the councils in the development of plans to end overfishing and rebuild fisheries. In drafting this provision, however, Congress clearly understood that fisheries are not managed in a vacuum and that rebuilding schedules should be based not only on the biological and ecological conditions of the fishery, but also on the needs of fishing communities as well as any international management measures that may apply. The relative weight of a particular factor would depend on the circumstances facing a fishery and would be determined by the councils, but the biology and life history characteristics of a species will always be very important in determining the ultimate rebuilding schedule.

Properly construed, the Sustainable Fisheries Act rebuilding provisions permit the councils to set a longer rebuilding schedule in cases where the stock or stocks at issue grow relatively slowly, and/or the size of the stock is sufficiently small that even under conditions of moderate or no fishing mortality, rebuilding will necessarily take a significantly longer period of time.

In the case of a slower-growing species, the Sustainable Fisheries Act provisions allow a council to establish a rebuilding schedule longer than 10 years to accommodate the life history characteristics, including growth rates, of the species. The term "biology of the stock of fish" was included in section 304(e)(4)(A)(ii) so that councils would have the ability to devise individual rebuilding schedules in harmony with the biological parameters of a fish population's growth capacity.

Section 304(e)(4)(A)(ii) also enables the Councils to establish rebuilding schedules longer than 10 years if the stock or stocks in question are managed under an international agreement to which the U.S. is a party, and any management measures or recommendations approved pursuant to such an agreement contain a rebuilding schedule longer than 10 years. In such circumstances, the rebuilding schedule developed under Section 304(e)(4), as well as other management provisions under the Magnuson-Stevens Act, must be consistent with the rebuilding schedule and associated management measures and recommendations under the international agreement.

In drafting section 304(e)(4)(A), Congress wanted to ensure that U.S. harvesters of species managed under an international regime were not saddled with a disproportionate conservation burden and not placed at a competitive disadvantage compared to their counterparts from other countries that are parties to the regime.

Mr. REID. Mr. President, it is my understanding Senators KERRY and HOLLINGS have two amendments at the desk. I ask it be in order to consider the amendments en bloc; the amendments be agreed to en bloc; the motions to reconsider be laid on the table en bloc; the committee-reported substitute amendment, as amended, be agreed to; the motion to reconsider be laid on the table; the bill as amended, be read three times, passed, the motion to reconsider be laid on the table; and consideration of these amendments appear separately in the RECORD and any statements be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4982) was agreed to, as follows:

AMENDMENT NO. 4982

(Purpose: To provide authority for the acceptance of voluntary services)

At the appropriate place, add the following:

SEC. . AUTHORITY TO ACCEPT VOLUNTEER SERVICES.

Section 303 (33 U.S.C. 892a), is amended by adding at the end the following:

"(d) AUTHORITY TO ACCEPT VOLUNTEER SERVICES.—To help fulfill the duties of the Administrator, including authorities under the Act of 1947 (33 U.S.C. 883a et seq.), this Act, or in response to a maritime emergency, the Administrator may—

"(1) establish a volunteer program;

"(2) enter into special agreements with qualified organizations to assist in the implementation of a volunteer program; and

"(3) provide funding under the special agreement to the qualified organization for the purposes of assisting in the administration of the volunteer programs and for procuring and maintaining insurance or other coverage for the organization and its members when conducting volunteer activities.

"(e) LEGAL STATUS OF VOLUNTEERS.—Paragraphs (1) through (5) of section 7(c) of the Fish and Wildlife Act of 1956 (16 U.S.C. 742f(c)) shall apply to volunteers providing services to the Administrator under subsection (c) of this section, except that any reference in that section to the Secretary of the Interior or the Secretary of Commerce shall be deemed to refer to the Administrator.

"(f) QUALIFIED ORGANIZATION.—In this section, the term 'qualified organization' means a non-governmental, not-for-profit organization, determined by the Administrator to have demonstrated expertise in boating safety and a commitment to improving the quality of hydrographic services and related oceanographic and meteorological information that is made available to mariners.".

Mr. KERRY. Mr. President, I rise this evening as Chairman of the Oceans, Atmosphere and Fisheries Subcommittee to offer a few remarks concerning H.R. 1989, to which I am offering a Senate amendment, along with the ranking member of the Subcommittee Ms. SNOWE.

The Senate amendment includes a number of provisions that will help fishermen around this country. Our amendment contains two important provisions that will help identify and address overcapacity in our fisheries. The first is a report from the Secretary of Commerce identifying the top 20 fisheries in the United States with excess capacity. In order to restore and maintain sustainable fisheries, we need to ensure we understand and develop a plan to address overcapacity that may be undermining our efforts to rebuild our stocks. By ranking the fisheries with the most serious capacity problems, we can target resources at reducing capacity in these fisheries and allow some fishermen to retire with dignity.

This amendment also includes a provision that would require the Secretary of Commerce in coordination with the New England Fisheries Management Council to provide technical assistance and use all tools at his disposal—including the Coastal Zone Management Act planning procedures—to help industry develop a capacity reduction program for New England groundfish. Funding has already been provided for such an industry-funded buyout, but now our industry must consider what kind of plan makes sense for our fishing communities. We simply have too many fishermen chasing too few fish in New England. I know the entire New England delegation has enormous sympathy for our hard-working fishermen, and we want to help these families as they struggle against a tide of regulations. The first step to assisting these families is to evaluate and plan for the opportunities that will be available once our fisheries are rebuilt. Then people can make some informed decisions about retiring from the fishery. It is my hope that the Secretary in coordination with New England Fishery Management Council can develop such a plan.

This amendment also contains a provision that clarifies the flexibility that Congress provided the Secretary of Commerce in the 1996 reauthorization of the Magnuson-Stevens Act. Current law requires stocks identified as overfished to be rebuilt within 10 years, except that additional time is provided where the biology of the stocks, other environmental conditions, or international management measures dictate otherwise. Ms. SNOWE and I have included a provision clarifying that under existing law the Secretary of Commerce may extend rebuilding beyond 10 years if the rebuilding target we are working towards increases by 100 percent or more over the original target set by the Secretary at the start of the rebuilding plan. The extension should only be granted as long as the fishery meets or exceeds the original target and if the Secretary certifies that the overfishing requirements of the Act are met and that rebuilding will continue to occur.

We are not endorsing any backsliding on conservation, nor encouraging overfishing, but trying to deal with primarily a logistical problem: a mid-course increase in the targets based on new scientific information. Recently the National Marine Fisheries Service re-analysis of biological reference points resulted in more than doubling our rebuilding targets on several species in the Northeast multispecies fishery during year 3 of a 10-year rebuilding plan. This development generated confusion in the region, but we believe there is a simple response. Under the law, we believe the Secretary of Commerce has the authority to provide a biologically-based and reasonable time extension for these stocks, provided it is as short as possible, rebuilding continues, overfishing does not occur, and the original targets are met. This is only a commonsense response to this situation—a transition rule, if you will. A substantial change in biomass targets in the middle of a rebuilding plan was never envisioned when NMFS wrote the implementing regulations, but such a response would be consistent with the Act.

This amendment also contains a provision that would aid in implementing the industry-funded buyout in the West Coast groundfish fishery which Congress authorized last year. I know that my colleagues from Oregon, Washington and California care very much about this provision. I am happy that we could accommodate them with this legislation and help the fishing communities on the West Coast that are reeling from severe overfishing on stocks that are long lived, slow growing and slow to reproduce.

Finally, this amendment includes important provisions authorizing national approaches to cooperative research, independent peer review of data collection and assessment methods, fisheries training and outreach, and cooperative enforcement. All of these proposals are based on programs that have worked in practice or from recommendations made to Congress by the National Research Council. These provisions will improve the management of our fisheries by improving the science that underlies fishery management decisions or by enhancing local law enforcement efforts. These provisions will also ensure that the fishing industry has a seat at the table in discussions about fishery science and management. We have long supported the need to bridge the science gap so that scientists and fishermen can engage in productive dialogue on fishery management. This is essential to developing cooperative plans to achieving a common goal: sustainable fisheries for our communities.

The amendment (No. 4983) was agreed to.

(The text of the amendment is printed in today's RECORD under "Text of Amendments.")

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (H.R. 1989), as amended, was read the third time and passed.

Mr. REID. Mr. President, I yield to my friend, the junior Senator from Illinois, Mr. FITZGERALD.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. FITZGERALD. Mr. President, I ask unanimous consent to make a statement on the passage of the Holocaust Restitution and Tax Fairness Act of 2002.

Mr. REID. How long is that statement going to take?

Mr. FITZGERALD. I think it is just a page and a half.

Mr. REID. I think you can have that.

Mr. FITZGERALD. I appreciate the accommodation of my great friend from the State of Nevada.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator will proceed.

HOLOCAUST RESTITUTION TAX FAIRNESS ACT OF 2002

Mr. FITZGERALD. Mr. President, this year we mark the 57th anniversary of the end of the Holocaust. There are as many as 10,000 survivors of the Holocaust in my home State of Illinois, and over 100,000 in the entire United States, with an average age of over 80.

Last year, Congress passed legislation I introduced exempting restitution paid to Holocaust victims and their families from Federal income tax. Unfortunately, this had to be done as an amendment to the 2001 tax relief bill, all of the provisions of which expire at the end of the year 2010. In other words, under current law, the tax exemption afforded to Holocaust restitution payments by last year's legislation will expire on December 21, 2010.

According to current estimates, there will be over 90,000 Holocaust survivors in the year 2010, and over 35,000 in 2020. Without the assurance of permanence in Federal tax policy towards Holocaust restitution payments, victims of the Holocaust and their families will suffer significant risk and uncertainty in tax planning and other important personal decisions.

The Federal Government should not make one dime on Holocaust restitution, ever. The legislation we pass today—the Holocaust Restitution Tax Fairness Act of 2002—addresses this problem by ensuring that Holocaust restitution and compensation payments will never be taxed by the federal government.

I want to thank the sixteen Senators who cosponsored this bill, as well as Representative CLAY SHAW, who spearheaded House passage of the House version of this bill earlier this year. I also want to thank the Anti-Defamation League, B'nai B'rith International, the Conference on Jewish Material Claims, the International Commission on Holocaust Era Insurance Claims, the American Jewish Committee, the Union of Orthodox Jewish Congregations of America, the Jewish Council for Public Affairs, and the American Gathering of Jewish Holocaust Survivors—the largest organization of Holocaust survivors in America. The support of these groups was critical in shepherding this legislation through the Senate.

After more than 50 years of injustice, Holocaust survivors and their families are reclaiming what is rightfully theirs. In passing this legislation today, Congress has done its part to protect the proceeds—and make that protection permanent.

REPEALING THE SUNSET OF THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of S. 2577 and that the Senate proceed to the immediate consideration of S. 2577 and H.R. 4823 en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will read the bills by title en bloc.

The legislative clerk read as follows:

A bill (S. 2577) to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime;

A bill (H.R. 4823) to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime.

There being no objection, the Senate proceeded to consider the bills.

Mr. FITZGERALD. Mr. President, I ask unanimous consent that the bills be read a third time and passed, the motion to reconsider be laid upon the table en bloc, with no intervening action or debate, that any statements related to the bill be printed in the RECORD, and that the consideration of these items appear separately in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2577) was read the third time and passed, as follows:

S. 2577

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Holocaust Restitution Tax Fairness Act of 2002".

SEC. 2. REPEAL OF APPLICABILITY OF SUNSET OF THE ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 WITH RESPECT TO EXCLUSION FROM FEDERAL INCOME TAX FOR RESTITUTION RECEIVED BY VICTIMS OF NAZI REGIME.

Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by adding at the end the following new subsection:

"(c) EXCEPTION.—Subsection (a) shall not apply to section 803 (relating to no federal income tax on restitution received by victims of the Nazi regime or their heirs or estates).".

The bill (H.R. 4823) was read the third time and passed.

Mr. President, I yield the floor.

Mr. REID. Mr. President, I congratulate my friend on the passage of this legislation. I appreciate the Senator's persistence. It is very important legislation. There are a lot of happy old people today who have been waiting for a continuation of these benefits for a long time. So I thank the Senator very much for his work.

PRIVILEGES OF THE FLOOR

Mr. REID. Mr. President, I ask unanimous consent that the staff of Senator THURMOND be granted floor privileges for the next half hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

HYDROGRAPHIC SERVICES IMPROVEMENT ACT AMENDMENTS OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4883, which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4883) to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. HOLLINGS. Mr. President, I rise today to comment on H.R. 4883, a bill to reauthorize the Hydrographic Services Improvement Act of 1998. This legislation authorizes programs supporting NOAA's strategic missions to promote safe navigation and sustain healthy coasts. I am especially supportive of this bill because it improves the hydrographic services around our Nation and authorizes the activities of the Commissioned Corps of the National Oceanic and Atmospheric Administration, NOAA Corps.

Last week Congress approved the conference report on the Maritime Transportation Security Act, which will enhance security in our Nation's ports. H.R. 4883 authorizes some key provisions to support that effort by authorizing and increasing the number of officers in our NOAA Corps and supporting establishment of real time hydrographic monitoring systems to enhance navigation and safety. NOAA's hydrographic programs share data and work closely with the U.S. Coast Guard and U.S. Navy, and such collaborations have increased since September 11, 2001. Accurate navigation information supports safe and efficient military deployment and seaport evacuation. About 90 percent of all military equipment and supplies for overseas operations are shipped out of U.S. ports.

Seaports have always been an integral part of our Nation's commerce. Today, more than 95 percent of foreign trade by weight moves by sea,, and trade is projected to double by 2020. Vessels are twice as large as they were 50 years ago, testing the capabilities of many ports. Increased ferry, cruise line, and recreational boating activities contribute a rise in seaport congestion. Each year there are about 3,500 commercial and 7,000 recreational boating accidents.

The safe and efficient movement of products depends upon the marine transportation system. Advanced, highly accurate hydrographic, oceanographic and related data improve mariners' situational, three-dimensional awareness, which increases efficiency, reduces risk, and safeguards the marine environment. Such advanced data and services are an integral part of implementing an internationally compliant electronic chart display and information system.

I am especially supportive and pleased that this bill includes language to reauthorize the NOAA Corps. The NOAA Corps, the smallest of the seven uniformed services of the United States, plays a very important role at NOAA and for the Nation. The service, consisting of approximately 265 commissioned officers, provides NOAA with professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries, science, and other related disciplines. The officers serve in assignments within the five major line offices of NOAA: National Ocean Service, NOS; National Weather Service, NWS; National Marine Fisheries Service, NMFS; Oceanic and Atmospheric Research OAR; and National Environmental Satellite, Data, and Information Service, NESDIS. Officers operate ships, fly aircraft into hurricanes, lead mobile field parties, manage research projects, conduct diving operations, and serve in staff positions throughout NOAA. In addition they conduct hydrographic surveys along our Nation's coast in order to make our waters safe for marine commerce.

The NOAA Corps is essential to NOAA's coverage of our seas and our skies; in hours of crisis, NOAA employees have been found issuing the tornado warnings that saved hundreds of lives from a deadly storm, flying into the eyes of hurricanes to gather information about possible landfall, fighting to free three gray whales trapped in the ice, fielding a massive scientific operation to guide the recovery from an oil spill, and monitoring via satellites the movement of hurricanes and other severe storms, volcanic ash and wildfires that threaten communities.

As marine professionals, the NOAA Corps personnel may be transferred to the military services in times of national emergency, and this bill describes a number of technical areas designed to bring the NOAA Corps into line with Department of Defense standards in terms of rank, promotion and pay grade.. This bill authorizes a gradual increase in the number of officers to accommodate the growing needs associated with new Navigation Response Teams that will be established and located in ports around the country.

Finally, this legislation amends the Oceans Act of 2000 to ensure that the commission remains in existence 90 days after the date of the final submission of the report. This will allow the commission to provide advice to Congress on its report and on the President's implementation plan, but will not affect the due date established in the Act for submission of the Commission's report. The amendment would also authorize appropriations of $8.5 million; this increase reflects the resources necessary to hold nine regional meetings—three more than mandated by the Oceans Act. These regional meetings are essential to ensuring the views of all citizens are reflected in the work of the Commission, and I have fully supported this regional outreach effort, and the excellent work of the Ocean Commission and its staff.

I want to thank my colleagues in the House of Representatives for working with me to create a bill that does so much to enhance the safety and navigation along our coasts.

Mr. SARBANES. Mr. President, the legislation before the Senate, H.R. 4883, the Hydrographic Services Improvement Act Amendments of 2002, includes important provisions to reauthorize the NOAA Chesapeake Bay Office, NCBO. This office which was first established in 1992 pursuant to Public Law 102-567, has been the focal point for all of NOAA's activities within the Chesapeake Bay watershed and a vital part of the effort to achieve the long-term goal of the Bay Program—restoring the Bay's living resources to healthy and balanced levels.

During the past 10 years, the NCBO has made great strides in realizing the objectives of the NOAA Authorization Act of 1992 and the overall Bay Program living resource goals. Working with other Bay Program partners, important progress has been made in surveying and assessing fishery resources in the Bay, developing fishery management plans for selected species, undertaking habitat restoration projects, removing barriers to fish passage, and undertaking important remote sensing and data analysis activities. But NOAA's responsibilities to the Bay restoration effort are far from complete. Some populations of major species of fish and shellfish in Chesapeake Bay such as shad and oysters, remain severely depressed, while others, such as blue crab are at risk. Baywide, some 16 of 25 ecologically important species are in decline or severe decline, due to disease, habitat loss, overfishing and other factors. The underwater grasses that once sustained these fisheries are only at a fraction of their historic levels. Research and monitoring must be continued and enhanced to track living resource trends, evaluate the responses of the estuary's biota to changes in their environment and establish clear management goals and progress indicators for restoring the productivity, diversity and abundance of these species. Likewise, education to improve understanding by elementary and secondary students and teachers of the living resources in the Chesapeake Bay ecosystem is a top priority.

In order to ensure NOAA's continued full participation in the Bay's restoration and in meeting with goals and objectives of Chesapeake 2000, in the 106th Congress I introduced legislation, together with several of my colleagues, to reauthorize the NOAA Bay Program office and provide the office with additional resources and authority. No action was taken on that legislation so in the 107th Congress, Senators WARNER, MIKULSKI, ALLEN and I introduced new legislation to reauthorize the NCBO. A similar measure was introduced in the House by Representative GILCHREST and the entire Maryland House delegation and provisions of these bills are included in section 401 of the legislation before us. The provisions authorize and direct NOAA to undertake a special 5-year study, in cooperation with the scientific community of the Chesapeake Bay and appropriate other Federal agencies, to develop the knowledge base required for understanding multispecies interactions and developing multispecies management plans. NOAA is also authorized to carry out a small-scale fishery and habitat restoration grant and technical assistance program to help citizens organizations and local governments in the Chesapeake Bay watershed undertake habitat, fish, and shellfish restoration projects. The legislation authorizes $6 million a year specifically to fund the NOAA Chesapeake Bay office and carry out these two activities. And I want to emphasize that this authorization level is intended to address only NCBO's base budget and these two initiatives and that additional funds are provided for the work that the NCBO conducts in oyster reef restoration, oyster disease research, education and training and blue crab research.

I am disappointed however that the legislation did not include two other provisions which we sought to create an internet-based Coastal Predictions Center for the Chesapeake Bay and to formally authorize the NOAA Chesapeake Bay Office's Bay Watershed Education and Training, B-WET, Program that we established last year. Moreover, it is critical that the funding levels for the NOAA Bay Program activities continue to grow to meet these needs and NOAA's responsibilities in oyster and SAV restoration efforts, among other initiatives. If we are to achieve the ultimate, long-term goal of the Bay Program—protecting, restoring and maintaining the health of the living resources of the Bay—additional financial resources must be provided. I plan to introduce new legislation in the 108th Congress to address these shortcomings and look forward to working with my colleagues on the Commerce Committee in this regard.

Mr. KERRY. Mr. President, I rise today to offer a few comments concerning H.R. 4883, a bill to reauthorize the Hydrographic Services Improvement Act of 1998. I am especially supportive of this bill's inclusion of language to reauthorize the Commissioned Corps of the National Oceanic and Atmospheric Administration, NOAA Corps. The NOAA Corps plays a very important role in NOAA and to our Nation.

The NOAA Corps is the smallest of the seven uniformed services of the United States. The service, consisting of approximately 299 commissioned officers, is an integral part of NOAA, an agency under the U.S. Department of Commerce.

The NOAA Corps traces its roots back to the former U.S. Coast and Geodetic Survey, which dates back to 1807 and President Thomas Jefferson. The NOAA Corps today provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines. The officers serve in assignments within the five major Line Offices of NOAA: National Ocean Service, NOS; National Weather Service, NWS; National Marine Fisheries Service, NMFS; Oceanic and Atmospheric Research, OAR; and National Environmental Satellite, Data, and Information Service, NESDIS. Officers operate ships, fly aircraft into hurricanes, lead mobile field parties, manage research projects, conduct diving operations, and serve in staff positions throughout NOAA. In addition they conduct hydrographic surveys along our nation's coast in order to make our waters safe for marine commerce.

As Chairman of the Oceans, Atmosphere and Fisheries Subcommittee allow me to explain a little about NOAA. NOAA provides timely and precise weather, water and climate forecasts, to monitoring the environment, to managing fisheries and building healthy coastlines, to making our nation more competitive through safe navigation and examining changes in the oceans, NOAA is on the front lines for America.

In hours of crisis, NOAA employees have been found issuing the tornado warnings that saved hundreds of lives from a deadly storm, flying into the eyes of hurricanes to gather information about possible landfall, fighting to free three grey whales trapped in the ice, fielding a massive scientific operation on the shores to guide the comeback from an oil spill, and monitoring by satellites the movement of hurricanes and other severe storms, volcanic ash and wildfires that threaten communities.

In 1882 the U.S.S. *Albatross*, the first government research vessel built exclusively for fisheries and oceanographic research, launched both a future for NOAA's research programs and a fleet of research vessels. Today, NOAA scientists along with their university partners, work to better understand the world in which we live. NOAA research is where much of the work is done that results in better weather forecasts, longer warning lead times for natural disasters, new products from the sea, and a greater understanding of our climate, atmosphere and oceans. NOAA research is done not only in what many would consider traditional laboratories, but also aboard ships, aloft in planes, and beneath the sea in the world's only undersea habitat. NOAA research tools can be as high-tech as supercomputers or as basic as rain gauges. The officers of the NOAA Corps operate NOAA's fleet of research vessels and aircraft. Those of us on the Commerce Committee like to think of NOAA as the little agency that does a lot. The NOAA Corps is an integral part of the NOAA team that brings all of these valuable services to the American public.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The bill (H.R. 4883) was read the third time and passed.

COMMEMORATING THE 30TH ANNIVERSARY OF THE FOUNDING OF THE AMERICAN INDIAN HIGHER EDUCATION CONSORTIUM

Mr. REID. Mr. President, I ask unanimous consent that the Indian Affairs Committee be discharged from further consideration of S. Res. 321, and that the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A resolution (S. Res. 321) commemorating the 30th Anniversary of the Founding of the American Indian Higher Education Consortium (AIHEC).

There being no objection, the Senate proceeded to the consideration of the resolution.

Mr. REID. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table; and that any statements regarding this matter be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The resolution (S. Res. 321) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 321

Whereas the United States of America and Indian Tribes have a unique legal and political relationship as expressed in the U.S. Constitution, treaties, Federal statutes and Executive orders, court decisions, and course of dealing;

Whereas the United States has committed itself to national education excellence including excellence in institutions that educate American Indian and Alaska Native children and adults;

Whereas tribal colleges and universities are fully accredited community-based educational institutions devoted to the education, welfare, and economic advancement of American Indian communities;

Whereas the populations in the communities served by tribal colleges and universities are among the poorest of the Nation, and the services provided by the tribal colleges and universities enable students to train for and obtain jobs that offer social and economic stability, and serve to reduce welfare dependence in these communities;

Whereas tribal colleges and universities are chronically underfunded, and in addition to offering their communities higher education opportunities, also function as community centers, libraries, childcare centers, tribal archives, career and business centers, economic development centers, and public meeting places;

Whereas in 1970 President Nixon issued his now-famous "Special Message to Congress on Indian Affairs" rejecting the failed policies of assimilation and termination and heralding the new era of Indian Self Determination;

Whereas in 1972 six tribal colleges established the American Indian Higher Education Consortium to empower its member institutions through collective action, construct a national support and communications network, and assist Indian communities and Native people in the field of educational achievement, while nurturing, advocating, and protecting American Indian history, culture, art and language;

Whereas the American Indian Higher Education Consortium consists of 32 tribal colleges and universities located in 12 states that enroll approximately 30,000 full- and part-time students from over 250 Federally-recognized Indian Tribes;

Whereas on July 3, 2002, President Bush issued Executive Order 13270 ensuring that tribal colleges and universities are more fully recognized and integrated into the American family of institutions of higher education;

Whereas tribal colleges and universities provide access to information technology critical to full participation in American economic, political and social life, bridging great distances and transforming learning environment; and

Whereas tribal colleges and universities and their Native communities continue to play an integral role in American Indian education including assisting in the implementation of the No Child Left Behind Act of 2002: Now, therefore, be it

Resolved, that the Senate of the United States recognizes the essential role tribal colleges and universities play in American Indian communities, honors the vision and commitment of the founders of the American Indian Higher Education Consortium, and celebrates 30 successful years of implementing that vision for the benefit of American Indian peoples across the United States.

AMENDING THE AGRICULTURAL ADJUSTMENT ACT OF 1938

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. 14, which was introduced earlier today by Senator THURMOND.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 14) to amend the Agricultural Adjustment Act of 1938 to extend the farm reconstitution provision to the 2003 and 2004 crops.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table; and that any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The bill (S. 14) was read the third time and passed, as follows:

S. 14

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FARM RECONSTITUTIONS.

Section 316(a)(1)(A)(ii) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314b(a)(1)(A)(ii)) is amended in the last sentence by striking "2002 crop" and inserting "2002, 2003, and 2004 crops".

AUTHORIZING THE SECRETARY OF AGRICULTURE TO SELL OR EXCHANGE ALL OR PART OF CERTAIN ADMINISTRATIVE SITES

Mr. REID. Mr. President, I ask unanimous consent that the Agriculture Committee be discharged from further consideration of S. 2063, and that the Senate now proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2063) to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

There being no objection, the Senate proceeded to the consideration of the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements thereto be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The bill (S. 2063) was read the third time and passed, as follows:

S. 2063

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SALE OR EXCHANGE OF LAND.

(a) IN GENERAL.—The Secretary of Agriculture (referred to in this Act as the "Secretary") may, under such terms and conditions as the Secretary may prescribe, sell or exchange any right, title, and interest of the United States in and to the following National Forest System land and improvements:

(1) In the Ouachita National Forest—

(A) tract 1, "Work Center and two Residences" (approximately 12.4 acres), as identified on the map entitled "Ouachita National Forest, Waldron, Arkansas, Work Center and Residences" and dated July 26, 2000;

(B) tract 2, "Work Center" (approximately 10 acres), as identified on the map entitled "Ouachita National Forest, Booneville, Arkansas, Work Center" and dated July 26, 2000;

(C) tract 3, "Residence" (approximately ½ acre), as identified on the map entitled "Ouachita National Forest, Glenwood, Arkansas, Residence" and dated July 26, 2000;

(D) tract 4, "Work Center" (approximately 10.12 acres), as identified on the map entitled "Ouachita National Forest, Thornburg, Arkansas, Work Center" and dated July 26, 2000;

(E) tract 5, "Office Building" (approximately 1.5 acres), as identified on the map entitled "Ouachita National Forest, Perryville, Arkansas, Office Building" and dated July 26, 2000;

(F) tract 6, "Several Buildings, Including Office Space and Equipment Depot" (approximately 3 acres), as identified on the map entitled "Ouachita National Forest, Hot Springs, Arkansas, Buildings" and dated July 26, 2000;

(G) tract 7, "Isolated Forestland" (approximately 120 acres), as identified on the map entitled "Ouachita National Forest, Sunshine, Arkansas, Isolated Forestland" and dated July 26, 2000;

(H) tract 8, "Isolated Forestland" (approximately 40 acres), as identified on the map entitled "Ouachita National Forest, Sunshine, Arkansas, Isolated Forestland" and dated July 26, 2000;

(I) tract 9, "Three Residences" (approximately 9.89 acres), as identified on the map entitled "Ouachita National Forest, Heavener, Oklahoma, Three Residences" and dated July 26, 2000;

(J) tract 10, "Work Center" (approximately 38.91 acres), as identified on the map entitled "Ouachita National Forest, Heavener, Oklahoma, Work Center" and dated July 26, 2000;

(K) tract 11, "Residence #1" (approximately 0.45 acres), as identified on the map entitled "Ouachita National Forest, Talihina, Oklahoma, Residence #1" and dated July 26, 2000;

(L) tract 12, "Residence #2" (approximately 0.21 acres), as identified on the map entitled "Ouachita National Forest, Talihina, Oklahoma, Residence #2" and dated July 26, 2000;

(M) tract 13, "Work Center" (approximately 5 acres), as identified on the map entitled "Ouachita National Forest, Big Cedar, Oklahoma, Work Center" and dated July 26, 2000;

(N) tract 14, "Residence" (approximately 0.5 acres), as identified on the map entitled "Ouachita National Forest, Idabel, Oklahoma, Residence" and dated July 26, 2000;

(O) tract 15, "Residence and Work Center" (approximately 40 acres), as identified on the map entitled "Ouachita National Forest, Idabel, Oklahoma, Residence and Work Center" and dated July 26, 2000; and

(P) tract 16, "Isolated Forestland" at sec. 30, T. 2 S., R. 25 W. (approximately 2.08 acres), as identified on the map entitled "Ouachita National Forest, Mt. Ida, Arkansas, Isolated Forestland" and dated August 27, 2001.

(2) In the Ozark-St. Francis National Forest—

(A) tract 1, "Tract 750, District 1, Two Residences, Administrative Office" (approximately 8.96 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Mountain View, Arkansas, Tract 750, District 1, Two Residences, Administrative Office" and dated July 26, 2000;

(B) tract 2, "Tract 2736, District 5, Mountainburg Work Center" (approximately 1.61 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Mountainburg, Arkansas, Tract 2736, District 5, Mountainburg Work Center" and dated July 26, 2000;

(C) tract 3, "Tract 2686, District 6, House" (approximately 0.31 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Paris, Arkansas, Tract 2686, District 6 House" and dated July 26, 2000;

(D) tract 4, "Tract 2807, District 6, House" (approximately 0.25 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Paris, Arkansas, Tract 2807, District 6, House" and dated July 26, 2000;

(E) tract 5, "Tract 2556, District 3, Dover Work Center" (approximately 2.0 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Dover, Arkansas, Tract 2556, District 3, Dover Work Center" and dated July 26, 2000;

(F) tract 6, "Tract 2735, District 2, House" (approximately 0.514 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Jasper, Arkansas, Tract 2735, District 2, House" and dated July 26, 2000; and

(G) tract 7, "Tract 2574, District 2, House" (approximately 0.75 acres), as identified on the map entitled "Ozark-St. Francis National Forest, Jasper, Arkansas, Tract 2574, District 2, House" and dated July 26, 2000.

(b) APPLICABLE AUTHORITIES.—Except as otherwise provided in this Act, any sale or exchange of land described in subsection (a) shall be subject to laws (including regulations) applicable to the conveyance and acquisition of land for National Forest System purposes.

(c) CASH EQUALIZATION.—Notwithstanding any other provision of law, the Secretary may accept cash equalization payments in excess of 25 percent of the total value of the land described in subsection (a) from any exchange under subsection (a).

(d) SOLICITATIONS OF OFFERS.—

(1) IN GENERAL.—In carrying out this Act, the Secretary may use solicitations of offers for sale or exchange under this Act on such terms and conditions as the Secretary may prescribe.

(2) REJECTION OF OFFERS.—The Secretary may reject any offer under this Act if the Secretary determines that the offer is not adequate or not in the public interest.

SEC. 2. DISPOSITION OF FUNDS.

Any funds received by the Secretary through sale or by cash equalization from an exchange—

(1) shall be deposited into the fund established by Public Law 90–171 (commonly known as the "Sisk Act") (16 U.S.C. 484a); and

(2) shall be available for expenditure, without further Act of appropriation, for the acquisition, construction, or improvement of administrative facilities, land, or interests in land for the national forests in the States of Arkansas and Oklahoma.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

ANDERSONVILLE NATIONAL HISTORIC SITE

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of H.R. 4692.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4692) to amend the Act entitled "An Act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes", to provide for the addition of certain donated lands to the Andersonville National Historic Site.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid on the table, and any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4692) was read the third time and passed.

TO AMEND THE OMNIBUS PARKS AND PUBLIC LANDS MANAGEMENT ACT OF 1996

Mr. REID. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of H.R. 1606 and the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 1606) to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for historically black colleges and universities, to decrease the matching requirement related to such appropriations, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I understand Senator BINGAMAN has a technical amendment at the desk. I ask unanimous consent that the amendment be considered and agreed to, the motion to reconsider be laid on the table, the bill be read three times, passed, the motion to reconsider be laid on the table, and any statements related thereto be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 4984) was agreed to, as follows:

On page 3, line 14, strike "such sums as may be necessary" and insert "a total of $10 million for fiscal years 2003 and 2004."

The bill (H.R. 1606), as amended, was read the third time and passed.

COMMUNITY RENEWAL ACT

Mr. REID. Mr. President, a bill that should have passed this year is H.R. 3100, the Community Renewal Act. We could pass this bill tonight. We could have passed it last night or the night before. But some in the minority have objected to its consideration. This is too bad.

I will not offer the UC tonight, other than to say that Senator CLINTON has worked very hard on this bill to get it cleared on our side. It is a bipartisan bill that would allow HUD-designated renewal communities to take advantage of more recent 2000 census data in determining their boundaries.

This bill is important for more States than New York. Senator CLINTON has been the leader on this issue, but it is an important piece of legislation. It affects not only New York but Tennessee, Alabama, Kentucky, Colorado, Louisiana, Ohio, Texas, Mississippi, Washington, and other States.

Senator CLINTON cleared this bill with the chairman and ranking member of the Finance Committee, Senators BAUCUS and GRASSLEY. That was not enough. It is regrettable despite all our efforts Republicans could not clear this fine legislation. I commend the Senator from New York for her good work.

ORDER FOR ADJOURNMENT SINE DIE OR RECESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate stand in adjournment sine die under the provisions of S. Con. Res. 160 or in recess until Friday, November 22, at 2 p.m., if the House has not acted on the adjournment resolution.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. We expect the House to act on the adjournment resolution this coming Friday. Therefore, we expect the Senate will reconvene at 12 noon, January 7, 2003.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THURMOND). Without objection, it is so ordered.

ADJOURNMENT SINE DIE

Mr. DASCHLE. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of S. Con. Res. 160.

There being no objection, at 6:12 p.m., the Senate adjourned sine die.

CONFIRMATION

Executive nomination confirmed by the Senate November 20, 2002:

GOVERNMENT PRINTING OFFICE

BRUCE R. JAMES, OF NEVADA, TO BE PUBLIC PRINTER.

HOUSE OF REPRESENTATIVES—*Friday, November 22, 2002*

The House met at 11 a.m. and was called to order by the Speaker pro tempore (Mr. THORNBERRY).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
November 22, 2002.

I hereby appoint the Honorable MAC THORNBERRY to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer:

Lord of history and Creator of all, America's Thanksgiving prayer has grown mightily since first heard from Pilgrim voices.

Our freedom of religion in this great land has expanded the expression of faith and gratitude of its people. Our freedom of assembly has gathered men, women, and children down through the years from different nations, languages, and from different economic and educational backgrounds to say in unison: "Thank You, Lord."

Our freedom of speech is conditioned by our prayer to You converting hearts to speak with compassion and forgiveness to family and neighbor alike. Our freedom to bear arms is restricted by Your wisdom to defend and protect deeper values such as life and justice.

Around tables throughout this land and the years, prayer has ushered in conversation, decisions, and the establishment of the great American experiment in government. Today, across the tables of this Chamber, we give You thanks for the 107th Congress of the United States of America.

Dear Lord, may our Thanksgiving prayer this year renew deep gratitude in the hearts of all Americans for our many blessings. Deliver us Lord from fear, war, and prejudice of every kind, that we might truly live as Your free children giving You thanks and praise now and for ever. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Indiana (Mr. BURTON) come forward and lead the House in the Pledge of Allegiance.

Mr. BURTON of Indiana led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed with amendments in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 37. An act to amend the National Trails System Act to update the feasibility and suitability studies of 4 national historic trails and provide for possible additions to such trails.

H.R. 695. An act to establish the Oil Region National Heritage Area.

H.R. 980. An act to establish the Moccasin Bend National Historic Site in the State of Tennessee as a unit of the National Park System.

H.R. 1606. An act to amend section 507 of the Omnibus Parks and Public Lands Management Act of 1996 to authorize additional appropriations for Historically Black Colleges and Universities, to decrease the matching requirement related to such appropriations, and for other purposes.

H.R. 1989. An act to reauthorize various fishing conservation management programs, and for other purposes.

H.R. 5005. An act to establish the Department of Homeland Security, and for other purposes.

The message also announced that the Senate has passed bills and concurrent resolutions of the following titles in which the concurrence of the House is requested:

S. 12. An act to amend the Peace Corps Act to promote global acceptance of the principles of international peace and nonviolent coexistence among peoples of diverse cultures and systems of government, and for other purposes.

S. 13. An act to extend authorization for the national flood insurance program.

S. 14. An act to amend the Agricultural Adjustment Act of 1938 to extend the farm reconstitution provision to the 2003 and 2004 crops.

S. 198. An act to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land.

S. 606. An act to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency.

S. 1340. An act to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands.

S. 1816. An act to provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska, and for other purposes.

S. 2063. An act to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites.

S. 2222. An act to resolve certain conveyance and provide for alternative land selection under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes.

S. 2556. An act to authorize the Secretary of the Interior to convey certain facilities to the Fremont-Madison Irrigation District in the State of Idaho.

S. 2577. An act to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime,

S. 2670 An act to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems of the interior West.

S. 2711. An act to reauthorize and improve programs relating to Native Americans.

S. 2872. An act to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois.

S. 3079. An act to authorize the issuance of immigrant visas to, and the admission to the United States for permanent residence of, certain scientists, engineers, and technicians who have worked in Iraqi weapons of mass destruction programs.

S. Con. Res. 159. Concurrent Resolution to correct the enrollment of S. 1843

S. Con. Res. 160. Concurrent Resolution providing for the sine die adjournment of the One Hundred Seventh Congress, Second Session.

The message also announced that the Senate agrees to the amendments of the House to the bills of the Senate of the following titles:

S. 941. An act to revise the boundaries of the Golden Gate National Recreation Area in the State of California, to extend the term of the advisory commission for the recreation area, and for other purposes.

S. 1894. An act to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes.

The message also announced that the Senate disagreed to the amendment of the House to the bill of the Senate of the following title:

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

S. 1105. An act to provide for the expeditious completion of the acquisition of State of Wyoming lands within the boundaries of Grand Teton National Park, and for other purposes.

APPOINTMENT OF HON. RICHARD K. ARMEY TO ACT AS SPEAKER PRO TEMPORE TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS TODAY

The SPEAKER pro tempore laid before the House the following Communication from the Speaker:

HOUSE OF REPRESENTATIVES,
Washington, DC, November 22, 2002.

I hereby appoint the Honorable Richard K. Armey to act as Speaker pro tempore to sign enrolled bills and joint resolutions on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

The SPEAKER pro tempore. Without objection, the appointment is approved.

There was no objection.

APPOINTMENT AS MEMBERS OF BENJAMIN FRANKLIN TERCENTENARY COMMISSION

The SPEAKER pro tempore. Without objection, and pursuant to section 5(a)(2) of the Benjamin Franklin Tercentenary Commission Act (Pub. L. 107–202), the Chair announces the Speaker's appointment of the following Member of the House to the Benjamin Franklin Tercentenary Commission:

Mr. CASTLE of Delaware

and, in addition,

Mrs. Elise DuPont of Rockland, Delaware.

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 20, 2002.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 20, 2002 at 11:35 a.m.:

That the Senate agreed to House amendment S. 1240.

That the Senate agreed to conference report H.R. 3210.

That the Senate passed without amendment H.J. Res. 124.

With best wishes, I am
Sincerely,

JEFF TRANDAHL,
Clerk of the House.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 20, 2002.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 20, 2002 at 1:50 p.m.:

That the Senate passed without amendment H.J. Res. 117.

That the Senate passed without amendment H.R. 38.

That the Senate passed without amendment H.R. 308.

That the Senate passed without amendment H.R. 451.

That the Senate passed without amendment H.R. 706.

That the Senate passed without amendment H.R. 1712.

That the Senate passed without amendment H.R. 1776.

That the Senate passed without amendment H.R. 1814.

That the Senate passed without amendment H.R. 1870.

That the Senate passed without amendment H.R. 1906.

That the Senate passed without amendment H.R. 1925.

That the Senate passed without amendment H.R. 2099.

That the Senate passed without amendment H.R. 2109.

That the Senate passed without amendment H.R. 2115.

That the Senate passed without amendment H.R. 2385.

That the Senate passed without amendment H.R. 2628.

That the Senate passed without amendment H.R. 2818.

That the Senate passed without amendment H.R. 2828.

That the Senate passed without amendment H.R. 2937.

That the Senate passed without amendment H.R. 2990.

That the Senate passed without amendment H.R. 3048.

That the Senate passed without amendment H.R. 3401.

That the Senate passed without amendment H.R. 3449.

That the Senate passed without amendment H.R. 3747.

That the Senate passed without amendment H.R. 3858.

That the Senate passed without amendment H.R. 3909.

That the Senate passed without amendment H.R. 3954.

That the Senate passed without amendment H.R. 4129.

That the Senate passed without amendment H.R. 4638.

That the Senate passed without amendment H.R. 4682.

That the Senate passed without amendment H.R. 4750.

That the Senate passed without amendment H.R. 4874.

That the Senate passed without amendment H.R. 4944.

That the Senate passed without amendment H.R. 4953.

That the Senate passed without amendment H.R. 5099.

That the Senate passed without amendment H.R. 5125.

That the Senate passed without amendment H.R. 5436.

That the Senate passed without amendment H.R. 5738.

With best wishes, I am
Sincerely,

JEFF TRANDAHL,
Clerk of the House.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 21, 2002.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 21, 2002 at 1:42 p.m.

That the Senate agreed to House amendment S. 2017.

That the Senate passed without amendment H.R. 2187.

That the Senate passed without amendment H.R. 3180.

That the Senate passed without amendment H.R. 4692.

That the Senate passed without amendment H.R. 4823.

That the Senate passed without amendment H.R. 4883.

That the Senate passed without amendment H.R. 5472.

That the Senate passed without amendment H. Con. Res. 349.

With best wishes, I am
Sincerely,

JEFF TRANDAHL,
Clerk of the House.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 4 of rule 1, Speaker pro tempore DAVIS signed the following enrolled bills and joint resolutions on Wednesday, November 20, 2002:

H.R. 727, to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act;

H.R. 2595, to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia;

H.R. 3908, to reauthorize the North American Wetlands Conservation Act, and for other purposes;

H.R. 5504, to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes;

H.J. Res. 124, making further continuing appropriations for the fiscal year 2003, and for other purposes;

S. 1010, to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina;

S. 1226, to require the display of the POW/MIA flag at the World War II Memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial;

S. 1907, to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon;

S. 1946, to amend the National Trails System Act to designate the Old Spanish Trail as a national historic trail;

S. 2239, to amend the National Housing Act to simplify the downpayment requirement for FHA mortgage insurance for single family homebuyers;

S. 2712, to authorize economic and Democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries;

S. 3044, to authorize the court services and offender supervision agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation and supervised release;

S. 3156, to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila;

S.J. Res. 53, relative to the convening of the first session of the 108th Congress.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 19, 2002.
Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on November 19, 2002 at 3:15 p.m. and said to contain a message from the President whereby he transmits the State of Small Business Annual Report.

With best wishes, I am
Sincerely,
JEFF TRANDAHL,
Clerk of the House.

STATE OF SMALL BUSINESS ANNUAL REPORT—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Small Business:

To the Congress of the United States:

This report documents the state of small business at the end of the 20th century. Small businesses have always been the backbone of our economy. They perennially account for most innovation and job creation. Small businesses have sustained the economy when it is robust and growing as well as in weaker times when small businesses have put the economy back on the track to long-term growth.

We must work together to give small businesses an environment in which they can thrive. Small businesses are disproportionately affected by Government regulations and paperwork, and I am committed to reducing this burden. We should regulate only where there is a real need, fully justified through rigorous cost-benefit analysis and clear legal authority. And when Government must regulate, it must adopt commonsense approaches. Regulations work best when agencies anticipate and analyze the effects of their proposals on small firms. Rules need to reflect the ability of small businesses to comply.

Another barrier to unleashing the full potential of small business is our tax code. I am committed to reducing taxes for all Americans—especially small businesses. We must eliminate permanently the estate tax, which so often has spelled the death of the business and the jobs of its employees after the death of its founder. Our tax code should encourage investment in small businesses, and particularly in new and growing businesses. Because the innovations that drive tomorrow's economy come from entrepreneurial small businesses today, we must help them enter the marketplace, not impede them before they get there. Above all, small businesses need a tax code that is understandable and stable. Fairness, simplicity, transparency, and accountability should be our goals, and I am committed to this end.

Small business embodies so much of what America is all about. Self-reliance, hard work, innovation, the courage to take risks for future growth: these are values that have served our Nation well since its very beginning. They are values to be passed on from generation to generation. We must ensure that our small businesses continue to thrive and prosper, not just for their own sakes, but for all of us.

GEORGE W. BUSH.
THE WHITE HOUSE, *November 19, 2002.*

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, November 19, 2002.
Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on November 19, 2002 at 3:15 p.m. and said to contain a message from the President whereby he transmits the Annual Report of the Railroad Retirement Board.

With best wishes, I am
Sincerely,
JEFF TRANDAHL,
Clerk of the House.

ANNUAL REPORT OF UNITED STATES RAILROAD RETIREMENT BOARD—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on Transportation and Infrastructure and the Committee on Ways and Means:

To the Congress of the United States:

I transmit herewith the Annual Report of the Railroad Retirement Board presented for forwarding to you for the fiscal year ended September 30, 2001, pursuant to the provisions of section 7(b)(6) of the Railroad Retirement Act and section 12(1) of the Railroad Unemployment Insurance Act.

GEORGE W. BUSH.
THE WHITE HOUSE, *November 19, 2002.*

HOMELAND SECURITY ACT OF 2002

Mr. ARMEY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Resolved, That the bill from the House of Representatives (H.R. 5005) entitled "An Act to establish the Department of Homeland Security, and for other purposes.", do pass with the following Senate Amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Homeland Security Act of 2002".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.

Sec. 102. Secretary; functions.
Sec. 103. Other officers.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

Sec. 201. Directorate for Information Analysis and Infrastructure Protection.
Sec. 202. Access to information.

Subtitle B—Critical Infrastructure Information

Sec. 211. Short title.
Sec. 212. Definitions.
Sec. 213. Designation of critical infrastructure protection program.
Sec. 214. Protection of voluntarily shared critical infrastructure information.
Sec. 215. No private right of action.

Subtitle C—Information Security

Sec. 221. Procedures for sharing information.
Sec. 222. Privacy Officer.
Sec. 223. Enhancement of non-Federal cybersecurity.
Sec. 224. Net guard.
Sec. 225. Cyber Security Enhancement Act of 2002.

Subtitle D—Office of Science and Technology

Sec. 231. Establishment of office; Director.
Sec. 232. Mission of office; duties.
Sec. 233. Definition of law enforcement technology.
Sec. 234. Abolishment of Office of Science and Technology of National Institute of Justice; transfer of functions.
Sec. 235. National Law Enforcement and Corrections Technology Centers.
Sec. 236. Coordination with other entities within Department of Justice.
Sec. 237. Amendments relating to National Institute of Justice.

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Responsibilities and authorities of the Under Secretary for Science and Technology.
Sec. 303. Functions transferred.
Sec. 304. Conduct of certain public health-related activities.
Sec. 305. Federally funded research and development centers.
Sec. 306. Miscellaneous provisions.
Sec. 307. Homeland Security Advanced Research Projects Agency.
Sec. 308. Conduct of research, development, demonstration, testing and evaluation.
Sec. 309. Utilization of Department of Energy national laboratories and sites in support of homeland security activities.
Sec. 310. Transfer of Plum Island Animal Disease Center, Department of Agriculture.
Sec. 311. Homeland Security Science and Technology Advisory Committee.
Sec. 312. Homeland Security Institute.
Sec. 313. Technology clearinghouse to encourage and support innovative solutions to enhance homeland security.

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Responsibilities.
Sec. 403. Functions transferred.

Subtitle B—United States Customs Service

Sec. 411. Establishment; Commissioner of Customs.
Sec. 412. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 413. Preservation of customs funds.
Sec. 414. Separate budget request for customs.
Sec. 415. Definition.
Sec. 416. GAO report to Congress.
Sec. 417. Allocation of resources by the Secretary.
Sec. 418. Reports to Congress.
Sec. 419. Customs user fees.

Subtitle C—Miscellaneous Provisions

Sec. 421. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 422. Functions of Administrator of General Services.
Sec. 423. Functions of Transportation Security Administration.
Sec. 424. Preservation of Transportation Security Administration as a distinct entity.
Sec. 425. Explosive detection systems.
Sec. 426. Transportation security.
Sec. 427. Coordination of information and information technology.
Sec. 428. Visa issuance.
Sec. 429. Information on visa denials required to be entered into electronic data system.
Sec. 430. Office for Domestic Preparedness.

Subtitle D—Immigration Enforcement Functions

Sec. 441. Transfer of functions to Under Secretary for Border and Transportation Security.
Sec. 442. Establishment of Bureau of Border Security.
Sec. 443. Professional responsibility and quality review.
Sec. 444. Employee discipline.
Sec. 445. Report on improving enforcement functions.
Sec. 446. Sense of Congress regarding construction of fencing near San Diego, California.

Subtitle E—Citizenship and Immigration Services

Sec. 451. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 452. Citizenship and Immigration Services Ombudsman.
Sec. 453. Professional responsibility and quality review.
Sec. 454. Employee discipline.
Sec. 455. Effective date.
Sec. 456. Transition.
Sec. 457. Funding for citizenship and immigration services.
Sec. 458. Backlog elimination.
Sec. 459. Report on improving immigration services.
Sec. 460. Report on responding to fluctuating needs.
Sec. 461. Application of Internet-based technologies.
Sec. 462. Children's affairs.

Subtitle F—General Immigration Provisions

Sec. 471. Abolishment of INS.
Sec. 472. Voluntary separation incentive payments.
Sec. 473. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 474. Sense of Congress.
Sec. 475. Director of Shared Services.
Sec. 476. Separation of funding.
Sec. 477. Reports and implementation plans.
Sec. 478. Immigration functions.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Responsibilities.
Sec. 503. Functions transferred.
Sec. 504. Nuclear incident response.
Sec. 505. Conduct of certain public health-related activities.
Sec. 506. Definition.
Sec. 507. Role of Federal Emergency Management Agency.
Sec. 508. Use of national private sector networks in emergency response.
Sec. 509. Use of commercially available technology, goods, and services.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

Sec. 601. Treatment of charitable trusts for members of the Armed Forces of the United States and other governmental organizations.

TITLE VII—MANAGEMENT

Sec. 701. Under Secretary for Management.
Sec. 702. Chief Financial Officer.
Sec. 703. Chief Information Officer.
Sec. 704. Chief Human Capital Officer.
Sec. 705. Establishment of Officer for Civil Rights and Civil Liberties.
Sec. 706. Consolidation and co-location of offices.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 801. Office for State and Local Government Coordination.

Subtitle B—Inspector General

Sec. 811. Authority of the Secretary.
Sec. 812. Law enforcement powers of Inspector General agents.

Subtitle C—United States Secret Service

Sec. 821. Functions transferred.

Subtitle D—Acquisitions

Sec. 831. Research and development projects.
Sec. 832. Personal services.
Sec. 833. Special streamlined acquisition authority.
Sec. 834. Unsolicited proposals.
Sec. 835. Prohibition on contracts with corporate expatriates.

Subtitle E—Human Resources Management

Sec. 841. Establishment of Human Resources Management System.
Sec. 842. Labor-management relations.

Subtitle F—Federal Emergency Procurement Flexibility

Sec. 851. Definition.
Sec. 852. Procurements for defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack.
Sec. 853. Increased simplified acquisition threshold for procurements in support of humanitarian or peacekeeping operations or contingency operations.
Sec. 854. Increased micro-purchase threshold for certain procurements.
Sec. 855. Application of certain commercial items authorities to certain procurements.
Sec. 856. Use of streamlined procedures.
Sec. 857. Review and report by Comptroller General.
Sec. 858. Identification of new entrants into the Federal marketplace.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

Sec. 861. Short title.

Sec. 862. Administration.
Sec. 863. Litigation management.
Sec. 864. Risk management.
Sec. 865. Definitions.

Subtitle H—Miscellaneous Provisions

Sec. 871. Advisory committees.
Sec. 872. Reorganization.
Sec. 873. Use of appropriated funds.
Sec. 874. Future Year Homeland Security Program.
Sec. 875. Miscellaneous authorities.
Sec. 876. Military activities.
Sec. 877. Regulatory authority and preemption.
Sec. 878. Counternarcotics officer.
Sec. 879. Office of International Affairs.
Sec. 880. Prohibition of the Terrorism Information and Prevention System.
Sec. 881. Review of pay and benefit plans.
Sec. 882. Office for National Capital Region Coordination.
Sec. 883. Requirement to comply with laws protecting equal employment opportunity and providing whistleblower protections.
Sec. 884. Federal Law Enforcement Training Center.
Sec. 885. Joint Interagency Task Force.
Sec. 886. Sense of Congress reaffirming the continued importance and applicability of the Posse Comitatus Act.
Sec. 887. Coordination with the Department of Health and Human Services under the Public Health Service Act.
Sec. 888. Preserving Coast Guard mission performance.
Sec. 889. Homeland security funding analysis in President's budget.
Sec. 890. Air Transportation Safety and System Stabilization Act.

Subtitle I—Information Sharing

Sec. 891. Short title; findings; and sense of Congress.
Sec. 892. Facilitating homeland security information sharing procedures.
Sec. 893. Report.
Sec. 894. Authorization of appropriations.
Sec. 895. Authority to share grand jury information.
Sec. 896. Authority to share electronic, wire, and oral interception information.
Sec. 897. Foreign intelligence information.
Sec. 898. Information acquired from an electronic surveillance.
Sec. 899. Information acquired from a physical search.

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

Sec. 901. National Homeland Security Council.
Sec. 902. Function.
Sec. 903. Membership.
Sec. 904. Other functions and activities.
Sec. 905. Staff composition.
Sec. 906. Relation to the National Security Council.

TITLE X—INFORMATION SECURITY

Sec. 1001. Information security.
Sec. 1002. Management of information technology.
Sec. 1003. National Institute of Standards and Technology.
Sec. 1004. Information Security and Privacy Advisory Board.
Sec. 1005. Technical and conforming amendments.
Sec. 1006. Construction.

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

Sec. 1101. Legal status of EOIR.
Sec. 1102. Authorities of the Attorney General.
Sec. 1103. Statutory construction.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

Sec. 1111. Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1112. Technical and conforming amendments.
Sec. 1113. Powers of agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
Sec. 1114. Explosives training and research facility.
Sec. 1115. Personnel management demonstration project.

Subtitle C—Explosives

Sec. 1121. Short title.
Sec. 1122. Permits for purchasers of explosives.
Sec. 1123. Persons prohibited from receiving or possessing explosive materials.
Sec. 1124. Requirement to provide samples of explosive materials and ammonium nitrate.
Sec. 1125. Destruction of property of institutions receiving Federal financial assistance.
Sec. 1126. Relief from disabilities.
Sec. 1127. Theft reporting requirement.
Sec. 1128. Authorization of appropriations.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

Sec. 1201. Air carrier liability for third party claims arising out of acts of terrorism.
Sec. 1202. Extension of insurance policies.
Sec. 1203. Correction of reference.
Sec. 1204. Report.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

Sec. 1301. Short title.
Sec. 1302. Agency Chief Human Capital Officers.
Sec. 1303. Chief Human Capital Officers Council.
Sec. 1304. Strategic human capital management.
Sec. 1305. Effective date.

Subtitle B—Reforms Relating to Federal Human Capital Management

Sec. 1311. Inclusion of agency human capital strategic planning in performance plans and programs performance reports.
Sec. 1312. Reform of the competitive service hiring process.
Sec. 1313. Permanent extension, revision, and expansion of authorities for use of voluntary separation incentive pay and voluntary early retirement.
Sec. 1314. Student volunteer transit subsidy.

Subtitle C—Reforms Relating to the Senior Executive Service

Sec. 1321. Repeal of recertification requirements of senior executives.
Sec. 1322. Adjustment of limitation on total annual compensation.

Subtitle D—Academic Training

Sec. 1331. Academic training.
Sec. 1332. Modifications to National Security Education Program.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

Sec. 1401. Short title.
Sec. 1402. Federal Flight Deck Officer Program.
Sec. 1403. Crew training.
Sec. 1404. Commercial airline security study.
Sec. 1405. Authority to arm flight deck crew with less-than-lethal weapons.
Sec. 1406. Technical amendments.

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

Sec. 1501. Definitions.
Sec. 1502. Reorganization plan.
Sec. 1503. Review of congressional committee structures.

Subtitle B—Transitional Provisions

Sec. 1511. Transitional authorities.
Sec. 1512. Savings provisions.
Sec. 1513. Terminations.
Sec. 1514. National identification system not authorized.
Sec. 1515. Continuity of Inspector General oversight.
Sec. 1516. Incidental transfers.
Sec. 1517. Reference.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

Sec. 1601. Retention of security sensitive information authority at Department of Transportation.
Sec. 1602. Increase in civil penalties.
Sec. 1603. Allowing United States citizens and United States nationals as screeners.

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 1701. Inspector General Act of 1978.
Sec. 1702. Executive Schedule.
Sec. 1703. United States Secret Service.
Sec. 1704. Coast Guard.
Sec. 1705. Strategic national stockpile and smallpox vaccine development.
Sec. 1706. Transfer of certain security and law enforcement functions and authorities.
Sec. 1707. Transportation security regulations.
Sec. 1708. National Bio-Weapons Defense Analysis Center.
Sec. 1709. Collaboration with the Secretary of Homeland Security.
Sec. 1710. Railroad safety to include railroad security.
Sec. 1711. Hazmat safety to include hazmat security.
Sec. 1712. Office of Science and Technology Policy.
Sec. 1713. National Oceanographic Partnership Program.
Sec. 1714. Clarification of definition of manufacturer.
Sec. 1715. Clarification of definition of vaccine-related injury or death.
Sec. 1716. Clarification of definition of vaccine.
Sec. 1717. Effective date.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms "American homeland" and "homeland" means the United States.

(2) The term "appropriate congressional committee" means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term "assets" includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term "critical infrastructure" has the meaning given that term in section 1016(e) of Public Law 107-56 (42 U.S.C. 5195c(e)).

(5) The term "Department" means the Department of Homeland Security.

(6) The term "emergency response providers" includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term "executive agency" means an executive agency and a military department, as

defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term "functions" includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term "key resources" means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term "local government" means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term "major disaster" has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term "personnel" means officers and employees.

(13) The term "Secretary" means the Secretary of Homeland Security.

(14) The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term "terrorism" means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16)(A) The term "United States", when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

(B) Nothing in this paragraph or any other provision of this Act shall be construed to modify the definition of "United States" for the purposes of the Immigration and Nationality Act or any other immigration or nationality law.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect 60 days after the date of enactment.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

SEC. 101. EXECUTIVE DEPARTMENT; MISSION.

(a) ESTABLISHMENT.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) MISSION.—

(1) IN GENERAL.—The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out all functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress;

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland; and

(G) monitor connections between illegal drug trafficking and terrorism, coordinate efforts to sever such connections, and otherwise contribute to efforts to interdict illegal drug trafficking.

(2) RESPONSIBILITY FOR INVESTIGATING AND PROSECUTING TERRORISM.—Except as specifically provided by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—

(1) IN GENERAL.—There is a Secretary of Homeland Security, appointed by the President, by and with the advice and consent of the Senate.

(2) HEAD OF DEPARTMENT.—The Secretary is the head of the Department and shall have direction, authority, and control over it.

(3) FUNCTIONS VESTED IN SECRETARY.—All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(b) FUNCTIONS.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and cooperative agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or otherwise provided by law; and

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) COORDINATION WITH NON-FEDERAL ENTITIES.—With respect to homeland security, the Secretary shall coordinate through the Office of State and Local Coordination (established under section 801) (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(g) STANDARDS POLICY.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(1) A Deputy Secretary of Homeland Security, who shall be the Secretary's first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

(2) An Under Secretary for Information Analysis and Infrastructure Protection.

(3) An Under Secretary for Science and Technology.

(4) An Under Secretary for Border and Transportation Security.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) A Director of the Bureau of Citizenship and Immigration Services.

(7) An Under Secretary for Management.

(8) Not more than 12 Assistant Secretaries.

(9) A General Counsel, who shall be the chief legal officer of the department.

(b) Inspector General.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) Commandant of the Coast Guard.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) Other Officers.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A Director of the Secret Service.

(2) A Chief Information Officer.

(3) A Chief Human Capital Officer.

(4) A Chief Financial Officer.

(5) An Officer for Civil Rights and Civil Liberties.

(e) Performance of Specific Functions.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Directorate for Information Analysis and Infrastructure Protection; Access to Information

SEC. 201. DIRECTORATE FOR INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION.

(a) Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection.—

(1) In general.—There shall be in the Department a Directorate for Information Analysis and Infrastructure Protection headed by an Under Secretary for Information Analysis and Infrastructure Protection, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Responsibilities.—The Under Secretary shall assist the Secretary in discharging the responsibilities assigned by the Secretary.

(b) Assistant Secretary for Information Analysis; Assistant Secretary for Infrastructure Protection.—

(1) Assistant secretary for information analysis.—There shall be in the Department an Assistant Secretary for Information Analysis, who shall be appointed by the President.

(2) Assistant secretary for infrastructure protection.—There shall be in the Department an Assistant Secretary for Infrastructure Protection, who shall be appointed by the President.

(3) Responsibilities.—The Assistant Secretary for Information Analysis and the Assistant Secretary for Infrastructure Protection shall assist the Under Secretary for Information Analysis and Infrastructure Protection in discharging the responsibilities of the Under Secretary under this section.

(c) Discharge of Information Analysis and Infrastructure Protection.—The Secretary shall ensure that the responsibilities of the Department regarding information analysis and infrastructure protection are carried out through the Under Secretary for Information Analysis and Infrastructure Protection.

(d) Responsibilities of Under Secretary.—Subject to the direction and control of the Secretary, the responsibilities of the Under Secretary for Information Analysis and Infrastructure Protection shall be as follows:

(1) To access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State and local government agencies (including law enforcement agencies), and private sector entities, and to integrate such information in order to—

(A) identify and assess the nature and scope of terrorist threats to the homeland;

(B) detect and identify threats of terrorism against the United States; and

(C) understand such threats in light of actual and potential vulnerabilities of the homeland.

(2) To carry out comprehensive assessments of the vulnerabilities of the key resources and critical infrastructure of the United States, including the performance of risk assessments to determine the risks posed by particular types of terrorist attacks within the United States (including an assessment of the probability of success of such attacks and the feasibility and potential efficacy of various countermeasures to such attacks).

(3) To integrate relevant information, analyses, and vulnerability assessments (whether such information, analyses, or assessments are provided or produced by the Department or others) in order to identify priorities for protective and support measures by the Department, other agencies of the Federal Government, State and local government agencies and authorities, the private sector, and other entities.

(4) To ensure, pursuant to section 202, the timely and efficient access by the Department to all information necessary to discharge the responsibilities under this section, including obtaining such information from other agencies of the Federal Government.

(5) To develop a comprehensive national plan for securing the key resources and critical infrastructure of the United States, including power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and technological assets that support such systems.

(6) To recommend measures necessary to protect the key resources and critical infrastructure of the United States in coordination with other agencies of the Federal Government and in cooperation with State and local government agencies and authorities, the private sector, and other entities.

(7) To administer the Homeland Security Advisory System, including—

(A) exercising primary responsibility for public advisories related to threats to homeland security; and

(B) in coordination with other agencies of the Federal Government, providing specific warning information, and advice about appropriate protective measures and countermeasures, to State and local government agencies and authorities, the private sector, other entities, and the public.

(8) To review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence-related information, and other information relating to homeland security within the Federal Government and between the Federal Government and State and local government agencies and authorities.

(9) To disseminate, as appropriate, information analyzed by the Department within the Department, to other agencies of the Federal Government with responsibilities relating to homeland security, and to agencies of State and local governments and private sector entities with such responsibilities in order to assist in the deterrence, prevention, preemption of, or response to, terrorist attacks against the United States.

(10) To consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the Federal Government to establish collection priorities and strategies for information, including law enforcement-related information, relating to threats of terrorism against the United States through such means as the representation of the Department in discussions regarding requirements and priorities in the collection of such information.

(11) To consult with State and local governments and private sector entities to ensure appropriate exchanges of information, including law enforcement-related information, relating to threats of terrorism against the United States.

(12) To ensure that—

(A) any material received pursuant to this Act is protected from unauthorized disclosure and handled and used only for the performance of official duties; and

(B) any intelligence information under this Act is shared, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and methods under the National Security Act of 1947 (50 U.S.C. 401 et seq.) and related procedures and, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

(13) To request additional information from other agencies of the Federal Government, State and local government agencies, and the private sector relating to threats of terrorism in the United States, or relating to other areas of responsibility assigned by the Secretary, including the entry into cooperative agreements through the Secretary to obtain such information.

(14) To establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data-mining and other advanced analytical tools, in order to access, receive, and analyze data and information in furtherance of the responsibilities under this section, and to disseminate information acquired and analyzed by the Department, as appropriate.

(15) To ensure, in conjunction with the chief information officer of the Department, that any information databases and analytical tools developed or utilized by the Department—

(A) are compatible with one another and with relevant information databases of other agencies of the Federal Government; and

(B) treat information in such databases in a manner that complies with applicable Federal law on privacy.

(16) To coordinate training and other support to the elements and personnel of the Department, other agencies of the Federal Government, and State and local governments that provide information to the Department, or are consumers of information provided by the Department, in order to facilitate the identification and sharing of information revealed in their ordinary duties and the optimal utilization of information received from the Department.

(17) To coordinate with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector, as appropriate.

(18) To provide intelligence and information analysis and support to other elements of the Department.

(19) To perform such other duties relating to such responsibilities as the Secretary may provide.

(e) STAFF.—

(1) IN GENERAL.—The Secretary shall provide the Directorate with a staff of analysts having appropriate expertise and experience to assist the Directorate in discharging responsibilities under this section.

(2) PRIVATE SECTOR ANALYSTS.—Analysts under this subsection may include analysts from the private sector.

(3) SECURITY CLEARANCES.—Analysts under this subsection shall possess security clearances appropriate for their work under this section.

(f) DETAIL OF PERSONNEL.—

(1) IN GENERAL.—In order to assist the Directorate in discharging responsibilities under this section, personnel of the agencies referred to in paragraph (2) may be detailed to the Department for the performance of analytic functions and related duties.

(2) COVERED AGENCIES.—The agencies referred to in this paragraph are as follows:

(A) The Department of State.

(B) The Central Intelligence Agency.

(C) The Federal Bureau of Investigation.

(D) The National Security Agency.

(E) The National Imagery and Mapping Agency.

(F) The Defense Intelligence Agency.

(G) Any other agency of the Federal Government that the President considers appropriate.

(3) COOPERATIVE AGREEMENTS.—The Secretary and the head of the agency concerned may enter into cooperative agreements for the purpose of detailing personnel under this subsection.

(4) BASIS.—The detail of personnel under this subsection may be on a reimbursable or non-reimbursable basis.

(g) FUNCTIONS TRANSFERRED.—In accordance with title XV, there shall be transferred to the Secretary, for assignment to the Under Secretary for Information Analysis and Infrastructure Protection under this section, the functions, personnel, assets, and liabilities of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The National Infrastructure Simulation and Analysis Center of the Department of Energy and the energy security and assurance program and activities of the Department, including the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

(h) INCLUSION OF CERTAIN ELEMENTS OF THE DEPARTMENT AS ELEMENTS OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401(a)) is amended—

(1) by striking "and" at the end of subparagraph (I);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) the elements of the Department of Homeland Security concerned with the analyses of foreign intelligence information; and".

SEC. 202. ACCESS TO INFORMATION.

(a) IN GENERAL.—

(1) THREAT AND VULNERABILITY INFORMATION.—Except as otherwise directed by the President, the Secretary shall have such access as the Secretary considers necessary to all information, including reports, assessments, analyses, and unevaluated intelligence relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary, and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any agency of the Federal Government.

(2) OTHER INFORMATION.—The Secretary shall also have access to other information relating to matters under the responsibility of the Secretary that may be collected, possessed, or prepared by an agency of the Federal Government as the President may further provide.

(b) MANNER OF ACCESS.—Except as otherwise directed by the President, with respect to information to which the Secretary has access pursuant to this section—

(1) the Secretary may obtain such material upon request, and may enter into cooperative arrangements with other executive agencies to provide such material or provide Department officials with access to it on a regular or routine basis, including requests or arrangements involving broad categories of material, access to electronic databases, or both; and

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all agencies of the Federal Government shall promptly provide to the Secretary—

(A) all reports (including information reports containing intelligence which has not been fully evaluated), assessments, and analytical information relating to threats of terrorism against the United States and to other areas of responsibility assigned by the Secretary;

(B) all information concerning the vulnerability of the infrastructure of the United States, or other vulnerabilities of the United States, to terrorism, whether or not such information has been analyzed;

(C) all other information relating to significant and credible threats of terrorism against the United States, whether or not such information has been analyzed; and

(D) such other information or material as the President may direct.

(c) TREATMENT UNDER CERTAIN LAWS.—The Secretary shall be deemed to be a Federal law enforcement, intelligence, protective, national defense, immigration, or national security official, and shall be provided with all information from law enforcement agencies that is required to be given to the Director of Central Intelligence, under any provision of the following:

(1) The USA PATRIOT Act of 2001 (Public Law 107–56).

(2) Section 2517(6) of title 18, United States Code.

(3) Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure.

(d) ACCESS TO INTELLIGENCE AND OTHER INFORMATION.—

(1) ACCESS BY ELEMENTS OF FEDERAL GOVERNMENT.—Nothing in this title shall preclude any element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)), or other any element of the Federal Government with responsibility for analyzing terrorist threat information, from receiving any intelligence or other information relating to terrorism.

(2) SHARING OF INFORMATION.—The Secretary, in consultation with the Director of Central Intelligence, shall work to ensure that intelligence or other information relating to terrorism to which the Department has access is appropriately shared with the elements of the Federal Government referred to in paragraph (1), as well as with State and local governments, as appropriate.

Subtitle B—Critical Infrastructure Information

SEC. 211. SHORT TITLE.

This subtitle may be cited as the "Critical Infrastructure Information Act of 2002".

SEC. 212. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term "agency" has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term "critical infrastructure information" means information not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term "critical infrastructure protection program" means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term "Information Sharing and Analysis Organization" means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term "protected system"—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) Voluntary.—

(A) In general.—The term "voluntary", in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) Exclusions.—The term "voluntary"—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 213. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 214. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) Protection.—

(1) In general.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act);

(B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official;

(C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any civil action arising under Federal or State law if such information is submitted in good faith;

(D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(E) shall not, if provided to a State or local government or government agency—

(i) be made available pursuant to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) Express statement.—For purposes of paragraph (1), the term "express statement", with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: "This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002."; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) Limitation.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) Independently Obtained Information.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) Treatment of Voluntary Submittal of Information.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) Procedures.—

(1) In general.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) Elements.—The procedures established under paragraph (1) shall include mechanisms regarding—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government;

(B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle;

(C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit the sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

(f) Penalties.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than 1 year, or both, and shall be removed from office or employment.

(g) Authority To Issue Warnings.—The Federal Government may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

(1) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) Authority To Delegate.—The President may delegate authority to a critical infrastructure protection program, designated under section 213, to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 215. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle C—Information Security

SEC. 221. PROCEDURES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 222. PRIVACY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) assuring that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) assuring that personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974;

(3) evaluating legislative and regulatory proposals involving collection, use, and disclosure of personal information by the Federal Government;

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

SEC. 223. ENHANCEMENT OF NON-FEDERAL CYBERSECURITY.

In carrying out the responsibilities under section 201, the Under Secretary for Information Analysis and Infrastructure Protection shall—

(1) as appropriate, provide to State and local government entities, and upon request to private entities that own or operate critical information systems—

(A) analysis and warnings related to threats to, and vulnerabilities of, critical information systems; and

(B) in coordination with the Under Secretary for Emergency Preparedness and Response, crisis management support in response to threats to, or attacks on, critical information systems; and

(2) as appropriate, provide technical assistance, upon request, to the private sector and other government entities, in coordination with the Under Secretary for Emergency Preparedness and Response, with respect to emergency recovery plans to respond to major failures of critical information systems.

SEC. 224. NET GUARD.

The Under Secretary for Information Analysis and Infrastructure Protection may establish a national technology guard, to be known as "NET Guard", comprised of local teams of volunteers with expertise in relevant areas of science and technology, to assist local communities to respond and recover from attacks on information systems and communications networks.

SEC. 225. CYBER SECURITY ENHANCEMENT ACT OF 2002.

(a) SHORT TITLE.—This section may be cited as the "Cyber Security Enhancement Act of 2002".

(b) AMENDMENT OF SENTENCING GUIDELINES RELATING TO CERTAIN COMPUTER CRIMES.—

(1) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) STUDY AND REPORT ON COMPUTER CRIMES.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code.

(d) EMERGENCY DISCLOSURE EXCEPTION.—

(1) IN GENERAL.—Section 2702(b) of title 18, United States Code, is amended—

(A) in paragraph (5), by striking "or" at the end;

(B) in paragraph (6)(A), by inserting "or" at the end;

(C) by striking paragraph (6)(C); and

(D) by adding at the end the following:

"(7) to a Federal, State, or local governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.".

(2) REPORTING OF DISCLOSURES.—A government entity that receives a disclosure under section 2702(b) of title 18, United States Code, shall file, not later than 90 days after such disclosure, a report to the Attorney General stating the paragraph of that section under which the disclosure was made, the date of the disclosure, the entity to which the disclosure was made, the number of customers or subscribers to whom the information disclosed pertained, and the number of communications, if any, that were disclosed. The Attorney General shall publish all such reports into a single report to be submitted to Congress 1 year after the date of enactment of this Act.

(e) GOOD FAITH EXCEPTION.—Section 2520(d)(3) of title 18, United States Code, is amended by inserting "or 2511(2)(i)" after "2511(3)".

(f) INTERNET ADVERTISING OF ILLEGAL DEVICES.—Section 2512(1)(c) of title 18, United States Code, is amended—

(1) by inserting "or disseminates by electronic means" after "or other publication"; and

(2) by inserting "knowing the content of the advertisement and" before "knowing or having reason to know".

(g) STRENGTHENING PENALTIES.—Section 1030(c) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) in each of subparagraphs (A) and (C) of paragraph (4), by inserting "except as provided in paragraph (5)," before "a fine under this title";

(3) in paragraph (4)(C), by striking the period at the end and inserting "; and"; and

(4) by adding at the end the following:

"(5)(A) if the offender knowingly or recklessly causes or attempts to cause serious bodily injury from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for not more than 20 years, or both; and

"(B) if the offender knowingly or recklessly causes or attempts to cause death from conduct in violation of subsection (a)(5)(A)(i), a fine under this title or imprisonment for any term of years or for life, or both.".

(h) PROVIDER ASSISTANCE.—

(1) SECTION 2703.—Section 2703(e) of title 18, United States Code, is amended by inserting ", statutory authorization" after "subpoena".

(2) SECTION 2511.—Section 2511(2)(a)(ii) of title 18, United States Code, is amended by inserting ", statutory authorization," after "court order" the last place it appears.

(i) EMERGENCIES.—Section 3125(a)(1) of title 18, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the comma at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(C) an immediate threat to a national security interest; or

"(D) an ongoing attack on a protected computer (as defined in section 1030) that constitutes a crime punishable by a term of imprisonment greater than one year;".

(j) PROTECTING PRIVACY.—

(1) SECTION 2511.—Section 2511(4) of title 18, United States Code, is amended—

(A) by striking paragraph (b); and

(B) by redesignating paragraph (c) as paragraph (b).

(2) SECTION 2701.—Section 2701(b) of title 18, United States Code, is amended—

(A) in paragraph (1), by inserting ", or in furtherance of any criminal or tortious act in violation of the Constitution or laws of the United States or any State" after "commercial gain";

(B) in paragraph (1)(A), by striking "one year" and inserting "5 years";

(C) in paragraph (1)(B), by striking "two years" and inserting "10 years"; and

(D) by striking paragraph (2) and inserting the following:

"(2) in any other case—

"(A) a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and

"(B) a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.".

Subtitle D—Office of Science and Technology

SEC. 231. ESTABLISHMENT OF OFFICE; DIRECTOR.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is hereby established within the Department of Justice an Office of Science and Technology (hereinafter in this title referred to as the "Office").

(2) AUTHORITY.—The Office shall be under the general authority of the Assistant Attorney General, Office of Justice Programs, and shall be established within the National Institute of Justice.

(b) DIRECTOR.—The Office shall be headed by a Director, who shall be an individual appointed based on approval by the Office of Personnel Management of the executive qualifications of the individual.

SEC. 232. MISSION OF OFFICE; DUTIES.

(a) MISSION.—The mission of the Office shall be—

(1) to serve as the national focal point for work on law enforcement technology; and

(2) to carry out programs that, through the provision of equipment, training, and technical assistance, improve the safety and effectiveness of law enforcement technology and improve access to such technology by Federal, State, and local law enforcement agencies.

(b) DUTIES.—In carrying out its mission, the Office shall have the following duties:

(1) To provide recommendations and advice to the Attorney General.

(2) To establish and maintain advisory groups (which shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.)) to assess the law enforcement technology needs of Federal, State, and local law enforcement agencies.

(3) To establish and maintain performance standards in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113) for, and test and evaluate law enforcement technologies that may be used by, Federal, State, and local law enforcement agencies.

(4) To establish and maintain a program to certify, validate, and mark or otherwise recognize law enforcement technology products that conform to standards established and maintained by the Office in accordance with the National Technology Transfer and Advancement Act of 1995 (Public Law 104–113). The program may, at the discretion of the Office, allow for supplier's declaration of conformity with such standards.

(5) To work with other entities within the Department of Justice, other Federal agencies, and the executive office of the President to establish a coordinated Federal approach on issues related to law enforcement technology.

(6) To carry out research, development, testing, evaluation, and cost-benefit analyses in fields that would improve the safety, effectiveness, and efficiency of law enforcement technologies used by Federal, State, and local law enforcement agencies, including, but not limited to—

(A) weapons capable of preventing use by unauthorized persons, including personalized guns;

(B) protective apparel;

(C) bullet-resistant and explosion-resistant glass;

(D) monitoring systems and alarm systems capable of providing precise location information;

(E) wire and wireless interoperable communication technologies;

(F) tools and techniques that facilitate investigative and forensic work, including computer forensics;

(G) equipment for particular use in counterterrorism, including devices and technologies to disable terrorist devices;

(H) guides to assist State and local law enforcement agencies;

(I) DNA identification technologies; and

(J) tools and techniques that facilitate investigations of computer crime.

(7) To administer a program of research, development, testing, and demonstration to improve the interoperability of voice and data public safety communications.

(8) To serve on the Technical Support Working Group of the Department of Defense, and on other relevant interagency panels, as requested.

(9) To develop, and disseminate to State and local law enforcement agencies, technical assistance and training materials for law enforcement personnel, including prosecutors.

(10) To operate the regional National Law Enforcement and Corrections Technology Centers and, to the extent necessary, establish additional centers through a competitive process.

(11) To administer a program of acquisition, research, development, and dissemination of advanced investigative analysis and forensic tools to assist State and local law enforcement agencies in combating cybercrime.

(12) To support research fellowships in support of its mission.

(13) To serve as a clearinghouse for information on law enforcement technologies.

(14) To represent the United States and State and local law enforcement agencies, as requested, in international activities concerning law enforcement technology.

(15) To enter into contracts and cooperative agreements and provide grants, which may require in-kind or cash matches from the recipient, as necessary to carry out its mission.

(16) To carry out other duties assigned by the Attorney General to accomplish the mission of the Office.

(c) COMPETITION REQUIRED.—Except as otherwise expressly provided by law, all research and development carried out by or through the Office shall be carried out on a competitive basis.

(d) INFORMATION FROM FEDERAL AGENCIES.—Federal agencies shall, upon request from the Office and in accordance with Federal law, provide the Office with any data, reports, or other information requested, unless compliance with such request is otherwise prohibited by law.

(e) PUBLICATIONS.—Decisions concerning publications issued by the Office shall rest solely with the Director of the Office.

(f) TRANSFER OF FUNDS.—The Office may transfer funds to other Federal agencies or provide funding to non-Federal entities through grants, cooperative agreements, or contracts to carry out its duties under this section.

(g) ANNUAL REPORT.—The Director of the Office shall include with the budget justification materials submitted to Congress in support of the Department of Justice budget for each fiscal year (as submitted with the budget of the President under section 1105(a) of title 31, United States Code) a report on the activities of the Office. Each such report shall include the following:

(1) For the period of 5 fiscal years beginning with the fiscal year for which the budget is submitted—

(A) the Director's assessment of the needs of Federal, State, and local law enforcement agencies for assistance with respect to law enforcement technology and other matters consistent with the mission of the Office; and

(B) a strategic plan for meeting such needs of such law enforcement agencies.

(2) For the fiscal year preceding the fiscal year for which such budget is submitted, a description of the activities carried out by the Office and an evaluation of the extent to which those activities successfully meet the needs assessed under paragraph (1)(A) in previous reports.

SEC. 233. DEFINITION OF LAW ENFORCEMENT TECHNOLOGY.

For the purposes of this title, the term "law enforcement technology" includes investigative and forensic technologies, corrections technologies, and technologies that support the judicial process.

SEC. 234. ABOLISHMENT OF OFFICE OF SCIENCE AND TECHNOLOGY OF NATIONAL INSTITUTE OF JUSTICE; TRANSFER OF FUNCTIONS.

(a) AUTHORITY TO TRANSFER FUNCTIONS.—The Attorney General may transfer to the Office any other program or activity of the Department of Justice that the Attorney General, in consultation with the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, determines to be consistent with the mission of the Office.

(b) TRANSFER OF PERSONNEL AND ASSETS.—With respect to any function, power, or duty, or any program or activity, that is established in the Office, those employees and assets of the element of the Department of Justice from which the transfer is made that the Attorney General determines are needed to perform that function, power, or duty, or for that program or activity, as the case may be, shall be transferred to the Office.

(c) REPORT ON IMPLEMENTATION.—Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this title. The report shall—

(1) provide an accounting of the amounts and sources of funding available to the Office to carry out its mission under existing authorizations and appropriations, and set forth the future funding needs of the Office; and

(2) include such other information and recommendations as the Attorney General considers appropriate.

SEC. 235. NATIONAL LAW ENFORCEMENT AND CORRECTIONS TECHNOLOGY CENTERS.

(a) IN GENERAL.—The Director of the Office shall operate and support National Law Enforcement and Corrections Technology Centers (hereinafter in this section referred to as "Centers") and, to the extent necessary, establish new centers through a merit-based, competitive process.

(b) PURPOSE OF CENTERS.—The purpose of the Centers shall be to—

(1) support research and development of law enforcement technology;

(2) support the transfer and implementation of technology;

(3) assist in the development and dissemination of guidelines and technological standards; and

(4) provide technology assistance, information, and support for law enforcement, corrections, and criminal justice purposes.

(c) ANNUAL MEETING.—Each year, the Director shall convene a meeting of the Centers in order to foster collaboration and communication between Center participants.

(d) REPORT.—Not later than 12 months after the date of the enactment of this Act, the Director shall transmit to the Congress a report assessing the effectiveness of the existing system of Centers and identify the number of Centers necessary to meet the technology needs of Federal, State, and local law enforcement in the United States.

SEC. 236. COORDINATION WITH OTHER ENTITIES WITHIN DEPARTMENT OF JUSTICE.

Section 102 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712) is amended in subsection (a)(5) by inserting "coordinate and" before "provide".

SEC. 237. AMENDMENTS RELATING TO NATIONAL INSTITUTE OF JUSTICE.

Section 202(c) of the Omnibus Crime Control and Safety Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) in paragraph (3) by inserting ", including cost effectiveness where practical," before "of projects"; and

(2) by striking "and" after the semicolon at the end of paragraph (8), striking the period at the end of paragraph (9) and inserting "; and", and by adding at the end the following:

"(10) research and development of tools and technologies relating to prevention, detection, investigation, and prosecution of crime; and

"(11) support research, development, testing, training, and evaluation of tools and technology for Federal, State, and local law enforcement agencies.".

TITLE III—SCIENCE AND TECHNOLOGY IN SUPPORT OF HOMELAND SECURITY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

There shall be in the Department a Directorate of Science and Technology headed by an Under Secretary for Science and Technology.

SEC. 302. RESPONSIBILITIES AND AUTHORITIES OF THE UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the responsibility for—

(1) advising the Secretary regarding research and development efforts and priorities in support of the Department's missions;

(2) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based definable goals for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(3) supporting the Under Secretary for Information Analysis and Infrastructure Protection, by assessing and testing homeland security vulnerabilities and possible threats;

(4) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, except that such responsibility does not extend to human health-related research and development activities;

(5) establishing priorities for, directing, funding, and conducting national research, development, test and evaluation, and procurement of technology and systems for—

(A) preventing the importation of chemical, biological, radiological, nuclear, and related weapons and material; and

(B) detecting, preventing, protecting against, and responding to terrorist attacks;

(6) establishing a system for transferring homeland security developments or technologies to federal, state, local government, and private sector entities;

(7) entering into work agreements, joint sponsorships, contracts, or any other agreements with the Department of Energy regarding the use of the national laboratories or sites and support of the science and technology base at those facilities;

(8) collaborating with the Secretary of Agriculture and the Attorney General as provided in section 212 of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401), as amended by section 1709(b);

(9) collaborating with the Secretary of Health and Human Services and the Attorney General in determining any new biological agents and toxins that shall be listed as "select agents" in Appendix A of part 72 of title 42, Code of Federal Regulations, pursuant to section 351A of the Public Health Service Act (42 U.S.C. 262a);

(10) supporting United States leadership in science and technology;

(11) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(12) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(13) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs; and

(14) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 303. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The following programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States):

(A) The chemical and biological national security and supporting programs and activities of the nonproliferation and verification research and development program.

(B) The nuclear smuggling programs and activities within the proliferation detection program of the nonproliferation and verification research and development program. The programs and activities described in this subparagraph may be designated by the President either for transfer to the Department or for joint operation by the Secretary and the Secretary of Energy.

(C) The nuclear assessment program and activities of the assessment, detection, and cooperation program of the international materials protection and cooperation program.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(2) The National Bio-Weapons Defense Analysis Center of the Department of Defense, including the functions of the Secretary of Defense related thereto.

SEC. 304. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 302(2).

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

(c) ADMINISTRATION OF COUNTERMEASURES AGAINST SMALLPOX.—Section 224 of the Public Health Service Act (42 U.S.C. 233) is amended by adding the following:

"(p) ADMINISTRATION OF SMALLPOX COUNTERMEASURES BY HEALTH PROFESSIONALS.—

"(1) IN GENERAL.—For purposes of this section, and subject to other provisions of this subsection, a covered person shall be deemed to be an employee of the Public Health Service with respect to liability arising out of administration of a covered countermeasure against smallpox to an individual during the effective period of a declaration by the Secretary under paragraph (2)(A).

"(2) DECLARATION BY SECRETARY CONCERNING COUNTERMEASURE AGAINST SMALLPOX.—

"(A) AUTHORITY TO ISSUE DECLARATION.—

"(i) IN GENERAL.—The Secretary may issue a declaration, pursuant to this paragraph, concluding that an actual or potential bioterrorist incident or other actual or potential public health emergency makes advisable the administration of a covered countermeasure to a category or categories of individuals.

"(ii) COVERED COUNTERMEASURE.—The Secretary shall specify in such declaration the substance or substances that shall be considered covered countermeasures (as defined in paragraph (8)(A)) for purposes of administration to individuals during the effective period of the declaration.

"(iii) EFFECTIVE PERIOD.—The Secretary shall specify in such declaration the beginning and ending dates of the effective period of the declaration, and may subsequently amend such declaration to shorten or extend such effective period, provided that the new closing date is after the date when the declaration is amended.

"(iv) PUBLICATION.—The Secretary shall promptly publish each such declaration and amendment in the Federal Register.

"(B) LIABILITY OF UNITED STATES ONLY FOR ADMINISTRATIONS WITHIN SCOPE OF DECLARATION.—Except as provided in paragraph (5)(B)(ii), the United States shall be liable under this subsection with respect to a claim arising out of the administration of a covered countermeasure to an individual only if—

"(i) the countermeasure was administered by a qualified person, for a purpose stated in paragraph (7)(A)(i), and during the effective period of a declaration by the Secretary under subparagraph (A) with respect to such countermeasure; and

"(ii)(I) the individual was within a category of individuals covered by the declaration; or

"(II) the qualified person administering the countermeasure had reasonable grounds to believe that such individual was within such category.

"(C) PRESUMPTION OF ADMINISTRATION WITHIN SCOPE OF DECLARATION IN CASE OF ACCIDENTAL VACCINIA INOCULATION.—

"(i) IN GENERAL.—If vaccinia vaccine is a covered countermeasure specified in a declaration under subparagraph (A), and an individual to whom the vaccinia vaccine is not administered contracts vaccinia, then, under the circumstances specified in clause (ii), the individual—

"(I) shall be rebuttably presumed to have contracted vaccinia from an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B); and

"(II) shall (unless such presumption is rebutted) be deemed for purposes of this subsection to be an individual to whom a covered countermeasure was administered by a qualified person in eccordance with the terms of such declaration and as described by subparagraph (B).

"(ii) CIRCUMSTANCES IN WHICH PRESUMPTION APPLIES.—The presumption and deeming stated in clause (i) shall apply if—

"(I) the individual contracts vaccinia during the effective period of a declaration under subparagraph (A) or by the date 30 days after the close of such period; or

"(II) the individual resides or has resided with an individual to whom such vaccine was administered as provided by clauses (i) and (ii) of subparagraph (B) and contracts vaccinia after such date.

"(3) EXCLUSIVITY OF REMEDY.—The remedy provided by subsection (a) shall be exclusive of any other civil action or proceeding for any claim or suit this subsection encompasses.

"(4) CERTIFICATION OF ACTION BY ATTORNEY GENERAL.—Subsection (c) applies to actions under this subsection, subject to the following provisions:

"(A) NATURE OF CERTIFICATION.—The certification by the Attorney General that is the basis for deeming an action or proceeding to be against the United States, and for removing an action or proceeding from a State court, is a certification that the action or proceeding is against a covered person and is based upon a claim alleging personal injury or death arising out of the administration of a covered countermeasure.

"(B) CERTIFICATION OF ATTORNEY GENERAL CONCLUSIVE.—The certification of the Attorney General of the facts specified in subparagraph (A) shall conclusively establish such facts for purposes of jurisdiction pursuant to this subsection.

"(5) DEFENDANT TO COOPERATE WITH UNITED STATES.—

"(A) IN GENERAL.—A covered person shall cooperate with the United States in the processing and defense of a claim or action under this subsection based upon alleged acts or omissions of such person.

"(B) CONSEQUENCES OF FAILURE TO COOPERATE.—Upon the motion of the United States or any other party and upon finding that such person has failed to so cooperate—

"(i) the court shall substitute such person as the party defendant in place of the United States and, upon motion, shall remand any such suit to the court in which it was instituted if it appears that the court lacks subject matter jurisdiction;

"(ii) the United States shall not be liable based on the acts or omissions of such person; and

"(iii) the Attorney General shall not be obligated to defend such action.

"(6) RECOURSE AGAINST COVERED PERSON IN CASE OF GROSS MISCONDUCT OR CONTRACT VIOLATION.—

"(A) IN GENERAL.—Should payment be made by the United States to any claimant bringing a claim under this subsection, either by way of administrative determination, settlement, or court judgment, the United States shall have, notwithstanding any provision of State law, the right to recover for that portion of the damages so awarded or paid, as well as interest and any costs of litigation, resulting from the failure of any covered person to carry out any obligation or responsibility assumed by such person under a contract with the United States or from any grossly negligent, reckless, or illegal conduct or willful misconduct on the part of such person.

"(B) VENUE.—The United States may maintain an action under this paragraph against such person in the district court of the United States in which such person resides or has its principal place of business.

"(7) DEFINITIONS.—As used in this subsection, terms have the following meanings:

"(A) COVERED COUNTERMEASURE.—The term 'covered countermeasure', or 'covered countermeasure against smallpox', means a substance that is—

"(i)(I) used to prevent or treat smallpox (including the vaccinia or another vaccine); or

"(II) vaccinia immune globulin used to control or treat the adverse effects of vaccinia inoculation; and

"(ii) specified in a declaration under paragraph (2).

"(B) COVERED PERSON.—The term 'covered person', when used with respect to the administration of a covered countermeasure, includes any person who is—

"(i) a manufacturer or distributor of such countermeasure;

"(ii) a health care entity under whose auspices such countermeasure was administered;

"(iii) a qualified person who administered such countermeasure; or

"(iv) an official, agent, or employee of a person described in clause (i), (ii), or (iii).

"(C) QUALIFIED PERSON.—The term 'qualified person', when used with respect to the administration of a covered countermeasure, means a licensed health professional or other individual who is authorized to administer such countermeasure under the law of the State in which the countermeasure was administered.".

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with 1 or more federally funded research and development centers to provide independent analysis of homeland security issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 308.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(b) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or deployment activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(c) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 303(1)(D) of this Act, the President shall notify the appropriate congressional committees of the proposed transfer and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 307. HOMELAND SECURITY ADVANCED RESEARCH PROJECTS AGENCY.

(a) DEFINITIONS.—In this section:

(1) FUND.—The term "Fund" means the Acceleration Fund for Research and Development of Homeland Security Technologies established in subsection (c).

(2) HOMELAND SECURITY RESEARCH.—The term "homeland security research" means research relevant to the detection of, prevention of, protection against, response to, attribution of, and recovery from homeland security threats, particularly acts of terrorism.

(3) HSARPA.—The term "HSARPA" means the Homeland Security Advanced Research Projects Agency established in subsection (b).

(4) UNDER SECRETARY.—The term "Under Secretary" means the Under Secretary for Science and Technology.

(b) HSARPA.—

(1) ESTABLISHMENT.—There is established the Homeland Security Advanced Research Projects Agency.

(2) DIRECTOR.—HSARPA shall be headed by a Director, who shall be appointed by the Secretary. The Director shall report to the Under Secretary.

(3) RESPONSIBILITIES.—The Director shall administer the Fund to award competitive, merit-reviewed grants, cooperative agreements or contracts to public or private entities, including businesses, federally funded research and development centers, and universities. The Director shall administer the Fund to—

(A) support basic and applied homeland security research to promote revolutionary changes in technologies that would promote homeland security;

(B) advance the development, testing and evaluation, and deployment of critical homeland security technologies; and

(C) accelerate the prototyping and deployment of technologies that would address homeland security vulnerabilities.

(4) TARGETED COMPETITIONS.—The Director may solicit proposals to address specific vulnerabilities identified by the Director.

(5) COORDINATION.—The Director shall ensure that the activities of HSARPA are coordinated with those of other relevant research agencies, and may run projects jointly with other agencies.

(6) PERSONNEL.—In hiring personnel for HSARPA, the Secretary shall have the hiring and management authorities described in section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (5 U.S.C. 3104 note; Public Law 105-261). The term of appointments for employees under subsection (c)(1) of that section may not exceed 5 years before the granting of any extension under subsection (c)(2) of that section.

(7) DEMONSTRATIONS.—The Director, periodically, shall hold homeland security technology demonstrations to improve contact among technology developers, vendors and acquisition personnel.

(c) FUND.—

(1) ESTABLISHMENT.—There is established the Acceleration Fund for Research and Development of Homeland Security Technologies, which shall be administered by the Director of HSARPA.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $500,000,000 to the Fund for fiscal year 2003 and such sums as may be necessary thereafter.

(3) COAST GUARD.—Of the funds authorized to be appropriated under paragraph (2), not less than 10 percent of such funds for each fiscal year through fiscal year 2005 shall be authorized only for the Under Secretary, through joint agreement with the Commandant of the Coast Guard, to carry out research and development of improved ports, waterways and coastal security surveillance and perimeter protection capabilities for the purpose of minimizing the possibility that Coast Guard cutters, aircraft, helicopters, and personnel will be diverted from non-homeland security missions to the ports, waterways and coastal security mission.

SEC. 308. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out the responsibilities under section 302(4) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—

(1) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate;

(B) ensure that the research funded is of high quality, as determined through merit review processes developed under section 302(14); and

(C) distribute funds through grants, cooperative agreements, and contracts.

(2) UNIVERSITY-BASED CENTERS FOR HOMELAND SECURITY.—

(A) ESTABLISHMENT.—The Secretary, acting through the Under Secretary for Science and

Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation's homeland security.

(B) CRITERIA FOR SELECTION.—In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.

(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) DISCRETION OF SECRETARY.—The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—

(1) CONSULTATION.—In carrying out the duties under section 302, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) LABORATORIES.—The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any laboratory or site and may establish additional laboratory units at other laboratories or sites.

(3) CRITERIA FOR HEADQUARTERS LABORATORY.—If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate laboratories or sites against the criteria.

(D) Select a laboratory or site on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) LIMITATION ON OPERATION OF LABORATORIES.—No laboratory shall begin operating as the headquarters laboratory of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 309. UTILIZATION OF DEPARTMENT OF ENERGY NATIONAL LABORATORIES AND SITES IN SUPPORT OF HOMELAND SECURITY ACTIVITIES.

(a) AUTHORITY TO UTILIZE NATIONAL LABORATORIES AND SITES.—

(1) IN GENERAL.—In carrying out the missions of the Department, the Secretary may utilize the Department of Energy national laboratories and sites through any 1 or more of the following methods, as the Secretary considers appropriate:

(A) A joint sponsorship arrangement referred to in subsection (b).

(B) A direct contract between the Department and the applicable Department of Energy laboratory or site, subject to subsection (c).

(C) Any "work for others" basis made available by that laboratory or site.

(D) Any other method provided by law.

(2) ACCEPTANCE AND PERFORMANCE BY LABS AND SITES.—Notwithstanding any other law governing the administration, mission, use, or operations of any of the Department of Energy national laboratories and sites, such laboratories and sites are authorized to accept and perform work for the Secretary, consistent with resources provided, and perform such work on an equal basis to other missions at the laboratory and not on a noninterference basis with other missions of such laboratory or site.

(b) JOINT SPONSORSHIP ARRANGEMENTS.—

(1) LABORATORIES.—The Department may be a joint sponsor, under a multiple agency sponsorship arrangement with the Department of Energy, of 1 or more Department of Energy national laboratories in the performance of work.

(2) SITES.—The Department may be a joint sponsor of a Department of Energy site in the performance of work as if such site were a federally funded research and development center and the work were performed under a multiple agency sponsorship arrangement with the Department.

(3) PRIMARY SPONSOR.—The Department of Energy shall be the primary sponsor under a multiple agency sponsorship arrangement referred to in paragraph (1) or (2).

(4) LEAD AGENT.—The Secretary of Energy shall act as the lead agent in coordinating the formation and performance of a joint sponsorship arrangement under this subsection between the Department and a Department of Energy national laboratory or site.

(5) FEDERAL ACQUISITION REGULATION.—Any work performed by a Department of Energy national laboratory or site under a joint sponsorship arrangement under this subsection shall comply with the policy on the use of federally funded research and development centers under the Federal Acquisition Regulations.

(6) FUNDING.—The Department shall provide funds for work at the Department of Energy national laboratories or sites, as the case may be, under a joint sponsorship arrangement under this subsection under the same terms and conditions as apply to the primary sponsor of such national laboratory under section 303(b)(1)(C) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253 (b)(1)(C)) or of such site to the extent such section applies to such site as a federally funded research and development center by reason of this subsection.

(c) SEPARATE CONTRACTING.—To the extent that programs or activities transferred by this Act from the Department of Energy to the Department of Homeland Security are being carried out through direct contracts with the operator of a national laboratory or site of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that direct contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the direct contracts of the Department of Energy with such operator.

(d) AUTHORITY WITH RESPECT TO COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS AND LICENSING AGREEMENTS.—In connection with any utilization of the Department of Energy national laboratories and sites under this section, the Secretary may permit the director of any such national laboratory or site to enter into cooperative research and development agreements or to negotiate licensing agreements with any person, any agency or instrumentality, of the United States, any unit of State or local government, and any other entity under the authority granted by section 12 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a). Technology may be transferred to a non-Federal party to such an agreement consistent with the provisions of sections 11 and 12 of that Act (15 U.S.C. 3710, 3710a).

(e) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a Department of Energy national laboratory or site in connection with any utilization of such laboratory or site under this section, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(f) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the missions of the Department of Homeland Security.

(g) OFFICE FOR NATIONAL LABORATORIES.—There is established within the Directorate of Science and Technology an Office for National Laboratories, which shall be responsible for the coordination and utilization of the Department of Energy national laboratories and sites under this section in a manner to create a networked laboratory system for the purpose of supporting the missions of the Department.

(h) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 310. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) IN GENERAL.—In accordance with title XV, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—On completion of the transfer of the Plum Island Animal Disease Center under subsection (a), the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure that the Department of

Agriculture is able to carry out research, diagnostic, and other activities of the Department of Agriculture at the Center.

(c) DIRECTION OF ACTIVITIES.—The Secretary of Agriculture shall continue to direct the research, diagnostic, and other activities of the Department of Agriculture at the Center described in subsection (b).

(d) NOTIFICATION.—

(1) IN GENERAL.—At least 180 days before any change in the biosafety level at the Plum Island Animal Disease Center, the President shall notify Congress of the change and describe the reasons for the change.

(2) LIMITATION.—No change described in paragraph (1) may be made earlier than 180 days after the completion of the transition period (as defined in section 1501.

SEC. 311. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department a Homeland Security Science and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENTS.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of 1 year, 1 a term of 2 years, and the other a term of 3 years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the 1-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when 1 of its members has a conflict of interest in a matter being considered by the Advisory Committee.

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary for Science and Technology for transmittal to Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

(j) TERMINATION.—The Department of Homeland Security Science and Technology Advisory Committee shall terminate 3 years after the effective date of this Act.

SEC. 312. HOMELAND SECURITY INSTITUTE.

(a) ESTABLISHMENT.—The Secretary shall establish a federally funded research and development center to be known as the "Homeland Security Institute" (in this section referred to as the "Institute").

(b) ADMINISTRATION.—The Institute shall be administered as a separate entity by the Secretary.

(c) DUTIES.—The duties of the Institute shall be determined by the Secretary, and may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) CONSULTATION ON INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, nonprofit institutions, other Government agencies, and federally funded research and development centers.

(e) USE OF CENTERS.—The Institute shall utilize the capabilities of the National Infrastructure Simulation and Analysis Center.

(f) ANNUAL REPORTS.—The Institute shall transmit to the Secretary and Congress an annual report on the activities of the Institute under this section.

(g) TERMINATION.—The Homeland Security Institute shall terminate 3 years after the effective date of this Act.

SEC. 313. TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE HOMELAND SECURITY.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, acting through the Under Secretary for Science and Technology, shall establish and promote a program to encourage technological innovation in facilitating the mission of the Department (as described in section 101).

(b) ELEMENTS OF PROGRAM.—The program described in subsection (a) shall include the following components:

(1) The establishment of a centralized Federal clearinghouse for information relating to technologies that would further the mission of the Department for dissemination, as appropriate, to Federal, State, and local government and private sector entities for additional review, purchase, or use.

(2) The issuance of announcements seeking unique and innovative technologies to advance the mission of the Department.

(3) The establishment of a technical assistance team to assist in screening, as appropriate, proposals submitted to the Secretary (except as provided in subsection (c)(2)) to assess the feasibility, scientific and technical merits, and estimated cost of such proposals, as appropriate.

(4) The provision of guidance, recommendations, and technical assistance, as appropriate, to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in paragraph (1) or (2).

(5) The provision of information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would enhance homeland security, including information relating to Federal funding, regulation, or acquisition.

(c) MISCELLANEOUS PROVISIONS.—

(1) IN GENERAL.—Nothing in this section shall be construed as authorizing the Secretary or the technical assistance team established under subsection (b)(3) to set standards for technology to be used by the Department, any other executive agency, any State or local government entity, or any private sector entity.

(2) CERTAIN PROPOSALS.—The technical assistance team established under subsection (b)(3) shall not consider or evaluate proposals submitted in response to a solicitation for offers for a pending procurement or for a specific agency requirement.

(3) COORDINATION.—In carrying out this section, the Secretary shall coordinate with the Technical Support Working Group (organized under the April 1982 National Security Decision Directive Numbered 30).

TITLE IV—DIRECTORATE OF BORDER AND TRANSPORTATION SECURITY

Subtitle A—Under Secretary for Border and Transportation Security

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

There shall be in the Department a Directorate of Border and Transportation Security headed by an Under Secretary for Border and Transportation Security.

SEC. 402. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating those functions transferred to the Department at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 441 takes effect.

(4) Establishing and administering rules, in accordance with section 428, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Establishing national immigration enforcement policies and priorities.

(6) Except as provided in subtitle C, administering the customs laws of the United States.

(7) Conducting the inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 421.

(8) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 403. FUNCTIONS TRANSFERRED.

In accordance with title XV (relating to transition provisions), there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of—

(1) the United States Customs Service of the Department of the Treasury, including the functions of the Secretary of the Treasury relating thereto;

(2) the Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto;

(3) the Federal Protective Service of the General Services Administration, including the functions of the Administrator of General Services relating thereto;

(4) the Federal Law Enforcement Training Center of the Department of the Treasury; and

(5) the Office for Domestic Preparedness of the Office of Justice Programs, including the functions of the Attorney General relating thereto.

Subtitle B—United States Customs Service

SEC. 411. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) Establishment.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions including, but not limited to those set forth in section 415(7), and the personnel, assets, and liabilities attributable to those functions.

(b) Commissioner of Customs.—

(1) In General.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Compensation.—Section 5314 of title 5, United States Code, is amended by striking

"Commissioner of Customs, Department of the Treasury"

and inserting

"Commissioner of Customs, Department of Homeland Security.".

(3) Continuation in office.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 412. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) Retention of Customs Revenue Functions by Secretary of the Treasury.—

(1) Retention of authority.—Notwithstanding section 403(a)(1), authority related to Customs revenue functions that was vested in the Secretary of the Treasury by law before the effective date of this Act under those provisions of law set forth in paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after the effective date of this Act, the Secretary of the Treasury may delegate any such authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) Statutes.—The provisions of law referred to in paragraph (1) are the following: the Tariff Act of 1930; section 249 of the Revised Statutes of the United States (19 U.S.C. 3); section 2 of the Act of March 4, 1923 (19 U.S.C. 6); section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (19 U.S.C. 68); the Foreign Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) Maintenance of Customs Revenue Functions.—

(1) Maintenance of functions.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 411) on or after the effective date of this Act, reduce the staffing level, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) Functions.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) New Personnel.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 413. PRESERVATION OF CUSTOMS FUNDS.

Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 414. SEPARATE BUDGET REQUEST FOR CUSTOMS.

The President shall include in each budget transmitted to Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 415. DEFINITION.

In this subtitle, the term "customs revenue function" means the following:

(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessment.

(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.

(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.

(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.

(5) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated support staff, of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 416. GAO REPORT TO CONGRESS.

Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to Congress a report that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 417. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) In General.—The Secretary shall ensure that adequate staffing is provided to assure that levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.

(b) Notification of Congress.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 90 days prior to taking any action which would—

(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;

(2) eliminate or relocate any office of the Department which provides customs revenue services; or

(3) eliminate any port of entry.

(c) Definition.—In this section, the term "customs revenue services" means those customs revenue functions described in paragraphs (1) through (6) and paragraph (8) of section 415.

SEC. 418. REPORTS TO CONGRESS.

(a) Continuing Reports.—The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before such the effective date of this Act, to be so submitted under any provision of law.

(b) REPORT ON CONFORMING AMENDMENTS.—Not later than 60 days after the date of enactment of this Act, the Secretary of the Treasury shall submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives of proposed conforming amendments to the statutes set forth under section 412(a)(2) in order to determine the appropriate allocation of legal authorities described under this subsection. The Secretary of the Treasury shall also identify those authorities vested in the Secretary of the Treasury that are exercised by the Commissioner of Customs on or before the effective date of this section.

SEC. 419. CUSTOMS USER FEES.

(a) IN GENERAL.—Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—

(1) in paragraph (1), by striking subparagraph (B) and inserting the following:

"(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5).";

(2) in paragraph (4), by striking "(other than the excess fees determined by the Secretary under paragraph (5))"; and

(3) by striking paragraph (5) and inserting the following:

"(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the 'Customs Commercial and Homeland Security Automation Account'. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

"(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

"(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.".

(b) CONFORMING AMENDMENT.—Section 311(b) of the Customs Border Security Act of 2002 (Public Law 107–210) is amended by striking paragraph (2).

Subtitle C—Miscellaneous Provisions

SEC. 421. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary the functions of the Secretary of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading "Bureau of Animal Industry" in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

(4) The Plant Protection Act (7 U.S.C. 7701 et seq.).

(5) The Animal Health Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term "functions" does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the functions transferred under subsection (a) under a law specified in subsection (b).

(3) EFFECTIVE ADMINISTRATION.—The Secretary, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 1501, the Secretary of Agriculture and the Secretary shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary may include as part of the agreement the following:

(A) Authority for the Secretary to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary funds for activities carried out by the Secretary for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary under this subsection may not exceed the proportion of the costs incurred by the Secretary to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—Not later than the completion of the transition period defined under section 1501, the Secretary of Agriculture shall transfer to the Secretary not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting "or the Department of Homeland Security" after "Department of Agriculture"; and

(B) by inserting "or the Secretary of Homeland Security" after "Secretary of Agriculture";

(2) by striking "Secretary" each place it appears (other than in sections 501(a) and 501(e)) and inserting "Secretary concerned"; and

(3) by adding at the end of section 501 the following new subsection:

"(e) SECRETARY CONCERNED DEFINED.—In this title, the term 'Secretary concerned' means—

"(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

"(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.".

SEC. 422. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 403(3), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under chapter 10 of title 40, United States Code, and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 490(f) of title 40, United States Code.

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 423. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to

Congress a report containing a plan for complying with the requirements of section 44901(d) of title 49, United States Code, as amended by section 425 of this Act.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the day before the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 424. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—Subsection (a) shall cease to apply 2 years after the date of enactment of this Act.

SEC. 425. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

"(2) DEADLINE.—

"(A) IN GENERAL.—If, in his discretion or at the request of an airport, the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

"(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requirements of paragraph (1) as soon as practicable at that airport but in no event later than December 31, 2003; and

"(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

"(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

"(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

"(ii) the need to ensure that such installations and modifications are effective; and

"(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

"(C) RESPONSE.—The Under Secretary shall respond to the request of an airport under subparagraph (A) within 14 days of receiving the request. A denial of request shall create no right of appeal or judicial review.

"(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

"(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

"(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

"(3) REPORTS.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of this Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.".

SEC. 426. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(2) MEMBERSHIP.—Section 115(b)(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

"(A) The Secretary of Homeland Security, or the Secretary's designee.".

(3) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking "Secretary of Transportation" and inserting "Secretary of Homeland Security".

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

"(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) only as they relate to security equipment or section 47102(3)(B)(x) only as they relate to installation of bulk explosive detection system.".

SEC. 427. COORDINATION OF INFORMATION AND INFORMATION TECHNOLOGY.

(a) DEFINITION OF AFFECTED AGENCY.—In this section, the term "affected agency" means—

(1) the Department;

(2) the Department of Agriculture;

(3) the Department of Health and Human Services; and

(4) any other department or agency determined to be appropriate by the Secretary.

(b) COORDINATION.—The Secretary, in coordination with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall ensure that appropriate information (as determined by the Secretary) concerning inspections of articles that are imported or entered into the United States, and are inspected or regulated by 1 or more affected agencies, is timely and efficiently exchanged between the affected agencies.

(c) REPORT AND PLAN.—Not later than 18 months after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, the Secretary of Health and Human Services, and the head of each other department or agency determined to be appropriate by the Secretary, shall submit to Congress—

(1) a report on the progress made in implementing this section; and

(2) a plan to complete implementation of this section.

SEC. 428. VISA ISSUANCE.

(a) DEFINITION.—In this subsection, the term "consular office" has the meaning given that term under section 101(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(9)).

(b) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training provided by the Secretary of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien; and

(2) shall have authority to confer or impose upon any officer or employee of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section, consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law, shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country adoption).

(C) Section 212(a)(3)(B)(i)(IV)(bb) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(IV)(bb)).

(D) Section 212(a)(3)(B)(i)(VI) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)(VI)).

(E) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi)(II)).

(F) Section 212(a)(3(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(G) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(H) Section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(I) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(J) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(K) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(L) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999);

112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553.

(M) Section 103(f) of the Chemical Weapon Convention Implementation Act of 1998 (112 Stat. 2681–865).

(N) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(O) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(P) Section 51 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2723).

(d) Consular Officers and Chiefs of Missions.—

(1) In general.—Nothing in this section may be construed to alter or affect—

(A) the employment status of consular officers as employees of the Department of State; or

(B) the authority of a chief of mission under section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927).

(2) Construction regarding delegation of authority.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)), consistent with the Secretary of Homeland Security's authority to refuse visas in accordance with law.

(e) Assignment of Homeland Security Employees to Diplomatic and Consular Posts.—

(1) In general.—The Secretary is authorized to assign employees of the Department to each diplomatic and consular post at which visas are issued, unless the Secretary determines that such an assignment at a particular post would not promote homeland security.

(2) Functions.—Employees assigned under paragraph (1) shall perform the following functions:

(A) Provide expert advice and training to consular officers regarding specific security threats relating to the adjudication of individual visa applications or classes of applications.

(B) Review any such applications, either on the initiative of the employee of the Department or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to consular matters under the jurisdiction of the Secretary.

(3) Evaluation of consular officers.—The Secretary of State shall evaluate, in consultation with the Secretary, as deemed appropriate by the Secretary, the performance of consular officers with respect to the processing and adjudication of applications for visas in accordance with performance standards developed by the Secretary for these procedures.

(4) Report.—The Secretary shall, on an annual basis, submit a report to Congress that describes the basis for each determination under paragraph (1) that the assignment of an employee of the Department at a particular diplomatic post would not promote homeland security.

(5) Permanent assignment; participation in terrorist lookout committee.—When appropriate, employees of the Department assigned to perform functions described in paragraph (2) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1733).

(6) Training and hiring.—

(A) In general.—The Secretary shall ensure, to the extent possible, that any employees of the Department assigned to perform functions under paragraph (2) and, as appropriate, consular officers, shall be provided the necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, and fraud detection techniques, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) Use of center.—The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(7) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Secretary of State shall submit to Congress—

(A) a report on the implementation of this subsection; and

(B) any legislative proposals necessary to further the objectives of this subsection.

(8) Effective date.—This subsection shall take effect on the earlier of—

(A) the date on which the President publishes notice in the Federal Register that the President has submitted a report to Congress setting forth a memorandum of understanding between the Secretary and the Secretary of State governing the implementation of this section; or

(B) the date occurring 1 year after the date of enactment of this Act.

(f) No Creation of Private Right of Action.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(g) Study Regarding Use of Foreign Nationals.—

(1) In general.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) Report.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(h) Report.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(i) Visa Issuance Program for Saudi Arabia.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication.

SEC. 429. INFORMATION ON VISA DENIALS REQUIRED TO BE ENTERED INTO ELECTRONIC DATA SYSTEM.

(a) In General.—Whenever a consular officer of the United States denies a visa to an applicant, the consular officer shall enter the fact and the basis of the denial and the name of the applicant into the interoperable electronic data system implemented under section 202(a) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1722(a)).

(b) Prohibition.—In the case of any alien with respect to whom a visa has been denied under subsection (a)—

(1) no subsequent visa may be issued to the alien unless the consular officer considering the alien's visa application has reviewed the information concerning the alien placed in the interoperable electronic data system, has indicated on the alien's application that the information has been reviewed, and has stated for the record why the visa is being issued or a waiver of visa ineligibility recommended in spite of that information; and

(2) the alien may not be admitted to the United States without a visa issued in accordance with the procedures described in paragraph (1).

SEC. 430. OFFICE FOR DOMESTIC PREPAREDNESS.

(a) In General.—The Office for Domestic Preparedness shall be within the Directorate of Border and Transportation Security.

(b) Director.—There shall be a Director of the Office for Domestic Preparedness, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director of the Office for Domestic Preparedness shall report directly to the Under Secretary for Border and Transportation Security.

(c) Responsibilities.—The Office for Domestic Preparedness shall have the primary responsibility within the executive branch of Government for the preparedness of the United States for acts of terrorism, including—

(1) coordinating preparedness efforts at the Federal level, and working with all State, local, tribal, parish, and private sector emergency response providers on all matters pertaining to combating terrorism, including training, exercises, and equipment support;

(2) coordinating or, as appropriate, consolidating communications and systems of communications relating to homeland security at all levels of government;

(3) directing and supervising terrorism preparedness grant programs of the Federal Government (other than those programs administered by the Department of Health and Human Services) for all emergency response providers;

(4) incorporating the Strategy priorities into planning guidance on an agency level for the preparedness efforts of the Office for Domestic Preparedness;

(5) providing agency-specific training for agents and analysts within the Department, other agencies, and State and local agencies and international entities;

(6) as the lead executive branch agency for preparedness of the United States for acts of terrorism, cooperating closely with the Federal Emergency Management Agency, which shall have the primary responsibility within the executive branch to prepare for and mitigate the effects of nonterrorist-related disasters in the United States;

(7) assisting and supporting the Secretary, in coordination with other Directorates and entities outside the Department, in conducting appropriate risk analysis and risk management activities of State, local, and tribal governments consistent with the mission and functions of the Directorate; and

(8) those elements of the Office of National Preparedness of the Federal Emergency Management Agency which relate to terrorism, which shall be consolidated within the Department in the Office for Domestic Preparedness established under this section.

(d) Fiscal Years 2003 and 2004.—During fiscal year 2003 and fiscal year 2004, the Director of the Office for Domestic Preparedness established under this section shall manage and

carry out those functions of the Office for Domestic Preparedness of the Department of Justice (transferred under this section) before September 11, 2001, under the same terms, conditions, policies, and authorities, and with the required level of personnel, assets, and budget before September 11, 2001.

Subtitle D—Immigration Enforcement Functions

SEC. 441. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title XV (relating to transition provisions), there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.
(2) The detention and removal program.
(3) The intelligence program.
(4) The investigations program.
(5) The inspections program.

SEC. 442. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department of Homeland Security a bureau to be known as the "Bureau of Border Security".

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 5 years professional experience in law enforcement, and a minimum of 5 years of management experience.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 441 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services established under subtitle E, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions specified under section 441 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 441 takes effect, the Secretary shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration enforcement issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services (established under subtitle E), as appropriate.

(c) LEGAL ADVISOR.—There shall be a principal legal advisor to the Assistant Secretary of the Bureau of Border Security. The legal advisor shall provide specialized legal advice to the Assistant Secretary of the Bureau of Border Security and shall represent the bureau in all exclusion, deportation, and removal proceedings before the Executive Office for Immigration Review.

SEC. 443. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 444. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 445. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 441 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of State, the Director of the Federal Bureau of Investigation, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the heads of State and local law enforcement agencies to determine how to most effectively conduct enforcement operations.

SEC. 446. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of the Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

Subtitle E—Citizenship and Immigration Services

SEC. 451. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There shall be in the Department a bureau to be known as the "Bureau of Citizenship and Immigration Services".

(2) DIRECTOR.—The head of the Bureau of Citizenship and Immigration Services shall be the Director of the Bureau of Citizenship and Immigration Services, who—

(A) shall report directly to the Deputy Secretary;

(B) shall have a minimum of 5 years of management experience; and

(C) shall be paid at the same level as the Assistant Secretary of the Bureau of Border Security.

(3) FUNCTIONS.—The Director of the Bureau of Citizenship and Immigration Services—

(A) shall establish the policies for performing such functions as are transferred to the Director by this section or this Act or otherwise vested in the Director by law;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Secretary with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department, including potentially conflicting policies or operations;

(D) shall establish national immigration services policies and priorities;

(E) shall meet regularly with the Ombudsman described in section 452 to correct serious service problems identified by the Ombudsman; and

(F) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to Congress within 3 months after its submission to Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 455, the Director of the Bureau of Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS–14 or above, shall—

(i) gain some experience in all the major functions performed by such bureau; and

(ii) work in at least one field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 455, the Secretary shall submit a report to Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Director of the Bureau of Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—In accordance with title XV (relating to transition provisions), there are transferred from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 455:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 455.

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—

(A) making policy recommendations and performing policy research and analysis on immigration services issues; and

(B) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Border Security of the Department.

(d) LEGAL ADVISOR.—

(1) IN GENERAL.—There shall be a principal legal advisor to the Director of the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The legal advisor shall be responsible for—

(A) providing specialized legal advice, opinions, determinations, regulations, and any other assistance to the Director of the Bureau of Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and

(B) representing the Bureau of Citizenship and Immigration Services in visa petition appeal proceedings before the Executive Office for Immigration Review.

(e) BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—

(A) IN GENERAL.—The Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(f) CHIEF OF OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—There shall be a position of Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 452. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the "Ombudsman"). The Ombudsman shall report directly to the Deputy Secretary. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services; and

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2).

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the recommendations the Office of the Ombudsman has made on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior comment or amendment from the Secretary, Deputy Secretary, Director of the Bureau of Citizenship and Immigration Services, or any other officer or employee of the Department or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Director of the Bureau of Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any local office of the Ombudsman.

(2) CONSULTATION.—The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Director of the Bureau of Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such director by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department and report directly to Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 453. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Director of the Bureau of Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 454. EMPLOYEE DISCIPLINE.

The Director of the Bureau of Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives Congress or agency leadership on any matter.

SEC. 455. EFFECTIVE DATE.

Notwithstanding section 4, sections 451 through 456, and the amendments made by such sections, shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 456. TRANSITION.

(a) References.—With respect to any function transferred by this subtitle to, and exercised on or after the effective date specified in section 455 by, the Director of the Bureau of Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Bureau of Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) Other Transition Issues.—

(1) Exercise of authorities.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subtitle may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 455.

(2) Transfer and allocation of appropriations and personnel.—The personnel of the Department of Justice employed in connection with the functions transferred by this subtitle (and functions that the Secretary determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to,.the Immigration and Naturalization Service in connection with the functions transferred by this subtitle, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Bureau of Citizenship and Immigration Services for allocation to the appropriate component of the Department. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated. The Secretary shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subtitle for a period of 2 years after the effective date specified in section 455.

SEC. 457. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking "services, including the costs of similar services provided without charge to asylum applicants or other immigrants." and inserting "services.".

SEC. 458. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking "not later than one year after the date of enactment of this Act;" and inserting "1 year after the date of the enactment of the Homeland Security Act of 2002;".

SEC. 459. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) In General.—The Secretary, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in this subtitle takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 451(b).

(b) Contents.—For each type of adjudication to be undertaken by the Director of the Bureau of Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Secretary considers advisable.

(c) Consultation.—In carrying out subsection (a), the Secretary shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 451(b) and related processes.

SEC. 460. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in this subtitle takes effect, the Bureau of Citizenship and Immigration Services of the Department, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 461. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) Establishment of Tracking System.—The Secretary, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Secretary for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) Feasibility Study for Online Filing and Improved Processing.—

(1) Online filing.—The Secretary, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related to immigrant services. The study shall also include an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) Report.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) Technology Advisory Committee.—

(1) Establishment.—The Secretary shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the "Technology Advisory Committee") to assist the Secretary in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b). The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the House of Representatives and the Senate.

(2) Composition.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (b)(1).

SEC. 462. CHILDREN'S AFFAIRS.

(a) Transfer of Functions.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) Functions.—

(1) In general.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be submitted to Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations;

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) overseeing the infrastructure and personnel of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, updating, and publishing at least annually a state-by-state list of professionals or other entities qualified to provide guardian and attorney representation services for unaccompanied alien children;

(J) maintaining statistical information and other data on unaccompanied alien children for whose care and placement the Director is responsible, which shall include—

(i) biographical information, such as a child's name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child's placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is the subject;

(K) collecting and compiling statistical information from the Department of Justice, the Department of Homeland Security, and the Department of State on each department's actions relating to unaccompanied alien children; and

(L) conducting investigations and inspections of facilities and other entities in which unaccompanied alien children reside.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services, and the Assistant Secretary of the Bureau of Border Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitive activity; and

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

(e) REFERENCES.—With respect to any function transferred by this section, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 1512 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred pursuant to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term "placement" means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) the term "unaccompanied alien child" means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States; or

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

Subtitle F—General Immigration Provisions

SEC. 471. ABOLISHMENT OF INS.

(a) IN GENERAL.—Upon completion of all transfers from the Immigration and Naturalization Service as provided for by this Act, the Immigration and Naturalization Service of the Department of Justice is abolished.

(b) PROHIBITION.—The authority provided by section 1502 may be used to reorganize functions or organizational units within the Bureau of Border Security or the Bureau of Citizenship and Immigration Services, but may not be used to recombine the two bureaus into a single agency or otherwise to combine, join, or consolidate functions or organizational units of the two bureaus with each other.

SEC. 472. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "employee" means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuous service with 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term "covered entity" means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Homeland Security; and

(3) the term "transfer date" means the date on which the transfer of functions specified under section 441 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

(3) the information specified in section 663(b)(2) of Public Law 104–208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the "appropriate committees of Congress" are the Committees on Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment—

(1) shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to receive under section 5595(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary;

(4) may not be made except in the case of any qualifying employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act,

whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as

determined under regulations of the Office of Personnel Management.

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term "final basic pay" means, with respect to an employee, the total amount of basic pay which would be payable for a year of service by such employee, computed using the employee's final rate of basic pay, and, if last serving on other than a full-time basis, with appropriate adjustment therefor.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government or works for any agency of the Government through a personal services contract, shall be required to pay, prior to the individual's first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Secretary or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 473. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 571 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of such title 5 would otherwise apply (except an action described in section 7512(5) of such title 5).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code. Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may elect to participate in a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports on any demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term "covered entity" has the meaning given such term in section 472(a)(2).

SEC. 474. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the missions of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services are equally important and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 475. DIRECTOR OF SHARED SERVICES.

(a) IN GENERAL.—Within the Office of Deputy Secretary, there shall be a Director of Shared Services.

(b) FUNCTIONS.—The Director of Shared Services shall be responsible for the coordination of resources for the Bureau of Border Security and the Bureau of Citizenship and Immigration Services, including—

(1) information resources management, including computer databases and information technology;

(2) records and file management; and

(3) forms management.

SEC. 476. SEPARATION OF FUNDING.

(a) IN GENERAL.—There shall be established separate accounts in the Treasury of the United States for appropriated funds and other deposits available for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) SEPARATE BUDGETS.—To ensure that the Bureau of Citizenship and Immigration Services and the Bureau of Border Security are funded to the extent necessary to fully carry out their respective functions, the Director of the Office of Management and Budget shall separate the budget requests for each such entity.

(c) FEES.—Fees imposed for a particular service, application, or benefit shall be deposited into the account established under subsection (a) that is for the bureau with jurisdiction over the function to which the fee relates.

(d) FEES NOT TRANSFERABLE.—No fee may be transferred between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security for purposes not authorized by section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

SEC. 477. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Secretary, not later than 120 days after the effective date of this Act, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall submit to the Committees on Appropriations and the Judiciary of the House of Representatives and of the Senate an implementation plan to carry out this Act.

(2) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Recommendations for conforming amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(G) Establishment of a transition team.

(H) Methods to phase in the costs of separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 441 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report containing the following:

(A) A determination of whether the transfers of functions made by subtitles D and E have been completed, and if a transfer of functions has not taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by subtitles D and E have been completed, an identification of any issues that have arisen due to the completed transfers.

(C) An identification of any issues that may arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the date on which the transfer of functions specified under section 441 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(i) Operations.

(ii) Management, including accountability and communication.

(iii) Financial administration.

(iv) Recordkeeping, including information management and technology.

(B) A statement of the reasons for the determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate a report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 478. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Secretary shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Secretary should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.

There shall be in the Department a Directorate of Emergency Preparedness and Response headed by an Under Secretary for Emergency Preparedness and Response.

SEC. 502. RESPONSIBILITIES.

The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall include—

(1) helping to ensure the effectiveness of emergency response providers to terrorist attacks, major disasters, and other emergencies;

(2) with respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment;

(3) providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster;

(4) aiding the recovery from terrorist attacks and major disasters;

(5) building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters;

(6) consolidating existing Federal Government emergency response plans into a single, coordinated national response plan; and

(7) developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 503. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and liabilities of the following entities:

(1) The Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto.

(2) The Integrated Hazard Information System of the National Oceanic and Atmospheric Administration, which shall be renamed "FIRESAT".

(3) The National Domestic Preparedness Office of the Federal Bureau of Investigation, including the functions of the Attorney General relating thereto.

(4) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

(5) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(6) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 504. NUCLEAR INCIDENT RESPONSE.

(a) IN GENERAL.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency in the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to limit the ordinary responsibility of the Secretary of Energy and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

SEC. 505. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and hospital preparedness and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in collaboration with the Secretary.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

SEC. 506. DEFINITION.

In this title, the term "Nuclear Incident Response Team" means a resource that includes—

(1) those entities of the Department of Energy that perform nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance Center/Training Site (REAC/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform such support functions (including radiological emergency response functions) and related functions.

SEC. 507. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) IN GENERAL.—The functions of the Federal Emergency Management Agency include the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of planning for building the emergency management profession to prepare effectively for, mitigate against, respond to, and recover from any hazard;

(C) of response, by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to mitigation, planning, response, and recovery.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

SEC. 508. USE OF NATIONAL PRIVATE SECTOR NETWORKS IN EMERGENCY RESPONSE.

To the maximum extent practicable, the Secretary shall use national private sector networks and infrastructure for emergency response to chemical, biological, radiological, nuclear, or explosive disasters, and other major disasters.

SEC. 509. USE OF COMMERCIALLY AVAILABLE TECHNOLOGY, GOODS, AND SERVICES.

It is the sense of Congress that—

(1) the Secretary should, to the maximum extent possible, use off-the-shelf commercially developed technologies to ensure that the Department's information technology systems allow the Department to collect, manage, share, analyze, and disseminate information securely over multiple channels of communication; and

(2) in order to further the policy of the United States to avoid competing commercially with the private sector, the Secretary should rely on commercial sources to supply the goods and services needed by the Department.

TITLE VI—TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS

SEC. 601. TREATMENT OF CHARITABLE TRUSTS FOR MEMBERS OF THE ARMED FORCES OF THE UNITED STATES AND OTHER GOVERNMENTAL ORGANIZATIONS.

(a) FINDINGS.—Congress finds the following:

(1) Members of the Armed Forces of the United States defend the freedom and security of our Nation.

(2) Members of the Armed Forces of the United States have lost their lives while battling the evils of terrorism around the world.

(3) Personnel of the Central Intelligence Agency (CIA) charged with the responsibility of covert observation of terrorists around the world are often put in harm's way during their service to the United States.

(4) Personnel of the Central Intelligence Agency have also lost their lives while battling the evils of terrorism around the world.

(5) Employees of the Federal Bureau of Investigation (FBI) and other Federal agencies charged with domestic protection of the United States put their lives at risk on a daily basis for the freedom and security of our Nation.

(6) United States military personnel, CIA personnel, FBI personnel, and other Federal agents in the service of the United States are patriots of the highest order.

(7) CIA officer Johnny Micheal Spann became the first American to give his life for his country in the War on Terrorism declared by President George W. Bush following the terrorist attacks of September 11, 2001.

(8) Johnny Micheal Spann left behind a wife and children who are very proud of the heroic actions of their patriot father.

(9) Surviving dependents of members of the Armed Forces of the United States who lose their lives as a result of terrorist attacks or military operations abroad receive a $6,000 death benefit, plus a small monthly benefit.

(10) The current system of compensating spouses and children of American patriots is inequitable and needs improvement.

(b) DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Any charitable corporation, fund, foundation, or trust (or separate fund or account thereof) which otherwise meets all applicable requirements under law with respect to charitable entities and meets the requirements described in subsection (c) shall be eligible to characterize itself as a "Johnny Micheal Spann Patriot Trust".

(c) REQUIREMENTS FOR THE DESIGNATION OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—The requirements described in this subsection are as follows:

(1) Not taking into account funds or donations reasonably necessary to establish a trust, at least 85 percent of all funds or donations (including any earnings on the investment of such funds or donations) received or collected by any Johnny Micheal Spann Patriot Trust must be distributed to (or, if placed in a private foundation, held in trust for) surviving spouses, children, or dependent parents, grandparents, or siblings of 1 or more of the following:

(A) members of the Armed Forces of the United States;

(B) personnel, including contractors, of elements of the intelligence community, as defined in section 3(4) of the National Security Act of 1947;

(C) employees of the Federal Bureau of Investigation; and

(D) officers, employees, or contract employees of the United States Government,

whose deaths occur in the line of duty and arise out of terrorist attacks, military operations, intelligence operations, or law enforcement operations or accidents connected with activities occurring after September 11, 2001, and related to domestic or foreign efforts to curb international terrorism, including the Authorization for Use of Military Force (Public Law 107–40; 115 Stat. 224).

(2) Other than funds or donations reasonably necessary to establish a trust, not more than 15 percent of all funds or donations (or 15 percent of annual earnings on funds invested in a private foundation) may be used for administrative purposes.

(3) No part of the net earnings of any Johnny Micheal Spann Patriot Trust may inure to the benefit of any individual based solely on the position of such individual as a shareholder, an officer or employee of such Trust.

(4) None of the activities of any Johnny Micheal Spann Patriot Trust shall be conducted in a manner inconsistent with any law that prohibits attempting to influence legislation.

(5) No Johnny Micheal Spann Patriot Trust may participate in or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office, including by publication or distribution of statements.

(6) Each Johnny Micheal Spann Patriot Trust shall comply with the instructions and directions of the Director of Central Intelligence, the Attorney General, or the Secretary of Defense relating to the protection of intelligence sources and methods, sensitive law enforcement information, or other sensitive national security information, including methods for confidentially disbursing funds.

(7) Each Johnny Micheal Spann Patriot Trust that receives annual contributions totaling more than $1,000,000 must be audited annually by an independent certified public accounting firm. Such audits shall be filed with the Internal Revenue Service, and shall be open to public inspection, except that the conduct, filing, and availability of the audit shall be consistent with the protection of intelligence sources and methods, of sensitive law enforcement information, and of other sensitive national security information.

(8) Each Johnny Micheal Spann Patriot Trust shall make distributions to beneficiaries described in paragraph (1) at least once every calendar year, beginning not later than 12 months after the formation of such Trust, and all funds and donations received and earnings not placed in a private foundation dedicated to such beneficiaries must be distributed within 36 months after the end of the fiscal year in which such funds, donations, and earnings are received.

(9)(A) When determining the amount of a distribution to any beneficiary described in paragraph (1), a Johnny Micheal Spann Patriot Trust should take into account the amount of any collateral source compensation that the beneficiary has received or is entitled to receive as a result of the death of an individual described in paragraph (1).

(B) Collateral source compensation includes all compensation from collateral sources, including life insurance, pension funds, death benefit programs, and payments by Federal, State, or local governments related to the death of an individual described in paragraph (1).

(d) TREATMENT OF JOHNNY MICHEAL SPANN PATRIOT TRUSTS.—Each Johnny Micheal Spann Patriot Trust shall refrain from conducting the activities described in clauses (i) and (ii) of section 301(20)(A) of the Federal Election Campaign Act of 1971 so that a general solicitation of funds by an individual described in paragraph (1) of section 323(e) of such Act will be permissible if such solicitation meets the requirements of paragraph (4)(A) of such section.

(e) NOTIFICATION OF TRUST BENEFICIARIES.—Notwithstanding any other provision of law, and in a manner consistent with the protection of intelligence sources and methods and sensitive law enforcement information, and other sensitive national security information, the Secretary of Defense, the Director of the Federal Bureau of Investigation, or the Director of Central Intelligence, or their designees, as applicable, may forward information received from an executor, administrator, or other legal representative of the estate of a decedent described in subparagraph (A), (B), (C), or (D) of subsection (c)(1), to a Johnny Micheal Spann Patriot Trust on how to contact individuals eligible for a distribution under subsection (c)(1) for the purpose of providing assistance from such Trust; provided that, neither forwarding nor failing to forward any information under this subsection shall create any cause of action against any Federal department, agency, officer, agent, or employee.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Defense, in coordination with the Attorney General, the Director of the Federal Bureau of Investigation, and the Director of Central Intelligence, shall prescribe regulations to carry out this section.

TITLE VII—MANAGEMENT

SEC. 701. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, accounting, and finance.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) IMMIGRATION.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(A) Maintenance of all immigration statistical information of the Bureau of Border Security and the Bureau of Citizenship and Immigration Services. Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 441 takes effect), including region-by-region statistics on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by such bureaus.

(2) TRANSFER OF FUNCTIONS.—In accordance with title XV, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The investigations program.

(E) The inspections program.

(F) Adjudication of immigrant visa petitions.

(G) Adjudication of naturalization petitions.

(H) Adjudication of asylum and refugee applications.

(I) Adjudications performed at service centers.

(J) All other adjudications performed by the Immigration and Naturalization Service.

SEC. 702. CHIEF FINANCIAL OFFICER.

The Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 703. CHIEF INFORMATION OFFICER.

The Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 704. CHIEF HUMAN CAPITAL OFFICER.

The Chief Human Capital Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct and shall ensure that all employees of the Department are informed of their rights and remedies under chapters 12 and 23 of title 5, United States Code, by—

(1) participating in the 2302(c) Certification Program of the Office of Special Counsel;

(2) achieving certification from the Office of Special Counsel of the Department's compliance with section 2302(c) of title 5, United States Code; and

(3) informing Congress of such certification not later than 24 months after the date of enactment of this Act.

SEC. 705. ESTABLISHMENT OF OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

(a) IN GENERAL.—The Secretary shall appoint in the Department an Officer for Civil Rights and Civil Liberties, who shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department; and

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Officer.

(b) REPORT.—The Secretary shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress on an annual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described under subsection (a)(1) and any actions taken by the Department in response to such allegations.

SEC. 706. CONSOLIDATION AND CO-LOCATION OF OFFICES.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall develop and submit to Congress a plan for consolidating and co-locating—

(1) any regional offices or field offices of agencies that are transferred to the Department under this Act, if such officers are located in the same municipality; and

(2) portions of regional and field offices of other Federal agencies, to the extent such offices perform functions that are transferred to the Secretary under this Act.

TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

SEC. 801. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office established under subsection (a) shall—

(1) coordinate the activities of the Department relating to State and local government;

(2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

(3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and

(4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.

Subtitle B—Inspector General

SEC. 811. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes—

(1) a statement as to whether the Inspector General agrees or disagrees with such exercise; and

(2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I the following:

"SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.".

SEC. 812. LAW ENFORCEMENT POWERS OF INSPECTOR GENERAL AGENTS.

(a) IN GENERAL.—Section 6 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

"(e)(1) In addition to the authority otherwise provided by this Act, each Inspector General appointed under section 3, any Assistant Inspector General for Investigations under such an Inspector General, and any special agent supervised by such an Assistant Inspector General may be authorized by the Attorney General to—

"(A) carry a firearm while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General;

"(B) make an arrest without a warrant while engaged in official duties as authorized under this Act or other statute, or as expressly authorized by the Attorney General, for any offense against the United States committed in the presence of such Inspector General, Assistant Inspector General, or agent, or for any felony cognizable under the laws of the United States if such Inspector General, Assistant Inspector General, or agent has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

"(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

"(2) The Attorney General may authorize exercise of the powers under this subsection only upon an initial determination that—

"(A) the affected Office of Inspector General is significantly hampered in the performance of responsibilities established by this Act as a result of the lack of such powers;

"(B) available assistance from other law enforcement agencies is insufficient to meet the need for such powers; and

"(C) adequate internal safeguards and management procedures exist to ensure proper exercise of such powers.

"(3) The Inspector General offices of the Department of Commerce, Department of Education, Department of Energy, Department of Health and Human Services, Department of Homeland Security, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, Department of Veterans Affairs, Agency for International Development, Environmental Protection Agency, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Services Administration, National Aeronautics and Space Administration, Nuclear Regulatory Commission, Office of Personnel Management, Railroad Retirement Board, Small Business Administration, Social Security Administration, and the Tennessee Valley Authority are exempt from the requirement of paragraph (2) of an initial determination of eligibility by the Attorney General.

"(4) The Attorney General shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

"(5)(A) Powers authorized for an Office of Inspector General under paragraph (1) may be rescinded or suspended upon a determination by the Attorney General that any of the requirements under paragraph (2) is no longer satisfied or that the exercise of authorized powers by that Office of Inspector General has not complied with the guidelines promulgated by the Attorney General under paragraph (4).

"(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Attorney General that such individual has not complied with guidelines promulgated by the Attorney General under paragraph (4).

"(6) A determination by the Attorney General under paragraph (2) or (5) shall not be reviewable in or by any court.

"(7) To ensure the proper exercise of the law enforcement powers authorized by this subsection, the Offices of Inspector General described under paragraph (3) shall, not later than 180 days after the date of enactment of this subsection, collectively enter into a memorandum of understanding to establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office and within any Office that later receives an authorization under paragraph (2). The review process shall be established in consultation with the Attorney General, who shall be provided with a copy of the memorandum of understanding that establishes the review process. Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The results of each review shall be communicated in writing to the applicable Inspector General and to the Attorney General.

"(8) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority, including United States Marshals Service special deputation.".

(b) PROMULGATION OF INITIAL GUIDELINES.—

(1) DEFINITION.—In this subsection, the term "memoranda of understanding" means the agreements between the Department of Justice and the Inspector General offices described under section 6(e)(3) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) that—

(A) are in effect on the date of enactment of this Act; and

(B) authorize such offices to exercise authority that is the same or similar to the authority under section 6(e)(1) of such Act.

(2) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines under section 6(e)(4) of the Inspector General Act of 1978 (5 U.S.C. App) (as added by subsection (a) of this section) applicable to the Inspector General offices described under section 6(e)(3) of that Act.

(3) MINIMUM REQUIREMENTS.—The guidelines promulgated under this subsection shall include, at a minimum, the operational and training requirements in the memoranda of understanding.

(4) NO LAPSE OF AUTHORITY.—The memoranda of understanding in effect on the date of enactment of this Act shall remain in effect until the guidelines promulgated under this subsection take effect.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subsection (a) shall take effect 180 days after the date of enactment of this Act.

(2) INITIAL GUIDELINES.—Subsection (b) shall take effect on the date of enactment of this Act.

Subtitle C—United States Secret Service

SEC. 821. FUNCTIONS TRANSFERRED.

In accordance with title XV, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle D—Acquisitions

SEC. 831. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the 5-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1) IN GENERAL.—When the Secretary carries out basic, applied, and advanced research and development projects, including the expenditure of funds for such projects, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f)), after making a determination that the use of a contract, grant, or cooperative agreement for such project is not feasible or appropriate. The annual report required under subsection (b) of this section, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2) PROTOTYPE PROJECTS.—The Secretary may, under the authority of paragraph (1), carry out prototype projects in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160). In applying the authorities of that section 845, subsection (c) of that section shall apply with respect to prototype projects under this paragraph, and the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than 2 years after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Secretary may—

(1) procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109(b) of title 5, United States Code; and

(2) whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

(d) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term "nontraditional Government contractor" has the same meaning as the term "nontraditional defense contractor" as defined in section 845(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 832. PERSONAL SERVICES.

The Secretary—

(1) may procure the temporary or intermittent services of experts or consultants (or organizations thereof) in accordance with section 3109 of title 5, United States Code; and

(2) may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed 1 year) or intermittent personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 833. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—

(1) IN GENERAL.—The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department (as described in section 101) would be seriously impaired without the use of such authorities.

(2) DELEGATION.—The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) NOTIFICATION.—Not later than the date that is 7 days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and

(B) the justification for such determination.

(b) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—

(1) IN GENERAL.—The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

(2) NUMBER OF EMPLOYEES.—The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) REVIEW.—Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be—

(A) in the case of a contract to be awarded and performed, or purchase to be made, within the United States, $200,000; and

(B) in the case of a contract to be awarded and performed, or purchase to be made, outside of the United States, $300,000.

(2) CONFORMING AMENDMENTS.—Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking "or" at the end of subparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting "; or"; and

(C) by adding at the end the following:

"(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 833(c) of the Homeland Security Act of 2002.".

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—

(1) IN GENERAL.—With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) LIMITATION.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) CERTAIN AUTHORITY.—Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 834. UNSOLICITED PROPOSALS.

(a) REGULATIONS REQUIRED.—Within 1 year of the date of enactment of this Act, the Federal Acquisition Regulation shall be revised to include regulations with regard to unsolicited proposals.

(b) CONTENT OF REGULATIONS.—The regulations prescribed under subsection (a) shall require that before initiating a comprehensive evaluation, an agency contact point shall consider, among other factors, that the proposal—

(1) is not submitted in response to a previously published agency requirement; and

(2) contains technical and cost information for evaluation and overall scientific, technical or socioeconomic merit, or cost-related or price-related factors.

SEC. 835. PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES.

(a) IN GENERAL.—The Secretary may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b).

(b) INVERTED DOMESTIC CORPORATION.—For purposes of this section, a foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) the entity completes after the date of enactment of this Act, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) after the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(A) in the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(B) in the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) the expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

(c) DEFINITIONS AND SPECIAL RULES.—

(1) RULES FOR APPLICATION OF SUBSECTION (b).—In applying subsection (b) for purposes of subsection (a), the following rules shall apply:

(A) CERTAIN STOCK DISREGARDED.—There shall not be taken into account in determining ownership for purposes of subsection (b)(2)—

(i) stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1).

(B) PLAN DEEMED IN CERTAIN CASES.—If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is after the date of enactment of this Act and which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(C) CERTAIN TRANSFERS DISREGARDED.—The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(D) SPECIAL RULE FOR RELATED PARTNERSHIPS.—For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as 1 partnership.

(E) TREATMENT OF CERTAIN RIGHTS.—The Secretary shall prescribe such regulations as may be necessary to—

(i) treat warrants, options, contracts to acquire stock, convertible debt instruments, and other similar interests as stock; and

(ii) treat stock as not stock.

(2) EXPANDED AFFILIATED GROUP.—The term "expanded affiliated group" means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting "more than 50 percent" for "at least 80 percent" each place it appears.

(3) FOREIGN INCORPORATED ENTITY.—The term "foreign incorporated entity" means any entity which is, or but for subsection (b) would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

(4) OTHER DEFINITIONS.—The terms "person", "domestic", and "foreign" have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701 (a) of the Internal Revenue Code of 1986, respectively.

(d) WAIVERS.—The Secretary shall waive subsection (a) with respect to any specific contract if the Secretary determines that the waiver is required in the interest of homeland security, or to prevent the loss of any jobs in the United States or prevent the Government from incurring any additional costs that otherwise would not occur.

Subtitle E—Human Resources Management

SEC. 841. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

(A) it is extremely important that employees of the Department be allowed to participate in a

meaningful way in the creation of any human resources management system affecting them;

(B) such employees have the most direct knowledge of the demands of their jobs and have a direct interest in ensuring that their human resources management system is conducive to achieving optimal operational efficiencies;

(C) the 21st century human resources management system envisioned for the Department should be one that benefits from the input of its employees; and

(D) this collaborative effort will help secure our homeland.

(2) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

"CHAPTER 97—DEPARTMENT OF HOMELAND SECURITY

"Sec.

"9701. Establishment of human resources management system.

"§9701. Establishment of human resources management system

"(a) IN GENERAL.—Notwithstanding any other provision of this part, the Secretary of Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel Management, establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department of Homeland Security.

"(b) SYSTEM REQUIREMENTS.—Any system established under subsection (a) shall—

"(1) be flexible;

"(2) be contemporary;

"(3) not waive, modify, or otherwise affect—

"(A) the public employment principles of merit and fitness set forth in section 2301, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other nonmerit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

"(B) any provision of section 2302, relating to prohibited personnel practices;

"(C)(i) any provision of law referred to in section 2302(b)(1), (8), and (9); or

"(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1), (8), and (9) by—

"(I) providing for equal employment opportunity through affirmative action; or

"(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

"(D) any other provision of this part (as described in subsection (c)); or

"(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

"(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law; and

"(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

"(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this part as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

"(1) subparts A, B, E, G, and H of this part; and

"(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

"(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

"(1) to modify the pay of any employee who serves in—

"(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

"(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

"(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

"(3) to exempt any employee from the application of such section 5307.

"(e) PROVISIONS TO ENSURE COLLABORATION WITH EMPLOYEE REPRESENTATIVES.—

"(1) IN GENERAL.—In order to ensure that the authority of this section is exercised in collaboration with, and in a manner that ensures the participation of employee representatives in the planning, development, and implementation of any human resources management system or adjustments to such system under this section, the Secretary of Homeland Security and the Director of the Office of Personnel Management shall provide for the following:

"(A) NOTICE OF PROPOSAL.—The Secretary and the Director shall, with respect to any proposed system or adjustment—

"(i) provide to each employee representative representing any employees who might be affected, a written description of the proposed system or adjustment (including the reasons why it is considered necessary);

"(ii) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposal; and

"(iii) give any recommendations received from any such representatives under clause (ii) full and fair consideration in deciding whether or how to proceed with the proposal.

"(B) PRE-IMPLEMENTATION CONGRESSIONAL NOTIFICATION, CONSULTATION, AND MEDIATION.—Following receipt of recommendations, if any, from employee representatives with respect to a proposal described in subparagraph (A), the Secretary and the Director shall accept such modifications to the proposal in response to the recommendations as they determine advisable and shall, with respect to any parts of the proposal as to which they have not accepted the recommendations—

"(i) notify Congress of those parts of the proposal, together with the recommendations of employee representatives;

"(ii) meet and confer for not less than 30 calendar days with any representatives who have made recommendations, in order to attempt to reach agreement on whether or how to proceed with those parts of the proposal; and

"(iii) at the Secretary's option, or if requested by a majority of the employee representatives who have made recommendations, use the services of the Federal Mediation and Conciliation Service during such meet and confer period to facilitate the process of attempting to reach agreement.

"(C) IMPLEMENTATION.—

"(i) Any part of the proposal as to which the representatives do not make a recommendation, or as to which their recommendations are accepted by the Secretary and the Director, may be implemented immediately.

"(ii) With respect to any parts of the proposal as to which recommendations have been made but not accepted by the Secretary and the Director, at any time after 30 calendar days have elapsed since the initiation of the congressional notification, consultation, and mediation procedures set forth in subparagraph (B), if the Secretary determines, in the Secretary's sole and unreviewable discretion, that further consultation and mediation is unlikely to produce agreement, the Secretary may implement any or all of such parts, including any modifications made in response to the recommendations as the Secretary determines advisable.

"(iii) The Secretary shall promptly notify Congress of the implementation of any part of the proposal and shall furnish with such notice an explanation of the proposal, any changes made to the proposal as a result of recommendations from employee representatives, and of the reasons why implementation is appropriate under this subparagraph.

"(D) CONTINUING COLLABORATION.—If a proposal described in subparagraph (A) is implemented, the Secretary and the Director shall—

"(i) develop a method for each employee representative to participate in any further planning or development which might become necessary; and

"(ii) give each employee representative adequate access to information to make that participation productive.

"(2) PROCEDURES.—Any procedures necessary to carry out this subsection shall be established by the Secretary and the Director jointly as internal rules of departmental procedure which shall not be subject to review. Such procedures shall include measures to ensure—

"(A) in the case of employees within a unit with respect to which a labor organization is accorded exclusive recognition, representation by individuals designated or from among individuals nominated by such organization;

"(B) in the case of any employees who are not within such a unit, representation by any appropriate organization which represents a substantial percentage of those employees or, if none, in such other manner as may be appropriate, consistent with the purposes of the subsection;

"(C) the fair and expeditious handling of the consultation and mediation process described in subparagraph (B) of paragraph (1), including procedures by which, if the number of employee representatives providing recommendations exceeds 5, such representatives select a committee or other unified representative with which the Secretary and Director may meet and confer; and

"(D) the selection of representatives in a manner consistent with the relative number of employees represented by the organizations or other representatives involved.

"(f) PROVISIONS RELATING TO APPELLATE PROCEDURES.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that—

"(A) employees of the Department are entitled to fair treatment in any appeals that they bring in decisions relating to their employment; and

"(B) in prescribing regulations for any such appeals procedures, the Secretary and the Director of the Office of Personnel Management—

"(i) should ensure that employees of the Department are afforded the protections of due process; and

"(ii) toward that end, should be required to consult with the Merit Systems Protection Board before issuing any such regulations.

"(2) REQUIREMENTS.—Any regulations under this section which relate to any matters within the purview of chapter 77—

"(A) shall be issued only after consultation with the Merit Systems Protection Board;

"(B) shall ensure the availability of procedures which shall—

"(i) be consistent with requirements of due process; and

"(ii) provide, to the maximum extent practicable, for the expeditious handling of any matters involving the Department; and

"(C) shall modify procedures under chapter 77 only insofar as such modifications are designed to further the fair, efficient, and expeditious resolution of matters involving the employees of the Department.

“(g) Provisions Relating to Labor-Management Relations.—Nothing in this section shall be construed as conferring authority on the Secretary of Homeland Security to modify any of the provisions of section 842 of the Homeland Security Act of 2002.

“(h) Sunset Provision.—Effective 5 years after the conclusion of the transition period defined under section 1501 of the Homeland Security Act of 2002, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.”.

(3) Technical and conforming amendment.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end of the following:

“97. Department of Homeland Security 9701”.

(b) Effect on Personnel.—

(1) Nonseparation or nonreduction in grade or compensation of full-time personnel and part-time personnel holding permanent positions.—Except as otherwise provided in this Act, the transfer under this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for 1 year after the date of transfer to the Department.

(2) Positions compensated in accordance with executive schedule.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such position, for the duration of the service of such person in such new position.

(3) Coordination rule.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 842. LABOR-MANAGEMENT RELATIONS.

(a) Limitation on Exclusionary Authority.—

(1) In general.—No agency or subdivision of an agency which is transferred to the Department pursuant to this Act shall be excluded from the coverage of chapter 71 of title 5, United States Code, as a result of any order issued under section 7103(b)(1) of such title 5 after June 18, 2002, unless—

(A) the mission and responsibilities of the agency (or subdivision) materially change; and

(B) a majority of the employees within such agency (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) Exclusions allowable.—Nothing in paragraph (1) shall affect the effectiveness of any order to the extent that such order excludes any portion of an agency or subdivision of an agency as to which—

(A) recognition as an appropriate unit has never been conferred for purposes of chapter 71 of such title 5; or

(B) any such recognition has been revoked or otherwise terminated as a result of a determination under subsection (b)(1).

(b) Provisions Relating to Bargaining Units.—

(1) Limitation relating to appropriate units.—Each unit which is recognized as an appropriate unit for purposes of chapter 71 of title 5, United States Code, as of the day before the effective date of this Act (and any subdivision of any such unit) shall, if such unit (or subdivision) is transferred to the Department pursuant to this Act, continue to be so recognized for such purposes, unless—

(A) the mission and responsibilities of such unit (or subdivision) materially change; and

(B) a majority of the employees within such unit (or subdivision) have as their primary duty intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

(2) Limitation relating to positions or employees.—No position or employee within a unit (or subdivision of a unit) as to which continued recognition is given in accordance with paragraph (1) shall be excluded from such unit (or subdivision), for purposes of chapter 71 of such title 5, unless the primary job duty of such position or employee—

(A) materially changes; and

(B) consists of intelligence, counterintelligence, or investigative work directly related to terrorism investigation.

In the case of any positions within a unit (or subdivision) which are first established on or after the effective date of this Act and any employees first appointed on or after such date, the preceding sentence shall be applied disregarding subparagraph (A).

(c) Waiver.—If the President determines that the application of subsections (a), (b), and (d) would have a substantial adverse impact on the ability of the Department to protect homeland security, the President may waive the application of such subsections 10 days after the President has submitted to Congress a written explanation of the reasons for such determination.

(d) Coordination Rule.—No other provision of this Act or of any amendment made by this Act may be construed or applied in a manner so as to limit, supersede, or otherwise affect the provisions of this section, except to the extent that it does so by specific reference to this section.

(e) Rule of construction.—Nothing in section 9701(e) of title 5, United States Code, shall be considered to apply with respect to any agency or subdivision of any agency, which is excluded from the coverage of chapter 71 of title 5, United States Code, by virtue of an order issued in accordance with section 7103(b) of such title and the preceding provisions of this section (as applicable), or to any employees of any such agency or subdivision or to any individual or entity representing any such employees or any representatives thereof.

Subtitle F—Federal Emergency Procurement Flexibility

SEC. 851. DEFINITION.

In this subtitle, the term “executive agency” has the meaning given that term under section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)).

SEC. 852. PROCUREMENTS FOR DEFENSE AGAINST OR RECOVERY FROM TERRORISM OR NUCLEAR, BIOLOGICAL, CHEMICAL, OR RADIOLOGICAL ATTACK.

The authorities provided in this subtitle apply to any procurement of property or services by or for an executive agency that, as determined by the head of the executive agency, are to be used to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack, but only if a solicitation of offers for the procurement is issued during the 1-year period beginning on the date of the enactment of this Act.

SEC. 853. INCREASED SIMPLIFIED ACQUISITION THRESHOLD FOR PROCUREMENTS IN SUPPORT OF HUMANITARIAN OR PEACEKEEPING OPERATIONS OR CONTINGENCY OPERATIONS.

(a) Temporary Threshold Amounts.—For a procurement referred to in section 852 that is carried out in support of a humanitarian or peacekeeping operation or a contingency operation, the simplified acquisition threshold definitions shall be applied as if the amount determined under the exception provided for such an operation in those definitions were—

(1) in the case of a contract to be awarded and performed, or purchase to be made, inside the United States, $200,000; or

(2) in the case of a contract to be awarded and performed, or purchase to be made, outside the United States, $300,000.

(b) Simplified Acquisition Threshold Definitions.—In this section, the term “simplified acquisition threshold definitions” means the following:

(1) Section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(2) Section 309(d) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(d)).

(3) Section 2302(7) of title 10, United States Code.

(c) Small Business Reserve.—For a procurement carried out pursuant to subsection (a), section 15(j) of the Small Business Act (15 U.S.C. 644(j)) shall be applied as if the maximum anticipated value identified therein is equal to the amounts referred to in subsection (a).

SEC. 854. INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.

In the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) with respect to a procurement referred to in section 852, the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $7,500.

SEC. 855. APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES TO CERTAIN PROCUREMENTS.

(a) Authority.—

(1) In general.—The head of an executive agency may apply the provisions of law listed in paragraph (2) to a procurement referred to in section 852 without regard to whether the property or services are commercial items.

(2) Commercial item laws.—The provisions of law referred to in paragraph (1) are as follows:

(A) Sections 31 and 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 427, 430).

(B) Section 2304(g) of title 10, United States Code.

(C) Section 303(g) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)).

(b) Inapplicability of Limitation on Use of Simplified Acquisition Procedures.—

(1) In general.—The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)), section 2304(g)(1)(B) of title 10, United States Code, and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall not apply to purchases of property or services to which any of the provisions of law referred to in subsection (a) are applied under the authority of this section.

(2) OMB guidance.—The Director of the Office of Management and Budget shall issue guidance and procedures for the use of simplified acquisition procedures for a purchase of property or services in excess of $5,000,000 under the authority of this section.

(c) Continuation of Authority for Simplified Purchase Procedures.—Authority under a provision of law referred to in subsection (a)(2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for use by the head of an executive agency as provided in subsections (a) and (b).

SEC. 856. USE OF STREAMLINED PROCEDURES.

(a) REQUIRED USE.—The head of an executive agency shall, when appropriate, use streamlined acquisition authorities and procedures authorized by law for a procurement referred to in section 852, including authorities and procedures that are provided under the following provisions of law:

(1) FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949.—In title III of the Federal Property and Administrative Services Act of 1949:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 303 (41 U.S.C. 253), relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 303J (41 U.S.C. 253j), relating to orders under task and delivery order contracts.

(2) TITLE 10, UNITED STATES CODE.—In chapter 137 of title 10, United States Code:

(A) Paragraphs (1), (2), (6), and (7) of subsection (c) of section 2304, relating to use of procedures other than competitive procedures under certain circumstances (subject to subsection (e) of such section).

(B) Section 2304c, relating to orders under task and delivery order contracts.

(3) OFFICE OF FEDERAL PROCUREMENT POLICY ACT.—Paragraphs (1)(B), (1)(D), and (2) of section 18(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)), relating to inapplicability of a requirement for procurement notice.

(b) WAIVER OF CERTAIN SMALL BUSINESS THRESHOLD REQUIREMENTS.—Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657q(b)(2)(A)) shall not apply in the use of streamlined acquisition authorities and procedures referred to in paragraphs (1)(A) and (2)(A) of subsection (a) for a procurement referred to in section 852.

SEC. 857. REVIEW AND REPORT BY COMPTROLLER GENERAL.

(a) REQUIREMENTS.—Not later than March 31, 2004, the Comptroller General shall—

(1) complete a review of the extent to which procurements of property and services have been made in accordance with this subtitle; and

(2) submit a report on the results of the review to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives.

(b) CONTENT OF REPORT.—The report under subsection (a)(2) shall include the following matters:

(1) ASSESSMENT.—The Comptroller General's assessment of—

(A) the extent to which property and services procured in accordance with this title have contributed to the capacity of the workforce of Federal Government employees within each executive agency to carry out the mission of the executive agency; and

(B) the extent to which Federal Government employees have been trained on the use of technology.

(2) RECOMMENDATIONS.—Any recommendations of the Comptroller General resulting from the assessment described in paragraph (1).

(c) CONSULTATION.—In preparing for the review under subsection (a)(1), the Comptroller shall consult with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives on the specific issues and topics to be reviewed. The extent of coverage needed in areas such as technology integration, employee training, and human capital management, as well as the data requirements of the study, shall be included as part of the consultation.

SEC. 858. IDENTIFICATION OF NEW ENTRANTS INTO THE FEDERAL MARKETPLACE.

The head of each executive agency shall conduct market research on an ongoing basis to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the executive agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack. The head of the executive agency shall, to the maximum extent practicable, take advantage of commercially available market research methods, including use of commercial databases, to carry out the research.

Subtitle G—Support Anti-terrorism by Fostering Effective Technologies Act of 2002

SEC. 861. SHORT TITLE.

This subtitle may be cited as the "Support Anti-terrorism by Fostering Effective Technologies Act of 2002" or the "SAFETY Act".

SEC. 862. ADMINISTRATION.

(a) IN GENERAL.—The Secretary shall be responsible for the administration of this subtitle.

(b) DESIGNATION OF QUALIFIED ANTI-TERRORISM TECHNOLOGIES.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior United States government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(c) REGULATIONS.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this subtitle.

SEC. 863. LITIGATION MANAGEMENT.

(a) FEDERAL CAUSE OF ACTION.—

(1) IN GENERAL.—There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law is inconsistent with or preempted by Federal law. Such Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology to Federal and non-Federal government customers.

(2) JURISDICTION.—Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.

(b) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) PUNITIVE DAMAGES.—No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) NONECONOMIC DAMAGES.—

(A) IN GENERAL.—Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) DEFINITION.—For purposes of subparagraph (A), the term "noneconomic damages" means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) COLLATERAL SOURCES.—Any recovery by a plaintiff in an action under this section shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) GOVERNMENT CONTRACTOR DEFENSE.—

(1) IN GENERAL.—Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) EXCLUSIVE RESPONSIBILITY.—The Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) CERTIFICATE.—For anti-terrorism technology reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security.

(e) EXCLUSION.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that—

(1) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(2) participates in a conspiracy to commit any such act of terrorism or any such criminal act.

SEC. 864. RISK MANAGEMENT.

(a) IN GENERAL.—

(1) LIABILITY INSURANCE REQUIRED.—Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to Federal and non-Federal government customers ("Seller") shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section and certified by the Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(2) MAXIMUM AMOUNT.—For the total claims related to 1 such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) SCOPE OF COVERAGE.—Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against or response or recovery from an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) THIRD PARTY CLAIMS.—Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 865. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term "qualified anti-terrorism technology" means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term "act of terrorism" means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term "insurance carrier" means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term "liability insurance" means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term "loss" means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term "non-Federal Government customers" means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle H—Miscellaneous Provisions

SEC. 871. ADVISORY COMMITTEES.

(a) IN GENERAL.—The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

(b) TERMINATION.—Any advisory committee established by the Secretary shall terminate 2 years after the date of its establishment, unless the Secretary makes a written determination to extend the advisory committee to a specified date, which shall not be more than 2 years after the date on which such determination is made. The Secretary may make any number of subsequent extensions consistent with this subsection.

SEC. 872. REORGANIZATION.

(a) REORGANIZATION.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(1) pursuant to section 1502(b); or

(2) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(b) LIMITATIONS.—

(1) IN GENERAL.—Authority under subsection (a)(1) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by this Act.

(2) ABOLITIONS.—Authority under subsection (a)(2) does not extend to the abolition of any agency, entity, organizational unit, program, or function established or required to be maintained by statute.

SEC. 873. USE OF APPROPRIATED FUNDS.

(a) DISPOSAL OF PROPERTY.—

(1) STRICT COMPLIANCE.—If specifically authorized to dispose of real property in this or any other Act, the Secretary shall exercise this authority in strict compliance with section 204 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 485).

(2) DEPOSIT OF PROCEEDS.—The Secretary shall deposit the proceeds of any exercise of property disposal authority into the miscellaneous receipts of the Treasury in accordance with section 3302(b) of title 31, United States Code.

(b) GIFTS.—Gifts or donations of services or property of or for the Department may not be accepted, used, or disposed of unless specifically permitted in advance in an appropriations Act and only under the conditions and for the purposes specified in such appropriations Act.

(c) BUDGET REQUEST.—Under section 1105 of title 31, United States Code, the President shall submit to Congress a detailed budget request for the Department for fiscal year 2004, and for each subsequent fiscal year.

SEC. 874. FUTURE YEAR HOMELAND SECURITY PROGRAM.

(a) IN GENERAL.—Each budget request submitted to Congress for the Department under section 1105 of title 31, United States Code, shall, at or about the same time, be accompanied by a Future Years Homeland Security Program.

(b) CONTENTS.—The Future Years Homeland Security Program under subsection (a) shall be structured, and include the same type of information and level of detail, as the Future Years Defense Program submitted to Congress by the Department of Defense under section 221 of title 10, United States Code.

(c) EFFECTIVE DATE.—This section shall take effect with respect to the preparation and submission of the fiscal year 2005 budget request for the Department and for any subsequent fiscal year, except that the first Future Years Homeland Security Program shall be submitted not later than 90 days after the Department's fiscal year 2005 budget request is submitted to Congress.

SEC. 875. MISCELLANEOUS AUTHORITIES.

(a) SEAL.—The Department shall have a seal, whose design is subject to the approval of the President.

(b) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the Department, the Secretary shall have the same authorities that the Secretary of Transportation

has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(c) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any function delegated under this Act may be redelegated to any subordinate.

SEC. 876. MILITARY ACTIVITIES.

Nothing in this Act shall confer upon the Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces to engage in warfighting, the military defense of the United States, or other military activities.

SEC. 877. REGULATORY AUTHORITY AND PREEMPTION.

(a) REGULATORY AUTHORITY.—Except as otherwise provided in sections 306(c), 862(c), and 1706(b), this Act vests no new regulatory authority in the Secretary or any other Federal official, and transfers to the Secretary or another Federal official only such regulatory authority as exists on the date of enactment of this Act within any agency, program, or function transferred to the Department pursuant to this Act, or that on such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority of any other executive agency, except to the extent that this Act transfers such authority from the agency.

(b) PREEMPTION OF STATE OR LOCAL LAW.—Except as otherwise provided in this Act, this Act preempts no State or local law, except that any authority to preempt State or local law vested in any Federal agency or official transferred to the Department pursuant to this Act shall be transferred to the Department effective on the date of the transfer to the Department of that Federal agency or official.

SEC. 878. COUNTERNARCOTICS OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to interdicting the entry of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism. Such official shall—

(1) ensure the adequacy of resources within the Department for illicit drug interdiction; and

(2) serve as the United States Interdiction Coordinator for the Director of National Drug Control Policy.

SEC. 879. OFFICE OF INTERNATIONAL AFFAIRS.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating to homeland security. Such exchange shall include the following:

(A) Exchange of information on research and development on homeland security technologies.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 880. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM.

Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps known as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 881. REVIEW OF PAY AND BENEFIT PLANS.

Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of the Office of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days after the date of enactment, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 2301 of title 5, United States Code.

SEC. 882. OFFICE FOR NATIONAL CAPITAL REGION COORDINATION.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Office of the Secretary the Office of National Capital Region Coordination, to oversee and coordinate Federal programs for and relationships with State, local, and regional authorities in the National Capital Region, as defined under section 2674(f)(2) of title 10, United States Code.

(2) DIRECTOR.—The Office established under paragraph (1) shall be headed by a Director, who shall be appointed by the Secretary.

(3) COOPERATION.—The Secretary shall cooperate with the Mayor of the District of Columbia, the Governors of Maryland and Virginia, and other State, local, and regional officers in the National Capital Region to integrate the District of Columbia, Maryland, and Virginia into the planning, coordination, and execution of the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

(b) RESPONSIBILITIES.—The Office established under subsection (a)(1) shall—

(1) coordinate the activities of the Department relating to the National Capital Region, including cooperation with the Office for State and Local Government Coordination;

(2) assess, and advocate for, the resources needed by State, local, and regional authorities in the National Capital Region to implement efforts to secure the homeland;

(3) provide State, local, and regional authorities in the National Capital Region with regular information, research, and technical support to assist the efforts of State, local, and regional authorities in the National Capital Region in securing the homeland;

(4) develop a process for receiving meaningful input from State, local, and regional authorities and the private sector in the National Capital Region to assist in the development of the homeland security plans and activities of the Federal Government;

(5) coordinate with Federal agencies in the National Capital Region on terrorism preparedness, to ensure adequate planning, information sharing, training, and execution of the Federal role in domestic preparedness activities;

(6) coordinate with Federal, State, local, and regional agencies, and the private sector in the National Capital Region on terrorism preparedness to ensure adequate planning, information sharing, training, and execution of domestic preparedness activities among these agencies and entities; and

(7) serve as a liaison between the Federal Government and State, local, and regional authorities, and private sector entities in the National Capital Region to facilitate access to Federal grants and other programs.

(c) ANNUAL REPORT.—The Office established under subsection (a) shall submit an annual report to Congress that includes—

(1) the identification of the resources required to fully implement homeland security efforts in the National Capital Region;

(2) an assessment of the progress made by the National Capital Region in implementing homeland security efforts; and

(3) recommendations to Congress regarding the additional resources needed to fully implement homeland security efforts in the National Capital Region.

(d) LIMITATION.—Nothing contained in this section shall be construed as limiting the power of State and local governments.

SEC. 883. REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) and (9) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

SEC. 884. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Homeland Security under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

SEC. 885. JOINT INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against the United States and taking appropriate actions to prevent harm to the United States.

(b) STRUCTURE.—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Forces for drug interdiction at Key West, Florida and Alameda, California, to the maximum extent feasible and appropriate.

SEC. 886. SENSE OF CONGRESS REAFFIRMING THE CONTINUED IMPORTANCE AND APPLICABILITY OF THE POSSE COMITATUS ACT.

(a) FINDINGS.—Congress finds the following:

(1) Section 1385 of title 18, United States Code (commonly known as the "Posse Comitatus Act"), prohibits the use of the Armed Forces as a posse comitatus to execute the laws except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.

(2) Enacted in 1878, the Posse Comitatus Act was expressly intended to prevent United States Marshals, on their own initiative, from calling on the Army for assistance in enforcing Federal law.

(3) The Posse Comitatus Act has served the Nation well in limiting the use of the Armed Forces to enforce the law.

(4) Nevertheless, by its express terms, the Posse Comitatus Act is not a complete barrier to the use of the Armed Forces for a range of domestic purposes, including law enforcement functions, when the use of the Armed Forces is authorized by Act of Congress or the President determines that the use of the Armed Forces is required to fulfill the President's obligations under the Constitution to respond promptly in time of war, insurrection, or other serious emergency.

(5) Existing laws, including chapter 15 of title 10, United States Code (commonly known as the "Insurrection Act"), and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), grant the President broad powers that may be invoked in the event of domestic emergencies, including an attack against the Nation using weapons of mass destruction, and these laws specifically authorize the President to use the Armed Forces to help restore public order.

(b) SENSE OF CONGRESS.—Congress reaffirms the continued importance of section 1385 of title 18, United States Code, and it is the sense of Congress that nothing in this Act should be construed to alter the applicability of such section to any use of the Armed Forces as a posse comitatus to execute the laws.

SEC. 887. COORDINATION WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE PUBLIC HEALTH SERVICE ACT.

(a) IN GENERAL.—The annual Federal response plan developed by the Department shall be consistent with section 319 of the Public Health Service Act (42 U.S.C. 247d).

(b) DISCLOSURES AMONG RELEVANT AGENCIES.—

(1) IN GENERAL.—Full disclosure among relevant agencies shall be made in accordance with this subsection.

(2) PUBLIC HEALTH EMERGENCY.—During the period in which the Secretary of Health and Human Services has declared the existence of a public health emergency under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), the Secretary of Health and Human Services shall keep relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, fully and currently informed.

(3) POTENTIAL PUBLIC HEALTH EMERGENCY.—In cases involving, or potentially involving, a public health emergency, but in which no determination of an emergency by the Secretary of Health and Human Services under section 319(a) of the Public Health Service Act (42 U.S.C. 247d(a)), has been made, all relevant agencies, including the Department of Homeland Security, the Department of Justice, and the Federal Bureau of Investigation, shall keep the Secretary of Health and Human Services and the Director of the Centers for Disease Control and Prevention fully and currently informed.

SEC. 888. PRESERVING COAST GUARD MISSION PERFORMANCE.

(a) DEFINITIONS.—In this section:

(1) NON-HOMELAND SECURITY MISSIONS.—The term "non-homeland security missions" means the following missions of the Coast Guard:

(A) Marine safety.

(B) Search and rescue.

(C) Aids to navigation.

(D) Living marine resources (fisheries law enforcement).

(E) Marine environmental protection.

(F) Ice operations.

(2) HOMELAND SECURITY MISSIONS.—The term "homeland security missions" means the following missions of the Coast Guard:

(A) Ports, waterways and coastal security.

(B) Drug interdiction.

(C) Migrant interdiction.

(D) Defense readiness.

(E) Other law enforcement.

(b) TRANSFER.—There are transferred to the Department the authorities, functions, personnel, and assets of the Coast Guard, which shall be maintained as a distinct entity within the Department, including the authorities and functions of the Secretary of Transportation relating thereto.

(c) MAINTENANCE OF STATUS OF FUNCTIONS AND ASSETS.—Notwithstanding any other provision of this Act, the authorities, functions, and capabilities of the Coast Guard to perform its missions shall be maintained intact and without significant reduction after the transfer of the Coast Guard to the Department, except as specified in subsequent Acts.

(d) CERTAIN TRANSFERS PROHIBITED.—No mission, function, or asset (including for purposes of this subsection any ship, aircraft, or helicopter) of the Coast Guard may be diverted to the principal and continuing use of any other organization, unit, or entity of the Department, except for details or assignments that do not reduce the Coast Guard's capability to perform its missions.

(e) CHANGES TO MISSIONS.—

(1) PROHIBITION.—The Secretary may not substantially or significantly reduce the missions of the Coast Guard or the Coast Guard's capability to perform those missions, except as specified in subsequent Acts.

(2) WAIVER.—The Secretary may waive the restrictions under paragraph (1) for a period of not to exceed 90 days upon a declaration and certification by the Secretary to Congress that a clear, compelling, and immediate need exists for such a waiver. A certification under this paragraph shall include a detailed justification for the declaration and certification, including the reasons and specific information that demonstrate that the Nation and the Coast Guard cannot respond effectively if the restrictions under paragraph (1) are not waived.

(f) ANNUAL REVIEW.—

(1) IN GENERAL.—The Inspector General of the Department shall conduct an annual review that shall assess thoroughly the performance by the Coast Guard of all missions of the Coast Guard (including non-homeland security missions and homeland security missions) with a particular emphasis on examining the non-homeland security missions.

(2) REPORT.—The report under this paragraph shall be submitted to—

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Government Reform of the House of Representatives;

(C) the Committees on Appropriations of the Senate and the House of Representatives;

(D) the Committee on Commerce, Science, and Transportation of the Senate; and

(E) the Committee on Transportation and Infrastructure of the House of Representatives.

(g) DIRECT REPORTING TO SECRETARY.—Upon the transfer of the Coast Guard to the Department, the Commandant shall report directly to the Secretary without being required to report through any other official of the Department.

(h) OPERATION AS A SERVICE IN THE NAVY.—None of the conditions and restrictions in this section shall apply when the Coast Guard operates as a service in the Navy under section 3 of title 14, United States Code.

(i) REPORT ON ACCELERATING THE INTEGRATED DEEPWATER SYSTEM.—Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Commandant of the Coast Guard, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Transportation and Infrastructure of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives that—

(1) analyzes the feasibility of accelerating the rate of procurement in the Coast Guard's Integrated Deepwater System from 20 years to 10 years;

(2) includes an estimate of additional resources required;

(3) describes the resulting increased capabilities;

(4) outlines any increases in the Coast Guard's homeland security readiness;

(5) describes any increases in operational efficiencies; and

(6) provides a revised asset phase-in time line.

SEC. 889. HOMELAND SECURITY FUNDING ANALYSIS IN PRESIDENT'S BUDGET.

(a) IN GENERAL.—Section 1105(a) of title 31, United States Code, is amended by adding at the end the following:

"(33)(A)(i) a detailed, separate analysis, by budget function, by agency, and by initiative area (as determined by the administration) for the prior fiscal year, the current fiscal year, the fiscal years for which the budget is submitted, and the ensuing fiscal year identifying the amounts of gross and net appropriations or obligational authority and outlays that contribute to homeland security, with separate displays for mandatory and discretionary amounts, including—

"(I) summaries of the total amount of such appropriations or new obligational authority and outlays requested for homeland security;

"(II) an estimate of the current service levels of homeland security spending;

"(III) the most recent risk assessment and summary of homeland security needs in each initiative area (as determined by the administration); and

"(IV) an estimate of user fees collected by the Federal Government on behalf of homeland security activities;

"(ii) with respect to subclauses (I) through (IV) of clause (i), amounts shall be provided by account for each program, project and activity; and

"(iii) an estimate of expenditures for homeland security activities by State and local governments and the private sector for the prior fiscal year and the current fiscal year.

"(B) In this paragraph, consistent with the Office of Management and Budget's June 2002 'Annual Report to Congress on Combatting Terrorism', the term 'homeland security' refers to those activities that detect, deter, protect against, and respond to terrorist attacks occurring within the United States and its territories.

"(C) In implementing this paragraph, including determining what Federal activities or accounts constitute homeland security for purposes of budgetary classification, the Office of Management and Budget is directed to consult periodically, but at least annually, with the House and Senate Budget Committees, the House and Senate Appropriations Committees, and the Congressional Budget Office.".

(b) Repeal of Duplicative Reports.—The following sections are repealed:

(1) Section 1051 of Public Law 105–85.

(2) Section 1403 of Public Law 105–261.

(c) Effective Date.—This section and the amendment made by this section shall apply beginning with respect to the fiscal year 2005 budget submission.

SEC. 890. AIR TRANSPORTATION SAFETY AND SYSTEM STABILIZATION ACT.

The Air Transportation Safety and System Stabilization Act (49 U.S.C. 40101 note) is amended—

(1) in section 408 by striking the last sentence of subsection (c); and

(2) in section 402 by striking paragraph (1) and inserting the following:

"(1) Air carrier.—The term 'air carrier' means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation and includes employees and agents (including persons engaged in the business of providing air transportation security and their affiliates) of such citizen. For purposes of the preceding sentence, the term 'agent', as applied to persons engaged in the business of providing air transportation security, shall only include persons that have contracted directly with the Federal Aviation Administration on or after and commenced services no later than February 17, 2002, to provide such security, and had not been or are not debarred for any period within 6 months from that date.".

Subtitle I—Information Sharing

SEC. 891. SHORT TITLE; FINDINGS; AND SENSE OF CONGRESS.

(a) Short Title.—This subtitle may be cited as the "Homeland Security Information Sharing Act".

(b) Findings.—Congress finds the following:

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes terrorist attack.

(2) The Federal Government relies on State and local personnel to protect against terrorist attack.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attack.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(c) Sense of Congress.—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

SEC. 892. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.

(a) Procedures for Determining Extent of Sharing of Homeland Security Information.—

(1) The President shall prescribe and implement procedures under which relevant Federal agencies—

(A) share relevant and appropriate homeland security information with other Federal agencies, including the Department, and appropriate State and local personnel;

(B) identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, determine whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) Procedures for Sharing of Homeland Security Information.—

(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with Federal agencies and appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the redissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) Sharing of Classified Information and Sensitive but Unclassified Information With State and Local Personnel.—

(1) The President shall prescribe procedures under which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include 1 or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) Responsible Officials.—For each affected Federal agency, the head of such agency shall designate an official to administer this Act with respect to such agency.

(e) Federal Control of Information.—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) Definitions.—As used in this section:

(1) The term "homeland security information" means any information possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term "intelligence community" has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term "State and local personnel" means any of the following persons involved in prevention, preparation, or response for terrorist attack:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private-sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal government in procedures developed pursuant to this section.

(4) The term "State" includes the District of Columbia and any commonwealth, territory, or possession of the United States.

(g) CONSTRUCTION.—Nothing in this Act shall be construed as authorizing any department, bureau, agency, officer, or employee of the Federal Government to request, receive, or transmit to any other Government entity or personnel, or transmit to any State or local entity or personnel otherwise authorized by this Act to receive homeland security information, any information collected by the Federal Government solely for statistical purposes in violation of any other provision of law relating to the confidentiality of such information.

SEC. 893. REPORT.

(a) REPORT REQUIRED.—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 892. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 892, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

SEC. 894. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out section 892.

SEC. 895. AUTHORITY TO SHARE GRAND JURY INFORMATION.

Rule 6(e) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (2), by inserting ", or of guidelines jointly issued by the Attorney General and Director of Central Intelligence pursuant to Rule 6," after "Rule 6"; and

(2) in paragraph (3)—

(A) in subparagraph (A)(ii), by inserting "or of a foreign government" after "(including personnel of a state or subdivision of a state";

(B) in subparagraph (C)(i)—

(i) in subclause (I), by inserting before the semicolon the following: "or, upon a request by an attorney for the government, when sought by a foreign court or prosecutor for use in an official criminal investigation";

(ii) in subclause (IV)—

(I) by inserting "or foreign" after "may disclose a violation of State";

(II) by inserting "or of a foreign government" after "to an appropriate official of a State or subdivision of a State"; and

(III) by striking "or" at the end;

(iii) by striking the period at the end of subclause (V) and inserting "; or"; and

(iv) by adding at the end the following:

"(VI) when matters involve a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, to any appropriate federal, state, local, or foreign government official for the purpose of preventing or responding to such a threat."; and

(C) in subparagraph (C)(iii)—

(i) by striking "Federal";

(ii) by inserting "or clause (i)(VI)" after "clause (i)(V)"; and

(iii) by adding at the end the following: "Any state, local, or foreign official who receives information pursuant to clause (i)(VI) shall use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 896. AUTHORITY TO SHARE ELECTRONIC, WIRE, AND ORAL INTERCEPTION INFORMATION.

Section 2517 of title 18, United States Code, is amended by adding at the end the following:

"(7) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to a foreign investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure, and foreign investigative or law enforcement officers may use or disclose such contents or derivative evidence to the extent such use or disclosure is appropriate to the proper performance of their official duties.

"(8) Any investigative or law enforcement officer, or other Federal official in carrying out official duties as such Federal official, who by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose such contents or derivative evidence to any appropriate Federal, State, local, or foreign government official to the extent that such contents or derivative evidence reveals a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

SEC. 897. FOREIGN INTELLIGENCE INFORMATION.

(a) DISSEMINATION AUTHORIZED.—Section 203(d)(1) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Public Law 107–56; 50 U.S.C. 403–5d) is amended by adding at the end the following: "Consistent with the responsibility of the Director of Central Intelligence to protect intelligence sources and methods, and the responsibility of the Attorney General to protect sensitive law enforcement information, it shall be lawful for information revealing a threat of actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power, domestic or international sabotage, domestic or international terrorism, or clandestine intelligence gathering activities by an intelligence service or network of a foreign power or by an agent of a foreign power, within the United States or elsewhere, obtained as part of a criminal investigation to be disclosed to any appropriate Federal, State, local, or foreign government official for the purpose of preventing or responding to such a threat. Any official who receives information pursuant to this provision may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information, and any State, local, or foreign official who receives information pursuant to this provision may use that information only consistent with such guidelines as the Attorney General and Director of Central Intelligence shall jointly issue.".

(b) CONFORMING AMENDMENTS.—Section 203(c) of that Act is amended—

(1) by striking "section 2517(6)" and inserting "paragraphs (6) and (8) of section 2517 of title 18, United States Code,"; and

(2) by inserting "and (VI)" after "Rule 6(e)(3)(C)(i)(V)".

SEC. 898. INFORMATION ACQUIRED FROM AN ELECTRONIC SURVEILLANCE.

Section 106(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

SEC. 899. INFORMATION ACQUIRED FROM A PHYSICAL SEARCH.

Section 305(k)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1825) is amended by inserting after "law enforcement officers" the following: "or law enforcement personnel of a State or political subdivision of a State (including the chief executive officer of that State or political subdivision who has the authority to appoint or direct the chief law enforcement officer of that State or political subdivision)".

TITLE IX—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 901. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office of the President a council to be known as the "Homeland Security Council" (in this title referred to as the "Council").

SEC. 902. FUNCTION.

The function of the Council shall be to advise the President on homeland security matters.

SEC. 903. MEMBERSHIP.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Defense.

(6) Such other individuals as may be designated by the President.

SEC. 904. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President may direct.

SEC. 905. STAFF COMPOSITION.

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Executive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 906. RELATION TO THE NATIONAL SECURITY COUNCIL.

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President may otherwise direct.

TITLE X—INFORMATION SECURITY

SEC. 1001. INFORMATION SECURITY.

(a) SHORT TITLE.—This title may be cited as the ‘‘Federal Information Security Management Act of 2002’’.

(b) INFORMATION SECURITY.—

(1) IN GENERAL.—Subchapter II of chapter 35 of title 44, United States Code, is amended to read as follows:

‘‘SUBCHAPTER II—INFORMATION SECURITY

‘‘§3531. Purposes

‘‘The purposes of this subchapter are to—

‘‘(1) provide a comprehensive framework for ensuring the effectiveness of information security controls over information resources that support Federal operations and assets;

‘‘(2) recognize the highly networked nature of the current Federal computing environment and provide effective governmentwide management and oversight of the related information security risks, including coordination of information security efforts throughout the civilian, national security, and law enforcement communities;

‘‘(3) provide for development and maintenance of minimum controls required to protect Federal information and information systems;

‘‘(4) provide a mechanism for improved oversight of Federal agency information security programs;

‘‘(5) acknowledge that commercially developed information security products offer advanced, dynamic, robust, and effective information security solutions, reflecting market solutions for the protection of critical information infrastructures important to the national defense and economic security of the nation that are designed, built, and operated by the private sector; and

‘‘(6) recognize that the selection of specific technical hardware and software information security solutions should be left to individual agencies from among commercially developed products.’’.

‘‘§3532. Definitions

‘‘(a) IN GENERAL.—Except as provided under subsection (b), the definitions under section 3502 shall apply to this subchapter.

‘‘(b) ADDITIONAL DEFINITIONS.—As used in this subchapter—

‘‘(1) the term ‘information security’ means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

‘‘(A) integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

‘‘(B) confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information;

‘‘(C) availability, which means ensuring timely and reliable access to and use of information; and

‘‘(D) authentication, which means utilizing digital credentials to assure the identity of users and validate their access;

‘‘(2) the term ‘national security system’ means any information system (including any telecommunications system) used or operated by an agency or by a contractor of an agency, or other organization on behalf of an agency, the function, operation, or use of which—

‘‘(A) involves intelligence activities;

‘‘(B) involves cryptologic activities related to national security;

‘‘(C) involves command and control of military forces;

‘‘(D) involves equipment that is an integral part of a weapon or weapons system; or

‘‘(E) is critical to the direct fulfillment of military or intelligence missions provided that this definition does not apply to a system that is used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications);

‘‘(3) the term ‘information technology’ has the meaning given that term in section 11101 of title 40; and

‘‘(4) the term ‘information system’ means any equipment or interconnected system or subsystems of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information, and includes—

‘‘(A) computers and computer networks;

‘‘(B) ancillary equipment;

‘‘(C) software, firmware, and related procedures;

‘‘(D) services, including support services; and

‘‘(E) related resources.’’.

‘‘§3533. Authority and functions of the Director

‘‘(a) The Director shall oversee agency information security policies and practices, by—

‘‘(1) promulgating information security standards under section 11331 of title 40;

‘‘(2) overseeing the implementation of policies, principles, standards, and guidelines on information security;

‘‘(3) requiring agencies, consistent with the standards promulgated under such section 11331 and the requirements of this subchapter, to identify and provide information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of—

‘‘(A) information collected or maintained by or on behalf of an agency; or

‘‘(B) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

‘‘(4) coordinating the development of standards and guidelines under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3) with agencies and offices operating or exercising control of national security systems (including the National Security Agency) to assure, to the maximum extent feasible, that such standards and guidelines are complementary with standards and guidelines developed for national security systems;

‘‘(5) overseeing agency compliance with the requirements of this subchapter, including through any authorized action under section 11303(b)(5) of title 40, to enforce accountability for compliance with such requirements;

‘‘(6) reviewing at least annually, and approving or disapproving, agency information security programs required under section 3534(b);

‘‘(7) coordinating information security policies and procedures with related information resources management policies and procedures; and

‘‘(8) reporting to Congress no later than March 1 of each year on agency compliance with the requirements of this subchapter, including—

‘‘(A) a summary of the findings of evaluations required by section 3535;

‘‘(B) significant deficiencies in agency information security practices;

‘‘(C) planned remedial action to address such deficiencies; and

‘‘(D) a summary of, and the views of the Director on, the report prepared by the National Institute of Standards and Technology under section 20(d)(9) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).’’.

‘‘(b) Except for the authorities described in paragraphs (4) and (7) of subsection (a), the authorities of the Director under this section shall not apply to national security systems.

‘‘§3534. Federal agency responsibilities

‘‘(a) The head of each agency shall—

‘‘(1) be responsible for—

‘‘(A) providing information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of—

‘‘(i) information collected or maintained by or on behalf of the agency; and

‘‘(ii) information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency;

‘‘(B) complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines, including—

‘‘(i) information security standards promulgated by the Director under section 11331 of title 40; and

‘‘(ii) information security standards and guidelines for national security systems issued in accordance with law and as directed by the President; and

‘‘(C) ensuring that information security management processes are integrated with agency strategic and operational planning processes;

‘‘(2) ensure that senior agency officials provide information security for the information and information systems that support the operations and assets under their control, including through—

‘‘(A) assessing the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of such information or information systems;

‘‘(B) determining the levels of information security appropriate to protect such information and information systems in accordance with standards promulgated under section 11331 of title 40 for information security classifications and related requirements;

‘‘(C) implementing policies and procedures to cost-effectively reduce risks to an acceptable level; and

‘‘(D) periodically testing and evaluating information security controls and techniques to ensure that they are effectively implemented;

‘‘(3) delegate to the agency Chief Information Officer established under section 3506 (or comparable official in an agency not covered by such section) the authority to ensure compliance

with the requirements imposed on the agency under this subchapter, including—

"(A) designating a senior agency information security officer who shall—

"(i) carry out the Chief Information Officer's responsibilities under this section;

"(ii) possess professional qualifications, including training and experience, required to administer the functions described under this section;

"(iii) have information security duties as that official's primary duty; and

"(iv) head an office with the mission and resources to assist in ensuring agency compliance with this section;

"(B) developing and maintaining an agencywide information security program as required by subsection (b);

"(C) developing and maintaining information security policies, procedures, and control techniques to address all applicable requirements, including those issued under section 3533 of this title, and section 11331 of title 40;

"(D) training and overseeing personnel with significant responsibilities for information security with respect to such responsibilities; and

"(E) assisting senior agency officials concerning their responsibilities under paragraph (2);

"(4) ensure that the agency has trained personnel sufficient to assist the agency in complying with the requirements of this subchapter and related policies, procedures, standards, and guidelines; and

"(5) ensure that the agency Chief Information Officer, in coordination with other senior agency officials, reports annually to the agency head on the effectiveness of the agency information security program, including progress of remedial actions.

"(b) Each agency shall develop, document, and implement an agencywide information security program, approved by the Director under section 3533(a)(5), to provide information security for the information and information systems that support the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source, that includes—

"(1) periodic assessments of the risk and magnitude of the harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of information and information systems that support the operations and assets of the agency;

"(2) policies and procedures that—

"(A) are based on the risk assessments required by paragraph (1);

"(B) cost-effectively reduce information security risks to an acceptable level;

"(C) ensure that information security is addressed throughout the life cycle of each agency information system; and

"(D) ensure compliance with—

"(i) the requirements of this subchapter;

"(ii) policies and procedures as may be prescribed by the Director, and information security standards promulgated under section 11331 of title 40;

"(iii) minimally acceptable system configuration requirements, as determined by the agency; and

"(iv) any other applicable requirements, including standards and guidelines for national security systems issued in accordance with law and as directed by the President;

"(3) subordinate plans for providing adequate information security for networks, facilities, and systems or groups of information systems, as appropriate;

"(4) security awareness training to inform personnel, including contractors and other users of information systems that support the operations and assets of the agency, of—

"(A) information security risks associated with their activities; and

"(B) their responsibilities in complying with agency policies and procedures designed to reduce these risks;

"(5) periodic testing and evaluation of the effectiveness of information security policies, procedures, and practices, to be performed with a frequency depending on risk, but no less than annually, of which such testing—

"(A) shall include testing of management, operational, and technical controls of every information system identified in the inventory required under section 3505(c); and

"(B) may include testing relied on in a evaluation under section 3535;

"(6) a process for planning, implementing, evaluating, and documenting remedial action to address any deficiencies in the information security policies, procedures, and practices of the agency;

"(7) procedures for detecting, reporting, and responding to security incidents, including—

"(A) mitigating risks associated with such incidents before substantial damage is done; and

"(B) notifying and consulting with, as appropriate—

"(i) law enforcement agencies and relevant Offices of Inspector General;

"(ii) an office designated by the President for any incident involving a national security system; and

"(iii) any other agency or office, in accordance with law or as directed by the President; and

"(8) plans and procedures to ensure continuity of operations for information systems that support the operations and assets of the agency.

"(c) Each agency shall—

"(1) report annually to the Director, the Committees on Government Reform and Science of the House of Representatives, the Committees on Governmental Affairs and Commerce, Science, and Transportation of the Senate, the appropriate authorization and appropriations committees of Congress, and the Comptroller General on the adequacy and effectiveness of information security policies, procedures, and practices, and compliance with the requirements of this subchapter, including compliance with each requirement of subsection (b);

"(2) address the adequacy and effectiveness of information security policies, procedures, and practices in plans and reports relating to—

"(A) annual agency budgets;

"(B) information resources management under subchapter 1 of this chapter;

"(C) information technology management under subtitle III of title 40;

"(D) program performance under sections 1105 and 1115 through 1119 of title 31, and sections 2801 and 2805 of title 39;

"(E) financial management under chapter 9 of title 31, and the Chief Financial Officers Act of 1990 (31 U.S.C. 501 note; Public Law 101–576) (and the amendments made by that Act);

"(F) financial management systems under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note); and

"(G) internal accounting and administrative controls under section 3512 of title 31, United States Code, (known as the 'Federal Managers Financial Integrity Act'); and

"(3) report any significant deficiency in a policy, procedure, or practice identified under paragraph (1) or (2)—

"(A) as a material weakness in reporting under section 3512 of title 31; and

"(B) if relating to financial management systems, as an instance of a lack of substantial compliance under the Federal Financial Management Improvement Act (31 U.S.C. 3512 note).

"(d)(1) In addition to the requirements of subsection (c), each agency, in consultation with the Director, shall include as part of the performance plan required under section 1115 of title 31 a description of—

"(A) the time periods, and

"(B) the resources, including budget, staffing, and training,

that are necessary to implement the program required under subsection (b).

"(2) The description under paragraph (1) shall be based on the risk assessments required under subsection (b)(2)(1).

"(e) Each agency shall provide the public with timely notice and opportunities for comment on proposed information security policies and procedures to the extent that such policies and procedures affect communication with the public.

"§3535. Annual independent evaluation

"(a)(1) Each year each agency shall have performed an independent evaluation of the information security program and practices of that agency to determine the effectiveness of such program and practices.

"(2) Each evaluation by an agency under this section shall include—

"(A) testing of the effectiveness of information security policies, procedures, and practices of a representative subset of the agency's information systems;

"(B) an assessment (made on the basis of the results of the testing) of compliance with—

"(i) the requirements of this subchapter; and

"(ii) related information security policies, procedures, standards, and guidelines; and

"(C) separate presentations, as appropriate, regarding information security relating to national security systems.

"(b) Subject to subsection (c)—

"(1) for each agency with an Inspector General appointed under the Inspector General Act of 1978, the annual evaluation required by this section shall be performed by the Inspector General or by an independent external auditor, as determined by the Inspector General of the agency; and

"(2) for each agency to which paragraph (1) does not apply, the head of the agency shall engage an independent external auditor to perform the evaluation.

"(c) For each agency operating or exercising control of a national security system, that portion of the evaluation required by this section directly relating to a national security system shall be performed—

"(1) only by an entity designated by the agency head; and

"(2) in such a manner as to ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(d) The evaluation required by this section—

"(1) shall be performed in accordance with generally accepted government auditing standards; and

"(2) may be based in whole or in part on an audit, evaluation, or report relating to programs or practices of the applicable agency.

"(e) Each year, not later than such date established by the Director, the head of each agency shall submit to the Director the results of the evaluation required under this section.

"(f) Agencies and evaluators shall take appropriate steps to ensure the protection of information which, if disclosed, may adversely affect information security. Such protections shall be commensurate with the risk and comply with all applicable laws and regulations.

"(g)(1) The Director shall summarize the results of the evaluations conducted under this section in the report to Congress required under section 3533(a)(8).

"(2) The Director's report to Congress under this subsection shall summarize information regarding information security relating to national security systems in such a manner as to

ensure appropriate protection for information associated with any information security vulnerability in such system commensurate with the risk and in accordance with all applicable laws.

"(3) Evaluations and any other descriptions of information systems under the authority and control of the Director of Central Intelligence or of National Foreign Intelligence Programs systems under the authority and control of the Secretary of Defense shall be made available to Congress only through the appropriate oversight committees of Congress, in accordance with applicable laws.

"(h) The Comptroller General shall periodically evaluate and report to Congress on—

"(1) the adequacy and effectiveness of agency information security policies and practices; and

"(2) implementation of the requirements of this subchapter.

"§3536. National security systems

"The head of each agency operating or exercising control of a national security system shall be responsible for ensuring that the agency—

"(1) provides information security protections commensurate with the risk and magnitude of the harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of the information contained in such system;

"(2) implements information security policies and practices as required by standards and guidelines for national security systems, issued in accordance with law and as directed by the President; and

"(3) complies with the requirements of this subchapter.

"§3537. Authorization of appropriations

"There are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each of fiscal years 2003 through 2007.

"§3538. Effect on existing law

"Nothing in this subchapter, section 11331 of title 40, or section 20 of the National Standards and Technology Act (15 U.S.C. 278g–3) may be construed as affecting the authority of the President, the Office of Management and Budget or the Director thereof, the National Institute of Standards and Technology, or the head of any agency, with respect to the authorized use or disclosure of information, including with regard to the protection of personal privacy under section 552a of title 5, the disclosure of information under section 552 of title 5, the management and disposition of records under chapters 29, 31, or 33 of title 44, the management of information resources under subchapter I of chapter 35 of this title, or the disclosure of information to Congress or the Comptroller General of the United States.".

(2) CLERICAL AMENDMENT.—The items in the table of sections at the beginning of such chapter 35 under the heading "SUBCHAPTER II" are amended to read as follows:

"3531. Purposes.
"3532. Definitions.
"3533. Authority and functions of the Director.
"3534. Federal agency responsibilities.
"3535. Annual independent evaluation.
"3536. National security systems.
"3537. Authorization of appropriations.
"3538. Effect on existing law.".

(c) INFORMATION SECURITY RESPONSIBILITIES OF CERTAIN AGENCIES.—

(1) NATIONAL SECURITY RESPONSIBILITIES.—(A) Nothing in this Act (including any amendment made by this Act) shall supersede any authority of the Secretary of Defense, the Director of Central Intelligence, or other agency head, as authorized by law and as directed by the President, with regard to the operation, control, or management of national security systems, as defined by section 3532(3) of title 44, United States Code.

(B) Section 2224 of title 10, United States Code, is amended—

(i) in subsection 2224(b), by striking "(b) OBJECTIVES AND MINIMUM REQUIREMENTS.—(1)" and inserting "(b) OBJECTIVES OF THE PROGRAM.—";

(ii) in subsection 2224(b), by striking "(2) the program shall at a minimum meet the requirements of section 3534 and 3535 of title 44, United States Code."; and

(iii) in subsection 2224(c), by inserting ", including through compliance with subtitle II of chapter 35 of title 44" after "infrastructure".

(2) ATOMIC ENERGY ACT OF 1954.—Nothing in this Act shall supersede any requirement made by or under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Restricted Data or Formerly Restricted Data shall be handled, protected, classified, downgraded, and declassified in conformity with the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

SEC. 1002. MANAGEMENT OF INFORMATION TECHNOLOGY.

(a) IN GENERAL.—Section 11331 of title 40, United States Code, is amended to read as follows:

"§11331. Responsibilities for Federal information systems standards

"(a) DEFINITION.—In this section, the term 'information security' has the meaning given that term in section 3532(b)(1) of title 44.

"(b) REQUIREMENT TO PRESCRIBE STANDARDS.—

"(1) IN GENERAL.—

"(A) REQUIREMENT.—Except as provided under paragraph (2), the Director of the Office of Management and Budget shall, on the basis of proposed standards developed by the National Institute of Standards and Technology pursuant to paragraphs (2) and (3) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)) and in consultation with the Secretary of Homeland Security, promulgate information security standards pertaining to Federal information systems.

"(B) REQUIRED STANDARDS.—Standards promulgated under subparagraph (A) shall include—

"(i) standards that provide minimum information security requirements as determined under section 20(b) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(b)); and

"(ii) such standards that are otherwise necessary to improve the efficiency of operation or security of Federal information systems.

"(C) REQUIRED STANDARDS BINDING.—Information security standards described under subparagraph (B) shall be compulsory and binding.

"(2) STANDARDS AND GUIDELINES FOR NATIONAL SECURITY SYSTEMS.—Standards and guidelines for national security systems, as defined under section 3532(3) of title 44, shall be developed, promulgated, enforced, and overseen as otherwise authorized by law and as directed by the President.

"(c) APPLICATION OF MORE STRINGENT STANDARDS.—The head of an agency may employ standards for the cost-effective information security for all operations and assets within or under the supervision of that agency that are more stringent than the standards promulgated by the Director under this section, if such standards—

"(1) contain, at a minimum, the provisions of those applicable standards made compulsory and binding by the Director; and

"(2) are otherwise consistent with policies and guidelines issued under section 3533 of title 44.

"(d) REQUIREMENTS REGARDING DECISIONS BY DIRECTOR.—

"(1) DEADLINE.—The decision regarding the promulgation of any standard by the Director under subsection (b) shall occur not later than 6 months after the submission of the proposed standard to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3).

"(2) NOTICE AND COMMENT.—A decision by the Director to significantly modify, or not promulgate, a proposed standard submitted to the Director by the National Institute of Standards and Technology, as provided under section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), shall be made after the public is given an opportunity to comment on the Director's proposed decision.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 113 of title 40, United States Code, is amended by striking the item relating to section 11331 and inserting the following:

"11331. Responsibilities for Federal information systems standards.".

SEC. 1003. NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

Section 20 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3), is amended by striking the text and inserting the following:

"(a) The Institute shall—

"(1) have the mission of developing standards, guidelines, and associated methods and techniques for information systems;

"(2) develop standards and guidelines, including minimum requirements, for information systems used or operated by an agency or by a contractor of an agency or other organization on behalf of an agency, other than national security systems (as defined in section 3532(b)(2) of title 44, United States Code);

"(3) develop standards and guidelines, including minimum requirements, for providing adequate information security for all agency operations and assets, but such standards and guidelines shall not apply to national security systems; and

"(4) carry out the responsibilities described in paragraph (3) through the Computer Security Division.

"(b) The standards and guidelines required by subsection (a) shall include, at a minimum—

"(1)(A) standards to be used by all agencies to categorize all information and information systems collected or maintained by or on behalf of each agency based on the objectives of providing appropriate levels of information security according to a range of risk levels;

"(B) guidelines recommending the types of information and information systems to be included in each such category; and

"(C) minimum information security requirements for information and information systems in each such category;

"(2) a definition of and guidelines concerning detection and handling of information security incidents; and

"(3) guidelines developed in coordination with the National Security Agency for identifying an information system as a national security system consistent with applicable requirements for national security systems, issued in accordance with law and as directed by the President.

"(c) In developing standards and guidelines required by subsections (a) and (b), the Institute shall—

"(1) consult with other agencies and offices (including, but not limited to, the Director of the Office of Management and Budget, the Departments of Defense and Energy, the National Security Agency, the General Accounting Office, and the Secretary of Homeland Security) to assure—

"(A) use of appropriate information security policies, procedures, and techniques, in order to improve information security and avoid unnecessary and costly duplication of effort; and

"(B) that such standards and guidelines are complementary with standards and guidelines employed for the protection of national security systems and information contained in such systems;

"(2) provide the public with an opportunity to comment on proposed standards and guidelines;

"(3) submit to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code—

"(A) standards, as required under subsection (b)(1)(A), no later than 12 months after the date of the enactment of this section; and

"(B) minimum information security requirements for each category, as required under subsection (b)(1)(C), no later than 36 months after the date of the enactment of this section;

"(4) issue guidelines as required under subsection (b)(1)(B), no later than 18 months after the date of the enactment of this Act;

"(5) ensure that such standards and guidelines do not require specific technological solutions or products, including any specific hardware or software security solutions;

"(6) ensure that such standards and guidelines provide for sufficient flexibility to permit alternative solutions to provide equivalent levels of protection for identified information security risks; and

"(7) use flexible, performance-based standards and guidelines that, to the greatest extent possible, permit the use of off-the-shelf commercially developed information security products.

"(d) The Institute shall—

"(1) submit standards developed pursuant to subsection (a), along with recommendations as to the extent to which these should be made compulsory and binding, to the Director of the Office of Management and Budget for promulgation under section 11331 of title 40, United States Code;

"(2) provide assistance to agencies regarding—

"(A) compliance with the standards and guidelines developed under subsection (a);

"(B) detecting and handling information security incidents; and

"(C) information security policies, procedures, and practices;

"(3) conduct research, as needed, to determine the nature and extent of information security vulnerabilities and techniques for providing cost-effective information security;

"(4) develop and periodically revise performance indicators and measures for agency information security policies and practices;

"(5) evaluate private sector information security policies and practices and commercially available information technologies to assess potential application by agencies to strengthen information security;

"(6) evaluate security policies and practices developed for national security systems to assess potential application by agencies to strengthen information security;

"(7) periodically assess the effectiveness of standards and guidelines developed under this section and undertake revisions as appropriate;

"(8) solicit and consider the recommendations of the Information Security and Privacy Advisory Board, established by section 21, regarding standards and guidelines developed under subsection (a) and submit such recommendations to the Director of the Office of Management and Budget with such standards submitted to the Director; and

"(9) prepare an annual public report on activities undertaken in the previous year, and planned for the coming year, to carry out responsibilities under this section.

"(e) As used in this section—

"(1) the term 'agency' has the same meaning as provided in section 3502(1) of title 44, United States Code;

"(2) the term 'information security' has the same meaning as provided in section 3532(1) of such title;

"(3) the term 'information system' has the same meaning as provided in section 3502(8) of such title;

"(4) the term 'information technology' has the same meaning as provided in section 11101 of title 40, United States Code; and

"(5) the term 'national security system' has the same meaning as provided in section 3532(b)(2) of such title.".

SEC. 1004. INFORMATION SECURITY AND PRIVACY ADVISORY BOARD.

Section 21 of the National Institute of Standards and Technology Act (15 U.S.C. 278g–4), is amended—

(1) in subsection (a), by striking "Computer System Security and Privacy Advisory Board" and inserting "Information Security and Privacy Advisory Board";

(2) in subsection (a)(1), by striking "computer or telecommunications" and inserting "information technology";

(3) in subsection (a)(2)—

(A) by striking "computer or telecommunications technology" and inserting "information technology"; and

(B) by striking "computer or telecommunications equipment" and inserting "information technology";

(4) in subsection (a)(3)—

(A) by striking "computer systems" and inserting "information system"; and

(B) by striking "computer systems security" and inserting "information security";

(5) in subsection (b)(1) by striking "computer systems security" and inserting "information security";

(6) in subsection (b) by striking paragraph (2) and inserting the following:

"(2) to advise the Institute and the Director of the Office of Management and Budget on information security and privacy issues pertaining to Federal Government information systems, including through review of proposed standards and guidelines developed under section 20; and";

(7) in subsection (b)(3) by inserting "annually" after "report";

(8) by inserting after subsection (e) the following new subsection:

"(f) The Board shall hold meetings at such locations and at such time and place as determined by a majority of the Board.";

(9) by redesignating subsections (f) and (g) as subsections (g) and (h), respectively; and

(10) by striking subsection (h), as redesignated by paragraph (9), and inserting the following:

"(h) As used in this section, the terms "information system" and "information technology" have the meanings given in section 20.".

SEC. 1005. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Federal Computer System Security Training and Plan.—

(1) Repeal.—Section 11332 of title 40, United States Code, is repealed.

(2) Clerical amendment.—The table of sections at the beginning of chapter 113 of title 40, United States Code, as amended by striking the item relating to section 11332.

(b) Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001.—The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398) is amended by striking subtitle G of title X (44 U.S.C. 3531 note).

(c) Paperwork Reduction Act.—(1) Section 3504(g) of title 44, United States Code, is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "sections 11331 and 11332(b) and (c) of title 40" and inserting "section 11331 of title 40 and subchapter II of this title"; and

(ii) by striking the semicolon and inserting a period; and

(C) by striking paragraph (3).

(2) Section 3505 of such title is amended by adding at the end the following:

"(c) Inventory of Information Systems.—(1) The head of each agency shall develop and maintain an inventory of the information systems (including national security systems) operated by or under the control of such agency;

"(2) The identification of information systems in an inventory under this subsection shall include an identification of the interfaces between each such system and all other systems or networks, including those not operated by or under the control of the agency;

"(3) Such inventory shall be—

"(A) updated at least annually;

"(B) made available to the Comptroller General; and

"(C) used to support information resources management, including—

"(i) preparation and maintenance of the inventory of information resources under section 3506(b)(4);

"(ii) information technology planning, budgeting, acquisition, and management under section 3506(h), subtitle III of title 40, and related laws and guidance;

"(iii) monitoring, testing, and evaluation of information security controls under subchapter II;

"(iv) preparation of the index of major information systems required under section 552(g) of title 5, United States Code; and

"(v) preparation of information system inventories required for records management under chapters 21, 29, 31, and 33.

"(4) The Director shall issue guidance for and oversee the implementation of the requirements of this subsection.".

(3) Section 3506(g) of such title is amended—

(A) by adding "and" at the end of paragraph (1);

(B) in paragraph (2)—

(i) by striking "section 11332 of title 40" and inserting "subchapter II of this chapter"; and

(ii) by striking "; and" and inserting a period; and

(C) by striking paragraph (3).

SEC. 1006. CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, affects the authority of the National Institute of Standards and Technology or the Department of Commerce relating to the development and promulgation of standards or guidelines under paragraphs (1) and (2) of section 20(a) of the National Institute of Standards and Technology Act (15 U.S.C. 278g–3(a)).

TITLE XI—DEPARTMENT OF JUSTICE DIVISIONS

Subtitle A—Executive Office for Immigration Review

SEC. 1101. LEGAL STATUS OF EOIR.

(a) Existence of EOIR.—There is in the Department of Justice the Executive Office for Immigration Review, which shall be subject to the direction and regulation of the Attorney General under section 103(g) of the Immigration and Nationality Act, as added by section 1102.

SEC. 1102. AUTHORITIES OF THE ATTORNEY GENERAL.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) as amended by this Act, is further amended by—

(1) amending the heading to read as follows: "POWERS AND DUTIES OF THE SECRETARY, THE UNDER SECRETARY, AND THE ATTORNEY GENERAL";

(2) in subsection (a)—

(A) by inserting "Attorney General," after "President,"; and

(B) by redesignating paragraphs (8), (9), (8) (as added by section 372 of Public Law 104–208), and (9) (as added by section 372 of Public Law 104–208) as paragraphs (8), (9), (10), and (11), respectively; and

(3) by adding at the end the following new subsection:

"(g) ATTORNEY GENERAL.—

"(1) IN GENERAL.—The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date of the Immigration Reform, Accountability and Security Enhancement Act of 2002.

"(2) POWERS.—The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.".

SEC. 1103. STATUTORY CONSTRUCTION.

Nothing in this Act, any amendment made by this Act, or in section 103 of the Immigration and Nationality Act, as amended by section 1102, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.

Subtitle B—Transfer of the Bureau of Alcohol, Tobacco and Firearms to the Department of Justice

SEC. 1111. BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established within the Department of Justice under the general authority of the Attorney General the Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this section referred to as the "Bureau").

(2) DIRECTOR.—There shall be at the head of the Bureau a Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives (in this subtitle referred to as the "Director"). The Director shall be appointed by the Attorney General and shall perform such functions as the Attorney General shall direct. The Director shall receive compensation at the rate prescribed by law under section 5314 of title V, United States Code, for positions at level III of the Executive Schedule.

(3) COORDINATION.—The Attorney General, acting through the Director and such other officials of the Department of Justice as the Attorney General may designate, shall provide for the coordination of all firearms, explosives, tobacco enforcement, and arson enforcement functions vested in the Attorney General so as to assure maximum cooperation between and among any officer, employee, or agency of the Department of Justice involved in the performance of these and related functions.

(4) PERFORMANCE OF TRANSFERRED FUNCTIONS.—The Attorney General may make such provisions as the Attorney General determines appropriate to authorize the performance by any officer, employee, or agency of the Department of Justice of any function transferred to the Attorney General under this section.

(b) RESPONSIBILITIES.—Subject to the direction of the Attorney General, the Bureau shall be responsible for investigating—

(1) criminal and regulatory violations of the Federal firearms, explosives, arson, alcohol, and tobacco smuggling laws;

(2) the functions transferred by subsection (c); and

(3) any other function related to the investigation of violent crime or domestic terrorism that is delegated to the Bureau by the Attorney General.

(c) TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT OF JUSTICE.—

(1) IN GENERAL.—Subject to paragraph (2), but notwithstanding any other provision of law, there are transferred to the Department of Justice the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms, which shall be maintained as a distinct entity within the Department of Justice, including the related functions of the Secretary of the Treasury.

(2) ADMINISTRATION AND REVENUE COLLECTION FUNCTIONS.—There shall be retained within the Department of the Treasury the authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms relating to the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code of 1986, sections 4181 and 4182 of the Internal Revenue Code of 1986, and title 27, United States Code.

(3) BUILDING PROSPECTUS.—Prospectus PDC-98W10, giving the General Services Administration the authority for site acquisition, design, and construction of a new headquarters building for the Bureau of Alcohol, Tobacco and Firearms, is transferred, and deemed to apply, to the Bureau of Alcohol, Tobacco, Firearms, and Explosives established in the Department of Justice under subsection (a).

(d) TAX AND TRADE BUREAU.—

(1) ESTABLISHMENT.—There is established within the Department of the Treasury the Tax and Trade Bureau.

(2) ADMINISTRATOR.—The Tax and Trade Bureau shall be headed by an Administrator, who shall perform such duties as assigned by the Under Secretary for Enforcement of the Department of the Treasury. The Administrator shall occupy a career-reserved position within the Senior Executive Service.

(3) RESPONSIBILITIES.—The authorities, functions, personnel, and assets of the Bureau of Alcohol, Tobacco and Firearms that are not transferred to the Department of Justice under this section shall be retained and administered by the Tax and Trade Bureau.

SEC. 1112. TECHNICAL AND CONFORMING AMENDMENTS.

(a) The Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in section 8D(b)(1) by striking "Bureau of Alcohol, Tobacco and Firearms" and inserting "Tax and Trade Bureau"; and

(2) in section 9(a)(1)(L)(i), by striking "Bureau of Alcohol, Tobacco, and Firearms" and inserting "Tax and Trade Bureau".

(b) Section 1109(c)(2)(A)(i) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (7 U.S.C. 1445-3(c)(2)(A)(i)) is amended by striking "(on ATF Form 3068) by manufacturers of tobacco products to the Bureau of Alcohol, Tobacco and Firearms" and inserting "by manufacturers of tobacco products to the Tax and Trade Bureau".

(c) Section 2(4)(J) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173; 8 U.S.C.A. 1701(4)(J)) is amended by striking "Bureau of Alcohol, Tobacco, and Firearms" and inserting "Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice".

(d) Section 3(1)(E) of the Firefighters' Safety Study Act (15 U.S.C. 2223b(1)(E)) is amended by striking "the Bureau of Alcohol, Tobacco, and Firearms," and inserting "the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice,".

(e) Chapter 40 of title 18, United States Code, is amended—

(1) by striking section 841(k) and inserting the following:

"(k) 'Attorney General' means the Attorney General of the United States.";

(2) in section 846(a), by striking "the Attorney General and the Federal Bureau of Investigation, together with the Secretary" and inserting "the Federal Bureau of Investigation, together with the Bureau of Alcohol, Tobacco, Firearms, and Explosives"; and

(3) by striking "Secretary" each place it appears and inserting "Attorney General".

(f) Chapter 44 of title 18, United States Code, is amended—

(1) in section 921(a)(4)(B), by striking "Secretary" and inserting "Attorney General";

(2) in section 921(a)(4), by striking "Secretary of the Treasury" and inserting "Attorney General";

(3) in section 921(a), by striking paragraph (18) and inserting the following:

"(18) The term 'Attorney General' means the Attorney General of the United States";

(4) in section 922(p)(5)(A), by striking "after consultation with the Secretary" and inserting "after consultation with the Attorney General";

(5) in section 923(l), by striking "Secretary of the Treasury" and inserting "Attorney General"; and

(6) by striking "Secretary" each place it appears, except before "of the Army" in section 921(a)(4) and before "of Defense" in section 922(p)(5)(A), and inserting the term "Attorney General".

(g) Section 1261(a) of title 18, United States Code, is amended to read as follows:

"(a) The Attorney General—

"(1) shall enforce the provisions of this chapter; and

"(2) has the authority to issue regulations to carry out the provisions of this chapter.".

(h) Section 1952(c) of title 18, United States Code, is amended by striking "Secretary of the Treasury" and inserting "Attorney General".

(i) Chapter 114 of title 18, United States Code, is amended—

(1) by striking section 2341(5), and inserting the following:

"(5) the term 'Attorney General' means the Attorney General of the United States"; and

(2) by striking "Secretary" each place it appears and inserting "Attorney General".

(j) Section 6103(i)(8)(A)(i) of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by striking "or the Bureau of Alcohol, Tobacco and Firearms" and inserting ", the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, or the Tax and Trade Bureau, Department of the Treasury,".

(k) Section 7801(a) of the Internal Revenue Code of 1986 (relating to the authority of the Department of the Treasury) is amended—

(1) by striking "SECRETARY.—Except" and inserting "SECRETARY.—

"(1) IN GENERAL.—Except"; and

(2) by adding at the end the following:

"(2) ADMINISTRATION AND ENFORCEMENT OF CERTAIN PROVISIONS BY ATTORNEY GENERAL.—

"(A) IN GENERAL.—The administration and enforcement of the following provisions of this title shall be performed by or under the supervision of the Attorney General; and the term 'Secretary' or 'Secretary of the Treasury' shall, when applied to those provisions, mean the Attorney General; and the term 'internal revenue officer' shall, when applied to those provisions, mean any officer of the Bureau of Alcohol, Tobacco, Firearms, and Explosives so designated by the Attorney General:

"(i) Chapter 53.

"(ii) Chapters 61 through 80, to the extent such chapters relate to the enforcement and administration of the provisions referred to in clause (i).

"(B) USE OF EXISTING RULINGS AND INTERPRETATIONS.—Nothing in this Act alters or repeals the rulings and interpretations of the Bureau of Alcohol, Tobacco, and Firearms in effect on the effective date of the Homeland Security Act of 2002, which concern the provisions of this title referred to in subparagraph (A). The Attorney General shall consult with the Secretary to achieve uniformity and consistency in administering provisions under chapter 53 of title 26, United States Code.".

(l) Section 2006(2) of title 28, United States Code, is amended by inserting ", the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice," after "the Secretary of the Treasury".

(m) Section 713 of title 31, United States Code, is amended—

(1) by striking the section heading and inserting the following:

"§713. Audit of Internal Revenue Service, Tax and Trade Bureau, and Bureau of Alcohol, Tobacco, Firearms, and Explosives";

(2) in subsection (a), by striking "Bureau of Alcohol, Tobacco, and Firearms," and inserting "Tax and Trade Bureau, Department of the Treasury, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice"; and

(3) in subsection (b)

(A) in paragraph (1)(B), by striking "or the Bureau" and inserting "or either Bureau";

(B) in paragraph (2)—

(i) by striking "or the Bureau" and inserting "or either Bureau"; and

(ii) by striking "and the Director of the Bureau" and inserting "the Tax and Trade Bureau, Department of the Treasury, and the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice"; and

(C) in paragraph (3), by striking "or the Bureau" and inserting "or either Bureau".

(n) Section 9703 of title 31, United States Code, is amended—

(1) in subsection (a)(2)(B)—

(A) in clause (iii)(III), by inserting "and" after the semicolon;

(B) in clause (iv), by striking "; and" and inserting a period; and

(C) by striking clause (v);

(2) by striking subsection (o);

(3) by redesignating existing subsection (p) as subsection (o); and

(4) in subsection (o)(1), as redesignated by paragraph (3), by striking "Bureau of Alcohol, Tobacco and Firearms" and inserting "Tax and Trade Bureau".

(o) Section 609N(2)(L) of the Justice Assistance Act of 1984 (42 U.S.C. 10502(2)(L)) is amended by striking "Bureau of Alcohol, Tobacco, and Firearms" and inserting "Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice".

(p) Section 32401(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 13921(a)) is amended—

(1) by striking "Secretary of the Treasury" each place it appears and inserting "Attorney General"; and

(2) in subparagraph (3)(B), by striking "Bureau of Alcohol, Tobacco and Firearms" and inserting "Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice".

(q) Section 80303 of title 49, United States Code, is amended—

(1) by inserting "or, when the violation of this chapter involves contraband described in paragraph (2) or (5) of section 80302(a), the Attorney General" after "section 80304 of this title."; and

(2) by inserting ", the Attorney General," after "by the Secretary".

(r) Section 80304 of title 49, United States Code, is amended—

(1) in subsection (a), by striking "(b) and (c)" and inserting "(b), (c), and (d)";

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c), the following:

"(d) ATTORNEY GENERAL.—The Attorney General, or officers, employees, or agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice designated by the Attorney General, shall carry out the laws referred to in section 80306(b) of this title to the extent that the violation of this chapter involves contraband described in section 80302 (a)(2) or (a)(5).".

(s) Section 103 of the Gun Control Act of 1968 (Public Law 90–618; 82 Stat. 1226) is amended by striking "Secretary of the Treasury" and inserting "Attorney General".

SEC. 1113. POWERS OF AGENTS OF THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES.

Chapter 203 of title 18, United States Code, is amended by adding the following:

"§3051. Powers of Special Agents of Bureau of Alcohol, Tobacco, Firearms, and Explosives.

"(a) Special agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives, as well as any other investigator or officer charged by the Attorney General with the duty of enforcing any of the criminal, seizure, or forfeiture provisions of the laws of the United States, may carry firearms, serve warrants and subpoenas issued under the authority of the United States and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony.

"(b) Any special agent of the Bureau of Alcohol, Tobacco, Firearms, and Explosives may, in respect to the performance of his or her duties, make seizures of property subject to forfeiture to the United States.

"(c)(1) Except as provided in paragraphs (2) and (3), and except to the extent that such provisions conflict with the provisions of section 983 of title 18, United States Code, insofar as section 983 applies, the provisions of the Customs laws relating to—

"(A) the seizure, summary and judicial forfeiture, and condemnation of property;

"(B) the disposition of such property;

"(C) the remission or mitigation of such forfeiture; and

"(D) the compromise of claims,

shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any applicable provision of law enforced or administered by the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

"(2) For purposes of paragraph (1), duties that are imposed upon a customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws of the United States shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or any other person as may be authorized or designated for that purpose by the Attorney General.

"(3) Notwithstanding any other provision of law, the disposition of firearms forfeited by reason of a violation of any law of the United States shall be governed by the provisions of section 5872(b) of the Internal Revenue Code of 1986.".

SEC. 1114. EXPLOSIVES TRAINING AND RESEARCH FACILITY.

(a) ESTABLISHMENT.—There is established within the Bureau an Explosives Training and Research Facility at Fort AP Hill, Fredericksburg, Virginia.

(b) PURPOSE.—The facility established under subsection (a) shall be utilized to train Federal, State, and local law enforcement officers to—

(1) investigate bombings and explosions;

(2) properly handle, utilize, and dispose of explosive materials and devices;

(3) train canines on explosive detection; and

(4) conduct research on explosives.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as may be necessary to establish and maintain the facility established under subsection (a).

(2) AVAILABILITY OF FUNDS.—Any amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 1115. PERSONNEL MANAGEMENT DEMONSTRATION PROJECT.

Notwithstanding any other provision of law, the Personnel Management Demonstration Project established under section 102 of title I of Division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Pub. L. 105–277; 122 Stat. 2681–585) shall be transferred to the Attorney General of the United States for continued use by the Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, and the Secretary of the Treasury for continued use by the Tax and Trade Bureau.

Subtitle C—Explosives

SEC. 1121. SHORT TITLE.

This subtitle may be referred to as the "Safe Explosives Act".

SEC. 1122. PERMITS FOR PURCHASERS OF EXPLOSIVES.

(a) DEFINITIONS.—Section 841 of title 18, United States Code, is amended—

(1) by striking subsection (j) and inserting the following:

"(j) 'Permittee' means any user of explosives for a lawful purpose, who has obtained either a user permit or a limited permit under the provisions of this chapter."; and

(2) by adding at the end the following:

"(r) 'Alien' means any person who is not a citizen or national of the United States.

"(s) 'Responsible person' means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials.".

(b) PERMITS FOR PURCHASE OF EXPLOSIVES.—Section 842 of title 18, United States Code, is amended—

(1) in subsection (a)(2), by striking "and" at the end;

(2) by striking subsection (a)(3) and inserting the following:

"(3) other than a licensee or permittee knowingly—

"(A) to transport, ship, cause to be transported, or receive any explosive materials; or

"(B) to distribute explosive materials to any person other than a licensee or permittee; or

"(4) who is a holder of a limited permit—

"(A) to transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials; or

"(B) to receive explosive materials from a licensee or permittee, whose premises are located outside the State of residence of the limited permit holder, or on more than 6 separate occasions, during the period of the permit, to receive explosive materials from 1 or more licensees or permittees whose premises are located within the State of residence of the limited permit holder."; and

(3) by striking subsection (b) and inserting the following:

"(b) It shall be unlawful for any licensee or permittee to knowingly distribute any explosive materials to any person other than—

"(1) a licensee;

"(2) a holder of a user permit; or

“(3) a holder of a limited permit who is a resident of the State where distribution is made and in which the premises of the transferor are located.”.

(c) Licenses and User Permits.—Section 843(a) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by inserting “or limited permit” after “user permit”; and

(B) by inserting before the period at the end the following: “, including the names of and appropriate identifying information regarding all employees who will be authorized by the applicant to possess explosive materials, as well as fingerprints and a photograph of each responsible person”;

(2) in the second sentence, by striking “$200 for each” and inserting “$50 for a limited permit and $200 for any other”; and

(3) by striking the third sentence and inserting “Each license or user permit shall be valid for not longer than 3 years from the date of issuance and each limited permit shall be valid for not longer than 1 year from the date of issuance. Each license or permit shall be renewable upon the same conditions and subject to the same restrictions as the original license or permit, and upon payment of a renewal fee not to exceed one-half of the original fee.”.

(d) Criteria for Approving Licenses and Permits.—Section 843(b) of title 18, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

“(1) the applicant (or, if the applicant is a corporation, partnership, or association, each responsible person with respect to the applicant) is not a person described in section 842(i);”;

(2) in paragraph (4)—

(A) by inserting “(A) the Secretary verifies by inspection or, if the application is for an original limited permit or the first or second renewal of such a permit, by such other means as the Secretary determines appropriate, that” before “the applicant”; and

(B) by adding at the end the following:

“(B) subparagraph (A) shall not apply to an applicant for the renewal of a limited permit if the Secretary has verified, by inspection within the preceding 3 years, the matters described in subparagraph (A) with respect to the applicant; and”;

(3) in paragraph (5), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

“(6) none of the employees of the applicant who will be authorized by the applicant to possess explosive materials is any person described in section 842(i); and

“(7) in the case of a limited permit, the applicant has certified in writing that the applicant will not receive explosive materials on more than 6 separate occasions during the 12-month period for which the limited permit is valid.”.

(e) Application Approval.—Section 843(c) of title 18, United States Code, is amended by striking “forty-five days” and inserting “90 days for licenses and permits,”.

(f) Inspection Authority.—Section 843(f) of title 18, United States Code, is amended—

(1) in the first sentence—

(A) by striking “permittees” and inserting “holders of user permits”; and

(B) by inserting “licensees and permittees” before “shall submit”;

(2) in the second sentence, by striking “permittee” the first time it appears and inserting “holder of a user permit”; and

(3) by adding at the end the following: “The Secretary may inspect the places of storage for explosive materials of an applicant for a limited permit or, at the time of renewal of such permit, a holder of a limited permit, only as provided in subsection (b)(4).

(g) Posting of Permits.—Section 843(g) of title 18, United States Code, is amended by inserting “user” before “permits”.

(h) Background Checks; Clearances.—Section 843 of title 18, United States Code, is amended by adding at the end the following:

“(h)(1) If the Secretary receives, from an employer, the name and other identifying information of a responsible person or an employee who will be authorized by the employer to possess explosive materials in the course of employment with the employer, the Secretary shall determine whether the responsible person or employee is one of the persons described in any paragraph of section 842(i). In making the determination, the Secretary may take into account a letter or document issued under paragraph (2).

“(2)(A) If the Secretary determines that the responsible person or the employee is not one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue, to the responsible person or employee, a letter of clearance, which confirms the determination.

“(B) If the Secretary determines that the responsible person or employee is one of the persons described in any paragraph of section 842(i), the Secretary shall notify the employer in writing or electronically of the determination and issue to the responsible person or the employee, as the case may be, a document that—

“(i) confirms the determination;

“(ii) explains the grounds for the determination;

“(iii) provides information on how the disability may be relieved; and

“(iv) explains how the determination may be appealed.”.

(i) Effective Date.—

(1) In general.—The amendments made by this section shall take effect 180 days after the date of enactment of this Act.

(2) Exception.—Notwithstanding any provision of this Act, a license or permit issued under section 843 of title 18, United States Code, before the date of enactment of this Act, shall remain valid until that license or permit is revoked under section 843(d) or expires, or until a timely application for renewal is acted upon.

SEC. 1123. PERSONS PROHIBITED FROM RECEIVING OR POSSESSING EXPLOSIVE MATERIALS.

(a) Distribution of Explosives.—Section 842(d) of title 18, United States Code, is amended—

(1) in paragraph (5), by striking “or” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “or who has been committed to a mental institution;”; and

(3) by adding at the end the following:

“(7) is an alien, other than an alien who—

“(A) is lawfully admitted for permanent residence (as defined in section 101 (a)(20) of the Immigration and Nationality Act); or

“(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

“(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

“(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

“(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

“(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

“(8) has been discharged from the armed forces under dishonorable conditions;

“(9) having been a citizen of the United States, has renounced the citizenship of that person.”.

(b) Possession of Explosive Materials.—Section 842(i) of title 18, United States Code, is amended—

(1) in paragraph (3), by striking “or” at the end; and

(2) by inserting after paragraph (4) the following:

“(5) who is an alien, other than an alien who—

“(A) is lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act); or

“(B) is in lawful nonimmigrant status, is a refugee admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or is in asylum status under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), and—

“(i) is a foreign law enforcement officer of a friendly foreign government, as determined by the Secretary in consultation with the Secretary of State, entering the United States on official law enforcement business, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of this official law enforcement business;

“(ii) is a person having the power to direct or cause the direction of the management and policies of a corporation, partnership, or association licensed pursuant to section 843(a), and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of such power;

“(iii) is a member of a North Atlantic Treaty Organization (NATO) or other friendly foreign military force, as determined by the Secretary in consultation with the Secretary of Defense, (whether or not admitted in a nonimmigrant status) who is present in the United States under military orders for training or other military purpose authorized by the United States, and the shipping, transporting, possession, or receipt of explosive materials is in furtherance of the military purpose; or

“(iv) is lawfully present in the United States in cooperation with the Director of Central Intelligence, and the shipment, transportation, receipt, or possession of the explosive materials is in furtherance of such cooperation;

“(6) who has been discharged from the armed forces under dishonorable conditions;

“(7) who, having been a citizen of the United States, has renounced the citizenship of that person”; and

(3) by inserting “or affecting” before “interstate” each place that term appears.

SEC. 1124. REQUIREMENT TO PROVIDE SAMPLES OF EXPLOSIVE MATERIALS AND AMMONIUM NITRATE.

Section 843 of title 18, United States Code, as amended by this Act, is amended by adding at the end the following:

"(i) FURNISHING OF SAMPLES.—

"(1) IN GENERAL.—Licensed manufacturers and licensed importers and persons who manufacture or import explosive materials or ammonium nitrate shall, when required by letter issued by the Secretary, furnish—

"(A) samples of such explosive materials or ammonium nitrate;

"(B) information on chemical composition of those products; and

"(C) any other information that the Secretary determines is relevant to the identification of the explosive materials or to identification of the ammonium nitrate.

"(2) REIMBURSEMENT.—The Secretary shall, by regulation, authorize reimbursement of the fair market value of samples furnished pursuant to this subsection, as well as the reasonable costs of shipment.".

SEC. 1125. DESTRUCTION OF PROPERTY OF INSTITUTIONS RECEIVING FEDERAL FINANCIAL ASSISTANCE.

Section 844(f)(1) of title 18, United States Code, is amended by inserting before the word "shall" the following: "or any institution or organization receiving Federal financial assistance,".

SEC. 1126. RELIEF FROM DISABILITIES.

Section 845(b) of title 18, United States Code, is amended to read as follows:

"(b)(1) A person who is prohibited from shipping, transporting, receiving, or possessing any explosive under section 842(i) may apply to the Secretary for relief from such prohibition.

"(2) The Secretary may grant the relief requested under paragraph (1) if the Secretary determines that the circumstances regarding the applicability of section 842(i), and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of such relief is not contrary to the public interest.

"(3) A licensee or permittee who applies for relief, under this subsection, from the disabilities incurred under this chapter as a result of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year shall not be barred by such disability from further operations under the license or permit pending final action on an application for relief filed pursuant to this section.".

SEC. 1127. THEFT REPORTING REQUIREMENT.

Section 844 of title 18, United States Code, is amended by adding at the end the following:

"(p) THEFT REPORTING REQUIREMENT.—

"(1) IN GENERAL.—A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary not later than 24 hours after the discovery of the theft.

"(2) PENALTY.—A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.".

SEC. 1128. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as necessary to carry out this subtitle and the amendments made by this subtitle.

TITLE XII—AIRLINE WAR RISK INSURANCE LEGISLATION

SEC. 1201. AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.

Section 44303 of title 49, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "The Secretary of Transportation";

(2) by moving the text of paragraph (2) of section 201(b) of the Air Transportation Safety and System Stabilization Act (115 Stat. 235) to the end and redesignating such paragraph as subsection (b);

(3) in subsection (b) (as so redesignated)—

(A) by striking the subsection heading and inserting "AIR CARRIER LIABILITY FOR THIRD PARTY CLAIMS ARISING OUT OF ACTS OF TERRORISM.—";

(B) in the first sentence by striking "the 180-day period following the date of enactment of this Act, the Secretary of Transportation" and inserting "the period beginning on September 22, 2001, and ending on December 31, 2003, the Secretary"; and

(C) in the last sentence by striking "this paragraph" and inserting "this subsection".

SEC. 1202. EXTENSION OF INSURANCE POLICIES.

Section 44302 of title 49, United States Code, is amended by adding at the end the following:

"(f) EXTENSION OF POLICIES.—

"(1) IN GENERAL.—The Secretary shall extend through August 31, 2003, and may extend through December 31, 2003, the termination date of any insurance policy that the Department of Transportation issued to an air carrier under subsection (a) and that is in effect on the date of enactment of this subsection on no less favorable terms to the air carrier than existed on June 19, 2002; except that the Secretary shall amend the insurance policy, subject to such terms and conditions as the Secretary may prescribe, to add coverage for losses or injuries to aircraft hulls, passengers, and crew at the limits carried by air carriers for such losses and injuries as of such date of enactment and at an additional premium comparable to the premium charged for third-party casualty coverage under such policy.

"(2) SPECIAL RULES.—Notwithstanding paragraph (1)—

"(A) in no event shall the total premium paid by the air carrier for the policy, as amended, be more than twice the premium that the air carrier was paying to the Department of Transportation for its third party policy as of June 19, 2002; and

"(B) the coverage in such policy shall begin with the first dollar of any covered loss that is incurred.".

SEC. 1203. CORRECTION OF REFERENCE.

Effective November 19, 2001, section 147 of the Aviation and Transportation Security Act (Public Law 107–71) is amended by striking "(b)" and inserting "(c)".

SEC. 1204. REPORT.

Not later than 90 days after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

(A) evaluates the availability and cost of commercial war risk insurance for air carriers and other aviation entities for passengers and third parties;

(B) analyzes the economic effect upon air carriers and other aviation entities of available commercial war risk insurance; and

(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.

TITLE XIII—FEDERAL WORKFORCE IMPROVEMENT

Subtitle A—Chief Human Capital Officers

SEC. 1301. SHORT TITLE.

This title may be cited as the "Chief Human Capital Officers Act of 2002".

SEC. 1302. AGENCY CHIEF HUMAN CAPITAL OFFICERS.

(a) IN GENERAL.—Part II of title 5, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 14—AGENCY CHIEF HUMAN CAPITAL OFFICERS

"Sec.

"1401. Establishment of agency Chief Human Capital Officers.

"1402. Authority and functions of agency Chief Human Capital Officers.

"§1401. Establishment of agency Chief Human Capital Officers

"The head of each agency referred to under paragraphs (1) and (2) of section 901(b) of title 31 shall appoint or designate a Chief Human Capital Officer, who shall—

"(1) advise and assist the head of the agency and other agency officials in carrying out the agency's responsibilities for selecting, developing, training, and managing a high-quality, productive workforce in accordance with merit system principles;

"(2) implement the rules and regulations of the President and the Office of Personnel Management and the laws governing the civil service within the agency; and

"(3) carry out such functions as the primary duty of the Chief Human Capital Officer.

"§1402. Authority and functions of agency Chief Human Capital Officers

"(a) The functions of each Chief Human Capital Officer shall include—

"(1) setting the workforce development strategy of the agency;

"(2) assessing workforce characteristics and future needs based on the agency's mission and strategic plan;

"(3) aligning the agency's human resources policies and programs with organization mission, strategic goals, and performance outcomes;

"(4) developing and advocating a culture of continuous learning to attract and retain employees with superior abilities;

"(5) identifying best practices and benchmarking studies, and

"(6) applying methods for measuring intellectual capital and identifying links of that capital to organizational performance and growth.

"(b) In addition to the authority otherwise provided by this section, each agency Chief Human Capital Officer—

"(1) shall have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material that—

"(A) are the property of the agency or are available to the agency; and

"(B) relate to programs and operations with respect to which that agency Chief Human Capital Officer has responsibilities under this chapter; and

"(2) may request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this chapter from any Federal, State, or local governmental entity.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for chapters for part II of title 5, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"14. Agency Chief Human Capital Officers .... 1401".

SEC. 1303. CHIEF HUMAN CAPITAL OFFICERS COUNCIL.

(a) ESTABLISHMENT.—There is established a Chief Human Capital Officers Council, consisting of—

(1) the Director of the Office of Personnel Management, who shall act as chairperson of the Council;

(2) the Deputy Director for Management of the Office of Management and Budget, who shall act as vice chairperson of the Council; and

(3) the Chief Human Capital Officers of Executive departments and any other members who are designated by the Director of the Office of Personnel Management.

(b) FUNCTIONS.—The Chief Human Capital Officers Council shall meet periodically to advise and coordinate the activities of the agencies of its members on such matters as modernization of human resources systems, improved quality of human resources information, and legislation affecting human resources operations and organizations.

(c) EMPLOYEE LABOR ORGANIZATIONS AT MEETINGS.—The Chief Human Capital Officers Council shall ensure that representatives of Federal employee labor organizations are present at a minimum of 1 meeting of the Council each year. Such representatives shall not be members of the Council.

(d) ANNUAL REPORT.—Each year the Chief Human Capital Officers Council shall submit a report to Congress on the activities of the Council.

SEC. 1304. STRATEGIC HUMAN CAPITAL MANAGEMENT.

Section 1103 of title 5, United States Code, is amended by adding at the end the following:

"(c)(1) The Office of Personnel Management shall design a set of systems, including appropriate metrics, for assessing the management of human capital by Federal agencies.

"(2) The systems referred to under paragraph (1) shall be defined in regulations of the Office of Personnel Management and include standards for—

"(A)(i) aligning human capital strategies of agencies with the missions, goals, and organizational objectives of those agencies; and

"(ii) integrating those strategies into the budget and strategic plans of those agencies;

"(B) closing skill gaps in mission critical occupations;

"(C) ensuring continuity of effective leadership through implementation of recruitment, development, and succession plans;

"(D) sustaining a culture that cultivates and develops a high performing workforce;

"(E) developing and implementing a knowledge management strategy supported by appropriate investment in training and technology; and

"(F) holding managers and human resources officers accountable for efficient and effective human resources management in support of agency missions in accordance with merit system principles.".

SEC. 1305. EFFECTIVE DATE.

This subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Reforms Relating to Federal Human Capital Management

SEC. 1311. INCLUSION OF AGENCY HUMAN CAPITAL STRATEGIC PLANNING IN PERFORMANCE PLANS AND PROGRAMS PERFORMANCE REPORTS.

(a) PERFORMANCE PLANS.—Section 1115 of title 31, United States Code, is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following:

"(3) provide a description of how the performance goals and objectives are to be achieved, including the operation processes, training, skills and technology, and the human, capital, information, and other resources and strategies required to meet those performance goals and objectives.";

(2) by redesignating subsection (f) as subsection (g); and

(3) by inserting after subsection (e) the following:

"(f) With respect to each agency with a Chief Human Capital Officer, the Chief Human Capital Officer shall prepare that portion of the annual performance plan described under subsection (a)(3).".

(b) PROGRAM PERFORMANCE REPORTS.—Section 1116(d) of title 31, United States Code, is amended— .

(1) in paragraph (4), by striking "and" after the semicolon;

(2) by redesignating paragraph (5) as paragraph (6); and

(3) by inserting after paragraph (4) the following:

"(5) include a review of the performance goals and evaluation of the performance plan relative to the agency's strategic human capital management; and".

SEC. 1312. REFORM OF THE COMPETITIVE SERVICE HIRING PROCESS.

(a) IN GENERAL.—Chapter 33 of title 5, United States Code, is amended—

(1) in section 3304(a)—

(A) in paragraph (1), by striking "and" after the semicolon;

(B) in paragraph (2), by striking the period and inserting "; and"; and

(C) by adding at the end of the following:

"(3) authority for agencies to appoint, without regard to the provision of sections 3309 through 3318, candidates directly to positions for which—

"(A) public notice has been given; and

"(B) the Office of Personnel Management has determined that there exists a severe shortage of candidates or there is a critical hiring need.

The Office shall prescribe, by regulation, criteria for identifying such positions and may delegate authority to make determinations under such criteria."; and

(2) by inserting after section 3318 the following:

"§3319. Alternative ranking and selection procedures

"(a) The Office, in exercising its authority under section 3304, or an agency to which the Office has delegated examining authority under section 1104(a)(2), may establish category rating systems for evaluating applicants for positions in the competitive service, under 2 or more quality categories based on merit consistent with regulations prescribed by the Office of Personnel Management, rather than assigned individual numerical ratings.

"(b) Within each quality category established under subsection (a), preference-eligibles shall be listed ahead of individuals who are not preference eligibles. For other than scientific and professional positions at GS–9 of the General Schedule (equivalent or higher), qualified preference-eligibles who have a compensable service-connected disability of 10 percent or more shall be listed in the highest quality category.

"(c)(1) An appointing official may select any applicant in the highest quality category or, if fewer than 3 candidates have been assigned to the highest quality category, in a merged category consisting of the highest and the second highest quality categories.

"(2) Notwithstanding paragraph (1), the appointing official may not pass over a preference-eligible in the same category from which selection is made, unless the requirements of section 3317(b) or 3318(b), as applicable, are satisfied.

"(d) Each agency that establishes a category rating system under this section shall submit in each of the 3 years following that establishment, a report to Congress on that system including information on—

"(1) the number of employees hired under that system;

"(2) the impact that system has had on the hiring of veterans and minorities, including those who are American Indian or Alaska Natives, Asian, Black or African American, and native Hawaiian or other Pacific Islanders; and

"(3) the way in which managers were trained in the administration of that system.

"(e) The Office of Personnel Management may prescribe such regulations as it considers necessary to carry out the provisions of this section.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 33 of title 5, United States Code, is amended by striking the item relating to section 3319 and inserting the following:

"3319. Alternative ranking and selection procedures.".

SEC. 1313. PERMANENT EXTENSION, REVISION, AND EXPANSION OF AUTHORITIES FOR USE OF VOLUNTARY SEPARATION INCENTIVE PAY AND VOLUNTARY EARLY RETIREMENT.

(a) VOLUNTARY SEPARATION INCENTIVE PAYMENTS.—

(1) IN GENERAL.—

(A) AMENDMENT TO TITLE 5, UNITED STATES CODE.—Chapter 35 of title 5, United States Code, is amended by inserting after subchapter I the following:

"SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

"§3521. Definitions

"In this subchapter, the term—

"(1) 'agency' means an Executive agency as defined under section 105; and

"(2) 'employee'—

"(A) means an employee as defined under section 2105 employed by an agency and an individual employed by a county committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) who—

"(i) is serving under an appointment without time limitation; and

"(ii) has been currently employed for a continuous period of at least 3 years; and

"(B) shall not include—

"(i) a reemployed annuitant under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government;

"(ii) an employee having a disability on the basis of which such employee is or would be eligible for disability retirement under subchapter III of chapter 83 or 84 or another retirement system for employees of the Government.

"(iii) an employee who is in receipt of a decision notice of involuntary separation for misconduct or unacceptable performance;

"(iv) an employee who has previously received any voluntary separation incentive payment from the Federal Government under this subchapter or any other authority;

"(v) an employee covered by statutory reemployment rights who is on transfer employment with another organization; or

"(vi) any employee who—

"(I) during the 36-month period preceding the date of separation of that employee, performed service for which a student loan repayment benefit was or is to be paid under section 5379;

"(II) during the 24-month period preceding the date of separation of that employee, performed service for which a recruitment or relocation bonus was or is to be paid under section 5753; or

"(III) during the 12-month period preceding the date of separation of that employee, performed service for which a retention bonus was or is to be paid under section 5754.

"§3522. Agency plans; approval

"(a) Before obligating any resources for voluntary separation incentive payments, the head of each agency shall submit to the Office of Personnel Management a plan outlining the intended use of such incentive payments and a proposed organizational chart for the agency once such incentive payments have been completed.

"(b) The plan of an agency under subsection (a) shall include—

"(1) the specific positions and functions to be reduced or eliminated;

"(2) a description of which categories of employees will be offered incentives;

"(3) the time period during which incentives may be paid;

"(4) the number and amounts of voluntary separation incentive payments to be offered; and

"(5) a description of how the agency will operate without the eliminated positions and functions.

"(c) The Director of the Office of Personnel Management shall review each agency's plan and may make any appropriate modifications in the plan, in consultation with the Director of the Office of Management and Budget. A plan under this section may not be implemented without the approval of the Directive of the Office of Personnel Management.

"§3523. Authority to provide voluntary separation incentive payments

"(a) A voluntary separation incentive payment under this subchapter may be paid to an employee only as provided in the plan of an agency established under section 3522.

"(b) A voluntary incentive payment—

"(1) shall be offered to agency employees on the basis of—

"(A) 1 or more organizational units;

"(B) 1 or more occupational series or levels;

"(C) 1 or more geographical locations;

"(D) skills, knowledge, or other factors related to a position;

"(E) specific periods of time during which eligible employees may elect a voluntary incentive payment; or

"(F) any appropriate combination of such factors;

"(2) shall be paid in a lump sum after the employee's separation;

"(3) shall be equal to the lesser of—

"(A) an amount equal to the amount the employee would be entitled to receive under section 5595(c) if the employee were entitled to payment under such section (without adjustment for any previous payment made); or

"(B) an amount determined by the agency head, not to exceed $25,000;

"(4) may be made only in the case of an employee who voluntarily separates (whether by retirement or resignation) under this subchapter;

"(5) shall not be a basis for payment, and shall not be included in the computation, of any other type of Government benefit;

"(6) shall not be taken into account in determining the amount of any severance pay to which the employee may be entitled under section 5595, based on another other separation; and

"(7) shall be paid from appropriations or funds available for the payment of the basic pay of the employee.

"§3524. Effect of subsequent employment with the Government

"(a) The term 'employment'—

"(1) in subsection (b) includes employment under a personal services contract (or other direct contract) with the United States Government (other than an entity in the legislative branch); and

"(2) in subsection (c) does not include employment under such a contract.

"(b) An individual who has received a voluntary separation incentive payment under this subchapter and accepts any employment for compensation with the Government of the United States with 5 years after the date of the separation on which the payment is based shall be required to pay, before the individual's first day of employment, the entire amount of the incentive payment to the agency that paid the incentive payment.

"(c)(1) If the employment under this section is with an agency, other than the General Accounting Office, the United States Postal Service, or the Postal Rate Commission, the Director of the Office of Personnel Management may, at the request of the head of the agency, may waive the repayment if—

"(A) the individual involved possesses unique abilities and is the only qualified applicant available for the position; or

"(B) in case of an emergency involving a direct threat to life or property, the individual—

"(i) has skills directly related to resolving the emergency; and

"(ii) will serve on a temporary basis only so long as that individual's services are made necessary by the emergency.

"(2) If the employment under this section is with an entity in the legislative branch, the head of the entity or the appointing official may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

"(3) If the employment under this section is with the judicial branch, the Director of the Administrative Office of the United States Courts may waive the repayment if the individual involved possesses unique abilities and is the only qualified applicant available for the position.

"§3525. Regulations

"The Office of Personnel Management may prescribe regulations to carry out this subchapter.".

(B) TECHNICAL AND CONFORMING AMENDMENTS.—Chapter 35 of title 5, United States Code, is amended—

(i) by striking the chapter heading and inserting the following:

"CHAPTER 35—RETENTION PREFERENCE, VOLUNTARY SEPARATION INCENTIVE PAYMENTS, RESTORATION, AND REEMPLOYMENT";

and

(ii) in the table of sections by inserting after the item relating to section 3504 the following:

"SUBCHAPTER II—VOLUNTARY SEPARATION INCENTIVE PAYMENTS

"3521. Definitions.

"3522. Agency plans; approval.

"3523. Authority to provide voluntary separation incentive payments.

"3524. Effect of subsequent employment with the Government.

"3525. Regulations.".

(2) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—The Director of the Administrative Office of the United States Courts may, by regulation, establish a program substantially similar to the program established under paragraph (1) for individuals serving in the judicial branch.

(3) CONTINUATION OF OTHER AUTHORITY.—Any agency exercising any voluntary separation incentive authority in effect on the effective date of this subsection may continue to offer voluntary separation incentives consistent with that authority until that authority expires.

(4) EFFECTIVE DATE.—This subsection shall take effect 60 days after the date of enactment of this Act.

(b) FEDERAL EMPLOYEE VOLUNTARY EARLY RETIREMENT.—

(1) CIVIL SERVICE RETIREMENT SYSTEM.—Section 8336(d)(2) of title 5, United States Code, is amended to read as follows:

"(2)(A) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in subparagraph (D);

"(B) is serving under an appointment that is not time limited;

"(C) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

"(D) is separated from the service voluntarily during a period in which, as determined by the office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

"(i) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

"(ii) a significant percentage of employees servicing in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

"(iii) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

"(E) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

"(i) 1 or more organizational units;

"(ii) 1 or more occupational series or levels;

"(iii) 1 or more geographical locations;

"(iv) specific periods;

"(v) skills, knowledge, or other factors related to a position; or

"(vi) any appropriate combination of such factors;".

(2) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8414(b)(1) of title 5, United States Code, is amended by striking subparagraph (B) and inserting the following:

"(B)(i) has been employed continuously, by the agency in which the employee is serving, for at least the 31-day period ending on the date on which such agency requests the determination referred to in clause (iv);

"(ii) is serving under an appointment that is not time limited;

"(iii) has not been duly notified that such employee is to be involuntarily separated for misconduct or unacceptable performance;

"(iv) is separate from the service voluntarily during a period in which, as determined by the Office of Personnel Management (upon request of the agency) under regulations prescribed by the Office—

"(I) such agency (or, if applicable, the component in which the employee is serving) is undergoing substantial delayering, substantial reorganization, substantial reductions in force, substantial transfer of function, or other substantial workforce restructuring (or shaping);

"(II) a significant percentage of employees serving in such agency (or component) are likely to be separated or subject to an immediate reduction in the rate of basic pay (without regard to subchapter VI of chapter 53, or comparable provisions); or

"(III) identified as being in positions which are becoming surplus or excess to the agency's future ability to carry out its mission effectively; and

"(v) as determined by the agency under regulations prescribed by the Office, is within the scope of the offer of voluntary early retirement, which may be made on the basis of—

"(I) 1 or more organizational units;

"(II) 1 or more occupational series or levels;

"(III) 1 or more geographical locations;

"(IV) specific periods;

"(V) skills, knowledge, or other factors related to a position; or

"(VI) any appropriate combination of such factors.".

(3) GENERAL ACCOUNTING OFFICE AUTHORITY.—The amendments made by this subsection shall not be construed to affect the authority under section 1 of Public Law 106–303 (5 U.S.C. 8336 note; 114 State. 1063).

(4) TECHNICAL AND CONFORMING AMENDMENTS.—Section 7001 of the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174; 112 Stat. 91) is repealed.

(5) REGULATIONS.—The Office of Personnel Management may prescribe regulations to carry out this subsection.

(c) SENSE OF CONGRESS.—It is the sense of Congress that the implementation of this section is intended to reshape the Federal workforce and not downsize the Federal workforce.

SEC. 1314. STUDENT VOLUNTEER TRANSIT SUBSIDY.

(a) IN GENERAL.—Section 7905(a)(1) of title 5, United States Code, is amended by striking "and a member of a uniformed service" and inserting ", a member of a uniformed service, and a student who provides voluntary services under section 3111".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 3111(c)(1) of title 5, United States Code, is amended by striking "chapter 81 of this title" and inserting "section 7905 (relating to commuting by means other than single-occupancy motor vehicles), chapter 81".

Subtitle C—Reforms Relating to the Senior Executive Service

SEC. 1321. REPEAL OF RECERTIFICATION REQUIREMENTS OF SENIOR EXECUTIVES.

(a) IN GENERAL.—Title 5, United States Code, is amended—

(1) in chapter 33—

(A) in section 3393(g) by striking "3393a";

(B) by repealing section 3393a; and

(C) in the table of sections by striking the item relating to section 3393a;

(2) in chapter 35—

(A) in section 3592(a)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end;

(iii) by striking paragraph (3); and

(iv) by striking the last sentence;

(B) in section 3593(a), by striking paragraph (2) and inserting the following:

"(2) the appointee left the Senior Executive Service for reasons other than misconduct, neglect of duty, malfeasance, or less than fully successful executive performance as determined under subchapter II of chapter 43."; and

(C) in section 3594(b)—

(i) in paragraph (1), by inserting "or" at the end;

(ii) in paragraph (2), by striking "or" at the end; and

(iii) by striking paragraph (3);

(3) in section 7701(c)(1)(A), by striking "or removal from the Senior Executive Service for failure to be recertified under section 3393a";

(4) in chapter 83—

(A) in section 8336(h)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8339(h), in the first sentence, by striking ", except that such reduction shall not apply in the case of an employee retiring under section 8336(h) for failure to be recertified as a senior executive"; and

(5) in chapter 84—

(A) in section 8414(a)(1), by striking "for failure to be recertified as a senior executive under section 3393a or"; and

(B) in section 8421(a)(2), by striking ", except that an individual entitled to an annuity under section 8414(a) for failure to be recertified as a senior executive shall be entitled to an annuity supplement without regard to such applicable retirement age".

(b) SAVINGS PROVISION.—Notwithstanding the amendments made by subsection (a)(2)(A), an appeal under the final sentence of section 3592(a) of title 5, United States Code, that is pending on the day before the effective date of this section—

(1) shall not abate by reason of the enactment of the amendments made by subsection (a)(2)(A); and

(2) shall continue as if such amendments had not been enacted.

(c) APPLICATION.—The amendment made by subsection (a)(2)(B) shall not apply with respect to an individual who, before the effective date of this section, leaves the Senior Executive Service for failure to be recertified as a senior executive under section 3393a of title 5, United States Code.

SEC. 1322. ADJUSTMENT OF LIMITATION ON TOTAL ANNUAL COMPENSATION.

(a) IN GENERAL.—Section 5307 of title 5, United States Code, is amended by adding at the end the following:

"(d)(1) Notwithstanding any other provision of this section, subsection (a)(1) shall be applied by substituting 'the total annual compensation payable to the Vice President under section 104 of title 3' for 'the annual rate of basic pay payable for level I of the Executive Schedule' in the case of any employee who—

"(A) is paid under section 5376 or 5383 of this title or section 332(f), 603, or 604 of title 28; and

"(B) holds a position in or under an agency which is described in paragraph (2).

"(2) An agency described in this paragraph is any agency which, for purposes of the calendar year involved, has been certified under this subsection as having a performance appraisal system which (as designed and applied) makes meaningful distinctions based on relative performance.

"(3)(A) The Office of Personnel Management and the Office of Management and Budget jointly shall promulgate such regulations as may be necessary to carry out this subsection, including the criteria and procedures in accordance with which any determinations under this subsection shall be made.

"(B) An agency's certification under this subsection shall be for a period of 2 calendar years, except that such certification may be terminated at any time, for purposes of either or both of those years, upon a finding that the actions of such agency have not remained in conformance with applicable requirements.

"(C) Any certification or decertification under this subsection shall be made by the Office of Personnel Management, with the concurrence of the Office of Management and Budget.

"(4) Notwithstanding any provision of paragraph (3), any regulations, certifications, or other measures necessary to carry out this subsection with respect to employees within the judicial branch shall be the responsibility of the Director of the Administrative Office of the United States Courts. However, the regulations under this paragraph shall be consistent with those promulgated under paragraph (3).".

(b) CONFORMING AMENDMENTS.—(1) Section 5307(a) of title 5, United States Code, is amended by inserting "or as otherwise provided under subsection (d)," after "under law,".

(2) Section 5307(c) of such title is amended by striking "this section," and inserting "this section (subject to subsection (d)),".

Subtitle D—Academic Training

SEC. 1331. ACADEMIC TRAINING.

(a) ACADEMIC DEGREE TRAINING.—Section 4107 of title 5, United States Code, is amended to read as follows:

"§ 4107. Academic degree training

"(a) Subject to subsection (b), an agency may select and assign an employee to academic degree training and may pay or reimburse the costs of academic degree training from appropriated or other available funds if such training—

"(1) contributes significantly to—

"(A) meeting an identified agency training need;

"(B) resolving an identified agency staffing problem; or

"(C) accomplishing goals in the strategic plan of the agency;

"(2) is part of a planned, systemic, and coordinated agency employee development program linked to accomplishing the strategic goals of the agency; and

"(3) is accredited and is provided by a college or university that is accredited by a nationally recognized body.

"(b) In exercising authority under subsection (a), an agency shall—

"(1) consistent with the merit system principles set forth in paragraphs (2) and (7) of section 2301(b), take into consideration the need to—

"(A) maintain a balanced workforce in which women, members of racial and ethnic minority groups, and persons with disabilities are appropriately represented in Government service; and

"(B) provide employees effective education and training to improve organizational and individual performance;

"(2) assure that the training is not for the sole purpose of providing an employee an opportunity to obtain an academic degree or qualify for appointment to a particular position for which the academic degree is a basic requirement;

"(3) assure that no authority under this subsection is exercised on behalf of any employee occupying or seeking to qualify for—

"(A) a noncareer appointment in the senior Executive Service; or

"(B) appointment to any position that is excepted from the competitive service because of its confidential policy-determining, policy-making or policy-advocating character; and

"(4) to the greatest extent practicable, facilitate the use of online degree training.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 41 of title 5, United States Code, is amended by striking the item relating to section 4107 and inserting the following:

"4107. Academic degree training.".

SEC. 1332. MODIFICATIONS TO NATIONAL SECURITY EDUCATION PROGRAM.

(a) FINDINGS AND POLICIES.—

(1) FINDINGS.—Congress finds that—

(A) the United States Government actively encourages and financially supports the training, education, and development of many United States citizens;

(B) as a condition of some of those supports, many of those citizens have an obligation to seek either compensated or uncompensated employment in the Federal sector; and

(C) it is in the United States national interest to maximize the return to the Nation of funds invested in the development of such citizens by seeking to employ them in the Federal sector.

(2) POLICY.—It shall be the policy of the United States Government to—

(A) establish procedures for ensuring that United States citizens who have incurred service obligations as the result of receiving financial support for education and training from the United States Government and have applied for Federal positions are considered in all recruitment and hiring initiatives of Federal departments, bureaus, agencies, and offices; and

(B) advertise and open all Federal positions to United States citizens who have incurred service obligations with the United States Government as the result of receiving financial support for education and training from the United States Government.

(b) FULFILLMENT OF SERVICE REQUIREMENT IF NATIONAL SECURITY POSITIONS ARE UNAVAILABLE.—Section 802(b)(2) of the David L. Boren

National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(1) in subparagraph (A), by striking clause (ii) and inserting the following:

“(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position in an agency or office of the Federal Government having national security responsibilities is available, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to the foreign country, foreign language, area study, or international field of study for which the scholarship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); or”; and

(2) in subparagraph (B), by striking clause (ii) and inserting the following:

“(ii) if the recipient demonstrates to the Secretary (in accordance with such regulations) that no national security position is available upon the completion of the degree, work in other offices or agencies of the Federal Government or in the field of higher education in a discipline relating to foreign country, foreign language, area study, or international field of study for which the fellowship was awarded, for a period specified by the Secretary, which period shall be determined in accordance with clause (i); and”.

TITLE XIV—ARMING PILOTS AGAINST TERRORISM

SEC. 1401. SHORT TITLE.

This title may be cited as the “Arming Pilots Against Terrorism Act”.

SEC. 1402. FEDERAL FLIGHT DECK OFFICER PROGRAM.

(a) IN GENERAL.—Subchapter I of chapter 449 of title 49, United States Code, is amended by adding at the end the following:

“§44921. Federal flight deck officer program

“(a) ESTABLISHMENT.—The Under Secretary of Transportation for Security shall establish a program to deputize volunteer pilots of air carriers providing passenger air transportation or intrastate passenger air transportation as Federal law enforcement officers to defend the flight decks of aircraft of such air carriers against acts of criminal violence or air piracy. Such officers shall be known as ‘Federal flight deck officers’.

“(b) PROCEDURAL REQUIREMENTS.—

“(1) IN GENERAL.—Not later than 3 months after the date of enactment of this section, the Under Secretary shall establish procedural requirements to carry out the program under this section.

“(2) COMMENCEMENT OF PROGRAM.—Beginning 3 months after the date of enactment of this section, the Under Secretary shall begin the process of training and deputizing pilots who are qualified to be Federal flight deck officers as Federal flight deck officers under the program.

“(3) ISSUES TO BE ADDRESSED.—The procedural requirements established under paragraph (1) shall address the following issues:

“(A) The type of firearm to be used by a Federal flight deck officer.

“(B) The type of ammunition to be used by a Federal flight deck officer.

“(C) The standards and training needed to qualify and requalify as a Federal flight deck officer.

“(D) The placement of the firearm of a Federal flight deck officer on board the aircraft to ensure both its security and its ease of retrieval in an emergency.

“(E) An analysis of the risk of catastrophic failure of an aircraft as a result of the discharge (including an accidental discharge) of a firearm to be used in the program into the avionics, electrical systems, or other sensitive areas of the aircraft.

“(F) The division of responsibility between pilots in the event of an act of criminal violence or air piracy if only 1 pilot is a Federal flight deck officer and if both pilots are Federal flight deck officers.

“(G) Procedures for ensuring that the firearm of a Federal flight deck officer does not leave the cockpit if there is a disturbance in the passenger cabin of the aircraft or if the pilot leaves the cockpit for personal reasons.

“(H) Interaction between a Federal flight deck officer and a Federal air marshal on board the aircraft.

“(I) The process for selection of pilots to participate in the program based on their fitness to participate in the program, including whether an additional background check should be required beyond that required by section 44936(a)(1).

“(J) Storage and transportation of firearms between flights, including international flights, to ensure the security of the firearms, focusing particularly on whether such security would be enhanced by requiring storage of the firearm at the airport when the pilot leaves the airport to remain overnight away from the pilot's base airport.

“(K) Methods for ensuring that security personnel will be able to identify whether a pilot is authorized to carry a firearm under the program.

“(L) Methods for ensuring that pilots (including Federal flight deck officers) will be able to identify whether a passenger is a law enforcement officer who is authorized to carry a firearm aboard the aircraft.

“(M) Any other issues that the Under Secretary considers necessary.

“(N) The Under Secretary's decisions regarding the methods for implementing each of the foregoing procedural requirements shall be subject to review only for abuse of discretion.

“(4) PREFERENCE.—In selecting pilots to participate in the program, the Under Secretary shall give preference to pilots who are former military or law enforcement personnel.

“(5) CLASSIFIED INFORMATION.—Notwithstanding section 552 of title 5 but subject to section 40119 of this title, information developed under paragraph (3)(E) shall not be disclosed.

“(6) NOTICE TO CONGRESS.—The Under Secretary shall provide notice to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate after completing the analysis required by paragraph (3)(E).

“(7) MINIMIZATION OF RISK.—If the Under Secretary determines as a result of the analysis under paragraph (3)(E) that there is a significant risk of the catastrophic failure of an aircraft as a result of the discharge of a firearm, the Under Secretary shall take such actions as may be necessary to minimize that risk.

“(c) TRAINING, SUPERVISION, AND EQUIPMENT.—

“(1) IN GENERAL.—The Under Secretary shall only be obligated to provide the training, supervision, and equipment necessary for a pilot to be a Federal flight deck officer under this section at no expense to the pilot or the air carrier employing the pilot.

“(2) TRAINING.—

“(A) IN GENERAL.—The Under Secretary shall base the requirements for the training of Federal flight deck officers under subsection (b) on the training standards applicable to Federal air marshals; except that the Under Secretary shall take into account the differing roles and responsibilities of Federal flight deck officers and Federal air marshals.

“(B) ELEMENTS.—The training of a Federal flight deck officer shall include, at a minimum, the following elements:

“(i) Training to ensure that the officer achieves the level of proficiency with a firearm required under subparagraph (C)(i).

“(ii) Training to ensure that the officer maintains exclusive control over the officer's firearm at all times, including training in defensive maneuvers.

“(iii) Training to assist the officer in determining when it is appropriate to use the officer's firearm and when it is appropriate to use less than lethal force.

“(C) TRAINING IN USE OF FIREARMS.—

“(i) STANDARD.—In order to be deputized as a Federal flight deck officer, a pilot must achieve a level of proficiency with a firearm that is required by the Under Secretary. Such level shall be comparable to the level of proficiency required of Federal air marshals.

“(ii) CONDUCT OF TRAINING.—The training of a Federal flight deck officer in the use of a firearm may be conducted by the Under Secretary or by a firearms training facility approved by the Under Secretary.

“(iii) REQUALIFICATION.—The Under Secretary shall require a Federal flight deck officer to requalify to carry a firearm under the program. Such requalification shall occur at an interval required by the Under Secretary.

“(d) DEPUTIZATION.—

“(1) IN GENERAL.—The Under Secretary may deputize, as a Federal flight deck officer under this section, a pilot who submits to the Under Secretary a request to be such an officer and whom the Under Secretary determines is qualified to be such an officer.

“(2) QUALIFICATION.—A pilot is qualified to be a Federal flight deck officer under this section if—

“(A) the pilot is employed by an air carrier;

“(B) the Under Secretary determines (in the Under Secretary's discretion) that the pilot meets the standards established by the Under Secretary for being such an officer; and

“(C) the Under Secretary determines that the pilot has completed the training required by the Under Secretary.

“(3) DEPUTIZATION BY OTHER FEDERAL AGENCIES.—The Under Secretary may request another Federal agency to deputize, as Federal flight deck officers under this section, those pilots that the Under Secretary determines are qualified to be such officers.

“(4) REVOCATION.—The Under Secretary may, (in the Under Secretary's discretion) revoke the deputization of a pilot as a Federal flight deck officer if the Under Secretary finds that the pilot is no longer qualified to be such an officer.

“(e) COMPENSATION.—Pilots participating in the program under this section shall not be eligible for compensation from the Federal Government for services provided as a Federal flight deck officer. The Federal Government and air carriers shall not be obligated to compensate a pilot for participating in the program or for the pilot's training or qualification and requalification to carry firearms under the program.

“(f) AUTHORITY TO CARRY FIREARMS.—

“(1) IN GENERAL.—The Under Secretary shall authorize a Federal flight deck officer to carry a firearm while engaged in providing air transportation or intrastate air transportation. Notwithstanding subsection (c)(1), the officer may purchase a firearm and carry that firearm aboard an aircraft of which the officer is the pilot in accordance with this section if the firearm is of a type that may be used under the program.

“(2) PREEMPTION.—Notwithstanding any other provision of Federal or State law, a Federal flight deck officer, whenever necessary to participate in the program, may carry a firearm in any State and from 1 State to another State.

“(3) CARRYING FIREARMS OUTSIDE UNITED STATES.—In consultation with the Secretary of

State, the Under Secretary may take such action as may be necessary to ensure that a Federal flight deck officer may carry a firearm in a foreign country whenever necessary to participate in the program.

"(g) AUTHORITY TO USE FORCE.—Notwithstanding section 44903(d), the Under Secretary shall prescribe the standards and circumstances under which a Federal flight deck officer may use, while the program under this section is in effect, force (including lethal force) against an individual in the defense of the flight deck of an aircraft in air transportation or intrastate air transportation.

"(h) LIMITATION ON LIABILITY.—

"(1) LIABILITY OF AIR CARRIERS.—An air carrier shall not be liable for damages in any action brought in a Federal or State court arising out of a Federal flight deck officer's use of or failure to use a firearm.

"(2) LIABILITY OF FEDERAL FLIGHT DECK OFFICERS.—A Federal flight deck officer shall not be liable for damages in any action brought in a Federal or State court arising out of the acts or omissions of the officer in defending the flight deck of an aircraft against acts of criminal violence or air piracy unless the officer is guilty of gross negligence or willful misconduct.

"(3) LIABILITY OF FEDERAL GOVERNMENT.—For purposes of an action against the United States with respect to an act or omission of a Federal flight deck officer in defending the flight deck of an aircraft, the officer shall be treated as an employee of the Federal Government under chapter 171 of title 28, relating to tort claims procedure.

"(i) PROCEDURES FOLLOWING ACCIDENTAL DISCHARGES.—If an accidental discharge of a firearm under the pilot program results in the injury or death of a passenger or crew member on an aircraft, the Under Secretary—

"(1) shall revoke the deputization of the Federal flight deck officer responsible for that firearm if the Under Secretary determines that the discharge was attributable to the negligence of the officer; and

"(2) if the Under Secretary determines that a shortcoming in standards, training, or procedures was responsible for the accidental discharge, the Under Secretary may temporarily suspend the program until the shortcoming is corrected.

"(j) LIMITATION ON AUTHORITY OF AIR CARRIERS.—No air carrier shall prohibit or threaten any retaliatory action against a pilot employed by the air carrier from becoming a Federal flight deck officer under this section. No air carrier shall—

"(1) prohibit a Federal flight deck officer from piloting an aircraft operated by the air carrier, or

"(2) terminate the employment of a Federal flight deck officer, solely on the basis of his or her volunteering for or participating in the program under this section.

"(k) APPLICABILITY.—

"(1) EXEMPTION.—This section shall not apply to air carriers operating under part 135 of title 14, Code of Federal Regulations, and to pilots employed by such carriers to the extent that such carriers and pilots are covered by section 135.119 of such title or any successor to such section.

"(2) PILOT DEFINED.—The term 'pilot' means an individual who has final authority and responsibility for the operation and safety of the flight or, if more than 1 pilot is required for the operation of the aircraft or by the regulations under which the flight is being conducted, the individual designated as second in command.".

(b) CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—The analysis for such chapter is amended by inserting after the item relating to section 44920 the following:

"44921. Federal flight deck officer program.".

(2) FLIGHT DECK SECURITY.—Section 128 of the Aviation and Transportation Security Act (Public Law 107–71) is repealed.

(c) FEDERAL AIR MARSHAL PROGRAM.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Federal air marshal program is critical to aviation security.

(2) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this Act, including any amendment made by this Act, shall be construed as preventing the Under Secretary of Transportation for Security from implementing and training Federal air marshals.

SEC. 1403. CREW TRAINING.

(a) IN GENERAL.—Section 44918(e) of title 49, United States Code, is amended—

(1) by striking "The Administrator" and inserting the following:

"(1) IN GENERAL.—The Under Secretary";

(2) by adding at the end the following:

"(2) ADDITIONAL REQUIREMENTS.—In updating the training guidance, the Under Secretary, in consultation with the Administrator, shall issue a rule to—

"(A) require both classroom and effective hands-on situational training in the following elements of self defense:

"(i) recognizing suspicious activities and determining the seriousness of an occurrence;

"(ii) deterring a passenger who might present a problem;

"(iii) crew communication and coordination;

"(iv) the proper commands to give to passengers and attackers;

"(v) methods to subdue and restrain an attacker;

"(vi) use of available items aboard the aircraft for self-defense;

"(vii) appropriate and effective responses to defend oneself, including the use of force against an attacker;

"(viii) use of protective devices assigned to crew members (to the extent such devices are approved by the Administrator or Under Secretary);

"(ix) the psychology of terrorists to cope with their behavior and passenger responses to that behavior;

"(x) how to respond to aircraft maneuvers that may be authorized to defend against an act of criminal violence or air piracy;

"(B) require training in the proper conduct of a cabin search, including the duty time required to conduct the search;

"(C) establish the required number of hours of training and the qualifications for the training instructors;

"(D) establish the intervals, number of hours, and elements of recurrent training;

"(E) ensure that air carriers provide the initial training required by this paragraph within 24 months of the date of enactment of this subparagraph; and

"(F) ensure that no person is required to participate in any hands-on training activity that that person believes will have an adverse impact on his or her health or safety.

"(3) RESPONSIBILITY OF UNDER SECRETARY.—(A) CONSULTATION.—In developing the rule under paragraph (2), the Under Secretary shall consult with law enforcement personnel and security experts who have expertise in self-defense training, terrorism experts, and representatives of air carriers, the provider of self-defense training for Federal air marshals, flight attendants, labor organizations representing flight attendants, and educational institutions offering law enforcement training programs.

"(B) DESIGNATION OF OFFICIAL.—The Under Secretary shall designate an official in the Transportation Security Administration to be responsible for overseeing the implementation of the training program under this subsection.

"(C) NECESSARY RESOURCES AND KNOWLEDGE.—The Under Secretary shall ensure that employees of the Administration responsible for monitoring the training program have the necessary resources and knowledge."; and

(3) by aligning the remainder of the text of paragraph (1) (as designated by paragraph (1) of this section) with paragraphs (2) and (3) (as added by paragraph (2) of this section).

(b) ENHANCE SECURITY MEASURES.—Section 109(a) of the Aviation and Transportation Security Act (49 U.S.C. 114 note; 115 Stat. 613–614) is amended by adding at the end the following:

"(9) Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.".

(c) BENEFITS AND RISKS OF PROVIDING FLIGHT ATTENDANTS WITH NONLETHAL WEAPONS.—

(1) STUDY.—The Under Secretary of Transportation for Security shall conduct a study to evaluate the benefits and risks of providing flight attendants with nonlethal weapons to aide in combating air piracy and criminal violence on commercial airlines.

(2) REPORT.—Not later than 6 months after the date of enactment of this Act, the Under Secretary shall transmit to Congress a report on the results of the study.

SEC. 1404. COMMERCIAL AIRLINE SECURITY STUDY.

(a) STUDY.—The Secretary of Transportation shall conduct a study of the following:

(1) The number of armed Federal law enforcement officers (other than Federal air marshals), who travel on commercial airliners annually and the frequency of their travel.

(2) The cost and resources necessary to provide such officers with supplemental training in aircraft anti-terrorism training that is comparable to the training that Federal air marshals are provided.

(3) The cost of establishing a program at a Federal law enforcement training center for the purpose of providing new Federal law enforcement recruits with standardized training comparable to the training that Federal air marshals are provided.

(4) The feasibility of implementing a certification program designed for the purpose of ensuring Federal law enforcement officers have completed the training described in paragraph (2) and track their travel over a 6-month period.

(5) The feasibility of staggering the flights of such officers to ensure the maximum amount of flights have a certified trained Federal officer on board.

(b) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall transmit to Congress a report on the results of the study. The report may be submitted in classified and redacted form.

SEC. 1405. AUTHORITY TO ARM FLIGHT DECK CREW WITH LESS-THAN-LETHAL WEAPONS.

(a) IN GENERAL.—Section 44903(i) of title 49, United States Code (as redesignated by section 6 of this Act) is amended by adding at the end the following:

"(3) REQUEST OF AIR CARRIERS TO USE LESS-THAN-LETHAL WEAPONS.—If, after the date of enactment of this paragraph, the Under Secretary receives a request from an air carrier for authorization to allow pilots of the air carrier to carry less-than-lethal weapons, the Under Secretary shall respond to that request within 90 days.".

(b) CONFORMING AMENDMENTS.—Such section is further amended—

(1) in paragraph (1) by striking "Secretary" the first and third places it appears and inserting "Under Secretary"; and

(2) in paragraph (2) by striking "Secretary" each place it appears and inserting "Under Secretary".

SEC. 1406. TECHNICAL AMENDMENTS.

Section 44903 of title 49, United States Code, is amended—

(1) by redesignating subsection (i) (relating to short-term assessment and deployment of emerging security technologies and procedures) as subsection (j);

(2) by redesignating the second subsection (h) (relating to authority to arm flight deck crew with less-than-lethal weapons) as subsection (i); and

(3) by redesignating the third subsection (h) (relating to limitation on liability for acts to thwart criminal violence for aircraft piracy) as subsection (k).

TITLE XV—TRANSITION

Subtitle A—Reorganization Plan

SEC. 1501. DEFINITIONS.

For purposes of this title:

(1) The term "agency" includes any entity, organizational unit, program, or function.

(2) The term "transition period" means the 12-month period beginning on the effective date of this Act.

SEC. 1502. REORGANIZATION PLAN.

(a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation or assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or revise any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(3) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

SEC. 1503. REVIEW OF CONGRESSIONAL COMMITTEE STRUCTURES.

It is the sense of Congress that each House of Congress should review its committee structure in light of the reorganization of responsibilities within the executive branch by the establishment of the Department.

Subtitle B—Transitional Provisions

SEC. 1511. TRANSITIONAL AUTHORITIES.

(a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or functions relating to the agency immediately before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required to be made by and with such advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office) or immediately before such designation, to act in such office until the same is filled as provided in this Act. While so acting, such officers shall receive compensation at the higher of—

(A) the rates provided by this Act for the respective offices in which they act; or

(B) the rates provided for the offices held at the time of designation.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the Department of any officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(d) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(2) the Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

(e) PROHIBITION ON USE OF TRANSPORTATION TRUST FUNDS.—

(1) IN GENERAL.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, or Harbor Maintenance Trust Fund, may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) LIMITATION.—This subsection shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 1512. SAVINGS PROVISIONS.

(a) COMPLETED ADMINISTRATIVE ACTIONS.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) For purposes of paragraph (1), the term "completed administrative action" includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) PENDING PROCEEDINGS.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions and to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and appeals therefrom, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(c) PENDING CIVIL ACTIONS.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings shall be had, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) REFERENCES.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, directives, or delegations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

(f) Statutory Reporting Requirements.—Any statutory reporting requirement that applied to an agency, transferred to the Department under this Act, immediately before the effective date of this Act shall continue to apply following that transfer if the statutory requirement refers to the agency by name.

SEC. 1513. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

SEC. 1514. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 1515. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b).

SEC. 1516. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and liabilities held, used, arising from, available, or to be made available, in connection with the functions transferred by this Act, as the Director may determine necessary to accomplish the purposes of this Act.

SEC. 1517. REFERENCE.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 1502) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE XVI—CORRECTIONS TO EXISTING LAW RELATING TO AIRLINE TRANSPORTATION SECURITY

SEC. 1601. RETENTION OF SECURITY SENSITIVE INFORMATION AUTHORITY AT DEPARTMENT OF TRANSPORTATION.

(a) Section 40119 of title 49, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting "and the Administrator of the Federal Aviation Administration each" after "for Security"; and

(B) by striking "criminal violence and aircraft piracy" and inserting "criminal violence, aircraft piracy, and terrorism and to ensure security"; and

(2) in subsection (b)(1)—

(A) by striking ", the Under Secretary" and inserting "and the establishment of a Department of Homeland Security, the Secretary of Transportation";

(B) by striking "carrying out" and all that follows through "if the Under Secretary" and inserting "ensuring security under this title if the Secretary of Transportation"; and

(C) in subparagraph (C) by striking "the safety of passengers in transportation" and inserting "transportation safety".

(b) Section 114 of title 49, United States Code, is amended by adding at the end the following:

"(s) Nondisclosure of Security Activities.—

"(1) In general.—Notwithstanding section 552 of title 5, the Under Secretary shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107–71) or under chapter 449 of this title if the Under Secretary decides that disclosing the information would—

"(A) be an unwarranted invasion of personal privacy;

"(B) reveal a trade secret or privileged or confidential commercial or financial information; or

"(C) be detrimental to the security of transportation.

"(2) Availability of information to Congress.—Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

"(3) Limitation on transferability of duties.—Except as otherwise provided by law, the Under Secretary may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.".

SEC. 1602. INCREASE IN CIVIL PENALTIES.

Section 46301(a) of title 49, United States Code, is amended by adding at the end the following:

"(8) Aviation security violations.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security shall be $10,000; except that the maximum civil penalty shall be $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).".

SEC. 1603. ALLOWING UNITED STATES CITIZENS AND UNITED STATES NATIONALS AS SCREENERS.

Section 44935(e)(2)(A)(ii) of title 49, United States Code, is amended by striking "citizen of the United States" and inserting "citizen of the United States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))".

TITLE XVII—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 1701. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting "Homeland Security," after "Transportation," each place it appears; and

(2) by striking "; and" each place it appears in paragraph (1) and inserting ";";

SEC. 1702. EXECUTIVE SCHEDULE.

(a) In General.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting "Secretary of Homeland Security." as a new item after "Affairs.";

(2) in section 5313, by inserting "Deputy Secretary of Homeland Security." as a new item after "Affairs.";

(3) in section 5314, by inserting "Under Secretaries, Department of Homeland Security.", "Director of the Bureau of Citizenship and Immigration Services." as new items after "Affairs." the third place it appears;

(4) in section 5315, by inserting "Assistant Secretaries, Department of Homeland Security.", "General Counsel, Department of Homeland Security.", "Officer for Civil Rights and Civil Liberties, Department of Homeland Security.", "Chief Financial Officer, Department of Homeland Security.", "Chief Information Officer, Department of Homeland Security.", and "Inspector General, Department of Homeland Security." as new items after "Affairs." the first place it appears; and

(5) in section 5315, by striking "Commissioner of Immigration and Naturalization, Department of Justice.".

(b) Special Effective Date.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 441 takes effect.

SEC. 1703. UNITED STATES SECRET SERVICE.

(a) In General.—(1) The United States Code is amended in section 202 of title 3, and in section 3056 of title 18, by striking "of the Treasury", each place it appears and inserting "of Homeland Security".

(2) Section 208 of title 3, United States Code, is amended by striking "of Treasury" each place it appears and inserting "of Homeland Security".

(b) Effective Date.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 1704. COAST GUARD.

(a) Title 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 53, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(b) Title 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a), 10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(2) Section 801(1) of such title is amended by striking "the General Counsel of the Department of Transportation" and inserting "an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security".

(3) Section 983(d)(2)(B) of such title is amended by striking "Department of Transportation" and inserting "Department of Homeland Security".

(4) Section 2665(b) of such title is amended by striking "Department of Transportation" and inserting "Department in which the Coast Guard is operating".

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking "Secretaries of the Army, Air Force, and Transportation" both places it appears and inserting "Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security"; and

(B) in subsection (b), by striking "Department of Transportation" and inserting "Department of Homeland Security".

(6) Section 7361(b) of such title is amended in the subsection heading by striking "Transportation" and inserting "Homeland Security".

(7) Section 12522(c) of such title is amended in the subsection heading by striking "Transportation" and inserting "Homeland Security".

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(d) TITLE 38, U.S.C.—Title 38, United States Code, is amended in sections 101(25)(d), 1560(a), 3002(5), 3011(a)(1)(A)(ii)(I), 3011(a)(1)(A)(ii)(II), 3011(a)(1)(B)(ii)(III), 3011(a)(1)(C)(iii)(II)(cc), 3012(b)(1)(A)(v), 3012(b)(1)(B)(ii)(V), 3018(b)(3)(B)(iv), 3018A(a)(3), 3018B(a)(1)(C), 3018B(a)(2)(C), 3018C(a)(5), 3020(m), 3035(b)(2), 3035(c), 3035(d), 3035(e), 3680A(g), and 6105(c) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(e) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking "of Transportation" and inserting "of Homeland Security"; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking "of Transportation" and inserting "of Homeland Security".

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking "after consultation with the Secretary of Transportation".

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking "of Transportation" and inserting "of Homeland Security".

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking "of Transportation" each place it appears and inserting "of Homeland Security".

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(9) Section 2307(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(10) Section 1034(a) of Public Law 105–85 (21 U.S.C. 1505a(a)) is amended by striking "of Transportation" and inserting "of Homeland Security".

(11) The Military Selective Service Act is amended—

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking "of Transportation" in the fourth paragraph and inserting "of Homeland Security";

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking "of Transportation" both places it appears and inserting "of Homeland Security";

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking "Secretaries of Army, Navy, Air Force, or Transportation" and inserting "Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard,"; and

(E) in section 15(e) (50 U.S.C. App. 465(e)), by striking "of Transportation" both places it appears and inserting "of Homeland Security".

(f) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as added by section 309 of Public Law 104–324) as section 673a.

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.

(g) EFFECTIVE DATE.—The amendments made by this section (other than subsection (f)) shall take effect on the date of transfer of the Coast Guard to the Department.

SEC. 1705. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.

(a) IN GENERAL.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) by striking "Secretary of Health and Human Services" and inserting "Secretary of Homeland Security";

(B) by inserting "the Secretary of Health and Human Services and" between "in coordination with" and "the Secretary of Veterans Affairs"; and

(C) by inserting "of Health and Human Services" after "as are determined by the Secretary"; and

(2) in subsections (a)(2) and (b), by inserting "of Health and Human Services" after "Secretary" each place it appears.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 1706. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO TITLE 40.—Section 581 of title 40, United States Code, is amended—

(1) by striking subsection (a); and

(2) in subsection (b)—

(A) by inserting "and" after the semicolon at the end of paragraph (1);

(B) by striking "; and" at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3).

(b) LAW ENFORCEMENT AUTHORITY.—

(1) IN GENERAL.—Section 1315 of title 40, United States Code, is amended to read as follows:

"§1315. Law enforcement authority of Secretary of Homeland Security for protection of public property

"(a) IN GENERAL.—To the extent provided for by transfers made pursuant to the Homeland Security Act of 2002, the Secretary of Homeland Security (in this section referred to as the 'Secretary') shall protect the buildings, grounds, and property that are owned, occupied, or secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

"(b) OFFICERS AND AGENTS.—

"(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

"(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

"(A) enforce Federal laws and regulations for the protection of persons and property;

"(B) carry firearms;

"(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

"(D) serve warrants and subpoenas issued under the authority of the United States; and

"(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

"(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

"(c) REGULATIONS.—

"(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

"(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

"(d) DETAILS.—

"(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

"(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

"(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under this section and enforce the regulations as provided in this section; or

"(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.

"(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.

"(e) AUTHORITY OUTSIDE FEDERAL PROPERTY.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.

"(f) SECRETARY AND ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Secretary and the Attorney General.

"(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—

"(1) preclude or limit the authority of any Federal law enforcement agency; or

"(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator's custody and control.".

(2) DELEGATION OF AUTHORITY.—The Secretary may delegate authority for the protection of specific buildings to another Federal agency where, in the Secretary's discretion, the Secretary determines it necessary for the protection of that building.

(3) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 40, United States Code, is amended by striking the item relating to section 1315 and inserting the following:

"1315. Law enforcement authority of Secretary of Homeland Security for protection of public property.".

SEC. 1707. TRANSPORTATION SECURITY REGULATIONS.

Title 49, United States Code, is amended—

(1) in section 114(l)(2)(B), by inserting "for a period not to exceed 90 days" after "effective"; and

(2) in section 114(l)(2)(B), by inserting "ratified or" after "unless".

SEC. 1708. NATIONAL BIO-WEAPONS DEFENSE ANALYSIS CENTER.

There is established in the Department of Defense a National Bio-Weapons Defense Analysis Center, whose mission is to develop countermeasures to potential attacks by terrorists using weapons of mass destruction.

SEC. 1709. COLLABORATION WITH THE SECRETARY OF HOMELAND SECURITY.

(a) DEPARTMENT OF HEALTH AND HUMAN SERVICES.—The second sentence of section 351A(e)(1) of the Public Health Service Act (42 U.S.C. 262A(e)(1)) is amended by striking "consultation with" and inserting "collaboration with the Secretary of Homeland Security and".

(b) DEPARTMENT OF AGRICULTURE.—The second sentence of section 212(e)(1) of the Agricultural Bioterrorism Protection Act of 2002 (7 U.S.C. 8401) is amended by striking "consultation with" and inserting "collaboration with the Secretary of Homeland Security and".

SEC. 1710. RAILROAD SAFETY TO INCLUDE RAILROAD SECURITY.

(a) INVESTIGATION AND SURVEILLANCE ACTIVITIES.—Section 20105 of title 49, United States Code, is amended—

(1) by striking "Secretary of Transportation" in the first sentence of subsection (a) and inserting "Secretary concerned";

(2) by striking "Secretary" each place it appears (except the first sentence of subsection (a)) and inserting "Secretary concerned";

(3) by striking "Secretary's duties under chapters 203–213 of this title" in subsection (d) and inserting "duties under chapters 203–213 of this title (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)";

(4) by striking "chapter." in subsection (f) and inserting "chapter (in the case of the Secretary of Transportation) and duties under section 114 of this title (in the case of the Secretary of Homeland Security)."; and

(5) by adding at the end the following new subsection:

"(g) DEFINITIONS.—In this section—

"(1) the term 'safety' includes security; and

"(2) the term 'Secretary concerned' means—

"(A) the Secretary of Transportation, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary; and

"(B) the Secretary of Homeland Security, with respect to railroad safety matters concerning such Secretary under laws administered by that Secretary.".

(b) REGULATIONS AND ORDERS.—Section 20103(a) of such title is amended by inserting after "1970." the following: "When prescribing a security regulation or issuing a security order that affects the safety of railroad operations, the Secretary of Homeland Security shall consult with the Secretary.".

(c) NATIONAL UNIFORMITY OF REGULATION.—Section 20106 of such title is amended—

(1) by inserting "and laws, regulations, and orders related to railroad security" after "safety" in the first sentence;

(2) by inserting "or security" after "safety" each place it appears after the first sentence; and

(3) by striking "Transportation" in the second sentence and inserting "Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters),".

SEC. 1711. HAZMAT SAFETY TO INCLUDE HAZMAT SECURITY.

(a) GENERAL REGULATORY AUTHORITY.—Section 5103 of title 49, United States Code, is amended—

(1) by striking "transportation" the first place it appears in subsection (b)(1) and inserting "transportation, including security,";

(2) by striking "aspects" in subsection (b)(1)(B) and inserting "aspects, including security,"; and

(3) by adding at the end the following:

"(C) CONSULTATION.—When prescribing a security regulation or issuing a security order that affects the safety of the transportation of hazardous material, the Secretary of Homeland Security shall consult with the Secretary.".

(b) PREEMPTION.—Section 5125 of that title is amended—

(1) by striking "chapter or a regulation prescribed under this chapter" in subsection (a)(1) and inserting "chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security";

(2) by striking "chapter or a regulation prescribed under this chapter." in subsection (a)(2) and inserting "chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security."; and

(3) by striking "chapter or a regulation prescribed under this chapter," in subsection (b)(1) and inserting "chapter, a regulation prescribed under this chapter, or a hazardous materials transportation security regulation or directive issued by the Secretary of Homeland Security,".

SEC. 1712. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting "homeland security," after "national security,"; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting "the Office of Homeland Security," after "National Security Council,".

SEC. 1713. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

"(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

"(14) Other Federal officials the Council considers appropriate.".

SEC. 1714. CLARIFICATION OF DEFINITION OF MANUFACTURER.

Section 2133(3) of the Public Health Service Act (42 U.S.C. 300aa–33(3)) is amended—

(1) in the first sentence, by striking "under its label any vaccine set forth in the Vaccine Injury Table" and inserting "any vaccine set forth in the Vaccine Injury table, including any component or ingredient of any such vaccine"; and

(2) in the second sentence, by inserting "including any component or ingredient of any such vaccine" before the period.

SEC. 1715. CLARIFICATION OF DEFINITION OF VACCINE-RELATED INJURY OR DEATH.

Section 2133(5) of the Public Health Service Act (42 U.S.C. 300aa–33(5)) is amended by adding at the end the following: "For purposes of the preceding sentence, an adulterant or contaminant shall not include any component or ingredient listed in a vaccine's product license application or product label.".

SEC. 1716. CLARIFICATION OF DEFINITION OF VACCINE.

Section 2133 of the Public Health Service Act (42 U.S.C. 300aa–33) is amended by adding at the end the following:

"(7) The term 'vaccine' means any preparation or suspension, including but not limited to a preparation or suspension containing an attenuated or inactive microorganism or subunit thereof or toxin, developed or administered to produce or enhance the body's immune response to a disease or diseases and includes all components and ingredients listed in the vaccines's product license application and product label.".

SEC. 1717. EFFECTIVE DATE.

The amendments made by sections 1714, 1715, and 1716 shall apply to all actions or proceedings pending on or after the date of enactment of this Act, unless a court of competent jurisdiction has entered judgment (regardless of whether the time for appeal has expired) in such action or proceeding disposing of the entire action or proceeding.

Mr. ARMEY (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. OBEY. Mr. Speaker, reserving the right to object, I just want to make certain that my understanding is that the gentleman from Indiana (Mr. BURTON) is going to be recognized first on a reservation of objection. I just want to make certain that I will also be recognized under a reservation of objection.

The SPEAKER pro tempore. The gentleman is correct. Does the gentleman withdrawal his reservation?

Mr. OBEY. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The SPEAKER pro tempore. Is there objection to the original request of the gentleman from Texas?

Mr. BURTON of Indiana. Mr. Speaker, reserving the right to object, first of all, let me say that I certainly support establishing the Department of Homeland Security. If there is one thing we need to deal with the terrorists and the terrorist threat, it is to make sure that we have a streamlined approach to dealing with the threat. I believe that Tom Ridge, who I believe will be the Secretary of Homeland Security, and others in that Department will do an outstanding job once they get started. So I support very strongly the establishment of a homeland security department.

But the thing that bothers me, and the reason I came back to Washington today, to reserve the right to object, is because something was put into the bill that is wrong. I believe that it was put into the bill, because those who were asking that it be put into the bill were unaware of the ramifications of putting it into the bill. So under my reservation, I am going to go into the details of this, and it is going to take a little bit of time, but I think the education of my colleagues is extremely important when we are talking about the thousands and thousands of children in this country that have autism and how their families are struggling to cope with this problem without any help from those who may have caused the damage.

So let me start off by saying that when section 1714 to section 1717 were put into the bill at the last minute here in the House, and the gentleman from Texas, my good friend, was the author of this amendment, I was told that the committee of jurisdiction was notified about this amendment.

Well, according to the Rules of the House, the Committee on Government Reform and Oversight was the committee of jurisdiction. I am the chairman of that committee and I was not notified.

☐ 1115

Had I been notified, I would have been down here on the floor debating it very stringently, because we have been studying this issue for 3 years. We have had thousands of pieces of correspondence from parents of children who have been damaged to the point where they cannot speak and cannot live a good life. We have had hearings involving scientists and doctors from all over the world about this subject, and we are the only committee to my knowledge in the Congress that has taken this kind of time and effort to research this problem. Yet, we were not notified about this and the ramifications of this amendment.

So what I did when the amendment was found out, and it was over in the Senate by that time because we had passed the homeland security bill, with my vote, in addition to those of my colleagues, I went over there to try to get this amendment out.

Well, I found that the only way you could get it out was to bring it back to the House and probably go to a conference committee and, as a result, the homeland security bill might be killed for this session, and we might be dragging this thing on through December. The majority leader in the Senate and the Speaker of the House did not want that to happen. Therefore, my request that we take this out was not accepted. Cloture was voted on, so they went directly to the bill.

So I sent out a Dear Colleague letter to all of the Senators. I want to go into some of that a little bit and the reasons why this is such an important issue.

In my letter to my colleagues in the Senate, I said, "Scientists have concluded that there is no causal connection between mercury-containing thimerosal." That is an additive that is put into the vaccines that is going into our children. Most people do not know that mercury is being injected or has been injected into our children 25 or 30 times before they go to the first grade in school, and there is a cumulative effect of mercury in the brain. You get a little bit, and it keeps building up because of the fatty tissue in the brain. One shot of mercury may not hurt, with the thimerosal, but the cumulative effect, according to many scientists, does cause neurological damage, including autism.

But the fact is, in 2001 the respected Institute of Medicine concluded that a connection between thimerosal, the mercury-containing additive, and autism, while unproven, is biologically plausible. So they said they did not know; they did not know whether it would cause autism or not, but they said it was biologically plausible.

Researchers in the State of California concluded this year that there is no statistical explanation for the nearly 300 percent increases in cases of autism in that State. "It is astounding to see a three-fold increase in autism with no explanation," said Dr. Robert Byrd, an epidemiologist who led the study. "There are a number of things that need to be answered, and we need to rethink the possible causes of autism."

If we look at this study, we will see here when we started about the late 1980s there was a dramatic increase in the amount of autism in California. That is when we started adding additional vaccines containing thimerosal, the mercury-based additive, preservative, to these vaccines.

Another fact: An internal HHS document produced to the Committee on Government Reform during our investigation into vaccine safety described what it referred to as a weak signal in its data link linking thimerosal to neurological disorders: "Preliminary screening of ICD-9 codes for possible neurologic and renal conditions following exposures to vaccines containing thimerosal," that is the mercury, "before 3 months of age showed a statistical association for the overall category of neurological development disorders and for two conditions within the category, speech delay and attention deficit disorder."

Fact: If there were no concerns that scientific research would demonstrate a connection between thimerosal and autism, sections 1714 and 1717 would not have been tacked into the Homeland Security Act in the 11th hour without any debate, without anybody knowing about that.

Here is some more fiction. Sections 1714 to 1717 do not eliminate the right of vaccine-injured individuals to sue manufacturers of vaccines and their components. Proponents of these provisions have stated that once individuals have gone through the Vaccine Injury Compensation Program they can still choose to file a civil lawsuit.

That is false. The reason is, there is a 3-year statute of limitations. Most of these families did not even know about the program, so the 3 years passed and they could not get into it. Therefore, the only recourse they had was to file a suit, a class action suit. So we have thousands of families out there that cannot get into the program, the vaccine compensation program, when their kids have been damaged because the statute of limitations has expired. They are out there with nothing. Their houses are being sold, they are going bankrupt, they are spending all their money and hurting their lives trying to help their kids, and they cannot do it. My grandson is one of them.

Fact: "Thimerosal has now been removed from all childhood vaccines and is no longer a concern."

That is not true. It is in the flu vaccine they are giving to children. They may have taken it out in the last couple of weeks, but it has been in there. It is in the flu vaccine that we get here in the House.

There is a tremendous increase in the number of people that are having Alzheimer's disease, and there is a growing body of evidence in the world of science that one of the contributing factors is the mercury that we are putting into our bodies. They are putting it into adult vaccines still, including the flu vaccine that every Member of this body got this year that took it.

I talked to the doctor, the head of health here in the House. When I first talked to him about it 2 or 3 years ago, I said, did you know there is mercury in the vaccines we are getting for flu? He was not aware of it. What it says in the leaflet that we get is thimerosal. Who in the heck knows what thimerosal is. Well, 50 percent of it is mercury.

Relating to the argument that it has been removed from pediatric vaccines, the pharmaceutical companies that have already put vaccines out there that have thimerosal in it, it is still on the shelves in the doctors' offices. They may not be manufacturing more with Thimerosal in it, but the doctors that have it in their offices and the pharmacists that have it in their pharmacy are still dispensing it and it is still being used; so we are still injecting mercury into our kids in large quantities.

Because the FDA was painfully slow to seek the removal of thimerosal during the 1990s, millions of children across the country were exposed to this mercury-based additive, preservative, at a time when concerns about its health effects were emerging. The legal rights of these children should not be curtailed; yet, they were curtailed.

Now, I want to thank publicly, and here the Speaker is going to tell me I cannot do it, but I am going to go ahead anyhow, Senators SNOWE, CHAFFEE, and COLLINS on the Republican side of the aisle, along with a lot of our Democrat colleagues, who put pressure on the leadership in the Senate to make a concession saying that they would adjust this or take this provision out, at least in part.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. THORNBERRY). The Chair appreciates the gentleman abiding by the rules of the House.

Mr. BURTON of Indiana. I will, Mr. Speaker. I am not going to do it again. I have gotten it down already.

But they went to the Senator, the Senator from Mississippi, TRENT LOTT, the majority leader, and said they were going to vote for an amendment to take a whole bunch of things out, including this provision, if they did not agree to take this out for retroactivity in a bill that will come up for corrections after the first of the year. I want to thank them personally for that.

Now, during the debate in the Senate, some of my colleagues, including some eminent doctors, said there was a Danish study that showed that thimerosal and mercury did not cause autism.

First of all, let me tell the Members that the Danes, Denmark, quit using thimerosal in 1992. Second, the study that they referred to had nothing to do with thimerosal. It had to do with the MMR vaccine. It had nothing to do with mercury. So my colleagues who are experts in the Senate that were talking about this Danish study did not read the darned thing. It had nothing to do with mercury.

I want to tell the Members about some people who have had some problems. I became interested in this, and I did not even know what autism was. I saw the movie Rain Man, and I did not know much about autism. I did not know what caused it. But I knew that, in the movie, he was brilliant in some areas, but he could not clothe himself or feed himself and had all kinds of problems.

Then my grandson got nine shots in one day. Two days later, the child that was normal was running around banging his head against the wall, flapping his hands, had constant constipation and diarrhea combined, and he would not look at you anymore, and he could not talk. He had autism.

I decided to start taking a look at this problem and find out what caused it. Nine shots in one day, seven of which had mercury in them. The cumulative effect of those shots showed that he had 40 times the amount of mercury that was tolerable in an individual in one day. He is ruined for life.

We might say that that is an isolated case. Do Members know how many people are autistic in America, how many kids? Ten years ago, it was one in 10,000. Now it is one in 250, a 40-fold increase in 10 years. And we had the audacity to take the only tool that these parents had out of their hands to soothe the pharmaceutical companies that manufactured that. The pharmaceutical companies, make no mistake about it, ought to be held responsible.

I would like to go through the Vaccine Injury Compensation Program if we could adjust it to make it fair to all these families, but we cannot write off people who have gone beyond the 3-year period and have no recourse unless they sue. We have to adjust that vaccine compensation program, and that is what we need to do next year.

I have had so many hearings on this. That is why I am so surprised we were not contacted. I have had mothers come in and fathers come in. It is four times more prevalent in boys than girls. In Brick Township in New Jersey, it is one out of less than 150 kids that are autistic. They believe that the mercury is being acquired in additional ways, as well.

When we hear these stories about these families that are going through this we just cannot understand it, why it is happening. They said the Vaccine Injury Compensation Program that we came up with in the late eighties, thanks to the gentleman from California (Mr. WAXMAN) on the Democratic side and my colleagues on the Republican side, was supposed to be a solution. It was going to help the pharmaceutical companies to reduce the number of lawsuits against them by saying that we had to first go through this vaccine injury compensation fund, and it was supposed to be nonadversarial.

We had people come before the committee who had kids who had been damaged by vaccines, including those containing mercury. Some of them had to wait until their child died before they got the money. One of the people was threatened by the Justice Department, saying, if they said anything about this, they would appeal the case and they would not get paid.

So this is a very adversarial situation. That needs to be corrected, too, because these parents are putting out thousands of dollars out of their pockets to take care of their kids. Their kids' lives are ruined. They have to deal with it. Eighty-five percent of the people that are married that have autistic kids get divorced, 85 percent, because of the pressures on the family.

Let me just tell the Members about a couple of other cases besides the one that I am involved with with my family. Incidentally, I have two grandchildren. My grandson is autistic, and my granddaughter got a Hepatitis B shot which contained mercury, and she quit breathing 2 hours later. They rushed her to the hospital, gave her mouth-to-mouth resuscitation, and she recovered and she was fine.

Yet, she now has grand mal seizures. We never had those in our family, in the history of our family on either side. We thought she was getting over them, and last night my daughter called me this morning and said she had another seizure in the middle of the night; a beautiful child, cheerleader, 9 years old. Members would see a picture and say this kid is beautiful. Yet, she has been affected by something, and I think it is probably the mercury in the vaccines.

Anybody that does not know mercury is a very toxic substance has their head in the wrong place. They took it out of Mercurochrome years ago. Remember when we used to put that red stuff on our skin, Mercurochrome? They took it out of there years ago because they said it caused some skin damage, plus there was concern about the mercury leaching into the skin, going to the brain, and causing neurological problems; yet they are still using it in vaccines.

Let me tell the Members about the Zuhlke case. Janet Zuhlke's daughter had a severe reaction to a childhood vaccination almost immediately after she got her shot. It was an injury that was on the injury table established by Congress. When you are on that injury table, compensation is supposed to be almost automatic.

The vaccine injury was certified by some of the most prominent neurologists in Florida, but the Justice Department has fought her case for 10 years so she could not collect from the vaccine injury compensation fund. Her daughter got the shot when she was 6 years old. She is almost 18 now. The family has not received a cent, although they are finally getting close to resolving the case.

Why should that case take 10 years? It is on the list. Neurologists verified that the child was damaged by the vaccine; yet, nothing has happened.

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The Barton case. Lori Barton of New Mexico, had a similar experience. Her son's case was a little more complicated, but he did have a table injury. That is on the table of injuries. Again, we had a case that took 10 years to resolve. After this lengthy fight, the Barton's finally won compensation. The problem is their son died halfway through the case.

Lori Barton and her mother testified before my committee that they were cross-examined like criminals by the government attorney. After they finally won their case, the government threatened to appeal the ruling and drag it out for another year unless the family agreed not to have the case publicly listed so it could set a precedent for other families.

Can you believe that? The child died and they agreed they should be compensated out of the fund, but they threatened them, saying if you say anything about this we will carry this thing on for another year. And God only knows how many thousands of dollars that they had to put out to take care of this problem. This was supposed to be a nonadversarial program.

I want to thank Dr. Cathy Pratt from the Indiana Autism Resource Center at Indiana University for helping my kids in these early days.

I want to show my colleagues some of these charts here, because I think a picture sometimes is better than a thousand words. This is what has happened in California. A 300 percent increase. And these figures do not go past 2000. That is California.

Now, we have a program called IDEA, and that is where we put money into a fund that goes out to the States to help children who have learning disabilities. This is Indiana, my home State. If we look here, we see that in the early 1990s, back to 1980, it was pretty level, the amount of autism we had. But then they introduced two additional vaccines that had a large amount of thimerosal in them, the Hib vaccine, which dealt with a flu-type problem children have, and the hepatitis B vaccine.

Now, if my colleagues will look at this, you can see the huge increase in the amount of autism since 1990; and the schools cannot cope with it because many of these kids need one-on-one attention to help them. They cannot cope with it because there has not been enough money appropriated for the IDEA program. Well, I am for cutting government spending, but if we are not going to take care of these kids one way, they have to be taken care another way. So, educationally, we can see there is a problem.

Talk to any school in the country. I submit to my colleagues, call them up and talk to them. They will tell you that they are being inundated with kids with autism, and they are having a difficult time helping them with their education. Some of them can be educated and become fairly independent later in life. But the fact of the matter is, we have to educate them.

In California, they estimate that between the ages of 6 and 18 an autistic child is going to cost the State $2 million. Two million dollars. The cost to this country for autism is going to be in the billions and billions, and maybe the trillions, of dollars in the years to come if we do not find a solution to this problem.

It used to be 1 in 10,000 children. In some parts of the country, it is 1 in 150 that are autistic right now. But nationwide, according to CDC and HHS, our health agencies, there has been a 40-fold increase. It is 1 in 250.

I submit that any person who has a child ought to think very carefully about what they are putting into their child in those vaccinations. I am for vaccinations. I think they are very important. They made this one of the most healthy nations in the world. In fact, the most healthy Nation. But there are certain things put into them that should not be in there, in my opinion; and I think scientists around the world would bear that out.

Now, the Autism Society of America estimates that autism is increasing at a rate of 10 to 17 percent each year, and that is faster than any other disease in the country. Any other disease. The Autism Society of America estimates that the total cost of autism each year is between $20 billion and $60 billion to our economy.

I talked about the school problems. Parents who have autistic children who are past the 3-year statute of limitations have no place to go. And I have talked to parents who have gone bankrupt, who have had their children die, who have ended up in divorce, have had all kinds of problems because of the problems that their children have incurred from autism.

And yet they say there is no research that shows one way or the other what is causing it. Scientists in other parts of the world, in Denmark, as I say, they have taken mercury out of vaccines back in 1992, and yet in the early 1990s we were adding more mercury to the vaccines of our children.

When I was a kid, we got maybe two or three vaccinations. We got the smallpox vaccine, everybody knows about that, and we will probably get that again, but we did not get very many. And there was not a lot of thimerosal being injected into our bodies. But now a child gets between 25 and 30 shots before they go to school. Many of them contained, in the past, mercury; and many scientists believe that that is one of the major causes of autism.

But there has not been any studies. Why has the FDA and the CDC not done extensive studies? Where did thimerosal come from in the first place? Back in the 1930s, the 1920s, they came up with this idea of putting a preservative in vaccinations that contained mercury. They tested it on 20 some people. This is back around 1929, 1928; and the 20 some people that they tested thimerosal on all had meningitis and they all died. But it was not because of the thimerosal, it was because of the meningitis. So they said it did not have any dilatory or adverse effect. That is a heck of a test.

When I asked the FDA why they have not tested it since, they say it is because after so long a time a thing has been used, they accept it as an acceptable preservative. But it has never been tested in humans. They have tested it in some animals and rats, and a lot of them died. I would like to go into all those studies with my colleagues, but I will put those in the CONGRESSIONAL RECORD and my colleagues can read them at their leisure.

The fact is that mercury in vaccines is not good. It is wrong. It is a toxic substance and should not be there.

The CDC is spending $932 million a year on the AIDS epidemic, and AIDs deserves attention. So does diabetes. This year we are going to spend $62 million on diabetes, and we probably ought to spend more than that. But do you know how much they are spending on research for our children who are autistic? About $10 million. So we are spending 80 times more on AIDS research than we are on autism, yet it is the fastest-growing problem in America. And we are spending five to six times more on diabetes than we are on autism.

The National Institutes of Health has a total this year of $27 billion. That is $27,000 billion. And they have been spending $22 million on autism out of $27 billion. This past year, because we have been raising cain, they did kick it up to $56 million. But $56 million out of $27 billion on the fastest-growing problem in America is not very much, and they have not researched the correlation between mercury in vaccines and autism.

We need to find out the cause. We need to determine how to stop the epidemic. We need to evaluate treatment options. We need to make sure that the people who are damaged from mercury in vaccines are compensated.

The people who produce the thimerosal, the mercury-based preservative, do not contribute anything to the vaccine injury compensation fund. And with the language that was put in the bill, gets them off scot-free. They do not ever have to worry about it. Because they are not putting any money in the fund right now, and they certainly would not have to if that language stayed in the bill in the future. And that is wrong. Because we should find out, and I believe we will find out, that they are a contributing factor, a major factor, in autism.

As I said before, thimerosal is 50 percent mercury, 50 percent mercury and 50 percent thiosalicylic acid. A 6-month old baby that received all the vaccines on schedule would get 75 micrograms of mercury from three doses of DTaP, 75 micrograms of mercury from three doses of Hib, and 37.5 micrograms from three doses of hepatitis B vaccine. That is a total of 187.5 micrograms, and that exceeds the suggested safe limits published by the EPA.

I do not know if the FDA talks to the EPA or not. That is something we are trying to solve with Homeland Security. But we have the EPA saying that the amount of mercury from those three vaccines that are going into our kids exceeds the safe levels in an adult. That is what the EPA says. Yet that is what we are doing, and have been doing, and the parents have no recourse.

Many clinics and doctors, as I said before, still have on their shelves vaccines that contain thimerosal. Those should be recalled. All that should be recalled. They say they are not producing any more, but we should not be putting any more into our kids. And they should not be putting it into adults either. We in Congress and people across this country should not get a flu shot and unknowingly have mercury injected into them year after year after year. Because, as I said, it has a cumulative effect in the brain, and you can talk to any scientist and they will tell you that.

I read to my colleagues before part of the report that was given in an HHS document that I had to subpoena. I want to read again a little bit of that. This is an HHS document that we had to subpoena to get.

It says, "Preliminary screening of ICD–9 codes for possible neurologic and renal conditions following exposures to vaccines containing thimerosal, mercury, before 3 months of age showed a statistical association for the overall category of neurological developmental disorders and for two conditions within the category, speech delay and attention deficit disorder."

So they are saying there is a statistical link between that and these kids that are under 3 months old that are getting these vaccines. And yet, when a child is in a hospital right now, they are getting a hepatitis B vaccine before they leave the hospital. And the only way you can get hepatitis B is through sex, needles or blood. Now, I do not know how many kids are out there having sex or using needles or having a blood transfusion. But, unless you have those, there is no need for those kids to even be getting that vaccine at that age.

In 2001, the Institute of Medicine concluded that a connection between thimerosal and autism, while unproven, is biologically plausible. "The IOM called for further research, stating evidence is inadequate to accept or reject a causal relationship between exposure to mercury, thimerosal, from vaccines and neurological developmental disorders of autism, ADHD, and speech and language delays."

So they do not know, because they have never done any testing on it, and yet they continue to inject our kids with this stuff.

I want to go on and quote a little more of what she said. She says, "Because mercury at high doses is known to pose risks, some parents and researchers are concerned that thimerosal in vaccines put children at increased risk for developmental disorders such as autism. Preliminary data from a few studies have suggested that thimerosal-containing vaccines could possibly," could possibly, but then she says, "very minimally," because they do not know, "affect some measures of normal child development. But the data are inclusive."

If it is inconclusive, why have our health agencies not been checking it out? Why have they not done something since 1929 to check this substance out, instead of continuing to inject mercury into our kids? They have taken mercury out of thermometers, they have taken it out of our topical dressings, and yet they are still injecting it into our kids and into adults.

And I want to say something that is very interesting. They are taking it out of children's vaccines here in America, but they are still putting it in vaccines they are sending to Third World countries. So my colleagues who are concerned about Africa and India and other parts of the world where they have huge populations and they have to vaccinate their kids, mercury is being injected into those kids, even though they are starting to take it out of vaccines here in America. That shows what we think sometimes in our health agencies about the rest of the world.

"Existing epidemiological evidence is inadequate to either accept or reject a causal relationship between exposure to thimerosal from vaccines and neurodevelopmental disorders of autism."

□ 1145

It is important to remember that the absence of proof of a correlation between vaccines and autism is far different than having a test and proving no vaccine causation.

Now, what does this mean for families? I want to tell Members about another family which has been before our committee. Scott Bono of Durham, North Carolina, testified before our committee a few years ago. His son, Jackson Bono, is one of those children who was adversely affected by thimerosal. He has autism. He is documented to have toxic levels of mercury in his body. He is now 13 years old. It is likely that the case his family has filed with the Vaccine Injury Compensation Program will be kicked out because of the 3-year statute of limitations. Unless his family can seek compensation through civil litigation, they will likely never be compensated for their child's vaccine injury.

They know that he has mercury in his body at toxic levels. But because the 3-year statute of limitations has passed, he has no recourse.

We did not publicize this nationwide. When we came up with this Vaccine Injury Compensation Program, they did not tell all Americans who had autistic children they had 3 years to file. A lot of people thought they had no recourse, so they filed suit and they did not go to the Vaccine Injury Compensation Fund; and they found out 3 years later, too late, that they could have gone to this fund and maybe been paid.

Mr. Speaker, that is why we need to reevaluate the entire fund and the approach to it. We need to have at least 6 years and a 2-year look-back provision to allow parents with damaged children to have access to that.

If it costs more money to put into the fund by the pharmaceutical companies, right now they are paying so much per shot into the fund, like a tax on each shot, then if we have to increase that a little bit, so be it. But those families need to be compensated, and they should not be shut out just because 3 years has passed.

I want to tell Members what I think ought to be in the Vaccine Compensation Program, and the gentleman from California (Mr. WAXMAN) and I, along with the gentleman from Florida (Mr. WELDON), have filed a bill that I hope will do this. Since this issue has become so big because of the homeland security bill, I hope Members will vote favorably for this bill next year.

First, the bill increases compensation for future lost earnings for injured children. Under current law, compensation is based on the average weekly earnings of full and part-time workers as determined by the Bureau of Labor Statistics. This bill would specify that only full-time workers should be used in the calculation so that there is a realistic amount of money for lost time and wages.

It would increase the level of compensation to a family after a vaccine-related death from $250,000 to $300,000. The death benefit has remained unchanged since the program's inception in 1986. Inflation alone makes it higher than that.

It would allow families of vaccine-injured children to be compensated for the costs of family counseling and creating and maintaining a guardianship to administer the funds and allow for the payment of interim attorneys' fees. They cannot get an attorney to take their case because it is such a long-drawn-out procedure. If they are not in the class action suit and they go to an attorney, he says, I want some money for my work. These attorneys do not work pro bono, so it is difficult to find attorneys to take their cases. So we ought to allow for payment of interim attorneys' fees and legal costs while the petition is being adjudicated.

The costs of assembling the necessary medical records and obtaining expert witnesses are substantial. Under current laws, these costs, as well as the attorneys' fees, are not reimbursed until the case is finally resolved, and they are not being resolved.

We should extend the statute of limitations 6 years from the date of injury. Under current law, families have to file within 2 years of the child's death or 3 years of the child's injury.

We should provide a one-time, 2-year period for families to file a petition if they were previously excluded from doing so because they missed the statute of limitations. So we ought to publicize across the country if a child is autistic and they were damaged by a vaccine in the compensation fund list table, that parents ought to have 2 years to file for their child's injury.

There have been other bills which have been introduced. However, the other bills also appear to protect industry more than protecting the families; and we need to scrutinize those very, very carefully.

Let me just conclude, and I know that I have been going on here for a long time, but I want to show Members one more chart.

This chart shows Dr. Leo Canner discovered autism among children born in the 1930s, and it shows a pretty consistent rate of autism for those who were being vaccinated. Then we increased the rate of vaccination here in the late 1960s, early 1970s, and then we notice that the Hib vaccine was introduced and the hepatitis B vaccine was introduced in the early 1990s. If we look at this chart, the rate of autism from vaccine is pretty constant until the early 1990s, and then it spiked. We went from 1 in 10,000 kids to 1 in 250 nationally that are damaged with autism.

It is unconscionable to me. And I am one of those conservative guys. I am a conservative. I do not like to see the government spend money. I believe the government that governs best governs least, and I believe in lower taxes, so I am pretty much the last guy Members would expect to see up here talking about this. Government has to have a heart, as well as being a guardian of the pocketbook; and when parents who have children who are autistic and they suspect that they have been damaged by vaccines or mercury, they ought to have some recourse, and right now they have virtually none.

The producers of the vaccines, they ought to be protected to a degree, too. That is why I supported the Vaccine Injury Compensation Fund. But where the two meet, there has to be some fairness, and the fairness is that parents with autistic kids who have been damaged by vaccines and those vaccines are on that vaccine table, they ought to be compensated without an adversarial situation evolving through the Department of Justice and Health and Human Services. That is not the case right now.

If it means that we have to extract more money from the pharmaceutical companies when they give these vaccines, like a little increase in the amount of the fee that they are paying into the Vaccine Compensation Fund, so be it, because these parents and children have a right to a good life and to be treated fairly. Right now, that is not the case.

Mr. Speaker, I hope the leadership in the House and the other body will look favorably upon reevaluating the Vaccine Injury Compensation Fund when we return in January, that they will reevaluate the language in the Department of Homeland Security bill to make sure that it is fair to those parents who have been left out in the cold; and if we do that, then I think we can look at ourselves in the mirror and say we are doing the right thing for parents and especially the children of America.

WHAT DO WE KNOW FROM THE PEER-REVIEWED SCIENTIFIC LITERATURE ABOUT THIMEROSAL?

Thimerosal is a preservative that is approximately 50 percent ethylmercury and 50 percent thiosalicylic acid (TSA—sometimes referenced in the literature as a salt). First licensed in 1930 by Eli Lily and Company, it has been used both in the manufacturing process of vaccines and as a preservative in single and multi-dose vials. Over the last 20 years the FDA determined that single dose vials would not require a preservative.

In the 1980's the FDA had already acted to pull mercury-containing topical ointments such as merthiolate from the market because they no longer considered them safe.

Both components in thimerosal are problematic. Mercury is known to be toxic to the central nervous system and to the renal system. Thiosalicyclic acid is known to cause an allergic response in a significant portion of the population. It is so allergic, that a skin patch test was developed decades ago, but has not been routinely used prior to vaccinations.

Below is a summary of published research papers discussing safety issues of thimerosal.

1. We know that in 1947, 31.5 percent of cases of contact dermititis was due to thimerosal. Of these 75 percent was confirmed to be related to the TSA and 12.5 percent confirmed to be related to mercury. We know that the authors of the 1947 paper questioned the wisdom of injecting thimerosal.

A 1947 paper reports on a series of case reports. The author makes reference to a 1942 test in which 1 of 6 patients tested were sensitive to merthiolate (16.7 percent). It also references a 1945 test which found that 8 patients were treated for contact dermatitis use related to merthiolate. Six of these were tested for TSA and reacted (75 percent). An 8th patient proved to be sensitive to mercury (12.5 percent). The article goes on to state that 35 percent of contact dermatitis (in general) is due to therapeutic agents, (i.e. from putting a medication on the skin). Of those 35 percent, 90 percent were due to merthiolate. Therefore, it meant that 31.5 percent of contact dermatitis (in general) was due to merthiolate (i.e. TSA and mercury) While much of the focus has been on the mercury component of thimerosal, the articles points to the high level of allergic response due to the TSA component. Given that thimerosal = ethylmercury + TSA, it doesn't really matter whether it is TSA or the mercury that causes the problem.

Dr. Vera Stejskal, a noted European researcher testified before the House Committee on Government Reform that is not simply the toxicity of the mercury, but also the sustained allergic response to mercury and TSA that can lead to a systemic response—which can include a swelling of the brain.

Notable quotes from paper:

"No eruptions or reactions have been observed or reported to merthiolate internally, but it may be dangerous to inject a serum containing merthiolate into a patient sensitive to merthiolate."

"The thiosalicylic acid radical is the usual sensitizing factor in merthiolate sensitivity."

"Only one patient who had merthiolate dermatitis gave a negative patch test to thiosalicyclic acid.

2. We know that in 1948 there were frequent reports of adverse reactions related to topical application of thimerosal.

A 1948 paper reports on a 1947 case in which a 45-year-old woman suffered multiple reactions to merthiolate applied to her skin prior to surgery. She suffered fever and chills and had small vesicles and erythema in the area of merthiolate application. After her recovery, the patient indicated that the ulcer for which she was being surgically treated appeared after repeated applications of a tincture of merthiolate. Thinking she was treating the skin itch, she applied merthiolate daily. She continued the application until the skin because too raw and painful to continue use—then sought medical care. After the surgery, she developed pruritis in the area of the reaction. Two months later upon an office visit, the patient's pruritis and crusting of the skin continued, while the erythema had almost subsided.

The article notes that there are many severe reactions reported following the use of mercurial ointments and a lesser number due to antiseptics containing mercurials, recommended further research to determine if harm would results following its subcutaneous or intravenous injection in skin sensitive individuals. The article also notes that most of the references to reactions to thimerosal are published in dermatology journals which general practitioners would not be reading, and thus not be alerted to the problems.

Notable quotes from paper:

"Merthiolate is such a commonly used preservative for biologicals, plasma, cartilage, etc., that it would seem important to determine whether harm would result following its subcutaneous or intravenous injection in skin sensitive individuals."

"It seems more logical, therefore, to ascribe most of the reactions of merthiolate to the thiosalicylate rather than the mercuric compound it contains."

A 1950 research paper published in the New York Academy of Science found that mercury bichloride (which is not merthiolate) was toxic when injected, that it caused dermititis if used on the skin too long, and that it could not be used in chemotherapy.

Additionally, this article provides an historical perspective of the use of mercurials to prevent sepsis. It also mentions that much of the early work conducted on these products was inadequate to make the claim. The research conducted for this paper was specifically to disprove the claims of high germicidal and sporicidal activity increasingly being touted in textbooks.

3. A 1963 research publication reported that a patient who is sensitive to merthiolate should not be injected with thimerosal. It notes that a patch test exists—and has existed for decades, but there has never been routine testing of infants or children to determine if there is an allergic response. Allergic responses are often overlooked. While the article states that individuals who are allergic to merthiolate are usually sensitive to the TSA, it also mentions that some are sensitive to the mercurial component.

The article also stipulates that in determining who will be sensitized, the frequency the topical ointment is used seems to affect the numbers who become allergic. If this argument upholds, it could be extrapolated to mean that the early and frequent use of thimerosal in childhood vaccines could make newer generations more susceptible to allergic responses to TSA and mercury. The paper reports that patients react differently—there is a dermal and epidermal reaction (possibly a systemic response).

Of particular concern from this paper is that if this is true, that with new and increasing recommendations from the CDC to given adults booster shots from childhood immunization and to give flu and other vaccines that adults may begin to suffer similar allergic (and systemic) reactions to thimerosal in vaccines.

Notable quotes from paper:

"There is another point of practical significance: does the parental injection of merthiolate-containing fluids cause disturbances in merthiolate-sensitive patients."

"It is known that persons that are contact sensitive to a drug may tolerate the same medications internally, but it seems advisable to use a preservative other than merthiolate for injections in merthiolate sensitive people."

"Patch and intradermal tests of Merthiolate "do not produce reactions in normal, nonsensitive persons, according to the literature and my own experience."

Test results present "a picture of allergic reaction and corresponds to those reactions seen in contact dermatitis."

"It is generally recognized sensitivity to Merthiolate usually is not due to its mercurial component but to the thiosalicylate part of the molecule . . . although some patients who are allergic to Merthiolate also react to other mercurials."

"The intradermal injection of Merthiolate from numerous intradermal tests in my cases did not seem to cause any systemic reactions."

4. A 1973 report of skin burns resulting from a chemical reaction of thimerosal and aluminum resulted in Lilly adding a new warning to the label in 1973.

Through multiple tests it was learned that thimerosal acted as a catalyst to the oxidation of aluminum. Blisters on the skin resulted. It was suggested in this article that thimerosal and aluminum should not be used together. (However, aluminum is another ingredient in many children's vaccines.)

Notable quotes from paper:

1972 British Medical Journal reports cases of skin burns resulting from the chemical reaction of thimerosal and aluminum. "Mercury is known to act as a catalyst and to cause aluminum to oxidize rapidly, with the production of heat." The manufacturers who supply us with thimerosal have been informed.

5. A 1972 paper reports on six patients who died as a result of subacute mercury poisoning from merthiolate. The doses of merthiolate were likely 1,000 higher than expected doses.

This article is important in that it shows that there is indeed a level in which merthiolate (thimerosal) can be toxic. A dose of 1,000 times the intended dose is now proven to be deadly. (We have not seen any research that indicates the exact dose that it would become toxic.) The LD50 (the dose at which 50 percent of the test animals die) for rats is 60 mg/kg of body weight.

The article references the subacute nature of the poisoning—i.e. showing that the death was not rapid, but that death occurred after the cellular enzyme was poisoned by the mercuric ion.

The article notes that in chronic poisoning, where small amounts of mercury are ingested over a long period, that the symptoms were mostly neurologic.

In immediate forms of poisoning, the kidneys were the affected area.

While merthiolate was used in blood plasma products extensively in WWII, it was learned that that a higher concentration of merthiolate resulted in the destruction of red blood cells, which was a noted issue in several of the cases reported in this paper.

Notable quotes from paper:

"The case histories of four children and two adults who were accidentally given toxic amounts of Merthiolate are recorded."

"Five out of the six patients died, and necropsy showed extensive renal tubular necrosis in each case, and in two, evidence of diffuse intravascular coagulation."

"Merthiolate (Thimerosal, Thiomersal) is an organo-mecurial compound widely used as an antiseptic agent. Its main application in medicine has been as a skin antiseptic, and it has also been incorporated as a preservative in attenuated polio and influenza virus preparations. Similarly, vials of antibiotic preparation may contain Merthiolate as a bactericidal agent to allow such vials to be used for several doses."

"Toxic effects in man have been confirmed mainly to skin reactions, which on occasions may be severe."

"Intravenous Merthiolate has been used in the treatment of subacute bacterial endocarditis with no apparent ill effects (Powell and Jamieson 1931). However, the doses used were very small."

"The amount of Merthiolate in each vial was 1,000 times as much."

"The LD50 (lethal dose for 50 percent of test population) for Merthiolate in man is unknown. However, these six patients received between two and six times the LD50 for rats (LD50 60 mg/kg)."

5. In 1982, the FDA published an Advance Notice of Proposed Rulemaking to ban the use of thimerosal in OTC products.

This FDA generated documents that lists the high level of toxicity of thimerosal in their proposed rule for OTÇs. The announcement noted delayed hypersensitivity in 10 of 20 guinea pigs (50 percent) tested indicating that thimerosal is highly allergenic and that it is reasonable to expect humans to be equally allergenic.

The report also notes a Swedish study found in healthy subjects the following had hypersensitivity to thimerosal:

10 percent of school children,
16 percent of military recruits,
18 percent of twins, and
26 percent of medical students.

The FDA concludes that while it has been suggested that hypersensitivity may be due to the TSA portion of the molecule and not the mercury, that this was not confirmed. They succeeded in their move to ban OTC products with thimerosal.

Notable quotes from paper:

"At the cellular level, thimerosal has been found to be more toxic for human epithelial cells in vitro than mercuric chloride, mercuric nitrate, and merbromim (mercurichrom)."

"It was found to be 35.3 times more toxic for embryonic chick heart tissue than for staphylococcus aureus." (1950 study showed that thimerosal was no better than water in protecting mice from potential fatal streptococcal infection.)

"The Panel concludes that thimerosal is not safe for OTC topical use because of its potential for cell damage if applied to broken skin and its allergy potential. It is not effective as a topical antimicrobial because its bacteriostatic action can be reversed."

6. Occupational Safety Materials give the following warnings:

Primary Physical and Reproduction Effects: Nervous System and Reproduction Effect.

Effects of exposure include fetal changes.

Exposure in children may cause mile to severe retardation.

Hypersensitivity to mercury is a medical condition aggravated by exposure.

CERCA Hazardous substance—toxic waste disposal.

The MSDS statement states that the primary physical and health hazards include that it is toxic, a mutagen, an allergen, and can have nervous system and reproductive effects.

Early signs of mercury poisoning in adults include: narrowing of the visual field and numbness in the extremities.

Exposure to mercury in utter may cause mild to severe mental retardation and mild to severe motor coordinating impairment.

In the toxicological section it was noted that in rats, an intravenous dose of greater than 45 mg/kg was needed for mortality.

7. A 1973 paper on the toxicology of thimerosal notes, "as with other chemicals of its generation, information relating to safety and efficacy of thimerosal in animal models is sparse."

The article reviews the existing animal studies:

In mice, all injections of 150 mg of thimerosal per kg of body weight were lethal within 1 hour.

A 1937 study performed by Lilly gave 20 mice 30 or 50 mc/kg of a 1 percent solution of thimerosal. The lethal dose of 50 percent of the mice was found to be 40.9 ± 1.2 mg/kg.

A 1945 study was done in mice. Doses ranging from 40–62 mc/kg of thimerosal was given intravenously. Most deaths occurred 3 days later, however a few mice died as late as 9 days later. The lethal dose of 50 percent was calculated at 55 ± mg/kg.

In a rat study, 45 mc/kg was the tolerated intravenous dose. Autopsy revealed definite kidney lesions, consisting principally of tubular changes, necrosis of the epithelium (membranous tissue composed of one or more layers of cells separated by very little intercellular substance and forming the covering of most internal and external surfaces of the body and its organs), inclusion of masses of debris in the lumen (the inner open space or cavity of a tubular organ, as of a blood vessel or an intestine) and congested and hemorrhagic regions throughout the cortex (the outer layer of an internal organ or body structure, as of the kidney or adrenal gland/the outer layer of gray matter that covers the surface of the cerebral hemisphere).

In a rabbit study, 25 mg/kg was usually tolerated dose. Pre-death signs of toxicity included prostration (total exhaustion or weakness; collapse) and diarrhea. Death occurred 1–6 days post-treatment and cause of death was attributable to mercurial poisoning, including kidney and intestinal lesions.

Another rabbit study tested 20 or 60 mg/kg intravenous dose of thimerosal. Onset of side effects and death occurred at both doses and varied with dose and rate of injection. Side effects noted were drowsiness, ataxia (loss of the ability to coordinate muscular movement), weight loss, and oliguria (production of an abnormally small amount of urine). Animals receiving a dose of 60 mg/kg showed a progressive fall in serum potassium and an elevation in urinary potassium excretion. Histopathology included kidney tubular necrosis but no glomerular (glomeruli: a tuft of capillaries situated within a Bowman's capsule at the end of a renal tubule in the vertebrate kidney that filters waste products from the blood and thus initiates urine formation) lesions.

In a series of studies that tested the oral delivery of thimerosal in rats, the lethal dose of thimerosal was estimated to be greater than 50 mg/kg but less than 100 mg/kg. Side effects preceding death included ptosis (Abnormal lowering or drooping of an organ or a part, especially a drooping of the upper eyelid caused by muscle weakness or paralysis), chromorhinorrhea (miscolored nasal discharge), poor grooming, and weakness.

These studies which originally lasted 7 days were extended 14 days and showed that there is a delayed toxicity in thimerosal. This is also shown in other studies previously discussed. This raises a large number of questions about the lack of safety studies in this area. Toxicity death prior to 3 days in one study only occurred at the 125 mg/kg level. The 50 percent death rate after 7 days was calculated at 88.8 ± 5.7 mg/kg but additional deaths occurred during the second week resulting in a 14 day 50 percent death rate of 72.7 ± 5.4 mg/kg.

An intraperitoneal (inside the area that holds the abdominal organs) study on guinea pigs tested injections of varying thimerosal solutions strengths. No abnormal responses were seen at the 0.0125 percent or 0.025 percent. Those treated with 0.05 percent or 0.1 percent evidenced irritation and pain, and autopsy revealed congestion (excessive fluid) and hemorrhage in the peritoneum.

Intracutaneous studies in rabbits found that some of the animals became irritated and other did not. In a guinea pig study found similar response and showed that the level of response was dose related.

As an extension of the intracutaneous study, a subcutaneous test was done on 3 rabbits. After 24 hours, no irritation was noted on the skin. The animals were sacrificed and examined. A few of the injection sites had caused small sites of hyperemia. The cause of this was unclear (thimerosal or needle puncture of small vessels).

A dermal study of rabbits found no dermal irritation.

In an ocular study with rabbits, tincture merthiolate (thimerosal, alcohol, and acetone) was found to be an eye irritant, damaging both the iris and the conjunctivia. The study was consistent with other studies on alcohol ocular irritation. In another study of mercuialentis, an ocular study of rats and guinea pigs (30 days) found no corneal toxicity. However, they found measurable levels of mercury in both eyes (test was in one eye) and in peripheral blood of rats.

In a subacute toxicity study in dogs given thimerosal intravenously. None of the dogs died from the 2 mg/kg of thimerosal.

WRITTEN TESTIMONY BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM—APRIL 18, 2002

My name is Lee Grossman and I am President of the Autism Society of America, Chair of the Autism Society of America Foundation, a member of the federal government's Interagency Autism Coordinating Committee, a resident of Honolulu Hawaii, a small business owner for over 20 years in the medical industry and, most importantly, a father of a child with autism. Vance. Mr. Chairman, I would like to thank you and your colleagues on the Committee on Government Reform for this opportunity to present testimony on the issue of autism, the fastest-growing disability in our country today. As president of the Autism Society of America, I can tell you that hearings such as this offer hope to the hundreds of thousands of individuals and families affected by autism.

The Autism Society of America (ASA) is the nation's largest autism organization with over 200 chapters throughout the U.S. representing professionals, individuals with autism, and their families.

I am here today to share some important information about autism with you and to tell you why it is imperative that we do everything possible to expand programs and research into this puzzling and debilitating disability. You may be surprised to learn that it has been 60 years since autism was first identified, and yet we still don't know what causes it, we don't know how to effectively treat it, and we don't know why it is on the rise, although several theories exist regarding the dramatic increases that we are seeing across the United States.

Just ten (10) years ago, autism was thought to be a rare disorder affecting 1 in 10,000 individuals. Five years ago, researchers, including those at the National Institutes of Health (NIH), Centers for Disease Control and Prevention (CDC), and the Department of Education, estimated that 1 in 500 individuals had autism. Today, researchers believe this number may be closer to 3 in 500 (CDC, 2001). This means that as many as 1,500,000 individuals in this country alone may have autism today.

And, again, this number is on the rise and not solely due to better diagnosis and identification. Based on reports from the U.S. Department of Education and state agencies, the ASA estimates that autism is increasing at the alarming rate of 10 to 17 percent each year, faster than any other disability or disease. At these rates, in the next decade, autism could surpass mental retardation as the most common developmental disability facing this country.

If we don't act now, there is no doubt that autism will have devastating effects on our national health and education systems. Today, the total cost of autism is $20 billion to $60 billion annually (based on current figures of 500,000 to 1,500,000 individuals with autism at an annualized per-person cost of $40,000). By 2010, this cost associated with autism could more than double or quadruple to $55 billion to $300 billion per year.

The only way to prevent this economic fallout from becoming a reality is to invest more money in research to solve the puzzle of autism, to expand educational and vocational opportunities, and to create support services that are currently lacking or nonexistent for those already affected by autism.

Research and programs are needed now if we are to thwart the growth rate and to prevent more families from receiving the devastating news that their son or daughter has autism. We commend you and your committee for your recognition of the growing problem of autism with strides you have made in the last two to three years to raise awareness about autism and to support and put into motion several research initiatives and funding, including the research programs established as a result of the Children's Health Act of 2000. This is the type of informed action of which I speak.

In fiscal year 2002, NIH will be spending $66 million on autism activities. The CDC, through its Center for Birth Defects and Developmental Disabilities, will be allocating $9,230,000 for its surveillance programs. These funding levels represent a dramatic increase in research towards this disorder. We applaud the work of those federal agencies which the ASA has enjoyed a closed relationship with.

Unfortunately, these gains pall compared to the huge economic and social problem of autism today and in the near future. Our nation is in the grasp of an autism national emergency health crisis; a crisis that demands a significantly more aggressive response from the federal government to counter the growing costs and fractured lives caused by autism. If we are going to make further progress in our understanding of this disability and begin making strides in treating it, we must geometrically increase the research commitment from all areas of the federal government to approach the geometric growth of autism.

The ASA is the voice of the autism community, and that community seeks increased funding for: (1) research and prevalence studies, (2) physician and caregiver awareness programs, and (3) early intervention programs. The ASA also calls for legislative action with regard to the recommendations of the National Research Council's report "Educating Children with Autism" and the need for support services for adults with autism. Please note that as long as the cause and cure for autism elude us, more and more persons with autism will become adults with autism. The appropriate care levels for adults is and will be greater than costs related to children.

AUTISM RESEARCH

Current funding levels in biomedical research at NIH are terribly low in relation to the disorder's population and economic impact. We are recommending that the federal government increase the funding available for research over the next three years to a level of $500 million per year devoted to basic science, environmental science, tissue and genetic collection, and all aspects of biomedical research related to autism. When compared to the annual growing rate of autism in our nation, this is substantially below funding to keep pace with the projected growth of autism.

In the area of applied research, we must find new and innovate ways to develop and implement therapeutic and clinical interventions and effective treatments. There have been to date virtually no activity and support from federal agencies in these vital areas. We recommend applied research funding be increased over the next five years to a level of $100,000,000 per year. This increase is needed in the case of autism because we are building from a zero base.

ASA also recommends that there is a need to increase the number of scientists involved with research and treatment grants. We request that NIH develop programs that encourage researchers to enter into fields associated with autism research and to stimulate new research protocols.

The CDC surveillance programs need to be implemented and then expanded immediately so that more exact figures on the prevalence and population of those with autism are established. In our discussions with CDC, we recognize that data from a substantial number of state or other geographic areas will be needed to better identify those who have autism and what scope of services will be needed. We, therefore, recommend that the CDC budget in the area be increased to $8 million to expand the number of regional centers and state surveillance programs from nine states to twenty states. These twenty states should represent a statistically sufficient database to allow CDC to better identify those who have autism, and then start looking for root causes and trends.

As we must find the causes and best treatments for those with autism, there is also a need to fund areas which could identify possible causes of autism created by our society. A substantial number of families within our autism community believe some forms of autism may be caused by some use of vaccines. While we do not know this to be specifically proved at this time, we should not ignore the body of evidence which calls into question the source of many children with autism. If causation is found, those injured must be provided recourse and compensation. This is why ASA supports and asked for early adoption of the Congress of the Burton-Waxman Bill (H.R. 3741) which improves the National Vaccine Injury Compensation Program by extending the statute of limitations for individuals to file claims and provides a two (2) year "Lookback provision" for the families that are presently prevented from filing under the program through no fault of their own.

EARLY DIAGNOSIS AND EARLY INTERVENTION FOR CHILDREN WITH AUTISM

ASA strongly supports the general consensus that the most effective means for a successful result in the life of an individual with autism is through early diagnosis and early, intense, and appropriate intervention. Successful early diagnosis and intervention is a proven way to reduce the huge social and economic burden of autism.

Therefore, we recommend that a national awareness campaign be established through the U.S. Department of Health and Human Services (DHHS), national physician organizations, and community health centers to provide education and identification programs to pediatricians, child care providers and to the population at large. ASA has expressed its willingness to act in concert with DHHS to make this happen by drawing upon its unique membership and chapter bases with the entire autism community.

ASA also seeks increased fund for states through their Early Head Start (0–3) programs administered by the Administration for Children and Families to provide the intensive interventions that are necessary to provide effective treatments to these children with autism.

EDUCATION FOR CHILDREN WITH AUTISM

ASA recommends to the Committee that it support and develop legislation to implement the recommendations and plan detailed in the National Research Council's report "Educating Children with Autism." The report precisely addresses the educational and intervention needs of secondary school aged children with autism. This is a case where the outreach of ASA has confirmed that there is something already in existence that can work today to benefit those with autism. This means money need not be spent on creating something new, but funds should be provided to get out the messages in this document and get what it advocates, which will be supported by the ASA, into practice.

ASA further recommends that Congress immediately reauthorize the Individuals with Disabilities Education Act (IDEA) and fulfills the long overdue commitment to the full funding of IDEA so our children and loved ones will be able to obtain a free and appropriate education.

SUPPORT AND SERVICES FOR ADULTS WITH AUTISM

The current availability of service, support, employment and residential options available to adults with autism can only be described as almost non-existent. For too long the service supports for these people has dramatically dropped once the person passes through the secondary education system. A comprehensive program must be developed and implemented to address the tremendous needs of this growing and immense population.

ASA has developed a white paper on this subject and has posted it on our Web site to help develop interest in having it implemented. ASA has joined with a coalition of adult service providers, and is assessing the needs of adults with autism to formulate initiatives and legislation to address this problem. We ask the Committee to join us in supporting the development of legislation and funding that will be necessary to deal with this current and ever-growing dilemma.

CONCLUSION

In closing Mr. Chairman, I would be amiss if I did not address the relevance and significance of this hearing. It is the first time, that I am aware, that the United States government has acknowledged the Autism Epidemic and attendant national health crisis. And with your acknowledgment, ASA stands firm and ardent in requesting that this nation take real and measurable actions today to stop this national economic, social and health emergency.

I have described in my testimony what needs to be done now in terms of money and autism. However, there is something just as important to be added—that is hope. The autism community has endured 60 years of unfulfilled hope.

Congressman Burton, I know you have waited with hope for five years, and I have waited and hoped for 14 years. If we will take the actions I have offered to you today, all our hopes can be translated into fulfillment. Please let us help each other give meaningful hope to the millions of people affected by autism. Let's take action!

AUTISM: A NOVEL FORM OF MERCURY POISONING

(By S. Bernard, A. Enayati, L. Redwood, H. Roger, T. Binstock)

Summary. Autism is a syndrome characterized by impairments in social relatedness and communications, repetitive behaviors, abnormal movements, and sensory dysfunction. Recent epidemiological studies suggest that autism may affect 1 in 150 U.S. children. Exposure to mercury can cause immune, sensory, neurological, motor, and behavioral dysfunctions similar to traits defining or associated with autism, and the similarities extend to neuronatomy, neurotransmitters, and biochemistry. Thimerosal, a preservative added to many vaccines, has become a major source of mercury in children who, within their first two years, may have received a quantity of mercury that exceeds safety guidelines. A review of medical literature and U.S. government data suggests that (i) many cases of idiopathic autism are induced by early mercury exposure from timerosal; (ii) this type of autism represents an unrecognized mercurial syndrome; and (iii) genetic and non-genetic factors establish a predisposition whereby thimerosal's adverse effects occur only in some children.

INTRODUCTION

Autistic Spectrum Disorder (ASD) is a neurodevelopmental syndrome with onset prior to age 36 months. Diagnostic criteria consist of impairments in sociality and communication plus repetitive and sterotypic behaviors (1). Traits strongly associated with autism include movement disorders and sensory dysfunctions (2). Although autism may be apparent soon after birth, most autistic children experience at least several months, even a year or more of normal development—followed by regression, defined as loss of function or failure to progress (2,3,4).

The neurotoxicity of mercury (Hg) has long been recognized (5). Primary data derive from victims of containment fish (Japan—Minamata Disease) or grain (Iraq, Guatemala, Russia); from acrodynia (Pink Disease) induced by Hg in teething powders; and from individual instances of mercury poisoning (HgP), many occurring in occupational settings (e.g., Mad Hatter's Disease). Animal and in vitro studies also provide insights into the mechanisms of Hg toxicity. More recently, the Food and Drug Administration (FDA) and the American Academy of Pediatrics (AAP) have determined that the typical amount of Hg injected into infants and toddlers via childhood immunizations has exceeded government safety guidelines on an individual (6) and cumulative vaccine basis (7). The mercury in vaccines derives from thimerosal (TMS), a preservative which is 49.6% ethylmercury (eHg) (7).

Past cases of HgP have presented with much inter-individual variation, depending on the dose, type of mercury, method of administration, duration of exposure, and individual sensitivity. Thus, while commonalities exist across the various instances of HgP, each set of variables has given rise to a different disease manifestation (8,9,10,11). It is hypothesized that the regressive form of autism represents another form of mercury poisoning, based on a thorough correspondence between autistic and HgP traits and physiological abnormalities, as well as on the known exposure to mercury through vaccines. Furthermore, other phenomena are consistent with a casual Hg–ASD relationship. These include (a) symptom onset shortly after immunization; (b) ASD prevalence increases corresponding to vaccination increases; (c) similar sex ratios of affected individuals; (d) a high heritability rate for autism paralleling a genetic predisposition to Hg sensitivity at low doses; and (e) parental reports of autistic children with elevated Hg.

TRAIT COMPARISON

ASD manifests a constellation of symptoms with much inter-individual variation (3,4). A comparison of traits defining, nearly universal to, or commonly found in autism with those known to arise from mercury poisoning is given in Table I. The characteristics defining or strongly associated with autism are also more fully described.

Autism has been conceived primarily as a psychiatric condition; and two of its three diagnostic criteria are based upon the observable traits of (a) impairments is sociality, most commonly social withdrawal or aloofness, and (b) a variety of perseverative or stereotypic behaviors and the need for sameness, which strongly resemble obsessive-compulsive tendencies. Differential diagnosis may include childhood schizophrenia, depression, obsessive-compulsive disorder (OCD), anxiety disorder, and other neuroses. Related behaviors commonly found in ASD individuals are irrational fears, poor eye contact, aggressive behaviors, temper tantrums, irritability, and inexplicable changes in mood (1,2,12–17). Mercury poisoning, when undetected, is often initially diagnosed as a psychiatric disorder (18). Commonly occurring symptoms include (a) "extreme shyness," indifference to others, active avoidance of others, or "a desire to be alone"; (b) depression, "lack of interest" and "mental confusion;" (c) irritability, aggression, and tantrums in children and adults;

(d) anxiety and fearfulness; and (e) emotional lability. Neuroses, including schizoid and obsessive-compulsive traits, problems in inhibition of preservation, and stereotyped behaviors, have been reported in a number of cases; and lack of eye contact was observed in one 12 year old girl with mercury vapor poisoning (18–35).

The third diagnostic criterion for ASD is impairment in communication (1). Historically, about half of those with classic autism failed to develop meaningful speech (2), and articulation difficulties are common (3). Higher functioning individuals may have language fluency but still show semantic and pragmatic errors (3,36). In many cases of ASD, verbal IQ is lower than performance IQ (3). Similarly, mercury-exposed children and adults show a marked difficulty with speech (9,19,37). In milder cases scores on language tests may be lower than those of unexposed controls (31,38). Iraqi children who were postnatally poisoned developed articulation problems, from slow, slurred word production to an inability to generate meaningful speech; while Iraqi babies exposed prenatally either failed to develop language or presented with severe language deficits in childhood (23,24,39). Workers with Mad Hatter's disease had word retrieval and articulation difficulties (21).

Nearly all cases of ASD and HgP involve disorders of physical movement (2,30,40). Clumsiness or lack of coordination has been described in many higher functioning ASD individuals (41). Infants and toddlers later diagnosed with autism may fail to crawl properly or may fall over while sitting or standing; and the movement disturbances typically occur on the right side of the body (42). Problems with intentional movement and imitation are common in ASD, as are a variety of unusual stereotypic behaviors such as toe walking, rocking, abnormal postures, choreiform movements, spinning, and hand flapping (2,3,43,44). Noteworthy because of similarities to autism are reports in Hg literature of (a) children in Iraq and Japan who were unable to stand, sit, or crawl (34,39); (b) Minamata disease patients whose movements disturbances were localized to one side of the body, and a girl exposed to Hg vapor who tended to fall to the right (18,34); (c) flapping motions in an infant poisoned from contaminated pork (37) and in a man injected with thimerosal (27); (d) choreiform movements in mercury vapor intoxication (19); (e) toe walking in a moderately poisoned Minamata child (34); (f) poor coordination and clumsiness among victims of acrodynia (45); (g) rocking among infants with acrodynia (11); and (h) unusual postures observed in both acrodynia and mercury vapor poisoning (11,31). The presence of flapping motions in both diseases is of interest because it is such an unusual behavior that it has been recommended as a diagnostic marker for autism (46).

Virtually all ASD subjects show a variety of sensory abnormalities (2). Auditory deficits are present in a minority of individuals and can range from mild to profound hearing loss (2,47). Over- or under-reaction to sound is nearly universal (2,48), and deficits in language comprehension are often present (3). Pain sensitivity or insensitivity is common, as is a general aversion to touch; abnormal sensation in the extremities and mouth may also be present and has been detected even in toddlers under 12 months old (2,49). There may be a variety of visual disturbances, including sensitivity to light (2,50,51,52). As in autism, sensory issues are reported in virtually all instances of Hg toxicity (40). HgP can lead to mild to profound hearing loss (40); speech discrimination is especially impaired (9,34). Iraqi babies exposed prenatally showed exaggerated reaction to noise (23), while in acrodynia, patients reported noise sensitivity (45). Abnormal sensation in the extremities and mouth is the most common sensory disturbance (25,28). Acrodynia sufferers and prenatally exposed Iraqi babies exhibited excess pain when bumping limbs and an aversion to touch (23,24,45,53). A range of visual problems has been reported, including photophobia (18,23,24).

Comparison of biological abnormalities

The biological abnormalities commonly found in autism are listed in Table II, along with the corresponding pathologies arising from mercury exposure. Especially noteworthy similarities are described.

Autism is a neurodevelopmental disorder which has been characterized as "a disorder of neuronal organization, that is, the development of the dentritic tree, synaptogenesis, and the development of the complex connectivity within and between brain regions" (54). Depressed expression of neural cell adhesion molecules (NCAMs), which are critical during brain development for proper synaptic structuring, has been found in one study of autism (55). Organic mercury, which readily crosses the blood-brain barrier, preferentially targets nerve cells and nerve fibers (56); primates accumulate the highest Hg-levels in the brain relative to other organs (40). Furthermore, although most cells respond to mercurial injury by modulating levels of glutathione (GSH), metallothionein, hemoxygenase, and other stress proteins, neurons tend to be "markedly deficient in these responses" and thus are less able to remove Hg and more prone to Hg-induced injury (56). In the developing brain, mercury interferes with neuronal migration, depresses cell division, disrupts microtubule function, and reduces NCAMs (28,57–59).

While damage has been observed in a number of brain areas in autism, many nuclei and functions are spared (36). HgP's damage is similarly selective (40). Numerous studies link autism with neuronal atypicalities within the amygdala, hippocampi, basal ganglia, the Purkinje and granule cells of the cerebellum, brainstem, basal ganglia, and cerebral cortex (36,66–69). Each of these areas can be affected by HgP (10,34,40,70–73). Migration of Hg, including eHg, into the amygdala is particularly noteworthy, because in primates this brain region has neurons specific for eye contact (74) and it is implicated in autism and in social behaviors (65,66,75).

Autistic brains show neurotransmitter irregularities which are virtually identical to those arising from Hg exposure: both high or low serotonin and dopamine, depending on the subjects studied; elevated epinephrine and norepinephrine in plasma and brain; elevated glutamate; and acetylcholine deficiency in hippocampus (2,21,76–83).

Gillberg and Coleman (2) estimate that 35–45% of autistics eventually develop epilepsy. A recent MEG study reported epileptiform activity in 82% of 50 regressive autistic children; in another study, half the autistic children expressed abnormal EEG activity during sleep (84). Autistic EEG abnormalities tend to be non-specific and have a variety of patterns (85). Unusual epileptiform activity has been found in a number of mercury poisoning cases (18,27,34,86–88). Early mHg exposure enhances tendencies toward epileptiform activity with a reduced level of seizure-discharge amplitude (89), a finding consistent with the subtlety of seizures in many autism spectrum children (84,85). The fact that Hg increases extracellular glutamate would also contribute to epileptiform activity (90).

Some autistic children show a low capacity to oxidize sulfur compounds and low levels of sulfate (91,92). These findings may be linked with HgP because (a) Hg preferentially binds to sulfhydryl molecules (-SH) such as cysteine and GSH, thereby impairing various cellular functions (40), and (b) mercury can irreversibly block the sulfate transporter NaSi cotransporter NaSi-1, present in kidneys and intestines, thus reducing sulfate absorption (93). Besides low sulfate, many autistics have low GSH levels, abnormal GSH-peroxidase activity within erythrocytes, and decreased hepatic ability to detoxify xenobiotics (91,94,95). GSH participates in cellular detoxification of heavy metals (96); hepatic GSH is a primary substrate for organic-Hg clearance from the human (40); and intraneuronal GSH participates in various protective responses against Hg in the CNS (56). By preferentially binding with GSH, preventing absorption of sulfate, or inhibiting the enzymes of glutathione metabolism (97), Hg might diminish GSH bioavailability. Low GSH can also derive from chronic infection (98,99), which would be more likely in the presence of immune impairments arising from mercury (100). Furthermore, mercury disrupts purine and pyrimidine metabolism (97,10). Altered purine or pyrimidine metabolism can induce autistic features and classical autism (2,101,102), suggesting another mechanism by which Hg can contribute to autistic traits.

Autistics are more likely to have allergies, asthma, selective IgA deficiency (sIgAd), enhanced expression of HLA-DR antigen, and an absence of interleukin-2 receptors, as well as familial autoimmunity and a variety of autoimmune phenomena. These include elevated serum IgG and ANA titers, IgM and IgG brain antibodies, and myelin basic protein (MBP) antibodies (103–110). Similarly, atypical responses to Hg have been ascribed to allergic or autoimmune reactions (8), and genetic predisposition to such reactions may explain why Hg sensitivity varies so widely by individual (88,111). Children who developed acrodynia were more likely to have asthma and other allergies (11); IgG brain autoantibodies, MBP, and ANA have been found in HgP subjects (18,111,112); and mice genetically prone to develop autoimmune diseases "are highly susceptible to mercury-induced immunopathological alterations" even at the lowest doses (113). Additionally, many autistics have reduced natural killer cell (NK) function, as well as immune-cell subsets shifted in a Th2 direction and increased urine neopterin levels, indicating immune system activation (103,114–116). Depending upon genetic predisposition, Hg can induce immune activation, an expansion of Th2 subsets, and decreased NK activity (117–120).

Population characteristics

In most affected children, autistic symptoms emerge gradually, although there are cases of sudden onset (3). The earliest abnormalities have been detected in 4 month olds and consist of subtle movement disturbances; subtle motor-sensory disturbances have been observed in 9 month olds (49). More overt speech and hearing difficulties become noticeable to parents and pediatricians between 12 and 18 months (2). TMS vaccines have been given in repeated intervals starting from infancy and continuing until 12 to 18 months. While HgP symptoms may arise suddenly in especially sensitive individuals (11), usually there is a preclinical "silent stage" in which subtle neurological changes are occurring (121) and then a gradual emergence of symptoms. The first symptoms are typically sensory- and motor-related, which are followed by speech and hearing deficits, and finally the full array of HgP characteristics (40). Thus, both the timing and nature of symptom emergence in ASD are fully consistent with a vaccinal Hg etiology. This parallel is reinforced by parental reports of excessive amounts of mercury in urine or hair from younger autistic children, as well as some improvement in symptoms with standard chelation therapy (122).

The discovery and rise in prevalence of ASD mirrors the introduction and spread of TMS in vaccines. Autism was first described in 1943 among children born in the 1930s (123). Thimerosal was first introduced into vaccines in the 1930s (7). In studies conducted prior to 1970, autism prevalence was estimated, at 1 in 2000; in studies from 1970 to 1990 it averaged 1 in 1000 (124). This was a period of increased vaccination rates of the TMS-containing DPT vaccines among children in the developed world. In the early 1990s, the prevalence of autism was found to be 1 in 500 (125), and in 2000 the CDC found 1 in 150 children affected in one community, which was consistent with reports from other areas in the country (126). In the late 1980s and early 1990s, two new TMS vaccines, the HIB and Hepatitis B, were added to the recommended schedule (7).

Nearly all US children are immunized, yet only a small proportion develop autism. A pertinent characteristic of mercury is the great variability in its effects by individual, so that at the same exposure level, some will be affected severely while others will be asymptomatic (9,11,28). An example is acrodynia, which arose in the early 20th Century from mercury in teething powders and afflicted only 1 in 500-1000 children given the same low dose (28). Studies in mice as well as humans indicated that susceptibility to Hg effects arises from genetic status, in some cases including a propensity to autoimmune disorders (113,34,40). ASD exhibits a strong genetic component, with high concordance in monozygotic twins and a higher than expected incidence among siblings (4); autism is also more prevalent in families with autoimmune disorders (106).

Additionally, autism is more prevalent among boys than girls, with the ratio estimated at 4:1 (2). Mercury studies in mice and humans consistently report greater effects on males than females, except for kidney damage (57). At high doses, both sexes are affected equally; at low doses only males are affected (38,40,127).

DISCUSSION

We have shown that every major characteristic of autism has been exhibited in at least several cases of documented mercury poisoning. Recently, the FDA and AAP have revealed that the amount of mercury given to infants from vaccinations has exceeded safety levels. The timing of mercury administration via vaccines coincides with the onset of autistic symptoms. Parental reports of autistic children with measurable mercury levels in hair and urine indicate a history of mercury exposure. Thus the standard primary criteria for a diagnosis of mercury poisoning—observable symptoms, known exposure at the time of symptom onset, and detectable levels in biologic samples (11,31)—have been met in autism. As such, mercury toxicity may be a significant etiological factor in at least some cases of regressive autism. Further, each known form of HgP in the past has resulted in a unique variation of mercurialism—e.g., Minamata disease, acrodynia, Mad Hatter's disease—none of which has been autism, suggesting that the Hg source which may be involved in ASD has not yet been characterized; given that most infants receive eHg via vaccines, and given that the effect on infants of eHg in vaccines has never been studied (129), vaccinal thimerosal should be considered a probable source. It is also possible that vaccinal eHg may be additive to a prenatal mercury load derived from maternal amalgams, immune globulin injections, or fish consumption, and environmental sources.

CONCLUSION

The history of acrodynia illustrates that a severe disorder, afflicting a small but significant percentage of children, can arise from a seemingly benign application of low doses of mercury. This review establishes the likelihood that Hg may likewise be etiologically significant in ASD, with the Hg derived from thimerosal in vaccines rather than teething powders. Due to the extensive parallels between autism and HgP, the likelihood of a causal relationship is great. Given this possibility, TMS should be removed from all childhood vaccines, and the mechanisms of Hg toxicity in autism should be thoroughly investigated. With perhaps 1 in 150 children now diagnosed with ASD, development of HgP-related treatments, such as chelation, would prove beneficial for this large and seemingly growing population.

TABLE I: SUMMARY COMPARISON OF TRAITS OF AUTISM & MERCURY POISONING

(**ASD references in bold;** *HgP references in italics*)

Psychiatric Disturbances
Social deficits, shyness, social withdrawal (**1,2,130,131**; *21,31,45,53,132)*
Repetitive, perseverative, stereotypic behaviors; obsessive-compulsive tendencies (**1,2,43,48,133**; *20,33-35,132)*
Depression/depressive traits, mood swings, flat affect; impaired face recognition (**14,15,17,103, 134,135**; *19,21,24,26,31)*
Anxicty; schizoid tendencies; irrational fears (**2,15,16**; *21,27,29,31)*
Irritability, aggression, temper tantrums (**12,13,43**; *18,21,22,25)*
Lacks eye contact; impaired visual fixation (HgP)/ problems in joint attention (ASD) (**3,36,136,137**; *18,19,34)*
Speech and Language Deficits
Loss of speech, delayed language, failure to develop speech (**1-3,138,139**; *11,23,24,27,30,37)*
Dysarthria; articulation problems (**3**; *21,25,27,39)*
Speech comprehension deficits (**3,4,140**; *9,25,34,38)*
Verbalizing and word retrieval problems (HgP); echolalia, word use and pragmatic errors (ASD) (**1,3,36**; *21,27,70)*
Sensory Abnormalities
Abnormal sensation in mouth and extremities (**2,49**; *25,28,34,39)*
Sound sensitivity; mild to profound hearing loss (**2,47,48**; *19,23-25,39,40)*
Abnormal touch sensations; touch aversion (**2,49**; *23,24,45,53)*
Over-sensitivity to light; blurred vision (**2,50,51**; *18,23,31,34,45)*
Motor Disorders
Flapping, myoclonal jerks, choreiform movements, circling, rocking, toe walking, unusual postures (**2,3,43,44**; *11,19,27,30,31,34,39)*
Deficits in eye-hand coordination; limb apraxia; intention tremors (HgP)/problems with ntentional movement or imitation (ASD) (**2,3,36,181**; *25,29,32,38,70,87)*
Abnormal gait and posture, clumsiness and incoordination; difficulties sitting, lying, crawling, and walking; problem on one side of body (**4,41,42,123**; *18,25,31,34,39,45)*
Cognitive Impairments
Borderline intelligence, mental retardation – some cases reversible (**2,3,151,152**; *19,25,31,39,70)*
Poor concentration, attention, response inhibition (HgP)/shifting attention (ASD) (**4,36,153**; *21,25,31,38,141)*
Uneven performance on IQ subtests; verbal IQ higher than performance IQ (**3,4,36**; *31,38)*
Poor short term, verbal, and auditory memory (**36,140**; *21,29,31,35,38,87,141)*
Poor visual and perceptual motor skills; impairment in simple reaction time (HgP)/ lower performance on timed tests (ASD) (**4,140,181**; *21,29,142)*
Deficits in understanding abstract ideas & symbolism; degeneration of higher mental powers (HgP)/sequencing, planning & organizing (ASD); difficulty carrying out complex commands (**3,4,36,153**; *9,18,37,57,142)*
Unusual Behaviors
Self injurious behavior, e.g. head banging (**3,154**; *11,18,53)*
ADHD traits (**2,36,155**; *35,70)*
Agitation, unprovoked crying, grimacing, staring spells (**3,154**; *11,23,37,88)*
Sleep difficulties (**2,156,157**; *11,22,31)*

Physical Disturbances
Hyper- or hypotonia; abnormal reflexes; decreased muscle strength, especially upper body; ncontinence; problems chewing, swallowing (**3,42,145,181**; *19,27,31,32,39)*
Rashes, dermatitis, eczema, itching (**107,146**; *22,26,143)*
Diarrhea; abdominal pain/discomfort, constipation, “colitis” (**107,147-149**; *(18,23,26,27,31,32)*
Anorexia; nausea (HgP)/vomiting (ASD); poor appetite (HgP)/restricted diet (ASD) (**2,123**; *18,22)*
Lesions of ileum and colon; increased gut permeability (**147,150**; *57,144)*

Table II: Summary Comparison of Biological Abnormalities in Autism & Mercury Exposure

Mercury Exposure	Autism
Biochemistry	
Binds -SH groups; blocks sulfate transporter n intestines, kidneys (40,93)	Low sulfate levels (91,92)
Reduces glutathione availability; inhibits enzymes of glutathione metabolism; glutathione needed in neurons, cells, and liver to detoxify heavy metals; reduces glutathione peroxidase and reductase (97,100,161,162)	Low levels of glutathione; decreased ability of liver to detoxify xenobiotics; abnormal glutathione peroxidase activity in erythrocytes (91,94,95)
Disrupts purine and pyrimidine metabolism (10,97,158,159)	Purine and pyrimidine metabolism errors lead to autistic features (2,101,102)
Disrupts mitochondrial activities, especially n brain (160,163,164)	Mitochondrial dysfunction, especially in brain (76,172)
Immune System	
Sensitive individuals more likely to have allergies, asthma, autoimmune-like symptoms, especially rheumatoid-like ones (8,11,18,24,28,31,111,113)	More likely to have allergies and asthma; familial presence of autoimmune diseases, especially rheumatoid arthritis; IgA deficiencies (103,106-109,115)
Can produce an immune response in CNS; causes brain/MBP autoantibodies (18,111,165)	On-going immune response in CNS; brain/MBP autoantibodies present (104,105,109,110)
Causes overproduction of Th2 subset; kills/inhibits lymphocytes, T-cells, and monocytes; decreases NK T-cell activity; nduces or suppresses IFNg & IL-2 (100,112,117-120,166)	Skewed immune-cell subset in the Th2 direction; decreased responses to T-cell mitogens; reduced NK T-cell function; increased IFNg & IL-12 (103,108,114-116,173,174)
CNS Structure	
Selectively targets brain areas unable to detoxify or reduce Hg-induced oxidative stress (40,56,161)	Specific areas of brain pathology; many functions spared (36)
Accummulates in amygdala, hippocampus, basal ganglia, cerebral cortex; damages	Pathology in amygdala, hippocampus, basal ganglia, cerebral cortex; damage to Purkinje

urkinje and granule cells in cerebellum; rain stem defects in some cases 10,34,40,70-73)	and granule cells in cerebellum; brain stem defects in some cases (36,60-69)
auses abnormal neuronal cytoarchitecture; isrupts neuronal migration, microtubules, nd cell division; reduces NCAMs 10,28,57-59,161)	Neuronal disorganization; increased neuronal cell replication, increased glial cells; depressed expression of NCAMs (4,54,55)
rogressive microcephaly (24)	Progressive microcephaly and macrocephaly (175)
euro-chemistry	
revents presynaptic serotonin release and nhibits serotonin transport; causes calcium isruptions (78,79,163,167,168)	Decreased serotonin synthesis in children; abnormal calcium metabolism (76,77,103,179)
lters dopamine systems; peroxidine eficiency in rats resembles mercurialism in umans (8,80)	Either high or low dopamine levels; positive response to peroxidine, which lowers dopamine levels (2,177,178)
levates epinephrine and norepinephrine evels by blocking enzyme that degrades pinephrine (81,160)	Elevated norepinephrine and epinephrine (2)
levates glutamate (21,171)	Elevated glutamate and aspartate (82,176)
eads to cortical acetylcholine deficiency; ncreases muscarinic receptor density in ippocampus and cerebellum (57,170)	Cortical acetylcholine deficiency; reduced muscarinic receptor binding in hippocampus (83)
auses demyelinating neuropathy (22,169)	Demyelination in brain (105)
europhysiology	
auses abnormal EEGs, epileptiform ctivity, variable patterns, e.g., subtle, low mplitude seizure activities (27,31,34,86-89)	Abnormal EEGs, epileptiform activity, variable patterns, including subtle, low amplitude seizure activities (2,4,84,85)
auses abnormal vestibular nystagmus esponses; loss of sense of position in space 9,19,34,70)	Abnormal vestibular nystagmus responses; loss of sense of position in space (27,180)
esults in autonomic disturbance: excessive weating, poor circulation, elevated heart ate (11,18,31,45)	Autonomic disturbance: unusual sweating, poor circulation, elevated heart rate (17,180)

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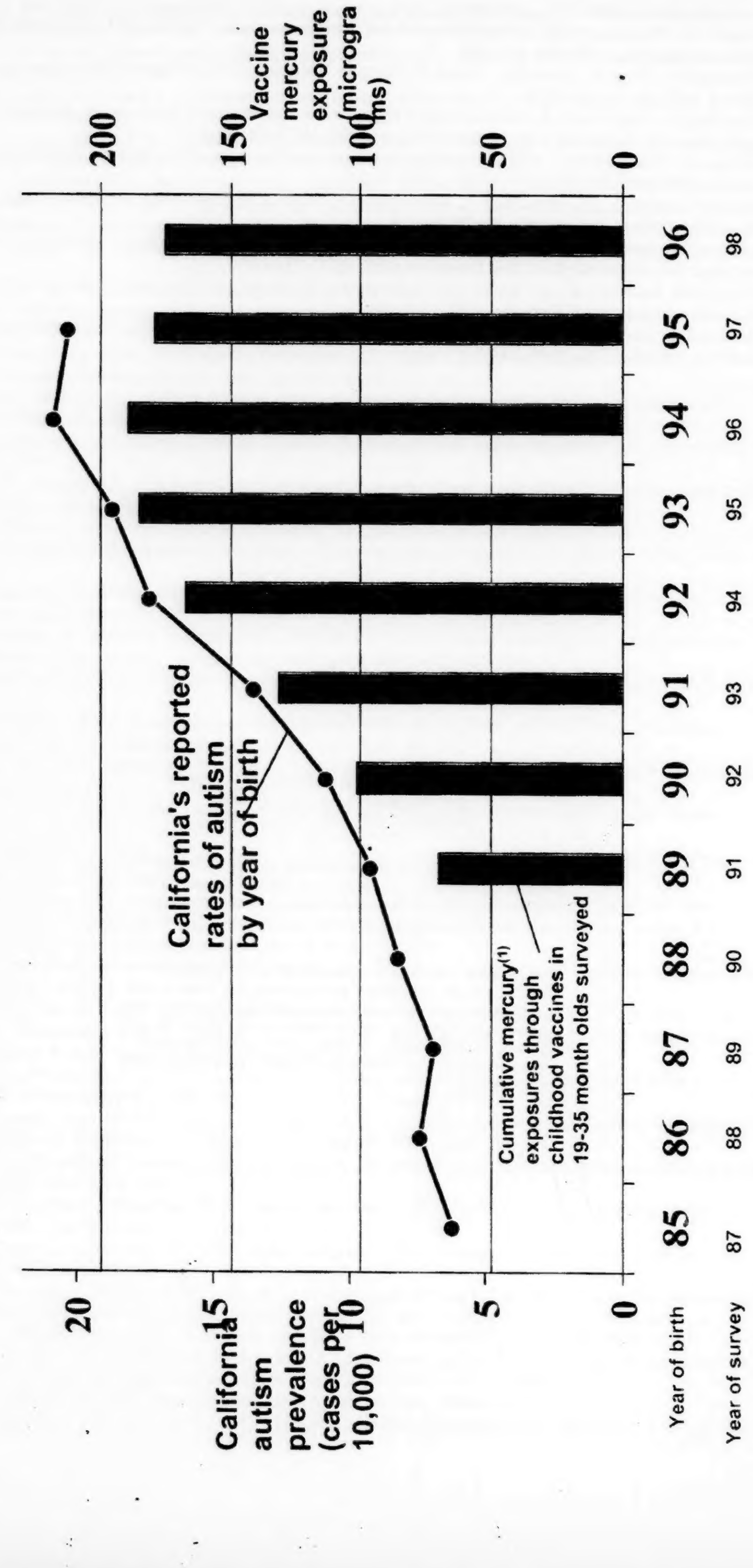
VACCINE MERCURY BURDEN AND AUTISM RISK (US)



(1) Includes DPT, haemophilus influenza B and hepatitis B exposures weighted by survey year compliance

Mark Blaxill IOM 7/2001

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. THORNBERRY). Is there objection to the original request of the gentleman from Texas?

Mr. OBEY. Mr. Speaker, reserving the right to object, I know concern has been expressed that if a Member objects to this motion today that somehow that will endanger the homeland security bill. I do not believe that to be the case at all, because nothing is more pitiful than a flock of politicians in full flight, and the fact is that politicians are scared green to vote against this legislation, despite the fact that it is masquerading as something that it most surely is not.

I thank the gentleman from Texas, because the gentleman has played a constructive role in improving the bill considerably than the one originally brought down from the White House, but I question the assumption that if an objection is lodged today that somehow this bill will not pass. Because, in my judgment, any bill labeled homeland security is going to pass, regardless of what is in it because politicians are afraid to look at the details, and they are afraid to go to the public with the details.

But, in fact, if we take a look at this legislation, and I want to state explicitly I am opposed to this legislation as it now stands. The major reason I am opposed to it is because of what it does to our ability to defend the homeland. Now we certainly do need a reorganization, but the fact is that we did not reorganize the Pentagon during World War II, we waited until the war was over because we recognized that there would be incredible turmoil associated with trying to reorganize the military during a war.

Well, we are in a war now, and the fact is that, despite the fact that we are in a war against terrorism, we are simply going to see thousands of bureaucrats over the next 2 or 3 or 4 years be focused on where their new offices are, where their desks are, who is their new boss, how they are going to get along with their boss, and I think it is going to create substantial vulnerability during that window of time.

I am not all that panicked about when this reorganization passes. What I am almost panicked about is the fact that this reorganization will move the boxes without putting the resources necessary into homeland security to actually see to it that these agencies can do their jobs.

Example, we are still substantially underfunding the FBI's computer system. Example, we are not doing nearly what is necessary to protect our ports from the kind of terrorist attacks that could befall us at any moment. Example, we are not doing nearly enough to deal with the problems that we have on the Canadian border. And there are many other examples of financial shortcomings that we have in our homeland security effort.

All Members have to do is look at the comments of the Secretary of Energy and his plea to OMB to provide additional resources to deal with radioactive material. I think there are plenty of solid reasons to question the lack of content in this homeland security reorganization package.

This is not a homeland security bill. This is a homeland security agency reorganization, but it will not be made effective policy until dollars are put into these agencies to meet the challenges that we have been told by the people who run these agencies must be met if they are to do their jobs. I think, therefore, that it would not be a bad thing if we had more time to deal with this issue to actually put the resources in that are needed.

But, even getting beyond that, I want to suggest that there are several other reasons why the public interest is not served by passage of this bill. The gentleman from Indiana (Mr. BURTON) just cited one of them.

I find it ironic as I listened to him this morning that the first issue that I became involved in when I came to the Congress a long time ago was the issue of mercury poisoning. I remember Wright Patman from Texas also being concerned about the issue at that time. I do not know what the facts are with respect to the mercury issue that the gentleman from Indiana raised this morning, but I do know that provision insulating the drug companies on that issue has no blessed business being in this bill.

Mr. Speaker, I suppose in a way this bill is a fitting end to this Congress. It is a shameful end to a pitiful and neglectful Congress, so I suppose it is a fitting emblem to summarize the work of this institution over the past 2 years.

☐ 1200

But I find it outrageous that the Congress is going to find room in its heart to help the poor downtrodden drug companies on the issue just mentioned by the gentleman from Indiana but will not find room in their hearts to deal with the problems of the long-term unemployed.

I have a very simple question that I will ask the majority leader at the end of my comments, and I will let him know ahead of time what it is going to be. My question is, if I withdraw my objection to consideration of the technical amendments to this bill, would the majority party leadership allow a motion to allow H.R. 3529 to come before this body, which is Senator NICKLES' proposal on unemployment compensation? Or would they allow it to come to the floor in the compromise form that I am told Senator NICKLES and Senator DASCHLE indicated they would agree to yesterday in an effort to try to salvage something for the unemployed at the Christmas season?

The problem is that without action on unemployment compensation to extend the Federal program, 830,000 people will be cut out of unemployment benefits on December 28, a belated Christmas present from a very comfortable and neglected Congress, and yet every week after that, an additional 95,000 people will lose State unemployment pension benefits. And that will happen because of a disagreement within the Republican Party about how to handle the unemployment compensation proposal. As I understand it, the Senate proposed a bill in the form of their amendment to H.R. 3529 which would extend temporary Federal benefits to March 29, a 3-month bridge. The House Republican leadership, I understand, has been insisting that they will stick to the House-passed bill, which provides relief for only three States, Washington, Oregon and Alaska, for a very short period of time.

The Senate, in an effort to compromise, I am told, had agreed to cut back the extension in their proposal to 2 months, and when the House GOP leadership objected, according to the reports that I have seen in the paper, then the Senate leadership agreed to cut back their proposal to a 1-month extension, and still we are told that the House Republican chairman of the committee of jurisdiction objected even to that compromise proposal. So the Congress is here insisting on playing Scrooge at Christmas time when we ought to be showing a little mercy.

I do not understand that kind of logic. I do not understand that kind of priorities. If you take a look at the bill to which we are asked to provide unanimous consent this morning, not only does it contain the special favor to the drug industry that does not belong in the bill, it also relaxes a ban on the issuance of homeland security contracts to companies that establish foreign tax havens in order to avoid U.S. taxes. That is also outrageous.

So we have room to allow corporations to change their mailing address to Bermuda so they can avoid pulling their fair share of the load for the expenses incurred by the United States Government in defending those corporations and everyone else in this society, but we do not have enough room to take care of the unemployed workers who are stuck here without jobs at home. That is to me an incredible contrast in what this House is willing to allow and what it is not.

I frankly do not know what I should do at this point, because I am told that if I refuse to withdraw my objection, that all that will happen is that the House will come back and they will pass this bill and the House Republican leadership will still do nothing on the unemployment compensation front. So

I am not quite sure what the right course of action is to take at this point. But at this point, I would ask the majority leader whether or not if I withdraw my objection to the motion pending, the House Republican leadership would allow H.R. 3529 to also be brought up under unanimous consent so that we can provide the additional unemployment compensation that was attempted by the other body?

Mr. ARMEY. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Texas.

Mr. ARMEY. Let me thank the gentleman from Wisconsin for his remarks, Mr. Speaker, and let me say to the gentleman that it has been very difficult business clearing bills for unanimous consent in this final day. This is the only business that is cleared for consideration today.

However, let me say, I too, as the gentleman from Wisconsin most certainly did, watched the final day's proceedings in the other body, saw the reports, the discussions, noted that the other body did not indeed pass from its own Chamber the compromise the gentleman speaks of today, but found myself reassured that the current extension of unemployment benefits under which the Nation operates today will extend benefits to today's unemployed through January 11. I understand from the discussions I have heard among Senators and leaders of the Senate that there is an intention when the Senate reconvenes in the next Congress to take up this issue of the need for an additional extension at that time, and should they do so at that time, it is my understanding that the people who would be covered by such an extension would find their unemployment compensations uninterrupted.

So I would refer the gentleman to those discussions I have seen in anticipation of the gentleman's ability to address this in the opening of the next Congress.

Mr. OBEY. Continuing under my reservation, Mr. Speaker, is the gentleman saying that the Senate did not pass its version of the unemployment compensation bill? My understanding is that the Senate version is at the desk.

Mr. ARMEY. If the gentleman will continue to yield, and again, let me thank the gentleman, it is my understanding that the compromise of which he spoke today was not passed out of the Senate.

Mr. OBEY. Taking back my time, but it is my understanding that the Senate did pass the Nickles proposal, which is a 3-month extension, and that H.R. 3529, as amended, is at the desk.

Mr. ARMEY. Again, if the gentleman will continue to yield, obviously I can only tell him what I know from having watched the Senate in action, listening to the debates on the other body's floor and news accounts from leaders of the other body that there were ongoing discussions. I, for example, heard Senator LOTT, the current minority leader, say that he intended to address that when the next Congress reconvenes. That is frankly, I am sorry, all that I can report to the gentleman.

Mr. OBEY. Taking back my time, I am informed that H.R. 3529 is at the desk, so all we would have to do to solve this problem is to take that bill up immediately and pass it.

Mr. ARMEY. Again, if the gentleman will continue to yield, the gentleman, of course, is aware of the fact that the majority leader does not by himself clear legislation for unanimous consent. As we see even by the presence of Members here on the floor, every Member is entitled to have their speech. No such bill is cleared. It is my understanding that no such bill would be cleared for available discussion at this time.

Mr. LEVIN. Mr. Speaker, will the gentleman yield?

Mr. OBEY. Under my reservation, I yield to the gentleman from Michigan.

Mr. LEVIN. Mr. Speaker, there is a reference to January 11. That is the date of the continuing resolution. But is it not clear that if we do not act today, that December 28 will be the cutoff date for 800,000-plus unemployed workers in terms of their extended benefits?

Mr. OBEY. Absolutely. As I said, a belated Christmas present to those who need help the most.

Mr. LEVIN. And is it not also true that after that, every week there will be over 90,000 more people who will be denied benefits?

Mr. OBEY. That is correct. I guess the congressional slogan would be, "Have a worried Christmas and an unhappy New Year."

Mr. LEVIN. So I would like to ask, if I might, to the distinguished majority leader through the gentleman from Wisconsin, is it not correct that the Senate bill is at the desk and that if one of us were allowed to offer a unanimous consent motion, that it be taken from the desk and you do not object, that it could be passed by the House today?

Mr. ARMEY. If the gentleman from Wisconsin will continue to yield, let me say to the gentleman from Michigan that there are a large number of bills available at the desk, none of which have been cleared for consideration by unanimous consent today. That bill from the other body may be one of them. But the process by which we clear bills for unanimous consent is a very long and elaborate process where in effect every Member of this body is consulted. It would be, it is, impossible to clear such a bill as that with Members traveling abroad. I do appreciate your sense of urgency, but the fact of the matter is I am assured that when the next Congress convenes, that those people who are covered by the current extension of unemployment benefits and who would be covered by any additional extension of unemployment benefits would be able to receive their compensation flow in an uninterrupted fashion through this period of time.

Again, if I may remind both the gentleman from Wisconsin and the gentleman from Michigan, I have been aware of the discussions that have gone on by the leaders of the other body, I do not know what discussions they may or may not have had with the Speaker or the future leaders of this body, but I profoundly believe that the next opportunity that this body will have to address this issue would be in reconvening the body in its new session of Congress after the 3rd or 4th of January.

Mr. LEVIN. If the gentleman will continue to yield so that this is clarified, is it not correct, I ask the gentleman from Wisconsin, and I say this respectfully to the gentleman from Texas, December 28 is a cutoff date, and people thereafter lose their benefits. Therefore, to say that we will come back here several weeks later is not an answer to the 800,000-plus people who will lose their benefits, is that not correct?

Mr. OBEY. Well, of course it is no answer.

Mr. LEVIN. Mr. Speaker, the gentleman from Wisconsin has been here a long time, including when we were in the majority. What does it mean that a bill has not been cleared for passage? It is at the desk, is it not? And if a unanimous consent is requested and not objected to, the bill becomes law like the homeland security bill if you do not object?

Mr. OBEY. Exactly, with one critical difference. The difference is that the people who are going to be helped by the unemployment compensation extension if we get our way, they need that help immediately. That is an immediate crisis for them. Whereas with the homeland security bill, this is simply a reorganization of boxes that will begin to take place sometime next year. And, I would point out, they do not even have a building selected yet where the new agency is going to be located.

So there is no immediate action that would be prevented by the delay in the passage of homeland security, but there most certainly is an immediate consequence of not taking up an extension of unemployment benefits for those almost million souls who need help.

Mr. LEVIN. So, in a word, I think it is correct to talk about, when we come back, is an empty promise for hundreds and hundreds of thousands of people, unemployed through no fault of their own.

□ 1215

We have had a prayer for Thanksgiving, and this is the answer from the majority here to hundreds of thousands of Americans, and then Christmas comes December 25. Three days later, hundreds of thousands of people lose their benefits. And again I just want the gentleman to state from his experience here, longer than mine, the bill is at the desk. All it takes is the nonobjection of the majority and the bill that passed unanimously on a bipartisan basis in the Senate will become law, is that not correct?

Mr. OBEY. Mr. Speaker, as a practical matter, the only thing that stands between providing these needed unemployment benefits, the only thing that stands between our doing that is the refusal to approve bringing the bill up by the House Republican leadership and the House Republican committee chairman.

Mr. LEVIN. Mr. Speaker, I thank the gentleman for yielding.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding.

I rise because I agree with the gentleman from Wisconsin (Mr. OBEY) on both counts. I had a new granddaughter on July 26 of this year. As a result, I was unable to be on the floor to participate and debate when we passed the homeland security legislation. I voted, however, and voted against it when it came up for a vote just a few weeks ago. I voted against it again for exactly the reasons that the gentleman from Wisconsin has articulated.

I believe, unfortunately, it is a false promise. It is a promise that we will affect, by passage of this legislation, security for our homeland. In fact, as the gentleman from Wisconsin has said, what we will do is divert the eyes and attention and focus of those who work in the agencies that are to be reorganized from without, from the threat from the terrorists who would harm our people and our land and divert that to their internal concerns, again, as the gentleman from Wisconsin said, as to where their desks will be located, whether they will have the corner office, whether they will be a supervisor, all of the issues that will be involved with reorganization.

I make the analogy to a family that is going to move and they are worried about packing up the boxes in their house; and their focus, of course, is on those boxes and what items go in what box. They are not looking outside their house. So that if a terrorist should come or somebody should be outside their house, they may miss because of their focus inward.

This bill, however, seeks to secure. It seeks to make our homeland more secure. And there are 435 Members of this body who are absolutely, irrevocably, and passionately committed to that objective. There is no one in this House who is not for ensuring the safety of our people and the security of our homeland. However, we are also concerned about the security of our families. We are concerned about the security of our workers. We are concerned about those 2.1 million people who are going to be put at risk as a result of the failure to pass the unemployment extension.

What we are asking the majority party to do is not unusual, as I am sure the majority leader knows. In the course of the 1982 recession, under President Reagan we extended unemployment insurance for over 30 weeks. When we again had a recession in 1991 under the first President Bush, we extended unemployment benefits for more than 30 weeks. In this recession, however, we have extended them for less than 10. That puts individuals at risk.

I understand the concerns of the gentleman from Wisconsin about objecting to the passage of this legislation because, unfortunately, we have seen in this Congress that reaching bipartisan agreement is very difficult. The Senate has sent us a bill, passed unanimously. All the Republicans, all the Democrats voted for that piece of legislation. It sits on the desk.

The majority leader makes the observation that we do not have an agreement. We could get that agreement, I suggest to the majority leader respectfully. But, furthermore, I point out to the majority leader when this House adjourns sine die tonight or today, if that is the course of action we pursue, that bill will die. It will no longer be available to us, and on December 28 the unemployment extension will end. Eight hundred thousand people will go off the rolls. I do not know exactly how many families that is. There are perhaps two people on unemployment in one family, but it is certainly hundreds of thousands of families that would be put at risk. And as the gentleman from Michigan (Mr. LEVIN) has pointed out, 90,000 every week will be added to those rolls.

I think the gentleman from Wisconsin (Mr. OBEY) is probably correct, and the leader is probably correct. Even if we objected, the majority has indicated it does not intend to act. So the only consequence would be the failure of this bill to pass, not the relief to those unemployed workers and their families. It would not solve their angst as they come towards Christmas nor will it solve the problem of those who will enter the new year without support.

I thank the gentleman for yielding. I would urge, in conclusion, the majority leader to reconsider. We have time. We could pass this bill in literally minutes. I cannot believe that all of us in this House do not want to secure those individuals and those families who through no fault of their own but the economic downturn that has occurred in this country have been placed in a position of having no job, no support for themselves, their families.

I would hope that the majority leader would consult with the Speaker, with the majority whip, with the chairman of the Committee on Ways and Means, and say to them, it is the right thing to do. We ought to pass this legislation. Our homeland needs to be secure, but our families and workers need to be secure as well.

Mr. OBEY. Mr. Speaker, continuing under my reservation, I would ask the majority leader another question. Would he be willing to recess the House in order to check once again with the rest of his leadership to determine whether or not they would allow H.R. 3529 extending unemployment compensation benefits, the bill which is now at the desk having been received from the Senate, whether they would be willing to allow that bill to be reconsidered yet today?

Mr. ARMEY. Mr. Speaker, I thank the gentleman from Wisconsin (Mr. OBEY) once again for his inquiry. Let me just say to the gentleman from Wisconsin, if I were willing to comply with his request, I can assure the gentleman it would be of no avail for any action today or in the foreseeable future.

I am sorry the gentleman from Maryland (Mr. HOYER) has left the floor. One of the privileges I have had for some time is to go through the very painstaking process of helping Members on both sides of the aisle clear bills for unanimous consent. It is, I can say, a rigorous process of respect for the fundamental right of each and every Member of this body to raise their objection and to be informed of the option before there is any scheduling of the bill. It would be virtually impossible for me to give that respect to each and every Member of this body, and as the majority leader who has protected the rights of the Members in these matters on both sides of the aisle with rigor and I might say deep affection for the Member and their right, I would be constrained to make an objection on behalf of those Members.

I would hope that the gentleman from Wisconsin would understand, appreciate the situation and not place me in that untenable situation. Because, quite frankly, the Members' rights in this body are a matter of profound concern to all of us; and their rights have been something that I believe and hope I have attended to with respect and thoroughness.

I thank the gentleman for yielding.

Mr. OBEY. Mr. Speaker, I thank the gentleman. I would simply say I respect very much the majority leader's determination protecting the rights of each individual Member of this body, but I also think those Members have obligations.

I am here today because I have serious reservations about proceeding without dealing with the problems of the unemployed, and if there are other Members who are opposed to dealing with the problems of the unemployed, then they ought to be here to express those objections. I continue to be frustrated by the fact that they are not.

Ms. JACKSON-LEE of Texas. Mr. Speaker, will the gentleman yield under his reservation?

Mr. OBEY. Mr. Speaker, under my reservation, I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from Wisconsin (Mr. OBEY) for yielding.

I want to associate myself with the words spoken earlier on the floor regarding the majority leader, and that is to thank him for his work on homeland security and noting in particular that, in his service on that committee, he did reach out to members from all of the committees of jurisdiction and was concerned that we did put in place an entity that could work and provide the security for this Nation.

I thought I had said farewell to the gentleman a few days ago, but let me say it again to my friend, and I look forward to his great service that will come.

I come to that floor in that spirit, because yesterday I had about 50 parents and teachers who had a chance to glimpse the floor of the House, and we were not in session, from the Houston Independent School District North Central Division, and I said this is a place of problem solvers. When we find a problem, we work on solving it.

To the majority leader I would simply say, in joining with my colleagues, that I am dismayed on two reasons of this legislation. I happen to be an advocate, and the gentleman knows that we have all said we stand shoulder to shoulder with the President on fighting terrorism. There is no line of difference between Democrats and Republicans on this issue. But I do come from a community that has found its own troubles, and that is Houston and the collapse of Enron and the high unemployment, the laid-off workers that are still in dire conditions, foreclosures, children who are leaving college because of the very sad conditions they found themselves in, high unemployment.

So to come to the point where we are able to pass H.R. 3529, that it is at the desk, that we know for sure that the January 11 date of our reconvening will be long overdue in terms of the dealing with the 800,000 individuals, I am asking or indicating that I would hope that this would be an appropriate time to respond to those whose unemployment will cease, desist, and end. This is an appropriate time for us to be problem solvers for the 800,000 that will lose that unemployment resource on December 28.

I do want to note that I do not see a sense of opposition from the leader. I think we are talking about a procedural question, and I respect him for that, that every Member has a right to object. And there may be some who are not here who would find it offensive to help the unemployed or those who are the least of us, but I would venture to say and speculate, without having a poll, that we would probably have unanimous consent for every Member of Congress to understand that these are benefits which these working people have earned, that they have invested in, that they paid payroll taxes for and other aspects of their contributions. These are workers. These are not individuals to which we are handing out. These are actually workers.

So I, too, join in arguing for the passage of or the bringing to the floor of H.R. 3529 for its, I think, overall support that it would garner.

□ 1230

Let me finish by concluding or coming back to the homeland security legislation, of which I expect to be among my colleagues supportive as it moves forward, but opposed as it is presently structured. I think it is important to make that statement, because it seems that people were fearful of expressing a different point of view. I cannot imagine that we would put legislation forward that would hurt innocent victims, particularly families, as I heard the gentleman from Indiana (Mr. BURTON), my good friend, speak about the vaccine question. There was an incident that occurred in Austin, Texas where a family was so severely impacted by a tragedy that occurred with a vaccine given to their young child. So I think we are misdirected. I know where we are going: let them be free, let them put forward vaccines to protect us against bioweapons, but we are doing a wrong thing by eliminating the liability and not protecting Americans against wrong, if you will, incorrect formulas of vaccines that would injure or maim or kill. The same thing for airport technologies and antiterrorism technologies, but I want to focus on the vaccines.

So I would beg for those who think this is the right kind of bill, and there are many things that I could comment on; I hope that the immigration aspect that I am concerned about to the immigrants of America, I hope we will say that we are not accusing everybody of being a terrorist and that we will have distinctive functions under that particular department so that there are immigration services and others. I supported that.

I conclude on this note: I am hoping that as we further this, that H.R. 3529, I say to the leader, can be brought forward because I think the objectives are clearly silenced on this matter. I think that all of us conclude that we want to help the unemployed, the workers who have been working, and then I would say on matters regarding the vaccine, it is imperative that we revisit this question. I can just see an array of maimed and injured individuals that we are treating so poorly in the name of homeland security.

Then I would say, because the gentleman comes from that neck of the woods, Texas A&M, I know there have been some questions about that. I have a solution. Let us expand the opportunities for university centers. Let us make sure we have historically black colleges, Hispanic-serving colleges, and some of our friends around the country. This is an excellent idea, but let us expand it. I see the criteria does not name one university, so I am saying this is a good thing that we might do and we need to do it in the spirit of opening it up so that others can be engaged in this very important business.

Mr. Speaker, with that I conclude by expressing my hope that of course we can move forward on H.R. 3529.

Mr. OBEY. Mr. Speaker, continuing my reservation, what the response of the majority leader demonstrates to me is that in the mind of the Republican leadership of this House, it is perfectly all right to include in the homeland security bill a provision that stops lawsuits now pending in State courts regarding injuries that some people feel are caused by the preservative mentioned by the gentleman from Indiana (Mr. BURTON) in his comments. They feel evidently that it is all right to stop those lawsuits currently pending in court and require the families to instead start all over by going through a Federal compensation program. But it is not all right for us to try to deal with the problems of the unemployed. We must allow an additional 800,000 plus people to lose what meager income they have under unemployment, because of the priority warp that we hear from the other side of the aisle. I just find that amazing.

I would also say that I disagree with the gentlewoman from Texas in one respect: there is a very definite difference between the President and the Congress on homeland security, and the difference is that I have more than 100 pages that lay out the record of congressional efforts to add more money to homeland security above and beyond the amount requested by the President so that we can make this reshuffling of boxes meaningful and actually deliver some security product to the American people, rather than just a juggling of the administrative and bureaucratic boxes.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, one of the interesting aspects of this homeland security bill of which we speak is that if we ask the American people, what are the two agencies most responsible for homeland security, one looking overseas at terrorists and one looking at terrorists here in America, they would respond overwhelmingly: the Central Intelligence Agency and the Federal Bureau of Investigation. The irony is neither one of those agencies is included in this reorganization, neither are included in this department, and, therefore, will not be affected in any way by the passage or failure of this particular piece of legislation. I thank the gentleman.

Ms. JACKSON-LEE of Texas. Mr. Speaker, will the gentleman yield?

Mr. OBEY. I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I would like to correct my statement because I think the gentleman made a very important point and I want to make sure that we know that we are in sync, and that is, I believe that we have said that we do not see a line of difference in fighting terrorism, that we are committed to fighting terrorism, but the gentleman is absolutely right that we have a large, gaping difference in the funding and the organizational structure which I wish we could have had more time to really move beyond what the distinguished minority whip has said, just moving the boxes.

So I agree with the distinguished gentleman from Wisconsin. We are standing united on fighting terrorism, but there is an enormous amount of amendments and funding that we have argued for that we need to do, and I hope that we will see that forthcoming.

Mr. OBEY. Mr. Speaker, continuing under my reservation, I would simply say that I find it quaint indeed that somehow, those of us who have tried for over a year to do substantially more to beef up our financial efforts against terrorism that somehow, our raising questions about the organization of that effort somehow indicates that we do not care as much as the President of the United States about defending the homeland. We obviously do. But I would point out that the record demonstrates that as long ago as a year ago, the President resisted the efforts on a bipartisan basis that were made in the Congress to add $4 billion to the President's budget for homeland security operations, and in July of this year, he effectively vetoed about $3 billion in additional funding for homeland security efforts, and yet today, somehow, it is terribly urgent that the boxes be reorganized this month rather than next month.

Mr. Speaker, it has been made crystal-clear by the majority leader that in his words, it would be "to no avail" for us to ask that the House be recessed in order to try to gain approval of the majority leadership to proceed with the unemployment compensation legislation. So I guess what he is saying is that any effort to delay this bill, in an effort to accomplish that would be futile.

Ms. DELAURO. Mr. Speaker, I rise in opposition to this legislation. I was proud to serve with my colleagues on the committee charged with drafting the legislation creating the Department of Homeland Security. But this so-called "compromise" is loaded with special interest giveaways that will do nothing to enhance our Nation's security.

This legislation violates a compromise regarding the Freedom of Information Act, leaving in its place the giant loophole in the House bill. Under this bill, lobbyists could communicate with department staff without any public disclosure at all. They could even shield their clients from liability simply by mentioning incriminating information to department officials. This despite the fact that current law already includes exemptions for national security and trade secrets, exemptions that already work for the Justice and Defense Departments. We can't sacrifice our tradition of open government in the name of national security.

And as the author of the corporate inversion amendment that we passed by an overwhelming bi-partisan majority, I am outraged that the Republicans eviscerated provisions that would have prevented companies from receiving federal contracts if they move abroad to avoid paying U.S. taxes. Those restrictions would no longer apply to companies who have already moved overseas, leaving them with a permanent advantage over companies who have been good corporate citizens. And Republicans included a waiver that is so broad, they may as well have taken this provision out altogether.

Mr. Speaker, there is no more unpatriotic gesture for a U.S. corporation than renouncing their citizenship, yet this legislation—ignoring the clear intention of both chambers of Congress—rewards them with generous Federal contracts, doing so at the expense of good corporate citizens. That is shameful, pure and simple.

There are so many places where this bill goes wrong. It shields the pharmaceutical industry from liability if one of its vaccines kills or disables a patient. It creates a loophole that protects corporations from prosecution if they simply communicate incriminating information to Homeland Security staff. And it allows corporations who thumb their noses at our tax laws to profit off our homeland defense needs.

This so-called compromise is an insult to the Members of both parties who wanted to fashion a bill to create a strong Homeland Security Department and improve our national security. It is riddled with loopholes and giveaways, and I urge my colleagues to oppose it.

Mr. INSLEE. Mr. Speaker, today the United States Congress will send to the desk of the President of the United States for his signature, the Homeland Security bill. This bill will create the Department of Homeland Security, an agency charged with safeguarding Americans and the American way of life.

When enacting this bill, we must be careful not stray into invading American's privacy when using the regulatory tools provided for in this bill. I refer specifically to the vague authorizations in this bill that would give this new Federal agency broad authority to push the privacy envelope.

Section 201, paragraph 14, charges the Under Secretary for Information Analysis and Infrastructure with the responsibility of establishing a secure communications and information technology infrastructure that specifically authorizes the use of "Data-mining." Since "Data-mining" has no statutory definition, I am concerned that we have not adequately established that the Department of Homeland Security does not have the green light to adopt an all encompassing program that invades the privacy of every American without their permission or knowledge. We were recently notified that former Rear Admiral John Poindexter is developing a Total Information Awareness program to monitor the everyday transactions of Americans. We cannot allow this to happen.

I do not believe that this statutory language is meant to allow the Federal Government to obtain whatever list, public, private, or commercial, to profile Americans. It is clear that the American public does reject this approach, as they soundly voiced their outrage for other privacy-eroding proposals such as the FBI's "Carnivore" system, and the Department of Justice "TIPS" program. It is vital that this body adopt standards to define such terms as "data-mining," and to do so early in the 108th Congress. I thank the Speaker.

Mr. ARMEY. Mr. Speaker, I am proud that the House is today sending H.R. 5005, the Homeland Security Act of 2002 to the President. It is an important step forward in the defense of the Nation.

I would like to take this opportunity to discuss a few items of interest in the bill as amended by the Senate.

First, Mr. Speaker, I would like to address the privacy concerns that have been raised recently about provisions in the Homeland Security bill.

Let me be clear. This bill does not in any way authorize the Department of Defense program knows as "Total Information Awareness." It does not authorize, fund or move into the Department anything like it. In fact, this bill provides unique statutory protections that will ensure the Department of Homeland Security could never undertake such a program.

Section 892 of our bill prohibits the sharing of any information that would undermine the statutory and constitutional protections of citizens. We also create a privacy officer, the first ever established by statute, whose sole mission will be to ensure that programs like TIA never get off the ground in this Department.

Our bill contains provisions that discontinue two programs that raise the very concerns that TIA has raised. We stop Operation TIPS, and ensure that nobody will use this bill as an excuse to implement a National ID card.

So the legislative intent of this bill is unmistakable. This department must protect the civil liberties that we all cherish.

I would like to further make it clear that references in the bill to data-mining are intended solely to authorize the use of advanced techniques to sift through existing intelligence data, not to open a new method of intruding lawful, everyday transactions of American citizens.

Second, Mr. Speaker, I want to explain the legislative intent of section 890 of H.R. 5710, the Homeland Security legislation which the House will give its final approval to today.

As the author of this section I would like to specify what this provision covers and what it is intended to do.

When Congress passed the Air Transportation Safety and System Stabilization Act (P.L. 107–42) it provided a cap on the potential liability of airlines and their agents for claims arising out of the September 11 attacks. At the time of the attacks, aviation passenger screening companies were the agents of the airlines. That is, they were under contract to perform these services and were, therefore, subject to the airlines' control, supervision and direction. According to all available evidence and after a thorough investigation of the facts, it is fair to say that no credible evidence has been uncovered to suggest that the majority of screening companies were in any way connected, culpable or otherwise derelict in their duty. Nonetheless, Congress determined that the traveling public would be better served and protected if the screening workforce was "federalized." That transition from a purely private to a completely federal workforce was largely completed this past week on November 19.

A little more than two months after Congress passed the Stabilization Act we enacted and the President signed the Aviation and Transportation Security Act (P.L. 107–71). The measure expanded the list of private and governmental entities to be covered by the liability cap. However, in the same legislation the earlier protection afforded to the private screening companies was inexplicable stripped from the law without debate or a vote.

My provision, which was first included in H.R. 5005 and which now appears as Section 890 of the final version of this legislation is intended to restore the liability cap for certain eligible screening companies. As noted, not every company will qualify for the cap. During debate in this chamber in July, members were very explicit in expressing concerns that certain companies should be excluded from the liability cap. My amendment does just that.

Indeed, my amendment is limited to those companies that had contracted with the Federal Aviation Administration but which had commenced services no later than February 17, 2002. The key and determining factor is when the screening services actually commenced regardless of the date on which the contract was actually executed. In addition, companies that had been debarred from doing business with the Federal Government for any period of time—even as little as a single day—within six months after February 17, 2002 would not be eligible under any circumstances for coverage under the cap. In the event a debarred company was subsequently reinstated as a government contractor, they still would not qualify for the cap.

Mr. Speaker, I believe my amendment accomplishes the clear intent of Congress when it passed the Stabilization Act last year. Private screening companies were in no better position to foresee or prevent the events of September 11 than any private or governmental entity. Therefore, fairness and equity demand that we restore the cap under specific terms and conditions. However, my amendment also responds to the concerns of members of this chamber. Indeed, let me repeat. The language in Section 890 makes explicitly clear that only those companies that are in good standing with the government as evidenced by the fact that a company commenced aviation passenger screening services for the government no later than February 17 of this year qualify for the cap. Further, a company would not be eligible if it had been debarred for any length of time within six months from that date.

Mr. Speaker, I trust my explanation will assist my colleagues to better understand the nature and purpose of my amendment.

Mr. OBEY. Mr. Speaker, I most regretfully withdraw my reservation of objection.

The SPEAKER pro tempore (Mr. THORNBERRY). Is there objection to the initial request of the gentleman from Texas?

There was no objection.

A motion to reconsider was laid on the table.

REQUEST TO CONSIDER H.R. 3529, ECONOMIC SECURITY AND WORKER ASSISTANCE ACT OF 2001

Mr. LEVIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 3529) to provide tax incentives for economic recovery and assistance to displaced workers, with a Senate amendment thereto, and concur in the Senate amendment.

The SPEAKER pro tempore. Under the guidelines consistently issued by successive speakers and recorded on pages 712 through 713 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request to consider a House bill with a Senate amendment at the Speaker's table until it has been cleared by the bipartisan floor and committee leadership. Therefore, the Chair is unable to recognize the gentleman for that request.

PARLIAMENTARY INQUIRY

Mr. LEVIN. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. LEVIN. Mr. Speaker, I heard what the Speaker had to say, but I think I can indicate that the minority would be very pleased to bring this up and, therefore, I think what the Speaker's ruling is indicating is that the majority does not wish to proceed. I believe I can speak clearly, and maybe I should leave it to the gentleman from Maryland (Mr. HOYER), to say that the minority desires that this matter be brought up at this time, and I would, therefore, yield as part of my inquiry to Mr. HOYER.

The SPEAKER pro tempore. The gentleman may not yield to another Member on a parliamentary inquiry. The gentleman's statement, of course, will appear in the record.

PARLIAMENTARY INQUIRY

Mr. HOYER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. HOYER. If, in fact, under the rules I indicate on behalf of the minority that we have no objection to that unanimous consent request, what effect would that have?

The SPEAKER pro tempore. The Chair would read directly from page 713 of the House Rules Manual where it states that, "It is not a proper parliamentary inquiry to ask the Chair to indicate which side of the aisle has failed under the Speaker's guidelines to clear a unanimous consent request. Therefore, the gentleman has not stated a proper parliamentary inquiry.

PARLIAMENTARY INQUIRY

Mr. HOYER. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state it.

Mr. HOYER. With all due respect, that was not my assertion, nor my question. My assertion was that in the event that I indicate to the Speaker that the minority side has no objection to the unanimous consent request propounded by the gentleman from Michigan to allow the unemployment extension bill to be immediately considered, would that have any effect under the rule?

The SPEAKER pro tempore. The Chair would repeat, once again, that under the clear precedents of the House, it is required that any measure such as that be cleared by the bipartisan floor and committee leadership going back to precedent established under Speaker O'Neill. It must be a bipartisan floor and committee leadership approval process.

PARLIAMENTARY INQUIRY

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentlewoman from Texas will state it.

Ms. JACKSON-LEE of Texas. Is it appropriate, Mr. Speaker, to inquire whether the congressional letter gathering a number of Members addressed to the Speaker of the House has been submitted into the RECORD asking for H.R. 3529 to be passed by unanimous consent, a letter that was directed by the gentleman from Ohio (Mr. STRICKLAND), has that been presented to the House or to the RECORD of the House at this time?

The SPEAKER pro tempore. The Chair has no specific knowledge. Of course, any Member may ask unanimous consent to have a letter or a document inserted into the RECORD.

Ms. JACKSON-LEE of Texas. Mr. Speaker, let me just ask unanimous consent for such a letter to be submitted into the RECORD, along with a letter that I have submitted as well to the Speaker on this issue of H.R. 3529 to be brought up on unanimous consent.

The SPEAKER pro tempore. Without objection, the gentlewoman's document may be submitted for the RECORD.

HOUSE OF REPRESENTATIVES,
Washington, DC, November 21, 2002.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Capitol, Washington, DC.

DEAR MR. SPEAKER: More than 800,000 jobless Americans will lose their unemployment compensation three days before the New Year if Congress leaves town without passing extension legislation. Senate Republican Whip Don Nickles worked diligently last week to broker a compromise bill, H.R. 3529, which the House has the option of passing by unanimous consent tomorrow before it adjourns sine die. We can think of no reason why the House of Representatives, which is in session tomorrow, would be unable to pass the bipartisan compromise extension that was passed in the Senate last week. But we can think of 800,000 reasons for the House to act tomorrow.

The San Francisco Chronicle quoted White House officials as saying that "the President believes it's important to protect unemployed workers" and has been lobbying for a compromise to be reached. Mr. Speaker, H.R. 3529 is that compromise. Not only would it ensure that workers receive their full thirteen weeks of extended compensation, but it would provide much needed relief to those who are about to exhaust their regular unemployment compensation and still have not found a new job.

When Members of the House left Washington last week, your spokesman responded to questions about whether the House will take up the Senate bill with: "We're done, we're closed up. Why don't they do [the House bill]?" When the House finished its business last week, House Leadership admonished Senators that it was their responsibility to ensure that a Homeland Security bill was passed. Now, it is the responsibility of the House to ensure that an extended compensation bill gets passed and that 800,000 Americans can rest a little easier this holiday seasons.

Sincerely,

SHEILA JACKSON-LEE,
Member of Congress.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Capitol, Washington, DC.

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Sincerely,

Ted Strickland; Charles B. Rangel; Tim Holden; Lucille Roybal-Allard; Marcy Kaptur; Gary L. Ackerman; Edward J. Markey; Dennis J. Kucinich; Rick Larsen; Neil Abercrombie; Danny K. Davis; Sherrod Brown; Maurice D. Hinchey; James L. Oberstar; Edolphus Towns; Rick Boucher; Bill Pascrell, Jr.; Stephanie Tubbs Jones; Vic Snyder; Darlene Hooley; Louise McIntosh Slaughter; Barney Frank; Lane Evans; Mark Udall; Anna G. Eshoo; Shelley Berkley; Jan Schakowsky; Patrick J. Kennedy.

Joseph Crowley; James P. Moran; Bernard Sanders; Betty McCollum; John F. Tierney; Jay Inslee; Ken Bentsen; Tom Udall; Barbara Lee; Steve Israel; Carolyn B. Maloney; Sanford D. Bishop, Jr.; Robert E. Andrews; Eva M. Clayton; Howard L. Berman; Sander M. Levin; Rosa L. DeLaura; Donald M. Payne; Peter A. DeFazio; Bobby L. Rush; Norm Dicks; José E. Serrano; Martin O. Sabo; Jerrold Nadler; Nick J. Rahall II; George Miller; Carrie P. Meek; Dale E. Kildee.

Joe Baca; Silvestre Reyes; Elijah E. Cummings; Karen McCarthy; John Spratt; Zoe Lofgren; Martin T. Meehan; Baron P. Hill; Ellen O. Tauscher; Bob Etheridge; Steven R. Rothman; Lynn N. Rivers; Bob Filner; Jerry Kleczka; Bart Gordon; Diana DeGette; Earl Blumenauer; Eliot L. Engel; Jerry E. Costello; Ike Skelton; Earl Pomeroy; William D. Delahunt; Steny H. Hoyer; Virgil Goode, Jr.; Tammy Baldwin; David Wu; Jane Harman.

Rubén Hinojosa; Xavier Becerra; Julia Carson; Brian Baird; Carolyn McCarthy; Mike McIntyre; Marion Berry; Dennis Moore; David E. Price; Alcee D. Hastings; John P. Murtha; David E. Bonior; James P. McGovern; Michael M. Honda; Lynn Woolsey; Gene Green; Corrine Brown; Chales A. Gonzalez; Frank Pallone, Jr.; Robert A. Brady; Michael F. Doyle; Adam Smith; Tom Barrett; Lloyd Doggett; Jim Davis; Stephen F. Lynch; Fortney Pete Stark; James R. Langevin; Sheila Jackson-Lee.

CONCLUDING REMARKS

(Mr. ARMEY asked and was given permission to address the House for 1 minute.)

Mr. ARMEY. Mr. Speaker, let me just say, since the gentleman from Texas (Mr. THORNBERRY) as a Member of this body was one of the first innovators of legislation with respect to homeland security, how very pleased I am to see the gentleman here today as Speaker pro tempore to drop the gavel on this matter. I am pleased for the gentleman, and I am proud to call the gentleman my friend.

Mr. HOYER. Mr. Speaker, will the gentleman yield?

Mr. ARMEY. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, on behalf of this side of the aisle, I want to say again, as this will be I suppose the last time in the gentleman's role as majority leader that the gentleman addresses the House, we want to congratulate the gentleman on his service. We obviously have had disagreements through the years, but the gentleman has handled himself as a gentleman, and for this side of the aisle, we want to wish the gentleman Godspeed as he enters into a new phase of his career. I know the gentleman's family is pleased to welcome him back to full-time association. I know that was one of the gentleman's prime motives, as he expressed so eloquently on the floor.

On behalf of the minority, we want to wish the gentleman every success and good health and happiness in the future.

Mr. ARMEY. Mr. Speaker, I am pleased to announce to this body that we have some new additions to our congressional family, a new addition to the Abel family. Williams James Abel arrived the night before last, yesterday, in the early hours of the morning, a beautiful baby boy, 9 pounds, 4 ounces.

□ 1245

Mr. Speaker, I wonder if the gentleman from Maryland (Mr. HOYER) would detain for one moment. I want to share a moment with him before he leaves the floor.

Mr. Speaker, in addition to the wonderful, beautiful William James Abell, we have another addition to our congressional family, to the Halpern family, Ari Joseph Halpern, born on November 28. I can tell the Members, Mr. Speaker, that his father is very proud.

Mr. Speaker, I notice a colleague of ours for so many years, the gentleman from Michigan (Mr. BONIOR), who has so ably served as whip on the other side of the aisle. If I could take a moment to say to the gentleman from Michigan from our side of the aisle, and I believe I dare speak in this case for the entire body, we thank him for his years of service. He has always been a gentleman. He has done his job well as a

Member of Congress. I would say on behalf, I believe, of all of us in this body, I wish him Godspeed in his remaining activities.

Mr. HOYER. Mr. Speaker, if the gentleman will yield further, I want to join the distinguished majority leader. The gentleman from Michigan (Mr. BONIOR) has been one of the most distinguished Members of this body. He has reflected, I think, what the American public expects of each of us: the courage to state our convictions. He stood for those convictions and fought for those convictions, irrespective of their popularity or whether he found himself to be in the majority on any given proposition.

I think every Member of this body admires the gentleman from Michigan (Mr. BONIOR) for the courage of his convictions. We talk a lot about that, but I think few Members have displayed the courage of their convictions any more dramatically or faithfully than has our colleague, the gentleman from Michigan (Mr. BONIOR).

He is still a very young man, and he has much to offer his country. He fought for his country in Vietnam, and he came here and fought for its ideals. He will continue to serve, I know, as a productive and extraordinary American citizen. We wish him the very best in whatever he may do.

Mr. ARMEY. Mr. Speaker, one final point which I am confident will be of particular interest to the gentleman from Maryland.

Mr. Speaker, with us today is my brother, Charlie Armey, general manager of the Rams. Mr. Speaker, he and his associates are in town this weekend to take care of business. I am sure the gentleman from Maryland would like to make him welcome.

Mr. HOYER. If the gentleman will continue to yield, Mr. Speaker, we shall see. We shall see.

PROVIDING FOR THE SINE DIE ADJOURNMENT OF THE 107TH CONGRESS, SECOND SESSION

The SPEAKER pro tempore (Mr. KERNS) laid before the House the privileged Senate concurrent resolution (S. Con. Res. 160) providing for the sine die adjournment of the One Hundred Seventh Congress, Second Session.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 160

Resolved by the Senate (the House of Representatives concurring), That when the Senate adjourns at the close of business on any day from Wednesday, November 20, 2002 through Saturday, November 23, 2002, or from Monday, November 25, 2002, through Wednesday, November 27, 2002, or on a motion offered pursuant to this concurrent resolution by its Majority Leader, or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the House of Representatives adjourns on any legislative day through the remainder of the second session of the One Hundred Seventh Congress on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Majority Leader of the Senate and the Speaker of the House, or their respective designees, acting jointly after consultation with the Minority Leader of the Senate and the Minority Leader of the House, shall notify the Members of the Senate and the House, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

The Senate concurrent resolution was concurred in.

A motion to reconsider was laid on the table.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, and under a previous order of the House, the following Members will be recognized for 5 minutes each:

TRIBUTE TO MICHAEL F. DiMARIO, 23RD PUBLIC PRINTER OF THE UNITED STATES

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. HOYER) is recognized for 5 minutes.

Mr. HOYER. Mr. Speaker, as the 107th Congress draws to a close, I want to pay tribute to a great public servant and dear friend whose Government service is also now drawing to a close. Michael F. DiMario, the 23rd Public Printer of the United States, will soon retire from his post now that the Senate has confirmed his successor. Mike has served as Public Printer since November 1993, and he leaves the Government Printing Office a much different and better place than when he took office nine years ago.

Mike's achievements as Public Printer are numerous and represent a sea-change in the way GPO produces and distributes government information to the American people. Mike's preeminent achievement has been the establishment and phenomenal growth of GPO Access (www.gpo.gov/gpoaccess), the GPO website established pursuant to a landmark 1993 act of Congress passed with his enthusiastic support. GPO Access today makes about 225,000 Federal titles available on-line, free of charge, to anyone with a computer and access to the Internet. Members of the public today use GPO Access to retrieve an average of 31 million documents each month, over a million every day; more than 1.1 billion Federal documents have been retrieved via GPO Access since it went live in 1994. The GPO site also serves as host to 19 other Federal websites, including the Supreme Court's, and the databases GPO prepares for GPO Access are indispensable to the Congress's prominent legislative website, THOMAS, which is operated by the Library of Congress. GPO Access was the primary site for several major Federal-document releases of the past decade, including the Microsoft anti-trust decision, the Supreme Court's decision in the Florida election cases, and the Starr Report, as well as all annual Federal budgets. GPO Access has won multiple awards from the on-line, library, legal, government, and educational communities, and will undoubtedly continue to revolutionize the distribution of government information.

During his service, DiMario also strongly supported and successfully implemented the Congress' policy decision to transition the Federal Depository Library Program to a primarily electronic format. He worked closely with the library community to implement this transition in a way that met Congress' goals of economy and efficiency while continuing to serve the needs of the public. Today, more than 60 percent of the new titles going into depository libraries are electronic, and the program has realized sufficient savings to underwrite the costs of GPO Access without requiring substantial new appropriations.

DiMario also brought other new technologies to GPO, streamlining its operations. Notable among these advances are the capacity to move print copy directly from computer to plate, which is now used to produce 90–95 percent of all plates used in GPO; roll-fed on-demand printing; and new, smaller, more efficient presses. DiMario also enhanced GPO's electronic communications capabilities through establishment of an agency web site to facilitate online posting of most bid solicitations for printing contracts, and an office-wide Intranet. Working closely with the House, Senate and other Federal agencies, DiMario oversaw the successful Y2K transition at GPO with no disruption of service. On his watch, In-Plant Graphics magazine chose GPO as the top in-plant in the country for four consecutive years, and in 1999, PC Week magazine hailed GPO as one of the top technology innovators in the United States. GPO has received "clean" financial opinions on all independent audits conducted during DiMario's tenure, and a comprehensive management audit in 1998 found that GPO has strong support among its "customers," i.e., the Congress, Federal agencies, and the public. During last year's anthrax crisis, DiMario offered GPO facilities for the use of various House and Senate offices, and he made available GPO's loading docks to the Capitol Police when Congress' own delivery-screening facilities were unusable. Since that time, he has worked to establish off-site printing and web capabilities to prevent disruptions of service in future emergencies.

Throughout his tenure, DiMario has strived to cut costs at GPO, and as a consequence, GPO's appropriations have remained relatively flat. Total personnel strength has declined by more than 35 percent since 1993, and now stands at the lowest level in over a century. It is a testament to Mike DiMario's leadership that he achieved the reduction through attrition with no significant workforce dislocation. During his tenure, DiMario worked closely with GPO's unions to reach reasonable wage contracts and ensure the successful implementation of new technology and new ways of doing things.

Through changing times, Mike stoutly defended the GPO against shortsighted proposals to reinvest or privatize its operations, regardless of their source. He clearly articulated how valuable GPO is to Congress's legislative operations, to the economical and effective procurement of printing for executive agencies, and to the public's ability to access Government information in a comprehensive, equitable manner. In the past several months, his defense of GPO against the ill-advised printing proposal of the Office of Management and Budget has been just as determined. The fact that GPO continues to operate today is due in no small part to the fact that Mike believes in the agency and never shirked from defending it when necessary.

Mike DiMario has had the 4th longest consecutive term of service as Public Printer since it began operations in 1861. He resides in Bowie, Maryland, so he's not just my friend, he's also my constituent. As Mike departs the GPO for a well-deserved retirement following 40 years of Federal service, I am sure my colleagues join me in wishing him good luck, Godspeed, and offering him the thanks of a grateful Nation for a job well done.

TRIBUTE TO HON. DAVID BONIOR OF MICHIGAN, AND ISSUES FOR THE 108TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Texas (Ms. JACKSON-LEE) is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Speaker, we just finished, I think, a very necessary debate and discussion involving the Homeland Security Department but, as well, some of the ailments that we will be facing as this Congress returns in the 108th session.

Before I comment on some of the issues that I believe leave us in a state of unreadiness, I would like to take this opportunity as well to again thank my colleague, the gentleman from Michigan (Mr. BONIOR), for the leadership that he has given to this Nation. I might say "to this Congress," but I believe his leadership goes far beyond these walls.

Having come in 1995, elected in 1994, the gentleman from Michigan (Mr. BONIOR) is the leadership that I knew, which, in essence, I grew up under, legislatively. If I might say, there was not a time, although his work was as the whip in organizing the votes, that he did not have a listening ear and welcoming of different perspectives, being courageous enough to recognize that we do not always speak in one voice. We speak as Americans, but we do not always speak in one voice.

So my applause to him for always being willing to be of service and, might I add, for the special work that he has been engaged in, and that is working to bring people together. I know he has a special connection to the Faith and Politics Institute, bringing individuals of faith and political life together for the betterment of all of us. So I thank him very much.

It leads me right into the reason why I speak today, which is to highlight, as I said, the unreadiness of this Congress on a series of issues that I think are extremely important that we have not yet done.

I want us to move quickly in the 108th Congress to face down corporate irresponsibility and malfeasance. Yes, we have passed legislation dealing with the ability to audit the internal records of corporations, to fix the audit committees, to oversee accountants, but we have not done much reform on the bankruptcy laws that negatively impacted laid-off or terminated employees.

For example, in my congressional district, when Enron filed bankruptcy on Sunday, they laid off almost 5,000 employees on Monday. Those employees are still trying to recoup. They had nothing, and they lost everything. It is interesting that the corporation could go in and recover through the bankruptcy laws, but the employees had no standing.

I am looking to file legislation with my colleagues to reform the bankruptcy law to put unsecured, fired, or terminated employees of corporations who seek bankruptcy protection at the top of the line. That is most evident by what happened to the family in my community, a member of the Enron family who was out on leave with a catastrophic illness. He, along with others, were terminated in the midst of his catastrophic illness. Of course, he was left with nothing. He lost his house, and he lost his life, because there was no more medical care for him, and there were no more health benefits and no ability to secure his prescription drugs. We have to fix that, Mr. Speaker.

We also have to fix this homeland security bill. I bring to the Members' attention the autism case dealing, as my colleague spoke before, with a vaccine that was utilized to the bad results of this particular individual. Russell Rollins was a picture perfect baby. Then at 15 months, just like every other baby, he got his MMR shot. He had a physical reaction to those vaccines, including a high-pitched scream and days of high-pitched crying and listlessness. Ten years later, those problems continue. Russell is now autistic.

So a vaccine moratorium on this case would be horrific, and this could happen time after time with the kind of limited liability that we have in the homeland security bill. I think it is misdirected, Mr. Speaker, as it is misdirected for airport security and antiterrorism technology.

We have never been afraid of doing the right thing, of ensuring that we have an opportunity for redress of grievances in courts. We have never been overwhelmed with frivolous lawsuits to the extent of products that are defective. We only need to engage in saving life. If Americans understood that under the auspices of homeland security we are blocking their opportunity into the courthouse, they would understand the problem.

Let me close by simply saying that we have many miles to travel; and, as we travel, we need to do it right. I close by simply saying that we did not do it right today, Mr. Speaker. We left 800,000 employees who were fired, terminated, and unemployed without unemployment insurance. We did not do it right, and I hope that we will get it right. I will fight on behalf of those individuals and on behalf of America until we get it right in this Congress.

THANKS AND APPRECIATION TO MEMBERS, STAFF, CONSTITUENTS, AND FAMILY FOR SUPPORT IN MEMBER'S SERVICE TO THE NATION

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, the gentleman from Michigan (Mr. BONIOR) is recognized for 60 minutes as the designee of the minority leader.

Mr. BONIOR. Mr. Speaker, I would like to thank my colleague, the gentlewoman from Texas (Ms. JACKSON-LEE), for her lovely comments, and to say how much I have enjoyed working with her through the years. I wish her and her family all the best and the best to the gentlewoman in her future endeavors. She is a great asset to this institution and also to the country.

I also want to appreciate the kind words uttered by my friend and colleague, the gentleman from Maryland (Mr. HOYER), who will be the new Democratic whip. I wish him much success in his new responsibilities; and to the gentleman from Texas (Mr. ARMEY), who also expressed some very kind words, I wish him all the best. It was wonderful over the years working with him and engaging in colloquies at the end of the week, looking forward to the following week. I wish him the best.

Mr. Speaker, I rise this afternoon just to say thank you. I wanted a chance before I left to thank the Members of this institution and my staff for the support of individuals who make this building and this government run so incredibly well.

I want to start by thanking my wife, Judy, who has been absolutely fabulous. I thank her for her love and support; for her loyalty to the issues of social and economic and racial justice; for her wise counsel over the years, keeping me out of trouble when I needed to be kept out of trouble. Most of us who serve here find a way into trouble too often.

She was wonderful in keeping me on the right path, but she also was very good about encouraging me to create controversy, trouble, if you will, when the times clearly needed it. I thank her for helping me lead a path to clarity among much of the confusion that sometimes engulfs our lives, our personal lives, as well as our professional lives, and also for stoking my outrage when outrage was needed, when the situation called for us to become indignant and to stand up and to express ourselves in the most forceful and emotional way, sometimes, that we could to get our points across.

□ 1300

She is a great asset to this institution herself, having served here for over 20 years; and we look forward to the rest of our lives together and continuing on issues that we care deeply about and supporting many of the people who have supported us, especially the young people who are making their way up politically in their lives.

I also thank my children, to Stephen and Julie and Andy, the three of them. They are grown adults now and out of school, fully employed and working in the Washington, D.C., area, for the most part. They have given much sacrifice over the years when their father was not there, when sometimes he should have been. They are great kids. They have worked in the campaign over the years. They have just been super lovely children and now wonderful adults, and I cannot thank them enough for their patience and for their encouragement and sometimes for their criticism when their father needed it. I wish them, of course, the best; and we will continue to love and support them.

I want to also mention some wonderful people on my staff. Seneca once said that loyalty is the holiest good in the human heart. While I am not so sure that it is the holiest good in the human heart, I appreciate the sentiment. Loyalty is a very important part of work, whether it is government work or private work or family life. You have to have loyalty, and I have had the most loyal, wonderful staff that one could ever imagine.

I am going to start by talking about, just very briefly, four people who have been with me throughout basically my whole career. The way my office basically ran was we had four people, two in Michigan, two in Washington; and they worked as a group, as a board: Ed Bruley, Chris Koch, Sarah Dufendach, and Kathy Gille.

Now, they all were with me for virtually my whole career: Ed Bruley, 25 years; Chris Koch, 25 years; Sarah Dufendach, 25 years; and I think Kathy about 20 years, although she worked on my first campaign 26, 27 years ago. So we have known each other, we have supported each other, and we have marched together with each other. They have all left now over this last year, but they will always be in my heart, and I wish them the best. They are really special people.

Ed does such a great job with young people particularly, nourishing them and helping them grow, helping them to become involved.

Chris Koch was sort of the person in our office who managed things and who was always there to lean on when you had a personal problem and who had a real common touch and a real decency.

And Sarah Dufendach, who ran the office with Kathy Gille here and the whip operation, Sarah has now gone on to work with the Vietnam Veterans Foundation and doing wonderful things. We grew up together in the same neighborhood, and I wish her and Alan all the best in the future. She is a wonderful person.

And Kathy Gille, who grew up on the east side, all of us, by the way, were east-siders in the Detroit area, and Kathy's fight for economic and social justice and racial justice has been steady and passionate. And now she is working on peace with respect to the situation in Iraq. I wish her and Doug Tannear, who runs the Faith in Politics Institute that the gentlewoman from Texas (Ms. JACKSON-LEE) alluded to a little earlier, all the best in their endeavors in the future as well.

Then, of course, there are some of my old whip staff who are now with the gentlewoman from California (Ms. PELOSI): Jerry Hartz, Howard Moon, Paula Short, Jon Stivers, people I have already talked about on this floor several months ago, and who are wonderful assets to this institution, and I wish them all the best.

If I could also address some other staff individuals who have performed tremendously for our office and the people of the 10th District of Michigan: Erich Pfuehler, who was my Washington staff AA. Erich's been with me, for, gee, I am reluctant to guess now, but I know it is in the teens, the number of years, and he is a fabulous young man, and still a young man, and I wish him and Sarah the best in their endeavors.

Maya Berry; Amy Furstenau, who left a while ago; Dana Hopings, who has just done excellent work on urban issues and legislative issues; Kevin Mauro, who has worked in our office in the Rayburn Building; Nicole Nice-Petersen, who left recently to go to law school; Charles Powell, who has spent many, many years working for me doing the mail, providing the humor, keeping the office on a level keel in the Rayburn Building. We will miss him. He is off to Louisiana to make a new home for himself and Sarah.

Paula Short, who I mentioned earlier, who did a fabulous job just keeping me in order for a number of years before she went over to the gentlewoman from California; Kim Kovach we brought over just out of school and in a short couple of years was doing the key work in our office on trade legislation and who is now working for the steelworkers. We wish her and her husband all the best.

Bridget Andrews, who has been with me now for about 2 years and came from Michigan and there, at the end, closing the offices, doing all the difficult work. So, Bridget, thank you for your patience and for your hard work.

I do not want to miss anybody. Brian Taylor, who worked in our whip office, who is now with the gentleman from Illinois (Mr. BLAGOJEVICH). Brian, the best to you in your future. Allison Remsen, who has now left but worked as a press secretary in the whip's office; and Matt Gelman, who did a good job for us and worked on the floor here and many of you knew. He has two lovely babies now and a good job, and we wish him the best.

And Mary Doroshenk and Chris Davis. Mary and Chris actually were married; and that was one of many, many marriages that came out of our organization over 30 years, and we wish them the best.

And Adri Jayaratne, who would make a great legislative director for anybody in this institution, a fabulous young man. And, Adri, thank you for so much of what you have done.

And in Michigan, I would like to say a particular thanks to the following people: Tim Morse, who has run my Port Huron office for 17 years. He is really a wonderful man, and we wish Tim the best in his endeavors.

And Rania Emara and Mark Fisk, Bob Allison and Joy Flynn and Steve Gallop. Steve has been with me 26 years, the whole time. He is as steady as a rock and as knowledgeable as it comes on grants and aid and support, and he is and will always be a very close friend. His sister Ruth, who was with me for 17 years, 17 years, and who now is going over, on her first day, with Senator STABENOW today. So good for you, Ruth.

I mentioned Joy Flynn and Bob Allison, who did some press work, and Mark Fisk, really very capable people, good people.

And Bob Gibson, who is now working for the Service Employees International Union, very good person who deals with workers' issues and community issues.

Charlie Jackson and Cindy Janecke. Cindy, thank you so much for putting up with me through all that scheduling difficulty we had, particularly in the Governor's race. We will certainly miss you, but I know you will do very well in the future. Best to you and Rick.

And to Tyler Kitchel, who is one of my top research people. Tyler is going on to graduate school and who will be missed.

Fred Miller, fabulous guy. Anything you want. Fred worked in the whip office and went back to Michigan and did the politics and other constituency work. We are going to miss Fred, but he is a neighbor, so I will see him on a regular basis.

And Sally Torres, who was one of our caseworkers. Sally has a master's degree in social work from the University of Michigan and does exceptionally good work and is a very caring and decent person. We wish her the best.

And Paul Soderberg and Patrick Rorai and Rick Suhrheinrich. They are all wonderful people, young people who started with us, those three actually, in high school, and now are graduates out of college and have been working with us. I am sure some of those people, Paul, Rick or Patrick, will eventually end up serving the public someday in public office; and I am looking forward to being there with them and helping them in that endeavor.

Darlene Kaltz, whose great humor and organizational skill and accounting skills have kept us on the straight and narrow. We wish Darlene the very best, and we will be seeing much of her as well.

I want to go back to Ed Bruley for a second, because Ed has sort of been the political guru of my staff. I met Ed at a campaign 30 years ago. I ran against him and beat him for State representative. But I knew from that race that I did not want him on the other side, so we formed a partnership. This was right after the McGovern defeat in 1972, and we formed a group called Locus Focus, basically to rebuild the party locally. And Ed was a big piece of that. We got to be good friends, and when I ran for Congress he was one of the key people who made the campaign work and then was hired, and he has been with me for 26 years and ran the gubernatorial campaign.

What Ed was so particularly good about was putting young people together. Over the years we did something called Student Summit, for 15 years, where we would bring high school kids from each of our 100 high schools together and for a weekend we would teach them basically how this institution worked. It was role playing. Each one would take the persona of a Member of Congress. We would take an issue, an environmental issue or an education issue or racial justice issue, and we would lay it on the table. They would elect their leaders, they would elect a speaker, and they would go about trying to get a piece of legislation passed and thereby learning how this institution and their government works.

I am proud to say that over those 15 or 16 years that we have done this a number of people have come out of that and done extremely well, actually been elected to school boards and city councils, and Ed puts that together. He brings people and school-to-work programs from Germany, from Ireland, from Canada into our congressional district, and we have a regular flow of people coming back and forth. That is one of the things that he excelled at, and I think he has given many opportunities to many people as a result of his interest in young folks. So, Ed, congratulations to you.

In fact, right now, he has taken about 20 people and taken them over to Germany. That is where they are at this very minute, some of them on my staff, some other young people, to expose them to government in Germany and the school-to-work program over there, among other things.

So we thank all of them. And I am sure I have left somebody out, and I deeply apologize if I have. It is not because I do not love you and respect you and appreciate what you have done; it is because I am not as organized as I probably should be this afternoon. But we thank all of you for your kindnesses and your support and your help.

There are other people I want to thank. I saw Ellen Rayner was here a little earlier. She has worked in this institution for 30, gee, I think it is 32 years, and in interesting ways, with the Iran-Contra and a whole host of special committees and recently for the gentleman from California (Mr. WAXMAN) and his committee. And she does a great job. She is going to retire after 32 or 34 years, and we are going to miss her.

But there are so many folks like that who have given their careers and their lives to this institution who need to be thanked and appreciated.

I want to also thank the staff, people who run the floor, the pages, the people in the cloakrooms, too numerous to mention. So many of you have made our lives easier. I know what it is like, being the former whip of my party, having to deal with over 200, at one time 260 Democrats on a daily basis, trying to keep them happy and informing them and bringing them together collegially. I know how difficult it is sometimes to please Members of Congress. But you do it every single day that we are here.

□ 1315

It is not easy sometimes, and I appreciate the patience of the staff and to their devotion.

To the parliamentarians, to the people who cook the food, to the waiters, to the elevator operators, to the janitorial service that keep this place looking really good so the public can enjoy it and appreciate its beauty and its specialness.

If I might also this afternoon, I would like to say a few words about my colleagues. It has been a great joy to serve here. They say over 10,000 people have served in the Congress. I do not know how many Members I have served with, but I suspect it is probably close to 1,000, probably that many over 26 years, and they are some of the finest people that a person would ever want to meet. They work long hours, they work hard, and are devoted to their constituents, to the issues they care about, and to their party for the most part. They do good work for this country, and it has been a joy to have created so many friendships over the years, and I hope to maintain those to the extent that I can in the coming years. To them, thank you for your kindnesses and courtesies.

And to my party, thank you for giving me the opportunity to serve in your leadership. I spent about half of my political career in the leadership here in the House, and it is a gift. It is a very special gift. I will always be grateful for that opportunity. I thank my colleagues for it.

Let me say this to my constituents from Macomb and St. Clair Counties, and these are counties just northeast of the city of Detroit, I thank them for the incredible gift they gave me of allowing me to serve them and to represent them. I have not been the easiest guy to keep sending back. I understand that.

I kind of believe in the old adage if you are not living on the edge, you are taking up too much room; so I like to kind of push on things, and sometimes I know I have tried people's patience. But my constituents have given me the opportunity to do that, and I thank them from the bottom of my heart. Judy and I will retain our home in Mount Clemens, Michigan. We do not know what I am going to end up doing next, but hopefully it will involve a little bit of teaching and a little bit of community service along the way, and perhaps some other things as well.

There is an old saying in the Bible in Proverbs that where there is no vision, the people perish. And in order for an institution or a people to be successful, you have to know where you are going and how you are going to get there. At least one needs an initial plan.

Throughout our career, and I say "our" because I consider this not only my career, but the career of the people who work for me and my family, we have tried to have a vision where we wanted to take the district and the country, and that vision revolved around social, economic and racial justice.

These are very difficult times that we are living in today, changing times at an incredible rate, technologically changing, changing times with respect to our natural environment, with our political environment, and the challenges that await my colleagues in this next Congress are monumental. I was going to try to resist leaving a few last words of comments to them, but I cannot help but give a little bit of advice if I could before I leave today.

At the beginning of today's session, Father Coughlin said these words when he gave his prayer. He said, "Dear Lord, deliver us from fear, hatred and war." Of course, if you can deliver yourself from fear, you are a long ways from delivering yourself and your community from hatred because fear is an ingredient into hatred. If you can move away from hatred, you can move away from violence, and violence often manifests itself, in our business, in war.

I am very much concerned about the state of our planet from a variety of aspects, but I will say this in conclusion. I have never seen in my 30 years of public life the international community as brittle as it is. It is almost as if on a hair trigger. I wake up to public radio, and the conflicts are raw, bitter, more frequent, and they seem more intractable.

I am generally an optimist, but I have found myself over the last couple of years, particularly on the international scene, becoming more and more pessimistic. While I know these conflicts in the Middle East and even here at home, and in Asia and South Asia in particular, and other places around the globe are not religious based, they do spring, to some extent, from misconceptions about other people's religions.

It is important for all of us to remember, it seems to me, that Christianity and Judaism and Islam all spring from the same fountain, they spring from Abraham. They are monotheistic in their teachings, and their values are incredibly similar. There is this disconnect out there in terms of what Christianity is about or what Islam is about.

I woke this morning to a story in Nigeria in which 100 people were killed over Christians and Muslims fighting, killing each other over a beauty contest. I am sure that it runs much deeper than that, but that was the issue that triggered the violence.

We have to be able to talk to each other better. We have to be able to reach out to each other more. I am so concerned about our inability to do that, the turning away Christian to Muslim, Jew to Muslim, Muslim to Christian. We need more coming together and understanding about each other's religion and who we are and the great traditions and histories of each other's religion. That is why talking to each other is very important.

I know there are Members in this institution who take great pride in the vote that they cast in 1991 regarding the Gulf War. And I stood at this very spot and gave the final speech in opposition to the Gulf War, and I did so because I felt that the Gulf War, while undoubtedly we would be successful militarily in the short run, would lead eventually to problems down the road in the future. I felt that we would be creating the atmosphere for another generation of people who felt just totally disillusioned and would be susceptible to moving into terrorist kinds of activities, suicide bombings, the kind of things that we have so painfully witnessed and suffered, not only here in our country, but abroad as well.

In 1982, about 20 years ago, I was in the Middle East and was on a trip. I went to seven countries, and ended up in Lebanon. At that time Members may recall, the Israelis were bombing Beirut in the summer of 1982. Arafat was confined in an underground bunker, which I was taken to to meet him, with a few other Members of Congress, and it looked like his time was just about up, and this was 20 years ago. This was a brutal civil war in Lebanon in which tens of thousands of people were lost, and much violence accrued to not only the Lebanese people, but other people in the region.

I remember one particular evening I was having dinner at the American ambassador's residence to Lebanon and the residence overlooked the city and I was eating outdoors with the Prime Minister of Lebanon, Bashir Gemayel. His father, Pierre, had been head of the clan, and also Amin Gemayel. The conversation became very tough and very accusatory with respect to who was to blame for what was going on just below us in the city.

Some ugly words were spoken, and I said to myself that evening, this is never going to end. The depth of hate and anger is so large, so deep, this is going to go on and on and on, and it did go on for many years afterwards.

That evening after we were done with our dinner, we walked to the edge of the cliff that overlooked the city of Beirut, and we watched the Israelis dropping fluorescent lighting over the city so they could pinpoint activity in the city, and perhaps even bombing the city. The next morning there was a lull in the fighting, and I was walking through the city and I saw the cluster bombs that were made by the United States and dropped in these neighborhoods, and I walked to this one neighborhood and I saw this house smouldering, and as I was standing by this house, a car came up with a father and mother in the front seat, and three teenaged sons in the back seat. The father came over to where I was, and asked me who I was. And I told him I was a United States congressman, and I asked who he was. And he said, "This is my home. It was bombed last night, and I lost a child and my home." I commiserated with him and expressed my sorrow and sympathies.

He went back to his car and he told his family who I was. One of the teenaged sons in the back seat came out of the car ran towards me, and started to attack me. He was pulled off. I had a security person with me. He went back to the car with his father. I will always remember that because I am positive that young man went after me because he associated me, a United States congressman, with the destruction of his home and the loss of his sister.

I think about that a lot because I wonder where those three teenaged boys in the back of that car, where did they end up? Did they end up as guerillas, as terrorists? What was their future going to be like?

Over the last 20 years, particularly the last couple of years, it has been so painful to know that some of our actions, and I do not want to stand here and blame the United States because we are a good country and do great things, but some of our actions have led to this kind of estrangement, this kind of hopelessness, this kind of terror-driven maniacal activity that is occurring around the globe today.

□ 1330

That is why I voted against the Gulf War resolution 10 years ago in this House of Representatives, or 11 years ago, because I felt that that effort was going to lead to another generation of people who are going to be disillusioned and who will strap something to themselves and walk into a building or a bus and blow themselves up. It has happened with much, much more frequency now. I do not know when it is going to abate or how it is going to abate, but we have to start to talk to each other. Violence and war is not the only answer.

I do not stand here as a pacifist. I was supportive of our efforts during the last administration to stop the ethnic cleansing in the Balkans and worked very hard to get President Clinton involved in that situation. I have supported President Bush in his efforts in Afghanistan. But I want to say to you this afternoon that I am so very fearful that our engagement again in Iraq will lead to another generation. They may not be necessarily in Iraq. They may be in Nigeria. They may end up in Indonesia. Does the United States really want to take on a huge part of the world? We have got to be able to talk to each other. We could find ourselves fighting on seven or eight different fronts in a very, very short time.

So violence is not the answer. It is discussion. I would encourage my colleagues and the American public to be a little bit cautious about reading those individuals on war or listening to those individuals in our media on war who have themselves refused to serve their country in time of war. The Rush Limbaughs and the George Wills and the Cal Thomases, these are folks that have not seen a war that they have not liked in their careers. They believe in America using its power repeatedly, consistently, expressing itself through its military might on every possible occasion.

If you read their writings, you will find that. I choose them because they are three that stand out. We need to have a more balanced perspective. If you watch the nightly news or the cable news over particularly the last couple of years, there is this frenzy to outdo each other for ratings or for whatever it is, a hyping of the situation, the war situation, in this instance, in Iraq. There is very little said, if anything said, about the horrific implications of what our sanctions have done to create the atmosphere, if you will, for millions of people to distrust the United States.

I have said this before and I will say it again, and I am not talking about just the Bush administration, the Clinton administration as well, our policy in Iraq led to the premature deaths of 50,000 children. 50,000 children. 50,000 a year. Children who did not get the nutrition they needed, mothers who did not get the nutrition they needed and bore children with low birthweight. Those children died of respiratory problems or they died of diarrhea which is rampant because they cannot get decent clean water because partially of the war and the bombings that occurred and the inability to get equipment to fix the water treatment facilities and the sanitation facilities.

50,000 a year. Yes, that could be rectified through a couple of avenues. Saddam Hussein could deal with this problem and so could the United States, but no one has done it, and it has gotten worse and worse and worse. They know this story in Afghanistan. They know this story in Tajikistan. They know this story in Syria. They know this story in Yemen. They know this story about 50,000 children dying prematurely in much of the world. We do not know this story here.

Yet we sat on a committee, the United States representative sat on what they call a 621 committee, if I am correct on the number. It does not matter. It is a committee of five people, members of the Security Council, and they have to vote on what medicine, what food, what equipment gets to be sent into Iraq. They have done this for 10 years. The United States has been the representative on that committee for the past 10 years that 98 percent of the time has said no to medicine, to food, to water pumps to fix their water systems. We have been the one who said no. They know this story. We do not even know our own story here. And it has led to such painful consequences for the innocent people of Iraq who do not want and do not care for Saddam Hussein and want him out of there. They are suffering. All we have done is strengthen him because it has shifted the focus to our inability to deal justly with their lives.

During the 1991 Gulf War, some of the armored equipment and projectiles, projectiles specifically that we deployed, were coated with something called uranium, depleted uranium. The reason they coat these projectiles is that uranium is hard, it can pierce through tanks, but what they did not tell us was that once this uranium projectile hits a tank or an armored vehicle, it atomizes, it gets in the atmosphere, it gets into people's lungs, and there has been a huge increase in leukemia and soft tissue sarcoma of children in Iraq, 100, 120 percent, since this war. They have the protocols to help these young people, they are mostly young people, I visited them in the hospitals when I was there, to help these people get through this difficult, life-threatening disease, but the United States has denied the medicine to treat these young children.

I tell you these stories not because I want to rag on the United States of America. This is a good country. We do lots of good things around the world in health care and education. But we cannot isolate ourselves the way we have in this part of the world or in South Asia or in other parts of the world and expect that the people are going to understand us and we them.

So I would just conclude by saying that I hope that we will look at our national security concerns from that perspective as well. And then to finally end up, I am sounding like a Baptist preacher, I am saying finally and I am closing 20 times here to the gentlewoman from Texas, but to finally say that our economic security is vitally important as well.

The gentlewoman from Texas (Ms. JACKSON-LEE) addressed this in her comments as did the gentleman from Wisconsin (Mr. OBEY), the gentleman from Michigan (Mr. LEVIN) and others earlier. We cannot ignore those workers in our country who have through no fault of their own been laid off or lost their jobs. We should have done the bill before we left today. This is a Republican bill, for heaven's sake. It was signed off by DON NICKLES in the United States Senate. It was passed unanimously over there. We are talking about a million people running out of unemployment compensation benefits during a very important time of year for most people. This is a stimulus package in itself, a small one albeit, but needed for those devastated economies in certain pockets of our country. We could have done this. There is no reason we could not have done this. But we did not. We did not do it. And so I hope the first order of business, Mr. Speaker, will be this bill when the new Congress resumes.

Finally, let me just say to you, Mr. Speaker, and to Speaker HASTERT and my dear friend DICK GEPHARDT, whom I have had the honor of working with, I thank you for your kindnesses over the years and your leadership. Both of your staffs have been exceptionally wonderful to me and to my staff. I thank you for all the kindnesses that you have shown me. I look forward to returning those kindnesses in the years and months ahead.

I yield to the gentlewoman from Texas.

Ms. JACKSON-LEE of Texas. I thank the gentleman for yielding.

Mr. Speaker, I did not leave the floor because I knew that the gentleman was going to give to this Congress an oration or a message that we should not miss. I just want to conclude to the gentleman's remarks by again thanking him for his service to America. And though you did not announce it yourself, many of us alluded to it, it is important to restate that you are a veteran of wars. You did go to Vietnam. You did serve your country in the United States military.

And so as you speak in concluding, thanking your staff and those of us of your colleagues, you speak from what you know. What I would like to offer to you is again an enormous thank you for educating us about the admonition of delivering us from fear and hatred and war. We would do well in the next Congress to include you, encourage you, and listen to you for the travels that you have made, the insights that you have gathered. Might I make a commitment, and might I say that I have been very much instructed by your words, is that we will not give up on a vote and that is that a vote that has seemingly given authority to go to war against Iraq. I always say to my constituents, there was a vote, but likewise there were votes, plural, that expressed a different perspective.

I think it is important for those of us who view this war as both untimely and as well ill-directed, to follow in your line of reasoning and, that is, to keep raising the issues and seeking to educate the American population.

Lastly, I would say the tone that you offered your message and your words today should be applauded by all. You were encouraging, embracing and nurturing. We thank you. What I would say to those who have debated this question of war, I would hope, and sometimes we are looked upon as being frivolous, that we might debate the question of peace, that there might be legislative initiatives that would talk about generating peace and understanding. I do not know if we have ever done that. I know there is a peace institute.

I would encourage and simply ask the minority whip, the former minority whip and the very helpful leader of this Congress and this Nation, to continue to stay in the fight with your words and wisdom on these issues, and maybe we will get there someday, understanding that peace has a greater price maybe, but a greater return than any war that we could engage in. I yield back to the gentleman with an enormous thanks.

Mr. BONIOR. I thank my colleague for her lovely words. I wish her success and happy Thanksgiving to you and your family and to the staff as well. Bless you.

RECALL DESIGNEE

The SPEAKER pro tempore (Mr. KERNS). Without objection, and pursuant to section 2 of Senate Concurrent Resolution 160, the Chair announces the Speaker's designation of Representative RICHARD K. ARMEY of Texas to act jointly with the majority leader of the Senate or his designee, in the event of the death or inability of the Speaker, to notify the Members of the House and the Senate, respectively, of any reassembly under that concurrent resolution, and further, in the event of the death or inability of that designee, the alternate Members of the House listed in the letter bearing this date that the Speaker has placed with the Clerk are designated, in turn, for the same purpose.

There was no objection.

STATUS AND LEGISLATIVE PRIORITIES OF GUAM

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2001, the gentleman from Guam (Mr. UNDERWOOD) is recognized for 60 minutes.

Mr. UNDERWOOD. Mr. Speaker, first of all, I want to congratulate the gentleman from Michigan (Mr. BONIOR) on an excellent career and express my profound admiration for him and for his work that he has done during the course of his career.

Perhaps one of the most unknown dimensions of his role as a leader in the House of Representatives is his willingness to take the time to take newer Members on and guide them through the process, especially those people that are not full Members of the House like myself, as a delegate from the territory of Guam, take the time to shepherd us through the process and provide guidance and support whenever necessary.

There were a number of points along the way in which the assistance of the gentleman from Michigan was very critical. I want to just recount two stories along those lines. One obviously was in the beginning of the 103rd Congress when the delegates of this House were granted a vote on the floor of the House under the Committee of the Whole which was introduced as a rule in the 103rd Congress. He stood by us and he was very strong on that. There was a lot of internal debate within the Democratic Party caucus and, of course, it became a full blown national issue almost immediately, resulted in a lawsuit and everything else, and probably even contributed to the demise of the majority by the Democrats in the 104th Congress.

□ 1345

But, true to his word, the gentleman from Michigan stood by the delegates; and he stood by the fact that he felt, as many of us U.S. citizens feel, that full representation in the House is not dependent upon payment of taxes but is dependent upon citizenship. He stood in a very steadfast manner for all of us, and we very much appreciated it.

Then another part which is much less well-known, but I am willing to kind of talk about it a little bit now, was, in organizing the Democratic Caucus rules for the 104th Congress, some of the Members felt that the delegates had become albatrosses around the neck of the Democratic Caucus, so that one way they could perhaps, since the Democrat delegates did not contribute to the winning of the speakership and since they were part of the committee ratios, some Democratic Members felt that perhaps it would be a good idea to limit the delegates to one committee membership as opposed to two. The reasoning for that was that since the party ratios had shifted and the Democrats were now kind of in a tough situation trying to fight for seats on choice committees, that if the delegates who were not helpful in controlling the House in any ways, if they were limited to one committee assignment, perhaps it would be of greater assistance to the Democratic party. And again, of course, I was part of a group that spoke out vigorously against that idea and spoke to the meaning and the heart of what it meant to be a member of the Democratic party caucus; and again the gentleman from Michigan (Mr. BONIOR) stood by those people who were basically without a voice in this House. So I congratulate him on a career well spent.

I am taking the time this afternoon in the last day of the 107th Congress for the House of Representatives to simply express my gratitude to the people of Guam for allowing me the opportunity to serve as their representative here for some 10 years, to thank my family, my children, and especially my wife, Lorraine, for making possible this service, as well as my mother, who is 89 years of age and continues to be of encouragement and provide guidance and wisdom in everything I do, as does my wife, Lorraine, and as do our five children, and also to express my gratitude to all the people who have supported me in political endeavors over the years, including a recent campaign for governor of Guam which I did not prevail in, but certainly I wanted to take the time to acknowledge their presence.

In fact, one of my Underwood young adult leaders is here with us this afternoon; and she is a neighbor, actually. She lives a couple of houses from us, Allison Chamberlain; and it is a very great honor and privilege to be allowed to give this special order with her present as well as my successor, Madeleine Bordallo, who is currently the Lieutenant Governor of Guam.

One of the things that I try to recount is what 10 years of service in the House of Representatives means, but what I wanted to do was basically talk a little bit about Guam, a little bit about that service and a little bit about the experience of being a nonvoting delegate in the House of Representatives. None of these three stories are really given much attention in the context of national politics here in Washington, D.C., and Guam is the farthest congressional district of any location. Sometimes people have a very kind of romantic view as to what constitutes Guam, and there are a whole lot of sentiments that go into that.

One of the things that over the years of service that I had, and people in every congressional district, I am sure, have this sentiment, that they think that they are the center of the world, and I would go back home and people would ask me, what do the people in Congress feel about Guam? And I would say, well, the good news is that they do not feel badly about Guam. The bad news is they do not feel particularly good about Guam. The reality is just that they do not feel much about Guam because everyone here is elected to represent their own constituency and represent their own interests, and it is only my responsibility to try to bring attention to the issues of Guam.

But Guam is a very special place. Obviously, it is the place of my birth, it is the place where I grew up, it is the place that has nurtured me and provided me the opportunity to rise not only in public service here in Washington, D.C., but also serve as an educator for some 20 years, and they have been supportive throughout the whole process. It is grounded in the experience of the indigenous people of the island, the Chamorro people, and I count myself to be fortunate amongst those people and to be part of a very special group of people that continue to speak the Chamorro language and be grounded in the experience of the people of the island.

But Guam is also enriched by newcomers, people who have brought their experiences to the island and continue to enrich it in ways in which the economy grows and social interaction grows; and there is just a great deal of social progress. To be sure, there are always fits and starts in any kind of conditions that obtain like that, but it is important to understand that it is a very special place.

One of the things that people in Guam sometimes feel is that they are isolated, and it is easy to sense that if they see themselves as 9,000 miles from Washington, D.C., and they are basically almost in the middle of the Pacific Ocean, but it is not. In reality, Guam is one of the most strategic pieces of real estate in the entire world.

It is the first Pacific island to be settled by nonPacific islanders. In fact, in Douglas Oliver's work on Pacific Islands, he begins the chapter on Guam by saying the rape of Oceania began with Guam. It was so-called "discovered" by Ferdinand Magellan, and it quickly became a way station for the Manila Galleon. The Manila Galleon was the ship that went between Acapulco, Mexico, and Manila on an annual basis and provided the core of the Spanish empire imprint in the Pacific for at least two to three centuries. It is also the only Pacific island that was taken by the United States as a result of the Spanish American War.

Of course, it was occupied by the Japanese during World War II, and there is a tragic story that was involved in that. It performed an important role in both the Korean and Vietnam conflicts, and today Guam is part of the global reach and power projection strategic picture of U.S. Armed Forces as they look to deal with the challenges that we confront in the 21st century. Guam is a critical part of that.

Its importance is even more critical now as we face challenges in the Asian-Pacific region and even as we face the potential of conflict in Iraq. Guam will be a major throughway for any potential conflict in that part of the world.

Its history is unique. It is the only U.S. territory to be occupied since the War of 1812, and as a result of a couple of things, the strategic importance of Guam and the enemy occupation of Guam led to two main issues which have affected Guam politics since the end of World War II. I am very happy to have worked on these two issues and have provided a glide path, I think, for resolving these two issues which have been of significance in Guam politics since the end of World War II.

The first has to do with land. Guam is only 212 square miles. After World War II, the U.S. military took a great deal of land, a little bit over half of the land, as they tried to triangulate a process of creating bases in order to deal with the Cold War, the emerging Cold War. As a result of that, that land was authorized to be taken by Congress; and it was given to the military government to figure out how to take this land.

Needless to say, the land was taken under military government. Sometimes a military officer would be in charge of taking the land, and then, if they had it adjudicated, it was a military officer who was a judge, and it was a very closed system. So it led to much abuse, and it led to a lot of very odd situations in terms of land.

So the return of Federal land has been one of the most difficult and tortuous issues in Guam because the majority of original landowners are still very much with us today. And remember the time when they signed papers that said, do not worry, as soon as the military no longer needs the land, it will be returned. Over the years the military has had the opportunity to return land but never to the original landowners; and, as a consequence, this very difficult process has been part of the main issues that any delegate from Guam has had to deal with here in Washington, D.C.

The two pieces of legislation which I moved through Congress, one is 103–339, which returned 3,200 acres of excess lands to the people of Guam; and the other is 106–504 passed in the last Congress, the Guam Land Return Act, basically are connected. They demonstrate for each other how land is to be returned to the people of Guam, and that is that basically the 3,200 acres were to be returned to the government of Guam before any other Federal agency, even though the land was accessed and that it was to be used for a public benefit purpose and that public benefit purpose would be outlined in subsequent reports of land usage by the government of Guam.

Those subsequent reports have included the possibility of return to original landowners through a locally constructed process of review called the Ancestral Lands Commission, and so today that process is in full swing. It is a legal process, and it is a process that has moved most of this land into the hands of the original landowners.

Since the 103–339 was for a specific piece of property, 106–504 says that, in the future, if the Federal Government is in the position of having any excess lands, that the government of Guam will be treated as a Federal agency and be at the head of the line for land return.

This is such unprecedented legislation that many other communities have tried to figure out how they can get the same kind of legislation for their community, but of course no one had the exact same experience as the people of Guam coming out of World War II. As a consequence, it is in recognition of the unfair nature and the unjust nature of the land takings that occurred at the end of World War II that led to the possibility of Guam's being treated as a Federal agency and at the head of the line in return for excess lands which 106–504, the Guam Land Return Act, posits.

In the meantime, of course, we deal with many, many other land issues; and we have to deal with them in terms of a declaration of critical habitat, Fish and Wildlife Service, the application of the Endangered Species Act, monitoring the return of excess lands, working with the General Services Administration. All of this are part and parcel of the portfolio of not just making sure that these pieces of legislation were passed but to make sure that they are implemented in the spirit that they were intended, and that has provided a lot of work. It meant that we had to do a lot of work as a congressional office, and we are very satisfied with that work.

We are very content that we passed two landmark pieces of legislation for that, but it does not mean that the struggle has ended, but it does mean that the glide path and the ultimate resolution of land issues is encased in Federal law, and that has occurred as a result of a great deal of work from my office and the collaboration of local officials as well.

The other issue arising out of World War II is war claims. The people of Guam at the time of the Japanese occupation during World War II were not U.S. citizens, they were called nationals, American nationals. That was a term of art meaning that they are not really a foreigner but they are not a citizen either. So the term "national" was applied to the people of Guam, and they were occupied during World War II, and of course it really is the only American territory that has been occupied since the War of 1812. So that experience led to a piece of legislation called the Guam Meritorious Claims Act which offered a tailor-made process by which the people of Guam could file claims based on their war experience, and that war claim time period existed for 1 year, from 1946 to 1947. This was at a time period when people were still recovering from the war.

□ 1400

It also posited that if you had any claim that was over $5,000, you had to make a personal appearance in Washington, D.C., to adjudicate it. It was an impossible process; and, as expected, most people did not file claims; and some people could file a claim for death and get $320. So it was, again, another process that had simply fallen apart and did not satisfy the war claims.

Well, subsequent to that, in 1948 and then with a revision in 1962, the U.S. Congress passed laws related to war claims for American citizens and nationals, but it excluded Guam from participating in that process. As a consequence, the claims resulting from American citizens as a result of their wartime experience, either as civilians or people in uniform, prisoners of war, or whether they were just put in civilian internment camps, either by Japan or Germany during World War II, had a clear process through which to adjudicate their war claims. But the people of Guam did not have that process. It led to some very, very interesting anomalies; and I will just offer one now.

My grandfather, James Holland Underwood, was taken by the Japanese off of the Island of Guam, even though he was a civilian, and put into a civilian internment camp, in Kobe, Japan. He was covered by this legislation, which meant that he could file a series of claims based upon the legislation passed by Congress in 1948 and amended in 1962, but his wife and his children and all of his family who endured many more hardships under the Japanese occupation could not.

So that is the anomaly that presented itself as a result of the war. So, as a consequence, the cry of war reparations or war claims has been part of the process and getting recognition for this experience, getting recognition for the unique experience of the people of Guam during World War II.

So my office has worked very diligently on this. I think one of the first bills that we passed coming out, well, it was the very first bill I ever had anything to do with in the 103d Congress, is 103-197, which creates the Asan Bay Memorial Wall which lists by name all of the people from Guam who suffered during World War II; and it has over 10,000 names. It is on the wall in the Pacific National Park that is in Guam, and it is an unprecedented effort and was an effort that the national park did not want, so we had to move it into law. I think it was entirely appropriate that the experiences of the Chamorro people of Guam during the Japanese occupation be honored and recognized this way, and it exists today as a result of this legislation.

When the World War II national memorial, the effort led by former Senator Bob Dole, out here in the Mall was envisioned, part of that was that they were going to create 50 columns, each one to honor each State in the national memorial for World War II. And what I thought, of course, representing the people of Guam, what an abomination that is. The only American territory occupied by the enemy during World War II would have not been recognized in the national World War II Memorial, because each of the 50 pillars was thought of as representing each of the 50 States.

So after a lot of floor speeches and a lot of work and a lot of appeals, the World War II Memorial on the Mall will include Guam, as well as the other territories. But Guam, more so than I think any other jurisdiction, because it was the one area of the United States that experienced enemy occupation during World War II.

We have also been able to include memorials in the Department of Defense authorization for massacres of Chamorros which occurred at Fena and Yigo, massacres where people were beheaded or machine gunned or had hand grenades thrown at them.

Over the years, we have also been very proud of telling the story, the Guam story, through our activities here in Washington. Every year, I began with my service in 1993, we began celebrating Guam Liberation Day with a ceremony, a wreath-laying at the Tomb of the Unknowns at Arlington National Cemetery; and we have done this consistently for 10 years, trying to bring national attention to the Guam liberation experience and the experience of the people of Guam during World War II.

On the 50th anniversary of that experience in 1994, we were able to secure full military honors for the 50th anniversary, including the presence of a number of secretaries, Cabinet secretaries, and the chairman of the Joint Chiefs of Staff and, of course, all Services being present. The most stirring part of it was the playing of the Guam hymn at Arlington National Cemetery. Taking the time to not only learn what the Guam hymn was all about but to actually play it was a moment of pride for those of us who had struggled to get national attention.

But the greatest achievement we have made in this occurred 3 days ago with the passage of H.R. 308 in the Senate, and this is the Guam War Claims Review Commission Act. For the first time, we will have a commission which will understand and look at the Guam war claims in light of all of the other war claims that had been offered to American nationals and American citizens coming out of the war experience. So that bill is now in. It passed the House last year, it passed the Senate under a unanimous consent arrangement on Tuesday night. So we are sure that President Bush will sign it because we had worked with the incoming Bush administration at the time to make sure they understood it and they support it. So we look forward to that resolution and that commission so that the people of Guam can tell their full story and so that full justice can be made on the basis of war claims.

Sometimes it is not really clearly understood why the war claims arising out of the activities of Japan or Germany are addressed to the United States, as opposed to those countries. It is important to understand that the Japan-U.S. peace treaty in 1951 absolved Japan of any individual claims, and those claims are inherited by the U.S. Government. The thinking at the time, and it is still very much present today, is that they would pay those claims out of funds that were confiscated as a result during World War II funds confiscated from Japanese companies, et cetera. It is simply standard practice in peace treaties.

But we also did other things as well. We tried to tell a little bit about the people of Guam, and we are certainly proud of things that we were able to do to get some national recognition for Guam.

One of the most intractable problems, and sometimes people do not see this or do not experience it, is the chewing of betel nut, pugua, pugua in the Chamorro language. It is a hard nut in the way that the Chamorros chew it; and it has been identified as a carcinogenic by the Food and Drug Administration, and it is, consequently, a banned substance. So since Guam is outside of the U.S. Customs zone and you come into the Customs zone, you go through a Customs zone in Hawaii and then an agricultural inspection. If they find betel nut on you, it is a banned substance, and they take it away. It is one of the most absolutely frustrating experiences for people from Guam, because people from Guam bring betel nut to their relatives for personal consumption, not out of the desire to get everyone else inside the Customs zone to chew betel nut, I do not think it would be very popular, but simply as a cultural practice.

We did pass legislation in the House that would eliminate this ban by the FDA, and when it went over to the Senate, I think it is one of the few times that the Food and Drug Administration actually changed one of their rules and exempted betel nut coming from Guam, so that the people from Guam can now ship betel nut into the Customs zone or bring it in, as long as it is for personal consumption. The good news is we define personal consumption as 5 pounds, which is a lot of betel nut. So we are very happy with that. The people of Guam who constantly ship betel nut to their relatives are very happy about that.

We fought to get Guam recognized in many other ways. One of the most interesting ways is we found out that the time zone of Guam and the Northern Marianas is one of nine time zones that is under the U.S. flag that is unnamed, so we decided we would introduce a bill to call it Chamorro Standard Time. It was one of those bills that we did not work hard on but, for some reason, it caught a lot of attention and the next thing you know it became law. So we have a new time zone under the U.S. flag, and it is called Chamorro Standard Time, and it is in honor of the indigenous people of Guam and the Northern Marianas.

Also in commemoration of the 100th anniversary of the centennial of Guam being under the U.S. flag, at that time I talked to Speaker Gingrich; and since he is an old history professor I tried to tell him and convince him that this was an historical moment that we cannot let pass and would he allow us to let us fly five Guam flags over the U.S. Capitol in honor of that. He checked it out and he said, they never fly any other flag ceremonially other than the U.S. flag, but after a lot of discussion, we finally got him convinced. So I think we are the only jurisdiction other than the U.S. that has ever had flags flown over the Capitol.

So we have those five flags, and of course they have gone to museums in Guam, and people are very happy to have these flags.

We fought to be commemorated and to be included in the Commemorative Coin Act. Every young person in America has these 50 quarters, commemorative coin bills. Well, one of the things is that, of course, the territories and even the District of Columbia is not included in this. It is simply an oversight, and it should be treated as an oversight, and that bill has passed the House twice. It has gone over to the Senate to languish. I regret to say that it went over to the Senate, and it never passed. A Senator objected to it. This exercise in trying to get American children to understand the fullness of America was defeated by some kind of narrow notion as to what includes America and what does not include America.

Even in the stamp program, I had one of the most outrageous experiences I have had as a Member of Congress, was when they created this 50-stamp program commemorating each State, was to try to find a way to get a Guam stamp and a stamp for the territories or a stamp for the District of Columbia. I had a number of meetings with Post Office officials and one of them told me, you know, one of the reasons why we did 50 stamps is because it fits neatly. There is 50, it fits into 5 rows of 10, and I had never seen such disrespect or disregard again as to what constitutes the fullness of America.

But, in any event, we continue to work on those, and they have not been successful. We understand that there may be a stamp outline for Guam under the stamps that are usually used to mail internationally, so we work on that.

Every State in the Union has a street named after it and the District of Columbia, and they are all usually diagonals. I went to Madrid, Spain, a few years ago; and I asked if there was a Guam street in Madrid, Spain. They proudly took me to the Guam Street in Madrid, Spain, because they said they wanted to recognize those areas that used to be a part of Spain. So, naturally, when I came back, I asked that the District of Columbia create a Guam Street. Given the nature of bureaucracy, I think we are almost there, but, still, it is just another reminder again sometimes about inclusion and trying to be recognized as part of America.

Of course, we worked hard over the years to try to get dignitaries to come to Guam, and we are very fortunate that even President Bill Clinton came to Guam and a number of other secretaries. We certainly hope that President Bush during his tenure in office will find the time to come to Guam.

Beyond that, we worked on military issues, we worked on issues that pertain to people in uniform, we fully funded the Guam Readiness Center, we have gotten almost a half a billion dollars of military construction for Guam to not only help the economy but to continue to cement the importance of Guam as a military location.

□ 1415

We worked hard to make sure that people in uniform got the benefits that they deserved. We did this not only through my work on the Committee on Armed Services, but even on the MWR panel we tried to propose different things to make sure that, for example, National Guard personnel would get full commissary privileges if they were called up on a national emergency or a federally-declared disaster.

So we continued to work hard to benefit our people in uniform, because so many of our people in Guam joined the military, as well as we in Guam understand the importance and the significance of the military and our role in the world.

We also work to continue to get people to understand the military value of Guam, even in the midst of negotiation, even in the midst of closing of bases, even in the midst of the A-76 process, all of which were, in the main, very painful for the people of Guam. There was much discussion about closing various facilities in Guam. We were able to keep some of that from happening, but now that the whole process has again been reevaluated, now submarines are being homeported in Guam, and there is the likelihood of military aircraft being stationed in Guam at Anderson Air Force Base, and we have been working very hard on that.

At the conclusion of this term in Congress for myself, I wanted to take an opportunity to talk a little bit about some of those things that our office tried to do over the course of five terms. But there is always something that is going to be left undone, and there are always a lot of things that remain to be done. There will always be. There will always be work for elected officials, and there are always going to be issues that present and manifest themselves that need direct attention.

Although there is always one thing that remains unfulfilled, in the end, I know this process will be completed, and that is the political status of Guam. The political status of Guam is called unincorporated territory. What that basically means legally is that we are not fully a part of the United States, but the U.S. Congress has plenary power over the territories.

This is a quandary that small territories particularly find themselves in because, unlike Puerto Rico, smaller territories do not really have the option, or it is not a feasible political option at this time, to aspire to statehood, so there are very few mechanisms by which we can have full participation in American society, and particularly in the laws that apply to us. So that is also a concern.

There was a great movement towards "commonwealth" in Guam that began in the '70s, and with some hope and aspiration, found its way into Congress in the late '80s and into the '90s, but as time went on and as the economy went bad in Guam and other things took center stage, this effort to change the political status of Guam has been put aside.

But like so many other things that are of fundamental, enduring political importance and speak to the essence of who we are as a people and where we fit into the body politic, this issue will come back, and it will come back at sometime in the future.

Lastly, I just wanted to talk a little bit about an item related to political status; that is, occupying this position that five other people basically hold in the House of Representatives, and that is being a delegate to the House of Representatives.

The official title of this office is "nonvoting delegate to the U.S. House of Representatives." It is an inelegant title. It is a title one is fully aware of when one aspires to office here. As we try to work on legislation here sometimes people say, oh, it is like trying to pass legislation with one hand tied behind our backs, or even with our mouths taped shut. It is a very difficult process, because we are not representatives. We are not fully a Member of the House of Representatives. There are costs that are attached to that. It is the situation we are confronted with.

Nevertheless, I think most delegates find a way to still find a fulfilling career as they try to fulfill the aspirations and meet the needs of their people. However, a day does not go by in this House of Representatives that we are not reminded in some way about the unique status that we have and the unique role that we play in this process; that is, basically representing a constituency for whom their political future is unclear, and for whom they have most of the obligations of American citizenship, they must obey Federal laws, they join the military, they have a commander in chief for whom they cannot vote, and they have a Representative in the House of Representatives who cannot vote for them whenever any piece of Federal legislation passes through here, but for which they must obey the law, in any event.

It is not a comfortable situation to be in and it is not a fulfilling situation to be in. In many ways, one cannot go the whole day here in the House without being reminded about it.

I have enjoyed the time I have had here, and I certainly enjoyed the time working with other Members of the House of Representatives. I certainly hope that the people of Guam wish my successor, Madeleine Bordallo, all the success in the world. I certainly hope that the Members of this body will extend to her every courtesy that has been extended to me.

I also thank all of my staff who have helped me through these 10 years. I want to make special mention of my current Chief of Staff, Esther Kiaaina; and my previous Chief of Staff, Terry Schroeder; and my district director, Vince Leon Guerrero, for the kind of steadfast loyalty and efforts they have made in making sure that our offices were always there for the people of Guam.

List of staff members is as follows:

PERSONNEL LIST

DC STAFF

Teresita P. Schroeder, Myat Moe Khaing, John J. Whitt, Angie P. Borja, David Goodfriend, Keith Parsky, Andrea Williams, Aric Noboa, Mark Jeffreys, Perfecto (Paul) T. Galman, Mariel L. Loriega, Jed R. Bullock, Nicholas J. Minella, Anthony M. Babauta, Esther Kiaaina, Jeannine Aguon, Lisa Ann B. Pablo, Alice Taijeron.

GUAM

Darryl Taggerty, Annie A. Rivera, Jimmy D. Iglesias, Phil T. Garcia, Vincent A. Leon Guerrero, Shirley B. Balmeo, Joshua F. Tenorio, Mae C. Tenorio, Catherine S. Gault, Paul A.P. Hattori, Donna F. Balbas, Joseph E. Duenas.

I want to acknowledge the work of my office managers Annie Rivera and Angel Borja was worked loyally for the entire time I was in office.

REAPPOINTMENT AS MEMBER TO COORDINATING COUNCIL ON JUVENILE JUSTICE AND DELINQUENCY PREVENTION

The SPEAKER pro tempore (Mr. KERNS). Without objection, pursuant to Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5616) and upon the recommendation of the minority leader, the Chair announces the Speaker's reappointment of the following member on the part of the House to the Coordinating Council on Juvenile Justice and Delinquency Prevention to a 2-year term:

Mr. Gordon A. Martin, Roxbury, Massachusetts.

There was no objection.

A HAPPY BIRTHDAY WISH TO SCOTT PALMER

(Without objection, Mr. ARMEY was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ARMEY. Mr. Speaker, before we adjourn for the year, I would like to take a moment to wish Scott Palmer, Speaker HASTERT's chief of staff, a very happy birthday today.

CORRECTION TO THE CONGRESSIONAL RECORD OF TUESDAY, NOVEMBER 19, 2002, AT PAGE H9028

The following letter is a corrected version submitted by the Clerk of the House.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, November 18, 2002.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on November 18, 2002 at 1:55 p.m.:

That the Senate passed without amendment H.R. 2458.

That the Senate passed without amendment H.R. 5708.

That the Senate passed without amendment H.R. 5716.

That the Senate agreed to conference report H.R. 4628.

With best wishes, I am
Sincerely,
JEFF TRANDAHL,
Clerk of the House.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HOYER) to revise and extend their remarks and include extraneous material:)

Mr. HOYER, for 5 minutes, today.

Ms. JACKSON-LEE of Texas, for 5 minutes, today.

SENATE BILLS REFERRED

Bills of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 12. An act to amend the Peace Corps Act to promote global acceptance of the principles of international peace and nonviolent coexistence among peoples of diverse cultures and systems of government, and for other purposes; to the Committee on International Relations.

S. 13. An act to extend authorization for the national flood insurance program; to the Committee on Financial Services.

S. 14. An act to amend the Agricultural Adjustment Act of 1938 to extend the farm reconstitution provision to the 2003 and 2004 crops; to the Committee on Agriculture.

S. 606. An act to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency; to the Committee on Energy and Commerce.

S. 1340. An act to amend the Indian Land Consolidation Act to provide for probate reform with respect to trust or restricted lands; to the Committee on Resources.

S. 1816. An act to provide for the continuation of higher education through the conveyance of certain public lands in the State of Alaska to the University of Alaska, and for other purposes; to the Committee on Resources.

S. 2063. An act to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites; to the Committee on Agriculture.

S. 2222. An act to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes; to the Committee on Resources.

S. 2670. An act to establish Institutes to conduct research on the prevention of, and restoration from, wildfires in forest and woodland ecosystems of the interior West; to the Committee on Resources, in addition to the Committee on Agriculture for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 2711. An act to reauthorize and improve programs relating to Native Americans; to the Committee on Resources.

S. 2872. An act to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois; to the Committee on Energy and Commerce.

S. 3079. An act to authorize the issuance of immigrant visas to, and the admission to the United States for permanent residence of, certain scientists, engineers, and technicians who have worked in Iraqi weapons of mass destruction programs; to the Committee on the Judiciary.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills and a joint resolution of the House of the following titles, which were thereupon signed by the Majority Leader:

H.R. 3210. An act to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

H.R. 3833. An act to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be a haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes.

H.R. 5005. An act to establish the Department of Homeland Security, and for other purposes.

H.R. 5469. An act to amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.

H.J. Res. 117. Joint resolution approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 1240. An act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes.

S. 2237. An act to amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on November 21, 2002 he presented to the President of the United States, for his approval, the following bills.

H.J. Res. 124. Making further continuing appropriations for the fiscal year 2003, and for other purposes.

H.R. 2621. To amend title 18, United States Code, with respect to consumer product protection.

H.R. 3758. For the relief of So Hyun Jun.

H.R. 3988. To amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

H.R. 4727. To reauthorize the national dam safety program, and for other purposes.

H.R. 5590. To amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders of protection on military installations.

H.R. 5708. To reduce preexisting PAYGO balances, and for other purposes.

H.R. 5716. "Mental Health Parity Reauthorization Act of 2002".

SINE DIE ADJOURNMENT

Mr. ARMEY. Mr. Speaker, pursuant to Senate Concurrent Resolution 160, the 107th Congress, I move that the House do now adjourn sine die.

The motion was agreed to.

The SPEAKER pro tempore. In accordance with Senate Concurrent Resolution 160, 107th Congress, the Chair declares the 2nd Session of the 107th Congress adjourned sine die.

Thereupon (at 2 o'clock and 23 minutes p.m.), pursuant to Senate Concurrent Resolution 160, the House adjourned.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

10161. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Irish Potatoes Grown in Colorado; Reduction of Membership on the Area No. 3 Colorado Potato Administrative Committee [Docket No. FV02-948-2 FR] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10162. A letter from the Administrator, Department of Agriculture, transmitting the Department's final rule — Apple; Grade Standards [Docket No. FV-98-3 03] received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10163. A letter from the Administrator, Dairy Programs, Department of Agriculture, transmitting the Department's final rule — Milk in the Pacific Northwest Marketing Area; Interim Order Amending the Order [Doc. No. AO-368-A29; DA-01-06] received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10164. A letter from the Administrator, Tobacco Programs, Department of Agriculture, transmitting the Department's final rule — Tobacco Inspection; Mandatory Grading [Docket No. TB-02-11] (RIN: 0581-AC20) received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10165. A letter from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit [Docket No. FV02-905-5 FIR] received November 22, 2002,, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10166. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Walnuts Grown in California; Decreased Assessment Rate [Docket No. FV02-984-1 IFR] received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10167. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Dried Prunes Produced in California; Decreased Assessment Rate [Docket No. FV02-993-4 FIR] received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10168. A letter from the Administrator, Agricultural Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Kiwifruit Grown in California; Relaxation of Pack and Container Requirements received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

10169. A letter from the Under Secretary, Department of Defense, transmitting revisions to the National Defense Stockpile Annual Materials Plan (AMP) for fiscal year 2003, pursuant to 50 U.S.C. 98h—5; to the Committee on Armed Services.

10170. A letter from the Assistant Secretary, Department of Defense, transmitting a report on Medical Informatics required by Section 753, National Defense Authorization Act for FY 2001; to the Committee on Armed Services.

10171. A letter from the Vice Chairman, Export-Import Bank, transmitting a report on transactions involving U.S. exports to South Africa pursuant to Section 2(b)(3) of the Export-Import Bank Act of 1945, as amended; to the Committee on Financial Services.

10172. A letter from the Director, Office of Management and Budget, transmitting appropriations reports containing OMB cost estimates; to the Committee on the Budget.

10173. A letter from the Secretary, Department of Education, transmitting Final Regulations —— Adjustment of Civil Monetary Penalties for Inflation, pursuant to 20 U.S.C. 1232(f); to the Committee on Education and the Workforce.

10174. A letter from the Secretary, Department of Education, transmitting a follow-up report pursuant to section 6(b) of the Federal Advisory Committee Act, as amended; to the Committee on Education and the Workforce.

10175. A letter from the Assistant Secretary, Department of Education, transmitting the Department's final rule — Student Assistance General Provisions — received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10176. A letter from the Secretary, Department of Education, transmitting the Department's final rule — Federal Student Aid Programs (RIN: 1845-AA23) received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

10177. A letter from the Acting General Counsel, Consumer Product Safety Commission, transmitting the Commission's final rule — Poison Prevention Packaging Requirements; Exemption of Hormone Replacement Therapy Products — received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10178. A letter from the Director, Office of Civilian Radioactive Waste Management, Department of Energy, transmitting the eighteenth Annual Report on the activities and expenditures of the Office of Civilian Radioactive Waste Management, pursuant to 31 U.S.C. 3512(c)(3); to the Committee on Energy and Commerce.

10179. A letter from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting the Department's final rule — Medical Devices; Ear, Nose, and Throat Devices; Classification of the Transcutaneous Air Conduction Hearing Aid System [Docket No. 02P-0241] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10180. A letter from the Attorney Advisor, NHTSA, Department of Transportation, transmitting the Department's final rule — Tire Safety Information [Docket No. NHTSA-0 2-13678] (RIN: 2127-AI32) received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10181. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Six Control Measures to Meet EPA-Identified Shortfalls in Delaware,s One-Hour Ozone Attainment Demonstration [DE061-DE066-1036; FRL-7411-3] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10182. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans; State of Missouri [MO 164-1164a; FRL 7412-4] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10183. A letter from the Acting Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Missouri [MO 166-1166a; FRL-7412-1] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10184. A letter from the Acting Principal Deputy Associate Administrator, Environomental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Montana;, State Implementation Plan Correction [SIP No. MT23-1-6402; FRL-7412-2] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10185. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — List of Approved Spent Fuel Storage Casks: VSC-24 Revision (RIN: 3150-AH05) received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

10186. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Navy's Proposed Letter(s) of Offer and Acceptance (LOA) to the Taipei Economic and Cultural Representative Office in the United States (Transmittal No. 03-03), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

10187. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting certification of a proposed license for the export of defense articles or defense services sold commercially under a contract to Indonesia, Canada and France [Transmittal No. DTC 177-02], pursuant to 22 U.S.C. 2776(c); to the Committee on International Relations.

10188. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the Department's final rule — Amendment to the International Traffic in Arms Regulations United States Munitions List — received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on International Relations.

10189. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a report regarding efforts to promote Israel's diplomatic relations with other countries; to the Committee on International Relations.

10190. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting the first annual report on the Benjamin A. Gilman International Scholarship Program; to the Committee on International Relations.

10191. A letter from the Chairman, United States Advisory Commission on Public Diplomacy, transmitting the Commission's report entitled, "Building America's Public Diplomacy through a Reformed Structure and Additional Resources"; to the Committee on International Relations.

10192. A letter from the Chairman, Board of Governors of the Federal Reserve System, transmitting the semiannual report on the activities of the Office of Inspector General, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

10193. A letter from the Director of Congressional Affairs, Central Intelligence Agency, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

10194. A letter from the Secretary, Department of the Treasury, transmitting the Department's Performance and Accountability Report for FY 2002; to the Committee on Government Reform.

10195. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Statement of Procedural Rules [REG-251003-96] (RIN: 1545-AR99) received November 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

10196. A letter from the Senior Deputy Chairman, National Endowment for the Arts, transmitting 2002 FAIR Act Inventory of Activities; to the Committee on Government Reform.

10197. A letter from the Senior Deputy Chairman, National Endowment for the Arts, transmitting the semiannual report of the Inspector General for the period April 1 through September 30, 2002 and the semiannual report on Final Action for the National Endowment for the Arts, pursuant to 5 U.S.C. app. (Insp. Gen. Act) section 5(b); to the Committee on Government Reform.

10198. A letter from the Acting Special Counsel, Office of Special Counsel, transmitting the FY 2002 Annual Report on the Agency Management of Commercial Activities; to the Committee on Government Reform.

10199. A letter from the Director, Fish and Wildlife Service, Department of the Interior, transmitting the Department's final rule — Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Lomatium cookii (Cook's Lomatium) and Limnanthes floccosa ssp. grandiflora (Large-flowered Woolly Meadowfoam) from Southern Oregon (RIN: 1018-AF84) received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10200. A letter from the Director, Office of Surface Mining, Department of the Interior, transmitting the Department's final rule — Louisiana Regulatory Program [LA-022-FOR] received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10201. A letter from the Deputy Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior, transmitting the Department's final rule — Special Regulations; Areas of the National Park System (RIN: 1024-AD06) received November 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10202. A letter from the Deputy Assistant Administrator for Regulatory Programs, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Northeastern United States; Magnuson-Stevens Fishery Conservation and Management Act Provisions; Monkfish Fishery [Docket No. 020329075-2124-03; I.D. 031902E] (RIN: 0648-AP11) received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

10203. A letter from the Chairman and CEO, Farm Credit Administration, transmitting the Administration's final rule — Rules of Practice and Procedure; Adjusting Civil Money Penalties for Inflation (RIN: 3052-AC12) received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

10204. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulation; Portage Bayou, Pass Christian, MS [CGD08-02-030] (RIN: 2115-AE47) received November 14, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10205. A letter from the Acting Under Secretary of Transportation for Security, Department of Transportation, transmitting a letter pursuant to Section 110(c)(2) of the Aviation and Transportation Security Act; to the Committee on Transportation and Infrastructure.

10206. A letter from the Attorney/Advisor, Bureau of Transportation Statistics, Department of Transportation, transmitting the Department's final rule — Reporting the Causes of Airline Delays and Cancellations under 14 CFR Part 234 [Docket No. OST 2000-8164] (RIN: 2139-AA09) received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10207. A letter from the Regulations Officer, FHWA, Department of Transportation, transmitting the Department's final rule — Traffic Control Devices on Federal-Aid and Other Streets and Highways; Color Specifications for Retroreflective Sign and Pavement Marking Materials [FHWA Docket No. FHWA-99-6190] (RIN: 2125-AE67) received November 22, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

10208. A letter from the Secretary, Department of Commerce, transmitting the 2002 summary report on federal laboratory technology transfer; to the Committee on Science.

10209. A letter from the Acting Deputy General Counsel, Small Business Administration, transmitting the Administration's final rule — Small Business Size Standards; Adoption of Size Standards by 2002 North American Industry Classification System for Size Standards (RIN: 3245-AF00) received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Small Business.

10210. A letter from the Assistant Secretary for Employment and Training, Department of Labor, transmitting the Department's final rule — Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002 — received November 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10211. A letter from the United States Trade Representative, Executive Office of the President, transmitting notification that the President intends to initiate negotiations for a free trade agreement with Australia; to the Committee on Ways and Means.

10212. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property (Rev. Rul. 2002-81) received November 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10213. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Treatment of Loans with Below-Market Interest Rates (Rev. Rul. 2002-78) received November 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10214. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Imposition of Tax (Rev. Rul. 2002-76) received November 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

10215. A letter from the Chief, Regulations Unit, Internal Revenue Service, transmitting the Service's final rule — Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed $2,800,000. (Rev. Rul. 2002-79) received November 21, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. BURTON: Committee on Government Reform. H.R. 4187. A bill to amend chapter 22 of title 44, United States Code, popularly known as the Presidential Records Act, to establish procedures for the consideration of claims of constitutionally based privilege against disclosure of Presidential records; with an amendment (Rept. 107–790). Referred to the Committee on the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. THOMAS:

H.R. 5763. A bill to amend the Internal Revenue Code of 1986 to provide fairness in tax collection procedures and improved administrative efficiency and confidentiality and to reform its penalty and interest provisions; to the Committee on Ways and Means.

By Mr. ETHERIDGE:

H.R. 5764. A bill to provide for the resolution of certain labor issues relating to the merger of the Metro-North Railroad and the Long Island Rail Road; to the Committee on Transportation and Infrastructure.

By Mr. ISRAEL:

H.R. 5765. A bill to promote global efforts to protect biological diversity by protecting the Tongass Rain Forest in the Tongass National Forest, to designate the Duke Island Trumpeter Swan Wilderness Area, and for other purposes; to the Committee on Resources.

By Ms. KILPATRICK:

H.R. 5766. A bill to create Federal advertising procurement opportunities for minority business concerns, and for other purposes; to the Committee on Government Reform, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. MILLENDER-McDONALD:

H.R. 5767. A bill to accelerate the effective date for the expansion of the adoption tax credit and the adoption assistance programs by 1 year; to the Committee on Ways and Means.

By Mr. ISRAEL:

H. Con. Res. 521. Concurrent resolution urging the Government of Egypt and other Arab governments not to allow their government-controlled television stations to broadcast any program that lends legitimacy to the Protocols of the Elders of Zion, and for other purposes; to the Committee on International Relations.

MEMORIALS

Under clause 3 of rule XII,

452. The SPEAKER presented a memorial of the Senate of the State of New Jersey, relative to Senate Resolution No. 77 memorializing the Congress of the United States to support construction of memorial at Gateway National Recreation Area; to the Committee on Resources.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to the public bills and resolutions as follows:

H.R. 122: Mr. JEFF MILLER of Florida.

H.R. 1319: Mr. PRICE of North Carolina.

H.R. 1602: Mr. WILSON of South Carolina.

H.R. 1613: Ms. NORTON and Mr. GORDON.

H.R. 1774: Mr. HEFLEY.

H.R. 2380: Mr. BAIRD and Mr. BLUEMNAUER.

H.R. 3132: Mr. MENENDEZ and Mr. BOEHLERT.

H.R. 3414: Ms. LOFGREN.

H.R. 4646: Ms. ESHOO.

H.R. 4763: Ms. ESHOO and Mr. QUINN.

H.R. 5257: Mr. HEFLEY.

H.R. 5411: Mr. STRICKLAND.

H.R. 5421: Mr. BOOZMAN, Mr. STUPAK, Mrs. JO ANN DAVIS of Virginia, Mr. PICKERING, Mr. STRICKLAND, Mr. McINTYRE, Mr. RAMSTAD, Mr. ANDREWS, Mr. GRAHAM, Mr. MOORE, and Mr. GREEN of Wisconsin.

H.R. 5433. Mr. ROSS.

H.R. 5502: Mr. MORAN of Virginia and Mr. SMITH of Washington.

H.R. 5544: Ms. RIVERS and Mr. KENNEDY of Rhode Island.

H.R. 5600: Mr. PALLONE.

H.R. 5644: Ms. WATSON.

H.R. 5649: Mr. PITTS.

H.R. 5742: Mr. PASCRELL and Mr. SMITH of New Jersey.

H. Con. Res. 164: Mr. MEEHAN.

H. Con. Res. 507: Mr. DREIER, Mr. HERGER, and Mr. KIRK.

PETITIONS, ETC.

Under clause 3 of rule XII, petitions and papers were laid on the clerk's desk and referred as follows:

94. The SPEAKER presented a petition of the Board of Supervisors of Essex County, New York, relative to Resolution No. 229 petitioning the United States Congress to support an increase in the Federal Medical Assistance Percentage to provide New York counties with medicaid relief; to the Committee on Energy and Commerce.

95. Also, a petition of Charles O. Porter, Attorney at Law, a Citizen of Oregon, relative to a Resolution petitioning the Congress of the United States to support a bill entitled "The National Reconciliation Act"; to the Committeeon the Judiciary.

96. Also, a petition of Larry Robinson, a Citizen of Texas, relative to a Resolution petitioning the United States Congress regarding Case No. 97–51099, USDC A–97–CA–453 Larry D. Robinson v. State of Texas; to the Committee on the Judiciary.

97. Also, a petition of the City Council of Galena City, Illinois, relative to Resolution No. 02–28 petitioning the United States Congress to support the construction of a 4-lane highway between Galena and Freeport; to the Committee on Transportation and Infrastructure.

EXTENSIONS OF REMARKS

IN HONOR OF REVEREND TYRONE CHESS

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Reverend Tyrone Chess for his exceptional service as pastor and founder of Holy Ghost Tabernacle Ministries in Jersey City, New Jersey. Rev. Chess was honored on November 3, 2002, at Holy Ghost Tabernacle's Ninth Annual Anniversary Banquet held at the Marriott International in Newark, New Jersey.

A native of Jersey City, born there in 1956, Rev. Chess has devoted his life to the improvement of his community. Having been a pastor for nine years, Rev. Chess now serves as the social and political chairperson of the Interdenominational Ministerial Alliance, and in the past served as its second vice president. His passion for the well being of humankind led him to participate as a member and chairperson of the Human Rights Commission. Presently, he is a member of the Jersey City Board of Adjustments, and founder and CEO of the Lincoln Center Community Development, Inc.

Reverend Chess began his religious education at Essex County College, and continued his studies at the American Fellowship Seminary. He recently earned a Bachelor of Arts degree in Theology from the Adonai Temple Christian Center Bible Institute.

Rev. Chess is married to Martha Chess and they are the proud parents of five children: Daarina, Thaddeus, Tyrone, Jr., Safiyah, and Zaynah.

Today, I ask my colleagues to join me in honoring Reverend Tyrone Chess for his many years of dedicated service as a pastor and mentor to the Jersey City community. The Reverend's selfless contributions to the community have not gone unnoticed; without a doubt, he is one of New Jersey's most outstanding religious leaders.

HONORING MORGAN WOOTTEN

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. HOYER. Mr. Speaker, Morgan Wootten has been changing the lives of young men in the Washington area for the last half century. Last month, Mr. Wootten, the head basketball coach at DeMatha High School in Hyattsville, MD, since 1956, announced his retirement.

Coach Wootten finished his career with 1,274 wins, 44 consecutive seasons with 20 or more wins, 33 Catholic league championships, 16 city titles, and five national championships. Under Coach Wootten, DeMatha finished the season ranked No. 1 in the area, a record 22 times. More than a dozen of his players have gone on to play in the NBA, 150 have received college basketball scholarships, and more than 20 are currently coaching basketball at some level. And two years ago, the all-time winningest high school basketball coach in America was inducted into the basketball Hall of Fame.

But numbers do not tell the story of Morgan Wootten, nor the impact he has had on the lives of those young men he has coached at DeMatha. He is most remembered by his players, and the students in his history classes, for the lessons he taught them about life. Coach Wootten preached to his players the importance of God, family, school and basketball, in that order. His true value is measured in the professional and personal success of those he has taught and coached, and by the number of former players and students who have remained close to him over the years.

Mr. Speaker, President Theodore Roosevelt said that "To educate a man in mind and not in morals is to educate a menace to society." Morgan Wootten has educated several generations of young men in both mind and morals, and I offer him my warmest congratulations on is well-deserved retirement.

HONORING THE OUTSTANDING CITIZENSHIP AND WORK OF MR. BILL COLE

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. TOM DAVIS of Virginia. Mr. Speaker, I would like to take this opportunity to honor Mr. Bill Cole, an outstanding citizen of Northern Virginia.

Mr. Cole has completed an exceptional career that has positively impacted our community. As a retired Army Officer with 28 years of service, Mr. Cole's last assignment was with the Department of Defense in helicopter research and development. While holding a master's degree in public administration, Mr. Cole currently works for William W. Cole & Associates, a business consulting firm he formed in 1992. Mr. Cole has also served as General Manager of Capital Lighting & Supply, Inc, an electrical distributor, for 18 years. Concurrently, he was co-owner and Vice President of Shannon Builders, a residential construction company, from 1978–1982.

Perhaps one of Mr. Cole's most important contributions to the community was his service as President of the Occoquan Watershed Coalition, an all-volunteer organization that is committed to the protection of "The Downzoned Occoquan Watershed" and the drinking water that it provides. Mr. Cole formed the Qccoquan Watershed Coalition in the fall of 1994 and on December 7, 1994, the coalition was recognized as an official organization.

Bill Cole's efforts have motivated others to dedicate their time and energy to improving quality of life for others. He is that rare individual who cares more about doing good than getting credit.

Mr. Speaker, in closing, it is with great pleasure that I extend this recognition to Mr. Bill Cole. His contributions to Virginia and his community have been great. Virginia is proud to have such a distinguished citizen in its professional and social community. I call upon my colleagues to join me in applauding him for all that he has done.

PAYING TRIBUTE TO THE BLOOD OF THE MARTYRS—MARTIN LUTHER KING, JR. BLOOD DRIVE

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to pay tribute to the Blood of the Martyrs—Martin Luther King, Jr. Blood Drive and its sponsors, the Roman Catholic Diocese of Lansing, the American National Red Cross, and the National Black Catholic Congress. This very important blood drive will take place from January 15–22, 2003 as part of National Blood Donor Month.

The Second Annual Blood of the Martyrs—Martin Luther King, Jr. blood drive in 2002 was met with a response of nearly 650 donors, who donated a total of 520 pints. These pints provided a supply of 2,080 blood units to be used for patients needs. I offer heartfelt thanks to all those who gave last year and contributed to this wonderful turnout.

The goal for this year's drive is 1205 productive units of blood which will result in blood supplies for nearly 5000 people. I encourage everyone who is able to donate blood, to do so for this worthy cause—it may be you who saves a life!

Mr. Speaker, at this time in our Nation's history, when our President is encouraging all Americans to serve a purpose greater than themselves, when we must rely on our neighbors, I can think of few ways to better serve our fellow Americans than by giving the gift of life, by donating blood.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

IN HONOR OF THE URBAN LEAGUE OF HUDSON COUNTY

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MENENDEZ. Mr. Speaker, I rise today to honor the Urban League of Hudson County for its efforts to revive communities throughout Hudson County, and to congratulate it upon the completion of its new headquarters on Martin Luther King Drive in Jersey City, NJ. To commemorate this event, a ribbon cutting ceremony was held on October 18, 2002, at the site of the new headquarters.

The Urban League of Hudson County is an organization that has stood for human advancement and achievement, and has worked tirelessly to develop and revitalize our urban areas. Its work has given hope and fortune to so many who call the inner city their home.

Project Reclaim is an Urban League initiative created for the redevelopment of the twenty-six block radius of Martin Luther King Drive in the Ward F community of Jersey City. The new headquarters building is a cornerstone of the Urban League's plan to initiate an economic and social renaissance in this community. And with the community's participation, this renaissance will be a lasting and inspiring model for the country.

Today, I ask my colleagues to join me in honoring the Urban League of Hudson County for providing hope to countless families, and for believing in America by investing and revitalizing our urban areas, when others turned their backs on our cities. The Urban League's accomplishments have paved the way for prosperous and healthy communities throughout New Jersey.

CONGRATULATING THE WESTLANDS WATER DISTRICT

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate the Westlands Water District of Huron, CA, on the occasion of celebrating 50 years of dedication and service to the communities of the San Joaquin Valley of California on Sunday, November 17, 2002. The 50th anniversary celebration will take place at Harris Ranch in Coalinga, CA.

Farming in the Westlands Water District began during California's Gold Rush era. The first significant irrigation in the Westlands area began about 1915 with the drilling of deep wells by individual operators on large acreages. In 1942, the Westside Landowners Association was established to urge and help finance studies on the feasibility of developing and constructing water supply systems to serve the west side. In 1952, the owners of 400,000 acres of westside land petitioned the Fresno County Board of Supervisors for the formation of the water district. On September 8, 1952, the Westlands Water District was formed.

Westlands is one of the largest agricultural water districts in the United States, with more than 570,000 irrigated acres of diversified crops on some of the most productive soil in the world. Westlands provides water to nearly 600 family-owned farms that average 850 acres in size. Farms within Westlands produce approximately $1 billion worth of food and fiber per year. This translates into $3.5 billion in farm related economic activity, nearly one-third of the $12.5 billion generated by the agriculture-based economy of Fresno County. In addition to food and fiber, Westlands farmers produce jobs, taxes, and strong economic core for the regional economy.

Mr. Speaker, it is my pleasure to congratulate the Westlands Water District of Central California on the occasion of their 50th year anniversary. I urge my colleagues to join me in wishing the Westlands Water District many years of continued success.

HONORING DR. MARTIN EICHELBERGER

HON. STENY H. HOYER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. HOYER. Mr. Speaker, Dr. Martin Eichelberger is a Professor of Surgery and of Pediatrics at George Washington University and Director of Emergency Trauma and Burn Service at the Children's National Medical Center, in Washington, DC. He is also president and cofounder of the National SAFE KIDS Campaign, and a nationally recognized pediatric trauma surgeon.

The reason Dr. Eichelberger is so highly regarded became evident on Monday, October 7, when he was called out of a skin graft surgery to begin preparing for a 13-year-old shooting victim who was on his way to Children's Hospital from the Bowie Health Center. The boy had been shot by the Washington-area snipers in front of Benjamin Tasker Middle School, and the dozens of fragments from the sniper's bullet had done extensive and life-threatening damage to a number of the boy's vital organs.

Dr. Eichelberger and his team immediately began to make critical decisions about which organs could be saved, and which ones were beyond repair and needed to be removed. The right decisions were made, and the two and a half hour operation saved the boy's life. Although this brave young man faces a long and challenging road to recovery, I am pleased to report that he has been released from the hospital, and I am hopeful that he will in fact make a full recovery from his injuries.

Mr. Speaker, this 13-year-old young man is one of the countless youngsters who have been touched by the gifts of Mr. Eichelberger and whose lives have been saved or made better by his compassionate dedication to public service. The 1989 United Nations Convention on the Rights of the Child states that "Mankind owes to the child the best it has to give." I am proud to say that in Dr. Eichelberger, we have given Washington area youngsters the best we have.

HONORING THE RETIREMENT OF DUNCAN A. HOLADAY

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. TOM DAVIS of Virginia. Mr. Speaker, I rise today to recognize and honor Mr. Duncan Holaday upon his retirement after 35 years of devoted service in support of our great Nation. His last position was with the Department of the Navy, where he served as the Deputy Assistant Secretary of the Navy for Installations and Facilities.

Mr. Holaday was born on February 15, 1943 in Berkeley, CA. He graduated from Beloit College in 1965 with a bachelor of arts degree in philosophy. In 1976, he received a master of business administration degree from Syracuse University.

Mr. Holaday began his Government service with the U.S. Army in 1967 as a management intern. Following completion of his training, he spent the next 15 years as an operations research analyst with the Army, serving both in the Pentagon and in Europe as well as with the Office of the Assistant Secretary of Defense for Program Analysis and Evaluation. While in this position at OSD, Mr. Holaday was responsible for analyzing Army and Marine Corps force structure, force basing, military construction, and manpower requirements.

From 1982 to 1987, Mr. Holaday served as a director in the office of the Deputy Assistant Secretary of Defense for Installations. It was there that he implemented the Model Installation Program, which was a highly successful test of the proposition that base commanders could do a better job of running their bases when freed of restraints imposed by headquarters. While at OSD, he also developed and implemented DOD-wide real property and base utilization policies.

He later served as the Director of the Defense Acquisition Regulatory System under the Under Secretary of Defense for Acquisition between 1987 and 1990. From 1990 to early 1993, he was the Executive Director of the Defense Ethics Council.

After leaving the Office of the Secretary of Defense in April 1993 and before joining the Department of the Navy in 1994, Mr. Holaday worked with then Vice President Al Gore on the National Performance Review, NPR. There, he was responsible for improving real property acquisition and management within the Federal Government and oversaw government-wide implementation of NPR recommendations for downsizing and streamlining the Federal workforce.

In October, 1994, he was appointed Deputy Assistant Secretary of the Navy, Installations and Facilities. As the Deputy Assistant Secretary, he was responsible for establishing policy and improving oversight on the Department of the Navy's acquisition, construction, use, management, operation, and disposal of real estate, facilities, and housing at Navy and Marine Corps bases worldwide.

During the transition in administrations, between January and August, 2001, he served as the Senior Civilian Official in the Office of the Assistant Secretary of the Navy for Installations and Environment. As Senior Civilian Official, he was directly responsible to the Secretary of the Navy for the formulation of Department-wide policies and procedures, and for overseeing all Department of the Navy functions and programs relating to environmental protection; Navy and Marine Corps facilities and installations; housing; long-range basing and infrastructure requirements; and safety and occupational health for military and civilian personnel. In this role, he provided stability and continuity during the absence of three presidentially-appointed political appointees.

His accomplishments throughout his career, and especially while serving in the Department of the Navy, are extraordinary. He has worked tirelessly to promote investment in the facilities where sailors and marines live, work, and train. He was at the forefront of the Department's efforts to improve military family housing through the innovative use of privatization authorities allowing partnership with the private sector. During his stewardship, the Department of the Navy was able to realize over $600 million in investment in Navy and Marine Corps family housing, using only slightly over $100 million of its own resources.

To every problem and challenge he has faced, he has brought keen insight and attention to detail that has enabled thoughtful solutions. He demonstrated extraordinary environmental stewardship in successfully shepherding the transfer of land on the western end of Vieques within the timeframes specified by law. He has successfully engaged in the extremely complicated task of negotiations and agreements, allowing the Department to convey base closure property for redevelopment by local communities.

Mr. Holaday has left a remarkable legacy. The hallmark of his service, throughout his career, has been improved living and working conditions for the soldiers, sailors, airmen, and marines who serve our country so bravely, day after day. He has been steadfast in his service to this great nation and his devotion to those with whom he has served. His superb performance has won him countless awards, including the Distinguished Civilian Service Award in 2001. His leadership will be sorely missed. I for one am extremely grateful that he chose to enter public service.

I wish to recognize and thank him for his honorable service and would like to join with his many friends and colleagues, both within the executive branch and here in Congress, in wishing him fair winds and following seas as he and his wife, Mary Margaret, and son, Duncan, continue forward in what most assuredly will remain a life of service to this great Nation.

IN MEMORY OF ELIZABETH HIRD

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. DELAURO. Mr. Speaker, it is with a heavy heart that I rise today to pay tribute to one of the most generous and giving community members I have had the pleasure of knowing. In life, Elizabeth Hird was beloved by all of those whose lives she touched—a true community treasure.

An artist, community leader and active conservationist, Elizabeth was a pioneer in the local efforts for environmental preservation and education—dedicating her time and energies to ensure that our natural resources would be protected for future generations to enjoy. A founding member, and later, director and president of the Killingworth Land Conservation Trust, Elizabeth worked hard to make the public aware of all nature could teach them. She was instrumental in the creation of the Platt Nature Center for environmental education which offers programs throughout the summer to young children. Through these programs, children are able to participate in a variety of activities where they learn to identify the wild flowers and wild life of the area. At part of the last days activities, children were invited to Outer Island, one of the Thimble Islands off the Connecticut coastline, where Elizabeth and her late husband, Basil Rauch, owned a home. Elizabeth hosted the event and children were encouraged to explore the island and the many creatures which call the island home. A unique experience for so many, children of all ages looked forward to this special opportunity.

In 1995, in honor of her husband, Elizabeth donated Outer Island to the United States Fish and Wildlife Service to become an environmental research and education center and part of the Stewart B. McKinney National Wildlife Refuge. Today, students of all ages, from elementary to graduate school, have access to the island and the endless lessons it provides. It was just over one year ago that I joined Elizabeth to announce the establishment of the Outer Island Endowment Fund—a renewed commitment to the preservation of Outer Island, its diverse wildlife, and educational opportunities for our community's young people. In speaking to Elizabeth that day, I knew that her dream for Outer Island had been realized and I was proud to join in the celebration of her vision.

I am honored to stand today in memory of Elizabeth Hird and express my deepest thanks and appreciation for all that she has given to our community. Elizabeth was truly a unique individual who has left an indelible mark on our community. Hers is a legacy which will continue to inspire many for generations to come.

IN HONOR OF THE SOCIETY OF HISPANIC PROFESSIONAL ENGINEERS

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MENENDEZ. Mr. Speaker, I rise today to honor the Society of Hispanic Professional Engineers as it hosted the 15th Annual Eastern Technical and Career Conference (ETCC), which was held November 1–3, 2002, at the Sheraton Meadowlands Hotel in East Rutherford, New Jersey.

Despite the many advancements made by Hispanics in the fields of engineering and science, we must continue to ensure equality in the work force for all Americans. The ETCC has made this its focus and, since 1987, has been promoting academic excellence, professional growth, technical opportunities, and the development of ties and connections among Hispanic professionals. These valuable networking opportunities for students and professionals are necessary to promote and provide for a more just work environment.

The second largest Hispanic student engineering conference in the nation, the ETCC attracts over 50 universities along the East Coast. This year, the ETCC is expecting 1,200 Latino college students majoring in math, science, and engineering, and 300 professionals and corporate representatives from Fortune 500 companies to attend.

Today, I ask my colleagues to join me in honoring the 15th Annual Eastern Technical and Career Conference hosted by the Society of Hispanic Professional Engineers. New Jersey is fortunate to have organizations that provide opportunities for students and professionals to explore what being Hispanic and being a professional can mean. My best wishes for a successful conference.

HONORING SPECIAL AGENT LOUIS PAUL RUSSO

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to honor a distinguished FBI agent from the Bureau's Detroit Division on the occasion of his retirement. On June 28, 1971 Louis Paul Russo entered on duty as a Special Agent of the Federal Bureau of Investigation. On October 1, 1971 SA Russo reported to the Detroit Division. Director J. Edgar Hoover transferred SA Russo from Detroit, to the Lansing Resident Agency beginning January 11, 1972. On December 21, 1972 SA Russo was transferred to the Cincinnati Division. SA Russo served in Cincinnati for over 16 years before he was reassigned to Detroit arriving on October 2, 1989.

SA Russo successfully worked a broad spectrum of cases including, Bank Robberies, Civil Rights, Auto Theft, Labor Violations, Fugitives, Counter Intelligence, and Organized Crime. Agent Russo spent his entire career as what is commonly called a "street agent." Street agents are the agents that solve the cases, make our neighborhoods safe, and protect these United States from our enemies; foreign and domestic, all at a great personal sacrifice to themselves and their families.

I am aware from Agent Russo's co-workers that right up to his last days "on the rolls", Special Agent Russo came to work early, poured over his files, "hit the streets" and got the job done. After September 11, 2001 SA Russo, while attending to his other cases, enthusiastically reengineered himself to transition with the Bureau in their new focus on the investigation of Terrorism, all with more energy and sense of purpose than most agents 30 years younger than he.

I have heard him affectionately referred to as a "one man squad". Agent Russo was always going above and beyond. I am aware of an instance where Agents on the organized crime squad in Detroit where assigned to fan out across the Motor City looking for evidence of construction equipment thefts that had allegedly occurred many years earlier; all to verify the credibility of a witness. They were only looking for evidence that such thefts had been reported; so many years had gone by, any leads were certain to be cold. The agents one by one returned at the end of the day with the various proofs that these pieces of equipment had in fact been reported stolen. Agent Russo also came back to the office with police reports to verify the long ago reported thefts and with a backhoe and other heavy equipment in tow, he had not only verified the thefts, he had recovered the stolen property. SA Russo has received letters of commendation from every Director that the Federal Bureau of Investigation has ever had. SA Russo consistently received top job performance reviews and he has garnered many letters of appreciation from Assistant United States Attorneys. Most importantly, SA Russo has earned and kept the respect of every agent he has ever served with. He has diligently protected the citizens of the great State of Michigan and the citizens of this great nation with enthusiasm, dedication and pride. Special Agent Russo exemplifies the finest traditions of the FBI and of the Bureau's motto of "Fidelity, Bravery, and Integrity". His efforts and his example have made the FBI the enduring and honorable institution that it is. He will be missed when he retires December 31, 2002, having served for over 31 years as a Special Agent. From this former Special Agent, on behalf of the State of Michigan and this Nation; thank you, Louis Paul Russo.

HONORING DR. ALICIA JUARRERO: OUTSTANDING COMMUNITY COLLEGE PROFESSOR OF THE YEAR

HON. ALBERT RUSSELL WYNN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. WYNN. Mr. Speaker, I rise today to honor Dr. Alicia Juarrero, a professor of philosophy at Prince George's Community College, who is being honored by the Carnegie Foundation for Advancement of Teaching and The Council for Advancement and Support of Education as the Outstanding Community College Professor of the Year.

Dr. Juarrero teaches at Prince George's Community College, located in my congressional district in Largo, Maryland. She has been nationally recognized among her community college colleagues as the best of the best. Dr. Juarrero's accomplishments speak to the caliber of professors at the community college level. Often times the invaluable work of our community college professors goes unrecognized, so it is especially rewarding for a local professor from my district to receive such an honorable award.

Dr. Juarrero earned her undergraduate degree, master's and Ph.D from the University of Miami. She has been a professor at Prince George's Community College since 1975. Dr. Juarrero starts each semester with great zeal, beginning with a quote from Plato: "Thinking is the talking of the soul with itself." She has been called a "teacher's teacher," often serving as a great resource for her follow colleagues.

It is truly an honor to have Dr. Juarrero as a professor at Prince George's Community College. She is a great reflection of a tremendous institution. I urge my colleagues to join me in honoring a gifted and highly respected teacher.

TRIBUTE TO BROOKINGS FELLOW ROBERT M. HARTT

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to pay tribute and gratitude to Mr. Robert M. Hartt. Recently, Mr. Hartt has ended a six-month fellowship with the Brookings Institution and will be returning to his position at the Committee for Purchase From People Who Are Blind or Severely Disabled.

While working in my office, Mr. Hartt brought an aspect to disabilities issues that shed a new light to legislation and office policies. Mr. Hartt passionately used his personal experiences as a man with a vision impairment to ensure improvements be set forth in computer software, educational textbooks and healthcare for all individuals with disabilities. His advocacy and strength instilled a renewed hope that one day our nation will have equality for all people.

Again, Mr. Speaker, I would like to thank Mr. Hartt for his exceptional hard work for the residents of Illinois 7th Congressional District and America's disability community.

IN REMEMBRANCE OF CATHERINE E. TODD

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MENENDEZ. Mr. Speaker, I rise today to remember Catherine E. Todd, who passed away on June 26, 2002. On Wednesday, November 6, 2002, the Jersey City Housing Authority held a dedication ceremony in her memory at the Montgomery Gardens Community Center in Jersey City, New Jersey.

Born on October 10, 1938, Catherine led a life of selfless dedication to those in need. She devoted 48 years of her life to the residents of Montgomery Gardens Housing Complex, contributing both time and energy in assisting residents in every possible way. Her tireless efforts on behalf of the residents of the Jersey City Housing Authority facilitated a sense of community and fostered a sense of home for all.

In 1954, Catherine began her battle on behalf of the residents of Montgomery Gardens. During the 1960s, she rose to positions such as building captain, community organizer, Montgomery Garden's site improvement committee member, and Montgomery Garden's liaison committee member. In 1978, Catherine became the Chairperson of the Montgomery Gardens tenant management corporation board, and regularly met with residents to ensure that their needs were being fulfilled and that they were aware of all programs available to them. In 1996, she was also elected to the office of chairperson of the Jersey City tenant affairs board.

Catherine is survived by her two children, Henry and Jo Ann, and three grandchildren, Hanifah, Sharifah, and Hasan.

Today, I ask my colleagues to join me in remembering Catherine E. Todd for her great concern for the residents of the Jersey City Housing Authority. She extended her heart and her hand to help improve the quality of life for each person she encountered and she will be missed not only by her Jersey City Housing Authority family, but by the entire Jersey City community.

PAYING TRIBUTE TO JIM AND SUE WHEELER, ANGELS IN ADOPTION HONOREES

HON. MIKE ROGERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ROGERS of Michigan. Mr. Speaker, I rise to honor the accomplishments of Jim and Sue Wheeler of East Lansing, Michigan, who were chosen as the 2002 8th Congressional Angels in Adoption honorees.

Jim and Sue Wheeler's personal dedication to raising 10 children, several of them adopted, makes them deserving of our respect and admiration.

Each year, the Congressional Coalition on Adoption Institute honors families or organizations who have shown a real commitment to improving the lives of children through adoption. Jim and Sue Wheeler are the role model for families who care about children. Their long-range impact on this nation will be felt for decades and generations to come and I was honored to sponsor them for recognition as Angels in Adoption.

The Wheelers are among 140 honorees from the 50 states who were recognized at special ceremonies in Washington, D.C. earlier this year.

Jim and Sue Wheeler married in 1984. She was a professor at Michigan State University.

"We had an 'ours-mine-yours' relationship," Jim told us. He had two children from a previous marriage and Sue had a daughter from a first marriage. Then they had a child together in 1986 and thought they were through.

But the Wheelers decided they would like to have a larger family and thought maybe there were children out there who needed a home. Since then Jim and Sue have had six more children by adoption through Catholic Social Service of Lansing/St. Vincent Home. Their diverse family of 10 children now represents three races!

Mr. Speaker, I ask my colleagues to join me in honoring this very special couple and their family. They are truly deserving of our respect and admiration.

TRIBUTE TO CHIEF CHARLES A. MOOSE

HON. ALBERT RUSSELL WYNN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. WYNN. Mr. Speaker, I proudly rise today to honor Montgomery County Police Chief Charles A. Moose for his exemplary work on the investigation of the sniper shootings that recently plagued the Washington Metro Region. I would like to commend Chief Moose for exhibiting great patience and humility amidst the frenzied media coverage, which was marked by excesses and speculation.

Chief Moose exhibited tremendous leadership and excellent teamwork by coordinating with other jurisdictions and law enforcement agencies. Chief Moose directed a multi-agency task force, whose work led to the eventual capture of the sniper suspects. Chief Moose became the public face of the investigation, holding daily press briefings, and consoling the public when a child became a victim of the sniper attacks.

Throughout the sniper shootings, many in the community looked to law enforcement to reassure their ever-present fears. Chief Moose served as a calming and informative spokesman, providing the public with needed information and a community oriented perspective.

Although Chief Moose has just recently come to national attention, he has always been active in the local community and has received numerous awards for his law enforcement and community activity. Along with his role as Chief of Police, Moose teaches criminology at the local community college, and serves as a Major in the District of Columbia National Air Guard. Chief Moose is clearly a tremendous leader, and an invaluable member of the Montgomery County Police force who has a bright and promising future ahead of him. It is truly an honor to have him serve in our community.

Mr. Speaker, I want to again thank Chief Charles A. Moose for his work in helping to apprehend the sniper suspects, and returning our community to normal. I urge my colleagues to join me in recognizing an honorable and professional member of the law enforcement community.

CONDEMNING ANTI-SEMITIC SENTIMENT

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. PALLONE. Mr. Speaker, I rise today to draw attention to the disturbing rise in and acceptance of Anti-Semitism in the Arab world.

An Egyptian satellite television station recently produced and is currently airing a new series that its producers openly acknowledge is partially based on a century old anti-Semitic tract entitled "The Protocols of the Elders of Zion."

"The Protocols," which have long been dismissed by historians as false, are a work of fiction fabricated in czarist Russia to perpetuate and justify anti-Semitic violence and persecution. "The Protocols" were a series of 24 documents reportedly written by Jewish leaders that outline a plan for global domination by the Jewish people. They were later used again as anti-Jewish propaganda in Nazi Germany and are still used to this day by neo-Nazis and white-supremacist groups.

The New Egyptian series, entitled "Horse Without a Horseman," is looking to breathe new life back into this cornerstone of anti-Semitic hatred. The 41-episode television series, created specifically to air during the Islamic holy month of Ramadan, traces the history of the Middle East from 1855–1917. With a prime evening timeslot, the series is expected to have excellent viewership, as families gather at home to break the daily fast. This puts the series in the unique position to bring anti-Jewish sentiment into millions of homes throughout the Middle East. Israeli and American Embassy officials have raised concerns over the use of the fictional and inflammatory "Protocols" with the Egyptian government, but to no avail.

With the increase in attention given to "The Protocols" in the Arab media, many believe that the imagery present in "Horse without a Horseman" is indicative of the rise in anti-Semitism in the Arab world since the September 11 terrorist attacks.

Even here at home, The Arab Voice, a local Arab newspaper in New Jersey, recently printed excerpts from "The Protocols." Despite knowledge that "The Protocols" are forgeries and have been used to incite anti-Jewish hatred and violence, the editors of The Arab Voice called "The Protocols" an "educational tool" for their readers.

The irresponsible decision by The Arab Voice to give credence to "The Protocols" by reprinting the falsehoods in their paper only fuels and further perpetuates the tension between the Arab and Jewish communities. At a time when the American-Arab and Jewish communities could be making an effort to improve communication and cooperation, The Arab Voice's printing of "The Protocols" is both irresponsible and inflammatory.

I ask my colleagues to join with me in condemning "Horse without a Horseman," The Arab Voice and any perpetuation of anti-Semitism either abroad or at home. It is critical that we remain vigilant and not allow attempts to spread hatred to be ignored or continued.

HONORING THERESA SIRICO FOR HER OUTSTANDING CONTRIBUTIONS TO THE COMMUNITY

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. DELAURO. Mr. Speaker, it is with great pleasure that I rise today to pay tribute to an outstanding member of the New Haven community—Theresa Sirico. The founder of the Louis and Joan Sirico Center for Elders and Families at Southern Connecticut State University, Theresa's generosity and compassion will touch the lives of thousands throughout Greater New Haven and millions across the country.

As a child, I knew Louis and Joan Sirico as neighbors and friends, working with my parents to enrich our neighborhood. The Siricos were both active advocates for our families and our community. Much as my own parents, they passed these values to their seven children. Both Louis and Joan suffered strokes, left without the abilities to care for themselves. In both instances, their family members came together to provide them the care they needed through their last days. However, not all are fortunate enough to have families who are willing or able to take on these challenges.

With the "baby boomer" generation approaching retirement age, more and more of our nation's seniors are looking for access to the care and companionship they need and rightly deserve. Theresa Sirico, recognizing the need for increased interest in geriatric care, took action. With a generous donation of a quarter of a million dollars, Theresa started the effort to establish a national model for improving the quality of life for our seniors. With a large anonymous donation, fund-raising efforts, and matching funds from the State Department of Higher Education, Theresa's vision of the Louis and Joan Sirico Center for Elders and Families became a reality.

The Sirico Center combines both undergraduate and graduate studies with hands-on workshops and seminars. Blending the studies of nursing, social work, and public health, the Center will be an invaluable resource for those interested in geriatric care. In a time when our nation is facing an ever increasing senior population and a lack of geriatric health care professionals, the Sirico Center is sure to be an asset not only to the Greater New Haven area, but to communities throughout the nation. The Sirico Center for Elders and Families will not only provide education for health professionals, but will generate excitement and interest in the field of geriatric medicine. This is the true gift of Theresa Sirico.

I am honored to rise today to join family, friends, and the staff and faculty of the Louis and Joan Sirico Center for Elders and Families in extending my deepest thanks and appreciation to Theresa Sirico for her outstanding contributions to our community. Seniors and their families will benefit greatly from her unique vision and unparalleled dedication.

HONORING MS. MARILYN MIGLIN OF CHICAGO

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I want to take a few minutes today to speak about one of my constituents who is making a most remarkable contribution to the people of Chicago and the entire Midwest. Marilyn Miglin is involved in an extraordinary range of public service activities and maintains a remarkable schedule.

Ms. Miglin originally suggested the notion of an advisory board for the University of Illinois Craniofacial Center in 1987. The Craniofacial Center of the University of Illinois provides medical services for patients with facial deformities.

But Marilyn Miglin went far beyond the offer of a suggestion. She began volunteering time from her busy schedule to assist the physician team at the Craniofacial Center in adding a new dimension to the patient services offered by the Department. She began coming regularly to the center to see patients with facial deformities and to show them how to apply makeup to hide their condition, or to draw attention away from the condition.

Not satisfied with superficial appearance, Ms. Miglin recognized the need to go beyond what one could see at the surface, and reached patients in a deeper and more profound way: helping each individual realize their inner beauty and self worth. Out of this personal growth came the renewed confidence and self assurance necessary to deal with everyday life;

Therefore, Mr. Speaker, I am especially pleased to take this opportunity to acknowledge and congratulate Marilyn Miglin for her support and dedication to the patients and staff of the University of Illinois Craniofacial Center.

IN HONOR OF REVEREND RALPH E. BROWER

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Reverend Ralph E. Brower for 47 years of outstanding service to our community as a leader and senior pastor at Saint Michael's Methodist Church. Rev. Brower was honored at a banquet at the Casino in the Park in Jersey City, New Jersey, on November 10, 2002.

For the past 47 years, Reverend Ralph E. Brower has been a tireless advocate on behalf of his community and congregation, ensuring that no one in the community is left behind. A true leader, Rev. Brower has served for the past 27 years as president of the Interdenominational Ministerial Alliance, and the past 25 years as chaplain for Hudson County. He has served in several city administrations, and is currently the president of the United Black interdenominational Clergy (VBIC) of New Jersey, the state's largest African-American clergy organization.

His selfless actions have not gone unnoticed, and he has been honored by New Jersey's Urban League, the National Association for the Advancement of Colored People of New Jersey, and the New Jersey State Federation of Colored Women's Clubs.

The fourth of six children, Rev. Brower was born and raised in North Carolina, but decided to make New Jersey his home. He is a graduate of the Laurinburg Institute and Kettle College of North Carolina, attended Florida State Christian College in Fort Lauderdale, Florida, earned his Bachelor of Arts degree from Jersey City State College, and his Doctorate of Sacred Theology from the Baltimore Bible College.

Rev. Brown is married to Alberta Hazel-Brower, and they are the proud parents of three children: two sons, Ralph, Jr. and Ronald, and one daughter, Denise.

Today, I ask my colleagues to join me in honoring Reverend Ralph E. Brower for close to 50 years of service as a leader and senior pastor to the Jersey City community. Let us all join together and take this opportunity to honor an exceptional man, setting an outstanding example for our community. Thank you Rev. Brower for all that you do.

CONGRATULATING J.S. WEST FAMILY AS 2002 AGRICULTURAL HALL OF FAME INDUCTEE

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today to congratulate the J.S. West family for receiving the 2002 Agricultural Hall of Fame Inductee Award at the Stanislaus County Ag Foundation's Agricultural Hall of Fame Ceremony in Modesto, California on December 5, 2002. This notable group of Stanislaus County Legends of Agriculture honors individuals and families who have worked to make agriculture the county's number one industry.

The Agricultural Hall of Fame members sacrifice and labor to produce crops from poultry and livestock to fruits and vegetables. These members and their families have made a mark on the Central Valley's local agricultural industry and community, as well as influenced the state, nation, and the world.

In 1909, J.S. West and Company began with the purchase of the Merced Milling building and a lease of land from the Southern Pacific Railroad in Modesto, California. James West worked with farmers on yearly contracts and sold sacked grain to brokers and customers. As the business grew, the family diversified into coal, wood, and fertilizers. After a fire destroyed the feed mill in the 1950's, a modern feed mill was built to supply feed to the poultry and cattle industry. This resulted in a full line of retail stores that are now carrying their supplies. The J.S. West family expanded upon their enterprise by making ice, selling fuel oil, operating an automobile service station and tire shop, and they recently closed a furniture store which they had operated since 1950.

The family also developed an egg contracting business in the 1950's, and today its members are still heavily involved in the poultry and egg industry at both state and national levels. The West family packs eggs for over sixty labels and frozen liquid eggs in their Hilmar processing plant. From feed to eggs and ice to propane, the West family continues to make a difference in the agricultural industry worldwide.

Mr. Speaker, I rise today to congratulate the J.S. West family for earning the 2002 Agricultural Hall of Fame Inductee Award. I urge my colleagues to join me in wishing the J.S. West family many years of continued success.

HONORING THE YALE-NEW HAVEN TEACHERS INSTITUTE ON THEIR 25TH ANNIVERSARY

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. DELAURO. Mr. Speaker, it is with great pleasure that I rise today to join the New Haven and Yale University communities in celebrating the 25th anniversary of the Yale-New Haven Teachers Institute—a unique and highly successful partnership between the New Haven Public School System and Yale University.

I have often spoke about the importance of education and the vital role it plays in our communities—especially for our urban youth. Today, it is more important than ever for our nation's teachers to have access to the skills and resources they need to prepare our children for the future. That is the mission of the Yale-New Haven Teachers Institute. For a quarter of a century, the Institute has been providing area educators with the opportunity to strengthen themselves professionally through annual seminars in the humanities and sciences. In addition, the Institute works with program participants to bring the curriculum and lessons of the seminars to the classroom. The teachers who have participated in this program have demonstrated a unique commitment to our young people. These are educators who are truly dedicated to ensuring that our children—our future—have the talented and creative teachers they need and deserve.

Just four years ago, the Institute forged ahead with a new goal. With just over one million dollars in grant funding, the Institute set out to replicate its program in four other cities across the country. This venture has been a success and has proven that the partnerships that are fostered between local public schools and universities can and will enrich the lives of our young people. New Haven has certainly benefited from this tremendous organization which has not only touched the lives of so many teachers, but countless numbers of our children. The Institute has earned a distinguished reputation and has been recognized at every level of government as a model for all communities.

For all that they have given to the families and children of New Haven and for all of their good work across the country, I am proud to stand today to extend my sincere congratulations to the Yale-New Haven Teachers Institute as they celebrate their 25th Anniversary.

THANKING MY CONGRESSIONAL STAFF

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. GEKAS. Mr. Speaker, the end of a congressional career brings about many emotions. Over the last twenty years I have happily spent representing the fine people of the

17th Congressional District of Pennsylvania I have had the pleasure of working with thousands of constituents, local, state and federal officials, and many former and current distinguished members of the U.S. House of Representatives and the U.S. Senate. To all of them I say, thanks for working with me towards a better America.

And, of course, every Member of Congress works with many, many competent staff, from the staff in their own personal offices to the Committee and Subcommittee staff and the leadership and floor staff. It has often been said that without staff where would this institution be? And I concur with that statement, for without the many fine staff with whom I have had good fortune to work, I and other Members of Congress of the United States would be far worse off. While I cannot mention all the fine staff who have worked with me over the years, let me at least mention the current personal and subcommittee staffers who have endeavored to achieve our common goals and to whom I give my hearty thanks and wish them well in their future careers.

In my Harrisburg district office, Arlene Eckels, my long-time personal secretary who has worked for me since the early days in the Pennsylvania State Senate and to whom I wish a happy and much deserved retirement; Tom Templeton, my hardworking district director, who so ably kept my entire district staff working smoothly; Suzanne Stoll, an old friend and superb caseworker; Paul Giannaris, whose ability to handle INS problems has made him invaluable; and Tim Vollrath, a recently returned former employee whose military and veterans help has been superb. In our Lebanon Office, Reg Nyman has been the voice of Lebanon for these many years, and his excellent knowledge and service will be missed. And in our Elizabethtown office, Susan Melendez has kept our Lancaster County constituents well served by her kind and efficient manner. Over the last twenty years my district office staff has handled hundreds of thousands of phone calls and constituent casework requests. A superb record by a superb staff.

My Washington office staff have proven themselves time and time again, regularly going beyond the call of duty. (The tally of my hundreds of legislative measures, nearly 30 Public Laws, thousands of office meetings and countless committee and other initiatives over the years speaks truth to that assertion.) First, on my personal staff, Patrick Sheehan, my Counsel and Legislative Director, has been a dynamic and intelligent thinker and leader, who offered sage advice on immigration, military and veterans affairs; Greg Helman, my Senior Legislative Counsel kept pace with my many Judiciary and legislative demands, especially bankruptcy reform and appropriations (as I would expect from a Palmyra, PA native); Becky Smith, my office manager and health legislative assistant, kept my schedule and personal affairs humming along smoothly and ably managed my most favorite of projects, the Congressional Biomedical Research Caucus of which I was founder and Co-Chairman; David Greineder, who did a multitude of duties as my talented systems manager, legislative correspondent and Legislative Assistant covering education and labor issues; Bill Tighe, another LC and Legislative Assistant whose insights into the Agriculture and Natural Resources needs of Pennsylvania and the district were more than invaluable, they were accurate; Mike Shields, my recent press secretary extraordinaire, who did an excellent job under difficult situations; and, of course, Allan Cagnoli, my long time Chief of Staff from Hershey, PA, a superb leader of the office and jack-of-all-trades who kept the office running and productive no matter what the crisis.

My Judiciary Subcommittee on Immigration, Border Security and Claims, of which I was Chairman, was ably staffed by George Fishman, Lora Ries, Art Arthur, Cynthia Blackston and Emily Sanders, as well as Brian Zimmer of the full Committee staff. They handled the extremely important legislation necessitated by the new domestic and international threats we now face. Their assistance to me during the challenges of this year is impossible to measure. The House of Representatives has much to look forward to with their continued work.

And last but not least, is the Subcommittee on Commercial and Administrative Law, of which I was a member this last Congress but on which I served as Chairman from 1994–2000. On this subcommittee we dealt with the hundreds of regulator reform issues developed by the Republican Majority through the Contract With America and following initiatives. My major Bankruptcy Reform measure began with me in this subcommittee; Administrative Law Judges; Legal Services Reform; the Federal Agency Compliance Act; The Regulatory Fair Warning Act; Executive Orders; Internet Tax reform; the Federal Arbitration Act; Interstate Compacts; the Independent Counsel Act; and many, many other topics. While bankruptcy reform took center stage, there was no end to the amount of topics and work my staff and I pursued. For this I thank them, the current and former staffers of the subcommittee, for all their exceptional work: Chief Counsel Ray Smietanka, who has worked with me as my chief committee counsel since I came to the 98th Congress in 1983; Susan-Jensen Conklin, whose superb work on bankruptcy reform got us where we are today; Rob Tracci, formerly of the Subcommittee, was an invaluable source of assistance; and all the other members of the CAL staff who have helped this Member of Congress over the many productive years. I thank them all for their work to the Nation and me.

To all I have mentioned, and those who I have regrettably not, please accept my sincere thanks for making my tenure in the United States House of Representatives a productive and pleasant one. Any current Member of Congress or Committee would be well served by the high-quality staff with whom it has been my pleasure to work over these many years.

HONORING JOHN KORREY

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to honor John Korrey of Iliff, CO, who recently received the 2002 World Champion Livestock Auctioneer title.

John is an extraordinary auctioneer, a skill that is highly admired in eastern Colorado. His talent helps ranchers earn top dollar for their stock. In fact, John has received other top accolades for his talent, including the Greater Midwest Champion Livestock Auctioneer in 2002 and International Champion Livestock Auctioneer in 1998. John is only one of four individuals globally to hold these three titles.

John Korrey is a native of Iliff, CO. Raised as a family farmer and rancher, John now runs Korrey Auctions, his own business, and is partner in Premier Livestock Exchange. At home, John enjoys farming with his wife Janna and his daughters Heidi and Lacey.

Mr. Speaker, I congratulate John Korrey and ask the House of Representatives to join me in wishing him success as World Champion Livestock Auctioneer.

HONORING THE RETIREMENT OF MR. AL AKERS

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. TOM DAVIS of Virginia. Mr. Speaker, I would like to take this opportunity to honor Mr. Al Akers upon his retirement as President of the Occoquan Watershed Coalition on December 1, 2002.

Mr. Akers' resume and accomplishments speak for themselves. He holds masters degrees in both business administration and international relations, and he is a graduate of the Advanced Management Programs at the Claremont Graduate School and the University of Southern California. After retiring from the U.S. Army as a major general, Mr. Akers helped launch two companies and was the executive director of a non-profit organization.

Not only does Mr. Akers have an impeccable career on paper, he has had a great and tangible impact on his community. In 1993, he served as chairman of the Superintendent's Community Advisory Counsel for Fairfax County Public Schools. Then, in 1995, he was selected as Lord Fairfax for the Springfield District, and also became a member of the Task Force on Fairfax County Resources and Expenditures. Mr. Akers served as a member of the Lorton Task Force from 1995–1997 and as vice chairman of the Springfield District Council. In addition to serving as vice chairman of this council, Mr. Akers was, and remains a member.

Perhaps one of his most significant contributions has been his work with the Occoquan Watershed Coalition, an all-volunteer organization committed to the protection of "The Downzoned Occoquan Watershed" and drinking water it provides. Mr. Akers served as vice president of the Occoquan Watershed Coalition from 1994–1999, in addition to serving as the coalition's representative to the Fairfax County Federation of Citizen's Association since 1995.

It is his tenure as President of the Occoquan Watershed Coalition we recognize today.

Mr. Speaker, in closing, it is with great pleasure that I extend a wholehearted thank you to Mr. Al Akers. His contributions to Virginia and his community have been great. Virginia is proud to have such a distinguished citizen in its professional and social community. I call upon my colleagues to join me in applauding him for all that he has done.

LEBANESE INDEPENDENCE DAY

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ENGEL. Mr. Speaker, I rise today to commemorate, but not celebrate Lebanon's Independence Day. Fifty-nine years ago, Lebanon gained its independence from France. Yet, today, Lebanon is no longer a sovereign and independent country. With 25,000 Syrian troops occupying Lebanon, it remains firmly in the grip of Damascus, without the ability to conduct its own affairs without first seeking the approval of the Assad regime.

More than 2 years ago, Israel completely withdrew its armed forces from southern Lebanon. This withdrawal was certified by the United Nations. The time is long past due for Syria to leave, as well, and for the Lebanese to run Lebanon.

As the author of the Syria Accountability Act, I thank the 172 members of the U.S. House of Representatives and the 45 members of the Senate who joined as cosponsors of our legislation. We have together shined a bright light on the injustice of the continuing Syrian occupation of Lebanon and have only added to the growing campaign to liberate Lebanon.

So, on this 59th anniversary of Lebanese independence, I stand with the Lebanese people who seek freedom and democracy for their beautiful country and peace for the entire region. It is my hope that some time soon, Lebanese Independence Day will not only be a commemoration, but will once again be a celebration.

HONORING PATTI REILLY

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. RADANOVICH. Mr. Speaker, I rise today in recognition of Patti Reilly upon her retirement as Mariposa County District I Supervisor. Patti Reilly has shown her dedication to the citizens of Mariposa and District I through years of active involvement and leadership.

Patti Reilly has demonstrated her community involvement through her years of service on numerous projects, boards and commissions. She was first elected to the Mariposa County Board of Supervisors in 1994 and reelected for her second term in 1998, serving as Chair the same year. On the board she served as liaison member to the Fiscal and Education Services, the Health and Human Service areas, and on Yosemite Park issues.

Patti Reilly has helped shape the future of Mariposa by serving on the Planning Commission and acting as Chair of both the Local Transportation Commission and the Housing Authority of the County of Mariposa. She has championed economic development, education, justice, and youth development.

Mr. Speaker, I want to congratulate Patti Reilly for her years of service to Mariposa and for her distinguished community involvement. I invite my colleagues to join me in wishing Patti Reilly many more years of continued success.

PAT FINUCANE REPORT IN NORTHERN IRELAND

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. PALLONE. Mr. Speaker, I rise today to call on the London Metropolitan Police Commissioner Sir John Stevens to expeditiously complete the report on the February 1989 killing of Pat Finucane in Belfast. Sir Stevens has been investigating this case for almost 3 years.

Pat Finucane was shot and killed by British-Loyalist paramilitaries while he sat eating a Sunday meal with his wife and three children. Since his murder in 1989, Amnesty International and the United Nations have called on the British Government to investigate any collusion between the RUC/British Government officials and the Loyalist paramilitaries. Unfortunately, after 3 years of investigation still no report has been made public.

Prior to being murdered, Mr. Finucane was a human rights lawyer who defended several individuals that were detained by the RUC. According to the UDA, Ulster Defense Association, which claimed responsibility for his murder, Mr. Finucane was profiled as an individual who was helping support the procatholic, pro-Republican cause in Northern Ireland.

Last week, Sir John Stevens announced, for a second time, that the Finucane report would be delayed as a result of a British military witness being reluctant to speak to the police. Stevens claims that the report will be released 'before next spring', however, there continues to be speculation that the report may be delayed further should a public inquiry be ordered.

There are few who will dispute the facts in this case. According to Brian Nelson, a former British military intelligence agent who also served as chief intelligence office of the UDA, he directly assisted in the targeting of Pat Finucane and passed a photograph of Pat Finucane to a UDA member just days before the killing. However, Mr. Nelson claims to have never been examined in an open court.

To date no one has been prosecuted for the murder of Pat Finucane.

The facts in this case seem quite straightforward—once again a pro-Loyalist police force used its authority to further sectarian rule and continue the rash of violence against the Catholic Community.

I call on Prime Minister Tony Blair and London Metropolitan Police Commissioner Stevens to finally release the current report and then immediately open a full public inquiry into this matter. My hope is that by putting an end to this long drawn-out process we can bring both justice to the individuals who undertook this gruesome act and take steps to ensure that this doesn't happen again.

This whole matter once again reinforces my belief that for too long both the British government, along with their police force, and the Loyalist paramilitary groups in Northern Ireland have worked in tandem to usurp the rights of the Catholic Community.

A full public inquiry into this matter will show the world that the only way peace can last in Northern Ireland is for a full fair and just reform in policing in Northern Ireland. Northern Ireland must immediately implement all of the Patten Commission's recommendations on policing.

Mr. Speaker, if there is to be a just and lasting peace in Northern Ireland we must learn from what happened to Pat Finucane and ensure that it never happens again.

HONORING MS. LESLIE TOURIGNY

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I take this opportunity to thank Ms. Leslie Tourigny for serving the residents of the Seventh Congressional District in her capacity as an American Political Science Association Fellow.

Ms. Tourigny spent the last year making significant contributions in the areas of: Postal Reform, Civil Service, and Defense issues. She also did an outstanding job of responding to constituent mail and inquiries.

Ms. Tourigny came to my office with more than 29 years of experience in the Federal Government. The ideas that she brought and passion for public service enhanced my office greatly. She operated as a senior staff person, and was willing to go the extra mile. Her attention to detail and diligence were greatly appreciated.

As Leslie returns to the Defense Intelligence Agency I wish her well. Again, on behalf of the residents of the Seventh Congressional District, I commend and congratulate Leslie for her outstanding work.

PASSAGE OF H.R. 4750

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. FARR of California. Mr. Speaker, I rise today to give sincere thanks to Chairman HANSEN, Ranking Member RAHALL and the staff of the Resources Committee for their efforts to move H.R. 4750 through this chamber in the final hours of the 107th Congress. I am pleased to inform you Mr. Speaker, that the other body has passed this legislation as well and it is on its way to the President. This legislation designates as wilderness more than

50,000 acres of land in the Central Coast of California, adding another jewel in the crown of Big Sur.

Mr. Speaker, since this legislation passed without committee action, it was not possible to get a Committee Report so I want to inform you of my intentions in regard to H.R. 4750. The Big Sur region is a rough, wild, sparsely populated area full of scenic vistas and should be managed as such. In regard to wilderness fire management, it would be beneficial to have a management plan for the Ventana and Silver Peak areas prepared, following their designation as wilderness, that would authorize the Forest Supervisor of the Los Padres National Forest to take whatever appropriate actions are necessary for fire prevention and watershed protection. This would include, but not be limited to, acceptable fire presuppression and fire suppression measures and techniques. Any special provisions contained in the management plan for the Ventana and Silver Peak Wilderness areas should be incorporated in the planning for the Los Padres National Forest.

This language is a slight modification of language enacted in 1977 as part of the legislation initially designating the Ventana wilderness area. The thought is that current language be as close to original language as possible. Local USFS staff have indicated that under normal agency procedures, the decision to utilize this existing authority would have to be made at the regional forester level or higher. The practical impact is that the existing authority has never been used. This language seeks to make the existing authority more useful by authorizing the decision at the forest supervisor level.

Mr. Speaker, in regard to military training at Fort Hunter-Liggett, I suggest that we do nothing to preclude existing low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas. In regard to military access all non-motorized access to and use of the wilderness areas designated by this Act for military training should be permitted to continue in the same manner and degree as permitted prior to enactment, subject to reasonable regulation by the land manager. This language will apply to the proposed wilderness areas adjacent to Fort Hunter-Liggett. The non-motorized use language covers a variety of training activities that the military has undertaken in the National Forest. Currently, the two agencies have an MOU that governs such activities. I would encourage a new MOU be developed to account for the change to wilderness.

Mr. Speaker, the Central Coast is a unique ecosystem in itself. For example, only in this area will you find giant redwoods growing in the same drainage as a yucca plant. Because of this great diversity our area faces constant assaults by invasive species. The spread of invasive species continues to inflict great damage to the Big Sur region's environment. Such plant species as South American pampas grass, genesta (French broom) from southern Europe, and cape ivy from South Africa have taken over large areas of the Big Sur region. In addition, a cross breed of ferral and wild pig has become very prolific in many areas of Big Sur. These pigs plough up native plants which destroys habitat for native animals and opens the way for many non native plants to colonize the disturbed ground. On their own, each of these species has inflicted major adverse changes to the Big Sur landscape. Their combined assault has resulted in the displacement of entire native communities.

Mr. Speaker, the federal government has invested millions of dollars in acquiring land for conservation in the Big Sur region. A program of this type would help prevent the ecological value of that investment from being destroyed. This region needs a program to target the eradication of invasive plant and animal species in the Monterey District of the Los Padres National Forest. In addition nearly private or other non USFS property where the property owner seeks the assistance and where the invasive species are present on that property pose a threat to national forest lands and should be included as well.

Mr. Speaker, I want to see the transfer USFS land currently occupied by Pacific Valley School under special use permit to the Pacific Valley School District. The amount of land to be transferred should not exceed the school's existing footprint (approximately 5 acres). Also, the transfer should include reversionary language that would require transfer back to the Forest Service if the School District ever gave up use of the land. The Pacific Valley School serves the residents of the rural southern Big Sur Coast. It has approximately 40 students in grades K–8. The school has occupied a site on USFS property under a special use permit for approximately 35 years. The school itself consists of 6 portable buildings arranged on a series of concrete and asphalt pads. Over the years the school has had a good relationship with the Forest Service. The major problem is the inflexibility that the special use permit arrangement imposes on the school's site management. Generally, any changes the school wants to make to the site have to be cleared by the Forest Service. Even if a change, for example the addition of a student garden or replacing a set of building steps, may not need Forest Service approval, the uncertainty of whether it does have a chilling effect on any activity. This transfer is intended to resolve the potential conflict and release the USFS from acting as a school site manager.

Finally, Mr. Speaker, I feel we should authorize the construction and maintenance of a new water line and corresponding spring box improvements adjacent to an existing domestic water service in the Silver Peak Wilderness Area in the Los Padres National Forest. The water system in question serves two adjacent properties located just outside the existing Silver Peak Wilderness Area boundary established in 1992. Both parcels are 10 acres and are located in the west ¼ of the south ¼ of the southwest ¼ of the southeast ¼ of section 14 in township 24 south, range 5 east, MDB&M. Both parcels have drawn water from the same spring for over 40 years. A single pipeline runs from the spring box located in the wilderness and delivers water to the two parcels in succession. The 1992 act creating the Silver Peak Wilderness Area grand-fathered this system into the wilderness. However, Monterey County ordinances now implementing state and federal law treat the system as a water distribution system which requires it to comply with the treatment and storage needs of a larger system serving multi-households. The owners of the two parcels want to lay a new separate pipeline alongside the existing line so that they become two separate individual systems and thus free of the cost of complying with the multiple hook-up requirements.

Mr. Speaker, I once again want to thank all those that made passage of this legislation possible. Protection of these resources is of great benefit to all.

HONORING BENEDICT KUPCHO ON THE OCCASION OF HIS RETIREMENT

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. DELAURO. Mr. Speaker, I am honored to rise today to join Coginchaug Regional High School and the community of Durham, Connecticut in paying tribute to Benedict Kupcho as he celebrates his retirement after thirty-seven years of service. An educator, colleague, and friend, Mr. Kupcho has been an invaluable resource to the students and faculty of Coginchaug Regional High School and the residents of Durham throughout his career.

I have often spoke of our nation's need for talented, creative educators ready to help our students learn and grow. Mr. Kupcho is just that kind of teacher. His commitment and dedication has touched the lives of thousands of our young people. Mr. Kupcho has enriched his students lives ensured that they have a strong foundation on which to build their futures—making a real difference in all of their lives. Coginchaug Regional High School has been fortunate to have benefitted from his many years of service.

I have had the pleasure of meeting Mr. Kupcho on several occasions throughout my career in the House of Representatives and I am always in awe of his seemingly unending enthusiasm and excitement. For twenty-two years, Mr. Kupcho has organized Coginchaug's annual trip to Washington, D.C.—bringing over two thousand students to our nation's capital throughout five separate administrations. Through wind, rain, sleet and snow, he has worked tirelessly to ensure that his students were given the opportunity to visit Washington and experience how our government works. I have always held a firm belief in the importance of engaging our young people in the democratic process and in assuring that they have a voice here in Washington. Mr. Kupcho's dedication is a reflection of this ideal and our community owes him a great debt of gratitude for all that he has done on behalf of our young people.

As a track coach and student advisor, Mr. Kupcho has also acted as a mentor to many students—truly helping to shape their lives outside of the classroom as well. In addition to his many professional contributions at Coginchaug Regional High School, Mr. Kupcho has also been active in the Durham community. One of the most popular and longest running events in Connecticut, the Durham

Fair has long been the beneficiary of Mr. Kupcho's time and energy. Attracting thousands of people from across the state, the Durham Fair is a major event for the small community of Durham. The name Benedict Kupcho is almost synonymous with the parking organization for the Fair and it has been his efforts that have enabled its many attendees to enjoy this wonderful annual event.

It is with great pleasure and my very best wishes for continued health and happiness that I stand today and extend my sincere thanks and appreciation to Benedict Kupcho for all of his good work throughout his thirty-seven years with Coginchaug Regional High School. Though he will certainly be missed, he has left an indelible mark on the Durham community and a legacy that will inspire others for many years to come.

IN HONOR OF RABBI STUART WEINBLATT

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ENGEL. Mr. Speaker, I rise today to honor Rabbi Stuart Weinblatt on his 50th birthday and in recognition of the tremendous work he has done on behalf of others. Rabbi Weinblatt and his wife Symcha are the parents of four wonderful children, Ezra, Margalit, Micha, and Noam. He is the founding Rabbi of Congregation B'nai Tzedek, a Conservative synagogue in Potomac, Maryland, to which I belong, serving more than 620 families. Prior to forming Congregation B'nai Tzedek in 1988, Rabbi Weinblatt was the Rabbi of Temple Solel in Bowie, Maryland, for seven years and Temple Beth Am in Miami, Florida, from 1979–1981.

Rabbi Weinblatt is active in a number of local and national organizations, including the National Rabbinic Cabinet of the UHC, Hillel at the University of Maryland, the Jewish National Fund, Israel Bonds, the Jewish Community Council, where he chaired a committee on Jewish Life and Culture, and the Federation of Greater Washington, where he chaired the Super Sunday effort several years ago. Rabbi Weinblatt has also served as President of the Washington Board of Rabbis. He has been an adjunct professor of Jewish History and Theology at Wesley Theological Seminary since 1992. His dynamic leadership, innovative approach to Judaism and reputation as an outstanding teacher and speaker has earned him many honors, including selection as a Bronfman Fellow by CLAL and as a fellow in the Shalom Hartman Institute Center for Rabbinic Enrichment program. In recognition of his outstanding leadership and community involvement, he was chosen in 2001 as the Washington area ORT "Man of the Year." He is a strong and vocal supporter of the State of Israel.

I met Stuart Weinblatt when I was first running for Congress, 14 years ago, when we were seated at the same table, by chance, at a dinner. I had no idea that years later I would become a member of a new synagogue that was opening with him at the helm. I have followed this man all these years, and have watched him and the synagogue grow in stature. His sermons are always remarkable and inspiring.

Mr. Speaker, Rabbi Weinblatt's years of service to his community and the nation have enriched the lives of so many others and he is a stellar example of the type of individuals we need leading our communities. I am proud to be a congregant of Rabbi Weinblatt's Synagogue. I wish Rabbi Weinblatt a very happy 50th birthday and I look forward to his continued service as a leader in our community. I am proud to call him my Rabbi, and even more proud to call him my friend.

HONORING THE MEMORY AND COURAGE OF JOURNALISTS

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to honor the memory and the courage of journalists who have given their lives in the pursuit of truth.

I rise to commend organizations like the National Ukrainian Journalists Union, a group dedicated to the protection of Ukrainian journalists, the abolition of censorship and the defense of free speech.

In many developing countries, harassment, in the form of threats, arrest, and even kidnapping and murder is used as a tool to silence journalists who dare to report the truth. No single attempt at censorship has sparked more protest than the disappearance and murder of Greorgiy Honhadze in Ukraine in 2000. This crime cast international attention on the systemic oppression of freedom of expression, and cast significant doubts on the level of democratic development in Ukraine.

The death of Honhadze, the beating death of Ihor Aleksandrov, the director of a television station in the Donetsk region of eastern Ukraine in July 2001, and most recently, the death of Mykhailo Kolomiyets, the director of a news agency in Kyiv, Ukrainian News, reinforce doubt about the state of freedom in Ukraine. The lethargic pursuit of the investigations of these deaths by authorities indicates official apathy if not tacit approval.

Mr. Speaker, continued government control of the media, and often violent oppression of freedom of expression denies the Ukranian people their inalienable human rights and prevents democracy from rooting and growing in Ukraine. Therefore, I call upon my Colleagues in the Congress to urge the government of Ukraine to resolve the deaths of these journalists expeditiously, to implement an agenda for the defense of free speech, and to recognize the fourth day of December as "a day of sorrow for lost journalists."

RECOGNIZING CONGRESSMAN BOB BORSKI

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MURTHA. Mr. Speaker, I would like to take this opportunity to recognize a good friend and colleague, BOB BORSKI, upon the occasion of his retirement from twenty years of distinguished service in the House of Representatives.

Congressman BOB BORSKI (D-PA) was first elected to the U.S. House of Representatives in November 1982. He is currently serving his tenth term as the Representative from Pennsylvania's Third Congressional District, which encompasses Northeast Philadelphia, the River Wards, Society Hill and portions of Queen Village. Of the three districts that include parts of Philadelphia, the 3rd is the only district completely within city limits.

As a teenager in Northeast Philadelphia, BOB was a standout athlete for the Frankford High Pioneers, captaining the basketball and baseball teams. He is a low-profile leader in Congress, but he still gives his all for the community where he grew up, devoting most of his energies to the needs and concerns of the 3rd District.

Since he was elected, BOB BORSKI has fought vigorously to preserve military facilities and defense jobs in his congressional district and throughout the Philadelphia region. In 1993 and 1995, he worked with the city of Philadelphia and community leaders to defeat attempts to close the Aviation Supply Office (ASO) and its tenant activities in Northeast Philadelphia.

In the past couple of years, BOB has initiated an effort to reclaim and revitalize the neglected waterfront of the Delaware River. We worked together in a coordinated effort with various regional, federal, state and local stakeholders in order to develop Philadelphia's waterfront for the benefit of both the city and the people. He envisioned an exciting, prosperous, new waterfront for Philadelphia that will reconnect neighborhoods with land developed for many uses. Interconnected recreational pathways as well as plenty of open green space bordering the river are principal parts of his vision.

Representative BORSKI retires as the third ranking Democrat on the Transportation and Infrastructure Committee and as the lead Democrat on the Committee's Highways and Transit Subcommittee.

In addition to his leadership position on the Transportation and Infrastructure Committee, BOB served as Regional White for Philadelphia and Ohio. As a senior member on the Transportation and Infrastructure Committee and Subcommittee Ranking Member, BOB has been a vocal advocate of an improved national transportation system and a strong federal commitment to public infrastructure and mass transit programs. In Philadelphia, his legislative efforts have resulted in millions of dollars more for SEPTA, I–95, neighborhood roads, and transportation improvements which will greatly benefit the Port of Philadelphia, and as a result, the surrounding area.

In the 105th Congress, BOB worked to pass TEA–21, authorizing spending for highway, mass transit and other transportation-related projects across the nation. This bill included $221 million in projects for the City of Philadelphia and led to the expansion of Philadelphia International Airport, I–95 improvements, investment in mass transit, and the construction of the Frankford Transportation Center, a state of the art multimodal terminal complex. With TEA–21, Congressman BORSKI led the effort to bring construction and manufacturing jobs to the City of Philadelphia with projects that also assisted in the reduction of traffic congestion and air pollution.

He has worked consistently to defend public safety, authoring legislation which bans the expanded use of triple trailer trucks as well as legislation which prohibited the dangerous practice of backhauling—transporting foods one way and toxic chemicals on the return trip.

In previous years, BORSKI served as the top Democrat on the Water Resources and Environment Subcommittee, a job that at times pulled him well beyond his customary focus on Philadelphia into issues such as government response to natural disasters and desalination efforts in communities short of fresh water. BOB was instrumental insuring the passage of the landmark Clean Water Act and Safe Drinking Water Act.

BOB BORSKI has been a strong supporter of the environment. As the subcommittee began debate in the 105h Congress on legislation to overhaul the Superfund hazardous waste cleanup program, BORSKI refused to support legislation that would go easy on polluters or that failed to ensure the protection of human health and the environment. He has pushed for legislation to promote cleanup of "brownfields"—urban industrial sites where pollution discourages redevelopment.

BOB is also a member of the Subcommittee on Railroads, the Subcommittee on Water Resources and Environment, the Congressional Delegation to the NATO Assembly, and the ad-hoc committee on Irish Affairs.

In addition to his committee assignments, he represented the concerns and needs of his large senor citizen constituency and serves on the Older Americans Caucus, the Diabetes Caucus, and the Prescription Drug Task Force.

Prior to his 1982 election to the U.S. Congress BOB BORSKI served three terms in the Pennsylvania State House. Before that, he was a floor manager at the Philadelphia Stock Exchange. He was born in Philadelphia on October 20, 1948 and is a life-long resident of the city. In 1966, he graduated from Frankford High School where he captained the basketball and baseball teams. He attended the University of Baltimore on an athletic scholarship and, after graduating with a B.A. in 1971, served one year as the assistant basketball coach. Congressman BORSKI lives in Northeast Philadelphia with his wife Karen and is the father of four girls and one boy.

I am grateful for the many years I've gotten to serve with BOB in the Pennsylvania delegation. His friendship, unfailing congeniality and hard work made it a joy to work with him, contributed immeasurably to the cohesiveness of the delegation and benefited Pennsylvania greatly. He will be remembered as a gentleman and statesman who left a positive mark on this body.

RECOGNIZING THE LIFE OF CORNELIUS MYRICKS

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. DAVIS of Illinois. Mr. Speaker, I rise today to pay tribute to the life of Cornelius Myricks born April 25, 1926 in Montgomery, Alabama. During his younger years, Mr. Myricks served in the United States Navy for four years. After being honorably discharged from the Navy, he moved to Chicago, Illinois. It was then he became a member of Metropolitan Missionary Baptist Church and ordained as a Deacon in 1950. He served as the President of the Senior and Junior Usher Boards for many years and later as the Captain of the Usher Board and the Willing Workers Club Number Two. Mr. Myricks was an active member of the Metropolitan Baptist Church participating in duties as an usher. His favorite scripture was John 9:4, "I must work the works of him that sent me, while it is day, the night cometh, when no man can work."

Mr. Myricks departed this life on Saturday, November 16, 2002 at 9:32 a.m., at the VA Westside Hospital in Chicago, Illinois. He is missed by his devoted wife, Thelma; one brother, Willie (Mattye) Myricks; sisters-in-law, Geraleme Myricks, McGrye Wright, Lucille Payne and Pearly Payne; brother-in-law, George Payne; two play sisters, Lonzie Johnson and Ernestine Lenard; nieces; nephews.

Mr. Speaker, I extend my condolences to the family. May God bless his family.

HONORING THE 3RD U.S. INFANTRY REGIMENT, "THE OLD GUARD"

HON. JIM NUSSLE

OF IOWA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. NUSSLE. Mr. Speaker, I rise today to honor the perseverance, dedication, and hard work of the members of America's oldest and one of the most prestigious units of our Armed Services, the 3rd U.S. Infantry Regiment, "The Old Guard."

As a nation, we have held many ceremonies honoring those individuals and groups who responded to the tragic events of September 11, 2001, and, without regard for their personal safety or emotional well-being, went about the sometimes gruesome task of looking for survivors in an area so devastated, few of us can even imagine the horror faced on that day. Men and women who eventually were searching for something, anything, that could help identify a victim and bring some measure of peace to anxious family members and friends. Unfortunately, as with any disaster of this magnitude, some people who assisted in the search for survivors and helped in the recovery efforts have not been identified and therefore have not been recognized for their invaluable service during the days, weeks, and months following the attacks.

Traditionally, The Old Guard has served to conduct ceremonies, memorial affairs, and special events to demonstrate the excellence of the United States Army to the world. Their missions normally include conducting military ceremonies at the White House, Pentagon, and other national memorials as well as to provide funeral escorts at Arlington National Cemetery and maintain the 24-hour vigil at the Tomb of the Unknown Soldier. However, their normal mission changed on September 11, 2001.

The Old Guard was immediately pressed into service for rescue and recovery for the disaster site at the Pentagon. Like all branches and units of our armed services, The Old Guard met the challenge in response to the terrorist attack. And like our nation, the resolve of The Old Guard was not shaken, no matter the mission.

I rise today to honor the sacrifices of all our men and women in uniform involved in the war on terrorism, in particular the unique services provided by members of The U.S. Infantry's Old Guard at the Pentagon. Let us never forget the service that our military has provided over the past 225 years and the sacrifices they made to protect and preserve our freedom.

IN TRIBUTE OF STAFF SGT. RYAN FORAKER

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SCHAFFER. Mr. Speaker, I rise today to pay tribute to Staff Sgt. Ryan Dane Foraker. Staff Sgt. Foraker, a U.S. Army reservist with the 342nd military police Company based in Columbus, Ohio, has been reported missing at the U.S. Naval Base Guantanamo Bay, Cuba since Tuesday, September 24, 2002.

Sgt. Foraker's wallet, military ID and civilian shorts and T-shirt were found folded and stuck in a rock crevasse outside Camp America barracks.

An extensive search and rescue effort including watercraft and search and rescue helicopters for the missing soldier was called off as of 2 p.m. (EST) October 4, 2002. Staff Sgt. Foraker's official duty status is, "whereabouts unknown."

Described as a "model soldier," Foraker was in his seventh month of reserve duty as a supervisor of MP's guarding al-Qaeda and Taliban prisoners, first at Camp X-Ray and later at compound Delta as part of Operation Enduring Freedom. Detainee involvement was not suspected in his disappearance.

Staff Sgt. Foraker leaves behind a wife and two daughters, ages 3 years and 14 months.

Mr. Speaker, I urge our colleagues to join me in expressing sincere sorrow, sympathy, and gratitude for Staff Sgt. Foraker and his family. Staff Sgt. Foraker's disappearance while defending America is a somber reminder of the dangers facing those safeguarding our Nation's freedoms. May God rest his soul.

IN HONOR OF JOSEPH BERMUDEZ

HON. ELIOT L. ENGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ENGEL. Mr. Speaker, I rise today to honor Joseph Bermudez who has dedicated his life to his adopted country. Joseph came to the United States as a boy of just 6 years of age. Throughout his life he has given so much to his country, his community, and his family.

Joseph joined the Navy and served during the Vietnam era. He remained in the Naval Air Reserve for 23 years, retiring at the rank of Lieutenant Commander.

Shortly after his discharge from the Navy, Joseph joined the Bronx Bureau of Child Welfare serving as a caseworker, child protective investigator and training specialist for the Manhattan office.

Joseph's professional career in the New York City Schools began as a bilingual social worker and social work coordinator for Community School District 1 and District 4 in Manhattan. Later he worked for School District 11 in the Bronx, as a bilingual social worker at Junior High School 112 and at Truman High School as a counselor. He also worked as an in-house social worker for the Committee on Special Education. The past 12 years he has served as an Education Administrator for The Committee on Pre-School Special Education. Finally, he has also served on the District Universal Advisory Board.

During this distinguished tenure, Joseph took time away from the New York Schools to serve a 3-year assignment with the U.S. Public Health Service as a Health Service Officer. During his tour of duty, the United States faced two major public health crises, the Cuban Boat Crisis and the Three Mile Island nuclear accident.

Joseph is a graduate of Long Island University and Fordham University, where he received a Master's degree in Social Work. He still lives in New York with his wife of 34 years and is the proud father of two daughters, Christina and Yvonne.

Mr. Speaker, New York and the United States have been blessed by the efforts of Joseph Bermudez. He is a shining example for all of us to look to.

TRIBUTE TO TOM LEVY

HON. MARY BONO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mrs. BONO. Mr. Speaker, I rise today to recognize the outstanding achievements of Tom Levy, who is retiring as the General Manager and Chief Engineer of the Coachella Valley Water District (CVWD).

Mr. Levy has served the public for thirty years at CVWD, and has served as General Manager for sixteen years. Under his tenure as General Manager, the District's domestic water service more than doubled, from less than 42,000 meters in 1986 to more than 86,000 today. He was instrumental in numerous water conservation projects, including the Whitewater River Spreading Area facilities and the development of an Urban Water Management Plan. He also worked feverishly for the last six years to bring about an agreement on the apportionment of Colorado River water for Southern California that would be satisfactory to CVWD, Imperial Irrigation District, Metropolitan Water District of Southern California, the State Department of Water Resources and the Department of the Interior.

He was appointed to California's Advisory Drought Planning Panel by Governor Gray Davis, and has also served two terms as Chairman of the State Water Contractors, which oversees the State Water Project.

For his leadership in California water issues, he was honored as a recipient of an Excellence in Water Leadership Award in 2000.

Even in retirement, Mr. Levy hopes to stay active in the water field, and will continue to provide whatever support the Coachella Valley Water District may need. It is my honor to acknowledge a man who deserves the recognition of our Nation and this Congress.

HONORING MR. ROBERT WAGNER

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to honor Mr. Robert Wagner, a resident of California's 27th Congressional District. Mr. Wagner has recently been honored by his alma mater, Georgetown University, with the renaming of the University's Alumni House, the Robert M. Wagner Alumni House.

Robert Wagner was born in Perth Amboy, N.J. but raised in both Iowa and California during the Great Depression. In 1940, at age 16, Mr. Wagner was called to serve in World War II and during boot camp found enough time to earn his GED. Upon completion of his service, he was accepted as a student at Georgetown University on the GI Bill.

It was at Georgetown, Mr. Wagner says, that he learned the skills that have made him a success. His professors, course work and classmates, all played a role in both his professional success in the years after his graduation, and his dedication to the school which helped him to achieve some of his life's greatest successes.

His dedication to Georgetown is legendary. Over the past 33 years, he was volunteered to interview Georgetown applicants, founded the Georgetown University Alumni Association of Southern California, and has endowed five scholarships to benefit financially needy students. In addition to scholarships, Mr. Wagner has made unrestricted gifts to the Georgetown Annual Fund and endowed the Carroll Quigley Lecture Series, which brings experts in international affairs to the University.

Most recently, Mr. Wagner endowed both a charitable remainder unitrust and a charitable lead trust. Both trusts will support the reconstruction, renovation and maintenance of the newly designated Robert M. Wagner Alumni House.

Such dedication to the educational institution which served him so well is admirable and it is with great pleasure that I ask all Members to join me in congratulating Mr. Robert Wagner upon his being bestowed this great honor by Georgetown University.

TRIBUTE TO JACK STEWART

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. FARR of California. Mr. Speaker, I rise today to honor the career of a true public servant, a man who has touched literally thousands of lives. Jack Stewart, who is currently the Monterey County Military and Veterans Affairs Officer and a long-time constituent of mine, will be retiring from the post he created in 1983 after a career that has been marked by excellence and dedication.

Jack first served in the U.S. Army in 1954, eventually serving 20 years and receiving several decorations and awards including he Combat Infantryman Badge, Bronze Star, Purple Heart, Meritorious Service Medal, Army Commendation Medal, Vietnam Service Medal, and Good Conduct Medal. Mr. Speaker, these commendations obviously show the level of commitment he had to defending and protecting the democratic ideals our country cherishes, but it is only the beginning of what would become a career dedicated to those who, like himself, served their country with honor.

As a county supervisor, I got to know Jack and understand the workings of his office, which helped us both when I became a California State Assemblyman. When the California Association of County Veterans Service Officers (which Jack served three terms as president) came to Sacramento I was always there for Jack, as he was for me. Jack was always a welcome sight in my office, and I know other counties were envious of the relationship and understanding that we had.

One of the highlights of my work with Jack during those years was helping him bring a replica of the Vietnam Veterans Memorial wall to Monterey County, a deeply moving experience. This project was one of the best instances of veterans coming together with the community, including anti-war leaders, in an outpouring of love and respect for those who didn't come home. This was the first listing of all Monterey County MIA's and those killed in action, which led to the creation of a separate Vietnam Veterans Memorial in Salinas. It also provided for listing those names on the state memorial in Capitol Park in Sacramento, including my cousin John Geisen and Carmel High School classmate Andrew Elliot, who is MIA. For Jack's work on these projects, I am personally grateful.

Mr. Speaker, many people will undoubtedly sing Jack Stewart's many praises as his retirement nears, but I must mention a few things that he has done while I have been a member of the U.S. House of Representatives. Perhaps the single most influential role he had was during the closure of Fort Ord in Monterey County, the largest base closure in US history. The economic and social implications on the local communities were astounding, but

Jack made sure that the interests of the veterans in the area were attended to. He had the world pulled out from him, as we lost a four hundred-bed hospital that served both active duty members and retirees; the CHAMPUS provider was to be switched so no one knew who to go to for health care; disabled vets were stranded without transportation; and all military personnel who could help handle such a crisis were gone. The only person left was Jack, who, with his staff had to do the work of an entire division.

Out of this chaos, he will be leaving behind a new clinic run by the Department of Veterans Affairs, serving a broader community than ever; a new Post Traumatic Stress Disorder Counseling Program; a Veterans Transition Center for homeless veterans and a transportation network that provides van rides to disabled veterans. Jack was also able to get the federal government to put up land and money to open a state-run veterans' cemetery at Fort Ord, and has been instrumental in starting and running the local process for making this a reality. Of course, this is a project that will continue without Jack, but he should be honored for his role in moving this from an idea to where it is today.

Mr. Speaker, I would like to close today by saying that Jack Stewart has handled more challenges than any county veterans officer I know of, and produced a more lasting legacy of services than anyone. This alone speaks volumes, but I hope I have been able to show how much he will be missed, not only by me, but also by the community at large. I wish Jack and his family all of the best in retirement, even though I know that he will remain an active part of the veteran's community.

THANKING MY CONGRESSIONAL STAFF

HON. GEORGE W. GEKAS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. GEKAS. Mr. Speaker, on November 19, 2002, I submitted remarks thanking my congressional staff. Inadvertently, several lines from those remarks were not included in that CONGRESSIONAL RECORD. I here resubmit those missing lines which thanked Phil Jodz and Mike Rule on my staff for their contributions to my incumbency.

The end of a congressional career brings about many emotions. Over the last 20 years I have happily spent representing the fine people of the 17th Congressional District of Pennsylvania I have had the pleasure of working with thousands of constituents, local, state and federal officials, and many former and current distinguished members of the U.S. House of Representatives and the U.S. Senate. To all of them I say, thanks for working with me towards a better America.

And, of course, every Member of Congress works with many, many competent staff, from the staff in their own personal offices to the committee and subcommittee staff and the leadership and floor staff. It has often been said that without staff where would this institution be? And I concur with that statement, for without the many fine staff with whom I have had the good fortune to work, I and other Members of Congress of the United States would be far worse off.

Phil Jodz, is the many talented staff assistant who handled constituent tours and interns, and also ably handled press, legislative research, the office website, and all manner of writing in my office. Mike Rule, our newest staff assistant, showed a willingness, and more importantly a capability, to do whatever was needed to assist the office.

To both I say please accept my sincere thanks for making my tenure in the U.S. House of Representatives a productive and pleasant one. Any current Member of Congress or committee would be well served by the high-quality staff with whom it has been my pleasure to work over these many years.

CONCERNS WITH THE PAKISTANI PARLIAMENT'S RELIGIOUS BLOC

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. PALLONE. Mr. Speaker, I would like to take this opportunity to express my concerns regarding the Pakistani Parliament and in particular, the efforts of the Islamic alliance to form a governing coalition in Parliament with either the King's Party, led by President Musharraf, or the People's Party, led by Benazir Bhutto.

Mr. Speaker, during Parliamentary elections held in Pakistan last month, members of the Pakistani religious bloc known as the Islamic allies unexpectedly won 60 out of 342 seats. Not only was this surprising, but furthermore, the outcome of the elections was divided in such a way that no party won the number of seats necessary to form a government.

As a result, the Islamic allies have been negotiating separately with the pro-Musharraf party and the Bhutto party in an effort to form a coalition and thereby create a majority. Their intent is to demand a reversal of constitutional amendments introduced by Musharraf earlier this year, and most importantly, to overturn the amendment that allows Musharraf to dismiss Parliament.

However, what concerns me greatly is that the members of this Islamic alliance, or this Pakistani religious bloc, won their seats based almost exclusively on an anti-American platform. In fact, this party's primary campaign message criticized Musharraf's support for the war on terror and denounced Musharraf's cooperation with the United States. In addition, a component of this party's message demanded that the U.S. military leave Pakistan and Afghanistan immediately. Lastly, the Islamic allies have encouraged Pakistanis to offer sanctuary to both the Taliban and Al-Qaeda and to embrace the work of Osama bin Laden.

Mr. Speaker, I believe that for these reasons, it is imperative that Pakistan's religious bloc remain unsuccessful in forming a coalition with Musharraf's party or Bhutto's party. If in fact this party gained a majority and was able to implement its anti-US policies, the consequences would be devastating.

At this stage, it does not seem as if the religious bloc will be able to achieve forming a government. However, Mr. Speaker, it is in the best interest of the U.S. to monitor this situation closely.

CONFERENCE REPORT FOR H.R. 4546, THE BOB STUMP NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2003

HON. WALTER B. JONES

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. JONES of North Carolina. Mr. Speaker, last week, the House of Representatives took up and passed the conference report to H.R. 4546, the Fiscal Year 2003 National Defense Authorization Act. As one of the conferees to that measure, I was proud to support the overall bill and was pleased to see its passage. The Bob Stump National Defense Act was a fitting tribute to a man whose congressional career was spent working for our Nation's men and women in uniform.

This year's Defense Authorization Act has three main principles: protecting and defending America's homeland, supporting U.S. service members and their families, and better equipping troops with training, equipment and weapons to fight and win the war against terrorism. It marks the largest increase in defense spending in over 20 years, providing billions of additional dollars for procurement, research, and development for the next generation of weapons. The measure continues our commitment to improving the pay of military personnel by providing a 4.1 percent pay increase and continued the administration's plans to eliminate out-of-pocket housing costs for military families. H.R. 4546 devotes considerable resources toward protecting our homeland from the threat of terrorist attacks and from the growing proliferation of ballistic missiles. I stand behind this bill because I believe it provides our military with the foundation it needs and deserves. We are living in a time of war and must act accordingly.

Despite the important advances this bill makes for our national defense, I retain two reservations about the final product.

One significant issue which has not been addressed is legislation I sponsored to redesignate the position of the Secretary of the Navy as the Secretary of the Navy and Marine Corps. For over 200 years the Navy and Marine Corps have shared a secretary in being, but not in name. Notwithstanding their jointness, the Navy and Marine Corps are distinct with their own history, honors, and tradition. Rather than detracting from those traditions, this legislation seeks to recognize the separate, but equal traditions that the Navy and the Marine Corps team share. It acknowledges that there are two members of the same team and seeks to reinforce to the American people that the Secretary is a proud supporter of both. The legislation was adopted unanimously in the House Armed Services Committee, over half of whose membership had cosponsored the legislation. It was supported by three former Secretaries of the

Navy, the current and two former Commandants of the Marine Corps, a former Secretary of the Veterans' Administration, and many other former senior leaders of the Navy and Marine Corps. The Fleet Reserve Association and the Marine Corps League, each boasting thousands of members, also strongly urged passage of the legislation. Yet because of the concerns of a few, it was not included in the final conference report.

However I do not view this as a setback, but instead an opportunity. I remain committed to introducing the measure again early in the 108th Congress. As Commandant Jim Jones stated, this is an idea whose time has come. I will be working diligently with my Navy and Marine Corps friends to broaden the support and communicate the importance of this measure. By passing this legislation, the teamwork that has been present for over 200 years will finally be recognized in the title of the person who coaches the team.

A second shortcoming of the otherwise outstanding measure is the compromise on concurrent receipt. Although the language in the conference report regarding concurrent receipt is a very important step forward, I strongly believe that more should be done. As I stated in a letter to President Bush, if a man or woman served in uniform and retired honorably, they deserve to receive the retirement pay they were promised. If in the course of that service, that military member was injured and sustained a lasting disability, they should be compensated for that as well. One was earned for service and one was earned for sacrifice. It is for that reason that I have been a strong supporter of legislation to eliminate this offset since coming to Congress.

It is true that correcting this unfair penalty is expensive, however I also believe that our military retirees are priorities for which we must be willing to support. Congressman BILIRAKIS, numerous military and veteran organizations such as the Fleet Reserve Association, and countless veterans have waged a tireless effort to see legislation ending the prohibition against concurrent receipt enacted. They should be commended for the great work that has been accomplished to date and encouraged to continue this fight in the future. I look forward to working with them on future efforts to meet the principles behind H.R. 303. Our military retirees did not fail us when they were called. We should not fail them.

GOVERNMENT PENSION OFFSET AND WINDFALL ELIMINATION PROVISION

HON. MAX SANDLIN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SANDLIN. Mr. Speaker, in the waning moments of this Congress, the House of Representatives almost adopted a bill that would have devastating consequences to teachers and public employees across the State of Texas and the country. Instead of helping teachers and government employees secure a better retirement, H.R. 4070, Social Security Program Protection Act of 2002, as amended, would have left hard working teachers worse off rather than better off. In these uncertain economic times, this Congress should be adopting legislation to make sure everyone has access to the retirement benefits they have earned over a lifetime of work and service.

Two little known amendments to the Social Security Act are dramatically and unfairly slashing the retirement benefits of hundreds of thousands of Americans—teachers and other public school employees, firefighters, police, social workers, and other civil servants—who are being penalized for their public service. These provisions are just plain unfair, and I am committed to working to end the injustices of these two provisions.

The Government Pension Offset, GPO, requires that an individual who receives a pension from work that was not covered by Social Security has his or her Social Security spousal benefit substantially reduced. The law allowed an exemption from the GPO if he or she worked in a job that was covered by Social Security on his or her last day of employment. Under the Senate-passed version of H.R. 4070, an individual would be required to work in a Social Security-covered job for the last 5 years of employment to be exempt from the GPO. The amendment is being characterized as closing a loophole. This is not a loophole but rather a mechanism for individuals to obtain the benefits for which they have paid. It is an unnecessary and unjust hurdle. Instead of raising the bar to achieve these earned benefits, Congress should be eliminating the barriers completely.

In addition to the GPO, teachers and certain other workers are subject to the Windfall Elimination Provision (WEP). This provision unfairly harms public servants by reducing—sometimes by as much as 55.6 percent—the Social Security benefits of federal, state, and local employees who retire from government jobs that are not covered by Social Security.

For teachers, the cost is significant. The Government Pension Offset and Windfall Elimination Provision affect at least one-third of America's education workforce, concentrated in 15 states, including my home state of Texas. But, because people move from state to state, there are affected individuals everywhere. I know from personal experience the penalty hard working teachers pay. My own mother, who spent nearly 30 years serving as a teacher in the public schools, has been adversely affected. We need to attract more people to teaching and public service. Adding onerous and additional unfair requirements to obtaining their retirement benefits will not solve the crisis we are having in attracting and retaining teacher professionals.

Since my election to Congress, I have worked to eliminate these two provisions. On March 1, 2001, I introduced H.R. 848, the Social Security Benefit Restoration Act. This bill will bring equity to retirement benefits. It will eliminate the public sector penalty and will allow civil servants to draw full Social Security benefits. I am also a cosponsor of H.R. 2638, the Social Security Fairness Act. This bill eliminates the Windfall Elimination Provision as well as the Government Pension Offset. Finally, I, along with an overwhelming majority of Members, have cosponsored H.R. 664, which also eliminates the Government Pension Offset.

My bill and the other legislation to eliminate these unjust provisions have been languishing in the House Ways and Means Committee. These bills are but another example of the long list of things the Republican leadership of the Congress has failed to address. To pass a bill that would make retirement less accessible for those who teach our children is unconscionable. We need to be doing more to strengthen the teaching profession and not adopt laws that make teaching less attractive to current and prospective teachers.

When the 108th Congress convenes next year, I will reintroduce my bill and work with my colleagues to eliminate these unfair provisions. Thousands of Texans who have devoted their lives to teaching and public service are entitled to the benefits they have spent a career earning. Basic fairness demands that Congress repeal these provisions and allow teachers and other public servants to collect all of their retirement benefits.

ON THE HISTORIC OCCASION OF THE UNITED STATES CONGRESS JOINT MEETING IN NEW YORK TO COMMEMORATE THE TRAGEDY OF SEPTEMBER 11TH

HON. JUANITA MILLENDER-McDONALD

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. MILLENDER-McDONALD. Mr. Speaker, it is an honor for me as the Member of the United States Congress to convene here in New York today, September 9, 2002, on this historic occasion. It has been one year since the tragic terrorist attacks of September 11. It has been over two hundred years since Congress convened here in New York at Federal Hall to elect the first President of the United States and to ratify the Bill of Rights.

We applaud the people of this great city and state for their resolve in light of the devastation thrust upon them. It is a credit to their perseverance and their total commitment to freedom that the 107th Congress stands proud today. We reflect with remorse on the past year, but also look forward with hope and optimism as we proceed in the healing of our Nation. On this historic day, the congress has convened to mourn the loss of families and friends during the September 11 attacks, and to salute the heroism of our police officers, fire fighters, and emergency responders who performed with unbridled bravery and gave so selflessly on that tragic day.

As I reflect on the tragic events of a year ago, I am reminded of the heavy hearts of so many great Americans who have grappled with this cowardly act and for those who had loved ones who perished in New York, Pennsylvania and the Pentagon. For those who lost friends and coworkers and who must now try to go on with their lives, our prayers are offered to these families and their friends and to all America and other Countries who lost loved ones.

Today, we are expressing our gratitude to the fire fighters, police officers, healthcare workers and those individuals who, on that fateful day, performed heroic deeds and helped their fellow citizens and neighbors without regard for their own welfare.

During the recent year, my colleagues and I in Congress have actively engaged in debate about how to develop an agenda that addresses the new world in which we now live.

Though our country and the world have been shaken, we continue to build bridges toward progress and strengthen the bond of patriotism and the spirit of hope. I cannot express how important it is to map out a course for our future that will sustain, inspire and protect our children. We must provide our children with a sense of optimism and hope.

Our domestic efforts and grief over the tragic events of September 11 have heightened our appreciation for the pain of others around the world who have been subjected to the brutality and inhumanness of terrorism. That is why we have supported liberation and democratization efforts in Afghanistan and seek to assist in the rehabilitation of those persecuted and who are attempting to rebuild their lives and their country. We must complete our mission there.

As we return to Washington, our nation and its Congress will never forget the victims of September 11. On this occasion of reflection, recommitment and rededication to freedom and democracy, we are affirming our commitment to remember and honor the men and women who paid the ultimate price—their lives. They will always be a part of our history and our hearts. Our nation shall continue to rise to meet the challenge of terrorism and the threats posed by terrorists who seek to derail freedom and a Nation of peace.

H. RES. 598

HON. HILDA L. SOLIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. SOLIS. Mr. Speaker, it is with a heavy heart and great sadness that I rise to honor my friend Senator Paul Wellstone, who died October 25 in a plane crash in Minnesota along with his wife and daughter, three of his staff members and two pilots. The mark that Paul Wellstone left on the world was far, far greater than his small stature and down-to-earth nature would suggest. And so, the emptiness we feel at his passing is vast and deep. It stretches far beyond the personal pain of losing a friend, or the tragedy of his shattered family.

Senator Wellstone was a public servant in the most ideal sense of the term. Politics never became more important to him than the people he represented and the people he loved. Victory never became more important to him than voicing his true convictions. Power never became more important to him than his desire to serve the powerless.

On the campaign trail, Paul Wellstone drove an old green school bus across the state of Minnesota. From that bus Senator Wellstone tirelessly assured people that he would struggle for peace and fight for veterans, that he would work to stop the tide of domestic violence and mental illness, and that he would defend our fragile environment. Most of all, that old bus brought hope and excitement to people whom for too long, and for too many reasons, felt that their government had forgotten about them. Now that he is gone, that bus must not sit and rust away. We must have the courage, the commitment, and the strength to keep that bus rolling.

I will miss Paul Wellstone greatly. I know that we all will.

HONORING TERRY FARMER OF HUMBOLDT COUNTY, CALIFORNIA

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize Terry Farmer of Eureka, who is being honored for his twenty years of public service as the District Attorney of Humboldt County, California.

Mr. Farmer has had a long and distinguished career as a public servant in our community. He has served on numerous community boards and organizations to help make the community a better place in which to live. Prior to being appointed a deputy district attorney, he was elected to the Trinidad City Council and as a member of his local school board. He was elected District Attorney of Humboldt County in 1982.

As district attorney, Mr. Farmer strived to achieve an outstanding system of justice, defined by professionalism and integrity. He developed a culture of excellence that reinforced competence and ethical values within the office.

During his tenure, the district attorney's office assumed a leadership role in the Child Abuse Services Team, a consortium of law enforcement, child protective workers, mental health professionals and victims working to improve investigations, convict molesters, and protect children. The program remains a model throughout the state of California.

Mr. Farmer worked collaboratively to develop a program to crack down on the use of methamphetamine in our community, while working to increase public awareness and improve treatment services to deter people using the drug.

Mr. Farmer graduated from the University of Minnesota in 1972. He concluded 6 years of service as a 2nd Lieutenant in the U.S. Army National Guard. He has ably served our nation, our state and our community.

Mr. Speaker, it is appropriate at this time that we recognize Terry Farmer for his vision, leadership and commitment and for his extraordinary record of public service to the people of the North Coast of California.

ON THE RETIREMENT OF DR. ARTHUR H. WU AFTER 28 YEARS OF DISTINGUISHED FEDERAL SERVICE

HON. CONSTANCE A. MORELLA

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mrs. MORELLA. Mr. Speaker, I rise to congratulate my constituent, Dr. Arthur H. Wu, for 28 years of meritorious federal service. In my Congressional tenure, I have been very proud to represent and serve the interests of our nation's most distinguished federal employees. These civil servants help to make our country safe, functional, and effective. We value their service and, today, I would like to specifically recognize Dr. Wu for his contributions to our nation upon his retirement from the Navy on December 20, 2002.

In his years of federal service Dr. Wu has made several notable contributions and attained a number of exceptional achievements. He was a top-ten finalist for the U.S. National Federal Engineer of the Year Award in 1997, as well as a two-time winner of the Naval Facilities Engineering Command (NAVFAC) Engineer of the Year Award in 1985 and 1996. For these honors, he was recognized for: his significant contributions to the application of numerical modeling and computational analysis of foundations and dry-dock safety that resulted in millions of cost savings to the Navy; his exemplary leadership in directing and preparing engineering standards, criteria, and computer software used by practicing engineers in site selection and design in areas of high security; and for over conserving an estimated $20 million of Navy resources and providing for enhanced military readiness. In addition to the above three major awards, Dr. Wu has also received over 20 special awards for his engineering design achievements and innovative technical developments.

Dr. Wu has ably served our nation well in a number of capacities including Senior Geotechnical Consultant, Acting Chief Engineer, Director of the Applied Engineering Division, and Technical Discipline Leader for the Naval Facilities Engineering Command and Naval Facilities Engineering Service Center. Dr. Wu is recognized worldwide as one of the premier problem solving engineers in the Naval Facilities Engineering Command. His reputation for expert and thorough engineering analyses and support for ongoing design and construction projects are well known within the Department of Defense and private industry.

Mr. Speaker, I would like to thank Dr. Wu for his years of service to our federal government. I offer him my warmest congratulations on his retirement and best wishes in his future endeavors.

THE UKRAINIAN FAMINE AND HUNGER IN AFRICA

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SCHAFFER. Mr. Speaker, as Co-Chair of the Congressional Ukrainian Caucus, I rise today to commemorate those innocent victims murdered by the Soviet regime during the Ukrainian Famine. Mr. Speaker, I also call the attention of the House to the famine presently being waged against the people of Zambia, Zimbabwe and South-central Africa.

This year, on November 23, the world observes the 69th anniversary of Ukraine's Great Famine—an unspeakable event. By presidential decree, every fourth Saturday in November is a national day of remembrance for famine and genocide victims throughout Ukraine. History has not witnessed a greater moral injustice. This was genocide unlike any other example in the history of human civilization.

At the time of the Great Ukrainian Famine, playwright George Bernard Shaw and his friend, Lady Astor, had a rare visit with Josef Stalin. "When are you going to stop killing people?" Lady Astor brazenly asked of Comrade Stalin. His terse reply: "When it is no longer necessary."

Stalin's favorite killing tool was mass starvation, a tactic he used ruthlessly against his own people. "The collectivization program in Ukraine resulted in a famine which cost not less than 3,000,000 lives in 1932. It was a Stalin-made famine," reported Time Magazine in its January 1, 1940, issue. We know now, the more realistic estimate is more than twice that originally reported by Time.

The Ukrainian Famine of 1921–1923 was a human tragedy perpetrated by the Soviet regime in an attempt to destroy Ukraine and its culture and leave behind an amorphous mass of people that could be restructured and redefined to serve the Soviet Union. It began as a process of assimilation, but soon turned to the collectivization and then subjugation of Ukrainian peasants, their lands, and their livelihoods. Most paid the ultimate price for their heritage, culture and orientation toward independence.

Bolshevik partisans confiscated grain from Ukrainian peasants and subsequently exported the stolen food to foreign nations and other regions of the Soviet empire. Those who protested were imprisoned, deported, or often killed on the spot. This grain, belonging to Ukraine, would have saved thousands of Ukrainian lives. Instead, it was callously shipped off for purposes of generating state profit, sometimes left to rot on the docks, or shipped to meet the needs of Russia's population. Once the famine ended, Ukraine's population was further decimated by a series of epidemics.

The Commission on the Ukraine Famine, appointed by Congress in 1986, researched and documented this terrible event. The commission confirmed these horrible events and verified the cruelty with which the atrocity was executed. The deliberate mass starvation did indeed constitute an act of genocide against Ukrainians. The commission's findings are recorded in the CONGRESSIONAL RECORD for posterity, as is the graphic and sobering testimony of genocide survivors.

Mr. Speaker, Members of the Congressional Ukrainian Caucus have, in prior years, risen here on the House floor in observance of the Ukrainian Famine and in solidarity with the survivors of this terrible tragedy. We have taken great efforts to ensure this House never forgets. In fact, we honor the lives of the victims by rededicating ourselves to summoning the strength and courage of our own nation and the conscientious voices of its leaders in the Congress to stand in firm contradiction to any new tyrant who would contemplate such devastation through intentional famine.

Today's observance compels me to also speak out against one such example of starvation currently taking place in south-central Africa. Mr. Speaker, America must be unambiguous in its opposition to the deliberate famine presently being orchestrated there by an alliance of clearly defined conspirators.

As in Ukraine seventy 70 years ago. Southern Africa's famine has less to do with drought and everything to do with pure politics. Today, nearly 13 million people in Southern Africa face a similar starvation.

"We're staring catastrophe in the face—unless we get food aid fast to millions of people whose lives are in the balance because they are starving," said James Morris, the UN's special envoy to the region.

Officials blame environmental groups such as Friends of the Earth and Greenpeace that have pressured African countries like Zambia to halt shipments of food aid from the United States and other nations willing and able to relieve the famine and save precious lives. The groups oppose so-called genetically modified (GM) foods. Extremist groups have put their ideology—opposing the importation of all such hybrid agricultural products—ahead of the lives of starving people.

"It's very disturbing to me that some groups have chosen a famine to make a political point," says Andrew Natsios, administrator of the U.S. Agency for International Development (USAID). "The lives of 13 million people are at risk."

Natsios said the U.S. is ready to supply more than 75 percent of all the food coming into starving Southern Africa. "If they don't get food from us they're not going to get it," he said.

This year, for example, Zimbabwe has refused to accept U.S. corn, convinced by radical groups that GM gain might somehow "contaminate" native crops. Some of this lifesaving corn was grown in my own state of Colorado. Adding more disinformation, Friends of the Earth claims "the U.S. is disposing of its rejected food on Africa," in a news release last month.

Just as in Stalin's days, truth has seldom been an ally of the Left. Natsios, who says the U.S. has been supplying GM foods to the region for the past seven years, also says it is the same food sold and consumed in the United States. "I've never seen, in my 30 years of public service, such disinformation and intellectual dishonesty," he said.

As for problems with modified crops—there are none. Concerned about the lives of millions of people desperately in need, the World Health Organization (WHO) released a report at the end of the summer assuring GM foods are perfectly safe. "Southern African countries should consider accepting GM food aid in the face of the humanitarian crisis facing the region," urged WHO Director General Gro Harlem Brundtland.

Like the notorious 1932–1933 mass starvation in Ukraine, famine is not always borne of a natural disaster. However, famine can become an effective ideological weapon.

Stalin himself would have been proud of the sordid partnership forged by radical environmentalists and African tyrants. What are a few million lives worth to this axis of hunger when there are political statements to be made?

Mr. Speaker, I urge the House to speak in strenuous objection to this African tragedy unfolding before our very eyes. The extreme human price paid for the lessons of the Great Ukrainian Famine should not be dismissed now to the complacency of an overwhelmed world. To permit this new festering scourge is to insult the memory of those poor Ukrainians who have perished while trivializing the dignity of their survivors whose lives command us to respond with immediate courage.

HONORING FORMER CONGRESSMAN BUD SHUSTER

HON. JAMES L. OBERSTAR

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. OBERSTAR. Mr. Speaker, I rise today to express congratulations to a former colleague, Congressman Bud Shuster of Pennsylvania, for an honor he recently received.

Earlier this week, Bud Shuster was named the "Transportation Person of the Century" by the Associated Pennsylvania Constructors (APC) in honor of the tremendous contributions he has made to the nation's transportation and infrastructure systems. It is a tribute to Bud that APC rightly recognized the role that he played in ensuring that our communities have transportation choices, such as transit, rail systems, pedestrian walkways, Amtrak, and bike paths.

Bud Shuster spent his career building America. Bud served in the House of Representatives for 28 years, six of those as Chairman of the House Transportation and Infrastructure Committee, the largest and most productive committee in Congress. His perseverance, patience and willingness to find common ground made him one of the greatest committee chairmen we have seen in recent years in the House. His extraordinary achievements as Chairman speak for themselves, and he has the respect of his former colleagues on both sides of the aisle.

Part of the joy of working on the Transportation and Infrastructure Committee is the way in which we work together to develop bipartisan bills. As a committee, we worked extraordinarily well over the six years of Bud's leadership. I had the pleasure of working with him on many major pieces of legislation to improve the nation's transportation and infrastructure systems, including TEA–21 and AIR–21. Throughout his service on the Transportation Committee, Bud Shuster demonstrated effective bipartisan leadership in showing that transportation, infrastructure and environmental programs make a real difference in all Americans' lives.

He retired from this body at the beginning of the 107th Congress, and since that time, I have missed him, not only for his policy expertise, but also for his friendship. I commend and congratulate Bud Shuster on his distinguished career as a public servant.

A SPECIAL TRIBUTE TO RICHARD H. FINAN FOR HIS DEDICATED SERVICE TO THE OHIO GENERAL ASSEMBLY AND TO THE STATE OF OHIO

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. GILLMOR. Mr. Speaker, it is with great pride that I rise today to pay special tribute to an outstanding gentleman, and good friend, from Ohio. Dick Finan, from the Village of Evandale, is the outgoing President of the Ohio Senate. He is being honored for his dedicated service and loyalty to the Ohio General Assembly and to the citizens of Ohio.

Mr. Speaker, President Richard H. Finan began his career in public service in 1963. He served as a Councilman in the Village of Evandale until 1969, when he was then elected to serve as Mayor.

After serving the citizens of Evandale for ten years, he ran for and was elected to the Ohio House of Representatives. There he served with distinction until 1978. He was elected to the Ohio Senate upon leaving the House of Representatives and in 1997, was elected by his colleagues to serve as Senate President.

President Finan has had a significant impact on public policy in Ohio. He has also reached out nationally in an attempt to improve the lives of all citizens living in this great land. He currently serves as Chairman of the University of Dayton Board of Trustees and is a Past President of the National Conference of State Legislatures. Serving his community and the State of Ohio was not only Dick's duty, but also his honor. These chances to give back to the public have brought him a lifetime of both personal and professional achievement. President Finan truly is a valued asset to the Village of Evandale and to the state of Ohio.

President Finan has been a great resource and a true friend to everyone around him. Respected by his colleagues in the legislature and in the private sector, Dick has shown the ability to improve the environment around him. He has been the recipient of many awards that reflect his service, including the Tree of Life Award from the Jewish National Fund, the President's Medal from Miami University, the Distinguished Citizen Award from the Medical College of Ohio, and the William Howard Taft Americanism Award from the Anti-Defamation League. He is an Honorary Alumni Member—Omicron Delta Kappa—at the University of Dayton and holds an honorary degree from Xavier University.

President Finan will be missed in the public arena. His wisdom, honesty and forthrightness are attributes to which all public servants should aspire. He has set an example for everyone on how to live a life of service, putting the greater interests of the community before one's own.

Mr. Speaker, I ask my colleagues to join me in paying special tribute to President Richard H. Finan. Our communities are served well by having such honorable and giving citizens, like Dick, who care about their well being and stability. We wish Dick, his wife Joan and their four children all the best as we pay tribute to one of our nation's finest citizens.

TRIBUTE TO REVEREND LAVAUGHN VENCHAEL BOOTH

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. PORTMAN. Mr. Speaker, I rise today to honor the life and accomplishments of Reverend Lavaughn Venchael Booth, a distinguished friend and champion of faith and justice from Cincinnati, who passed away on November 17.

Born on January 7, 1919 in Covington County, Mississippi, Reverend Booth received a bachelor's degree in American history from Alcorn A&M College; a bachelor's degree in divinity from Howard University; and a master's degree in church history from the University of Chicago Divinity School. He began his ministry with First Baptist Church of Warrenton, Virginia and continued his ministry with First Baptist Church of Gary, Indiana. He pastored Zion Baptist Church in the Avondale area of Cincinnati for 32 years before founding the Olivet Baptist Church in Silverton. Last year, he came out of retirement to pastor the Church upon the Rock in Anderson, Indiana.

In 1961, Reverend Booth founded the Progressive National Baptist Convention (PNBC). The PNBC became the household of Rev. Dr. Martin Luther King Jr. and the civil rights movement among African-American Baptists. As Dr. Lewis V. Baldwin noted, "King, while siding with progressives, had no active role with the organization of the PNBC." Dr. King at his last meeting with the PNBC in 1967 in Cincinnati emphasized according to convention minutes "that he is a member of the PNBC. He has come to speak not as a civil rights leader, but as a minister of the gospel." The PNBC split from the National Baptist Convention and formed a denomination that played an active role in the civil rights movement by joining with the Southern Christian Leadership Conference and provided Dr. King with a national platform. Reverend Booth served as its president from 1971–1974. Progressives today have 2.5 million members in 1,800 churches nationwide.

But Reverend Booth's focus was his local ministry, and he said, "We should have concern for the physical, as well as the spiritual well-being of people." He initiated economic development projects, secured the credit to build hundreds of low-income housing units and a church-run nursing home, and later established the region's first black-owned bank. Described as a visionary who dedicated his life to the Lord, he was driven to do for others, trying to make the world and his community a better place to live.

Reverend Booth's civil and community activities are legendary. He was the first African-American member of the University of Cincinnati Board of Trustees. He was a founding member of the Dr. Martin Luther King Jr. Center for Nonviolent Social Change, served on the board of the Cincinnati City Gospel Mission and as vice president of the Gospel World Alliance. He helped to establish the Marva Collins Preparatory School in Cincinnati; the Cincinnati Ecumenical Prayer Breakfast, a service that offered prayers for newly-elected public servants; and the National Prayer League.

Reverend Booth is survived by his sons, Paul Booth of Cincinnati, who is a member of the Cincinnati City Council; Lavaughn Booth Jr. of Chicago; and Rev. Dr. William Booth of Hampton, Virginia; and daughters Anna-Marie Booth of San Francisco, and Dr. Georgia Leeper of Memphis. He is also survived by 14 grandchildren and 3 great grandchildren. We are blessed by his life and having known him.

PERSONAL EXPLANATION

HON. KAREN McCARTHY

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. McCARTHY of Missouri. Mr. Speaker, during rollcall vote No. 484, I was unavoidably detained. Had I been present, I would have voted "aye."

RECOGNIZING CONGRESSMAN BILL COYNE

HON. JOHN P. MURTHA

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. MURTHA. Mr. Speaker, today I would like to pay tribute to my long time friend and colleague. BILL COYNE will retire from this institution after serving 11 terms as a Member of this institution.

Bill is a lifelong resident of Pittsburgh, and so like myself, is a native of the southwestern Pennsylvania district he has so faithfully represented for the past 22 years.

The 14th District includes the city of Pittsburgh as well as 33 other surrounding communities in the very heart of this country's steel producing center. From his post as a senior member of the Ways and Means Committee, he has been able to develop and promote countless economic policy initiatives to the benefit of the Southwestern region as well as the Nation, including those dealing with Social Security, trade, tax reform, health care, housing and community development, job creation, and job training.

In addition to serving as ranking member of the Ways and Means Oversight Subcommittee BILL has served on the Banking Committee, the Budget Committee, the Committee on House Administration, and the Committee on Standards of Official Conduct. He has consistently used his committee assignments to promote federal policies to the benefit of urban America.

During the 103rd Congress, BILL succeeded in making the tax-exempt Industrial Development Bond permanent. IDB's helped to create or retain more than 26,000 manufacturing jobs in Pennsylvania alone between 1987 and 1992. He also led the successful House Ways and Means opposition to a proposed $1 per gallon hike in the Federal fuel tax for waterway commerce in 1993, which was of enormous economic benefit for the Three Rivers area he represents.

Bill also successfully inserted language in the 1993 reconciliation bill that provided low-income workers with an improved opportunity to receive an Earned Income Tax Credit on a monthly basis, instead of waiting for a single annual payment.

In the 104th Congress, BILL COYNE worked with many of his Democratic colleagues to protect Federal funding for programs serving children, seniors, and working families, and to ensure that the burden of Federal taxation was not disproportionately borne by working families. He also worked to provide tax incentives for businesses and municipalities to clean up and redevelop abandoned industrial sites, and he worked to expand protection for workers' rights in international trade agreements.

In the 105th Congress, he worked for middle-class tax relief while balancing the Federal budget responsibly. He was a supporter of both the Taxpayer Relief Act of 1997 and the Balanced Budget Act of 1997. He worked successfully to include a provision in the Taxpayer Relief Act of 1997 which allowed businesses to deduct the cost of cleaning up brownfields sites in certain targeted areas. He was also actively involved in developing and enacting legislation to reform the Internal Revenue Service, and much of his Taxpayer Bill of Rights legislation was in that bill.

BILL COYNE worked to make organ transplant regulations fairer and worked with me to make the Disproportionate Share Hospital program's formula for hospitals fairer as well. He also worked to provide nearly $800 million in projects for his district in the Transportation Equity Act for the 21st Century (TEA–21) including reconstruction of Drake, Library and Overbrook trolley lines, construction of an extension of the MLK Jr. Busway, construction of an industrial access road in Lawrenceville, and construction of transit links between downtown and the North Shore.

During the 106th Congress, BILL COYNE continued to work to protect federal programs that serve children, senior citizens, the disabled, and working families; enact a Medicare prescription drug benefit; strengthen U.S. laws that punish unfair foreign trade practices; protect Americans' pensions and other retirement benefits; increase funding for medical research and education; and make the Federal Tax Code simpler and fairer by reforming the capital gains tax and the alternative minimum tax. He also worked successfully to increase public awareness about food stamp eligibility and to expand the brownfields tax provision and push back its expiration date by several years.

BILL COYNE is a graduate of Central Catholic High School and Robert Morris College. He served in the United States Army in Korea from 1955 to 1957. He worked as a corporate accountant for 13 years before entering politics in 1970. He served in the Pennsylvania House of Representatives from 1971 to 1972 and on the Pittsburgh City Council from 1973 until 1980.

I'm proud to have served alongside BILL COYNE and worked with him for these many years for the benefit of our adjoining districts and Pennsylvania as a whole. BILL's seniority on Ways and Means will be sorely missed by Pennsylvania. His expertise as a legislator will be missed by all Americans who were helped by his good work. His good nature, friendship, and collegiality will I know be missed by his fellow Pennsylvania Members and indeed by all of us here in the House of Representatives. Please join me in wishing him well in his retirement from public service.

IN HONOR OF STEPHEN BRAUNGINN

HON. TAMMY BALDWIN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. BALDWIN. Mr. Speaker, I rise today to recognize Mr. Stephen Braunginn, President and CEO of the Urban League of Greater Madison for his work in the community.

As a leader in the Urban League movement and in the Madison area community, Mr. Braunginn has focused on the continuing struggle for equal opportunity for all with a special focus on African Americans, other people of color, those with disabilities and the disadvantaged.

Prior to working with the Urban League, Steve served as the Deputy Director for the Wisconsin Clearinghouse for Prevention Resources for over four years. He was the first Director of Multicultural Affairs and Special Interest Groups for the Wisconsin Alumni Association at the University of Wisconsin-Madison.

He is also an educator, having taught in the Madison Schools for six years, working with students with learning disabilities and the gifted and talented. He served as a leader on the Wisconsin Education Association Council (WEAC) where he was also the leader of Teachers for a Free South Africa. In addition, Steve became active in developing a middle school for South Madison. When he was a teacher at Cherokee Middle School, he served on the Urban League Board of Directors, where he later became chair, serving for two years. During his tenure on the Urban League Board, Steve was selected to serve on the Madison School's South Madison Advisory Committee, which eventually developed the framework for Madison Middle School 2000 which later became James C. Wright Middle School.

Steve served on the Dane County Board of Supervisors for six years. During this time he chaired the Personnel and Finance Committee and the Dane County Human Services Board. He has been on many community commissions, served numerous organizations, and has also received a variety of awards for his service to the Madison area community.

As the Wisconsin Community Fund honors Steve Braunginn, I am proud to join them in thanking him for his dedication and service to the community.

LONG ISLAND'S HOUSING CRISIS

HON. STEVE ISRAEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. ISRAEL. Mr. Speaker, I rise today to once again note the severe affordable housing crisis my constituents face on Long Island.

Today's Newsday carried an article by Christian Murray revealing some truly disturbing statistics. According to the U.S. Census Bureau, 26 percent of Long Island households pay more than 35 percent of their gross monthly income on either rent or mortgage. For over fifty years Americans have been cautioned to keep housing expenses under 25 percent of their income. The 35 percent average is a genuine crisis.

Pearl Kamer, an economist who wrote the report for the Island's leading affordable housing organization, the Long Island Housing Partnership, noted that "with many people paying so much on housing, there is little left over for food and medical care."

Mr. Speaker, this housing crisis is having a terrible effect on Long Island's families. The fact that young people—often college graduates with good jobs—cannot find adequate, affordable housing, means that those young people are leaving Long Island. And if companies can't rely on a stable workforce, they will choose to locate somewhere else.

The lack of affordable housing on Long Island is not merely about some families having to pay too much. It is a problem that permeates every part of our community's life. Young people are forced out of our region. Jobs disappear as companies decide they can no longer depend upon a solid workforce. And our communities dissolve as the very foundation on which that community was built erodes.

Mr. Speaker, when the 108th Congress convenes in January, we must quickly address the issue of adequate housing in America.

I ask that the text of today's Newsday article be included in the RECORD at this time.

[From Newsday, Nov. 21, 2002]

MORTGAGING LI'S ECONOMIC FUTURE

(By Christian Murray)

Skyrocketing rents and booming home prices are forcing more than 200,000 Long Island households to pay more than one-third of their income on housing, according to a comprehensive new study released yesterday.

The study, "Lack of Affordable Housing: Prescription for Economic Disaster," found 26 percent of Long Island households pay more than 35 percent of their gross monthly income on either rent or mortgage.

"These findings are dire," said Pearl Kamer, a regional economist who conducted the study for the Long Island Housing Partnership. The U.S. Department of Housing and Urban Development guidelines say households should not spend more than 30 percent of their gross income on housing.

"With many people paying so much on housing, there is little left over for food and medical care," Kamer said at a news conference at North Shore University Hospital in Manhasset yesterday. Kamer added that the high cost of housing is forcing many people, especially young families, to leave Long Island, and this exodus will hurt the region when the economy picks up and companies can't find workers.

While affordable housing has long been an issue on Long Island, the problem has been exacerbated by the hot real estate market in the past four years, when home prices have soared 81 percent while household incomes have risen only 14 percent, Kamer said.

Jim Morgo, president of the Hauppauge-based Long Island Housing Partnership, said he has established a task force of industry

> and nonprofit officials to take the study's findings to every municipality across the Island, as a means of prodding officials to make way for more affordable housing.
>
> The study, based on 2000 census figures, analyzed median incomes and housing costs in more than 250 communities by individual census tract.
>
> It found that about one quarter, or 165,000 of Long Island's 672,000 homeowners, paid at least 35 percent for a place to live—including mortgage payments, property taxes and insurance. In some Nassau County neighborhoods, including Elmont, Hempstead Village, Uniondale and Roosevelt, at least 20 percent of the owners spent more than 50 percent of gross income on housing. And this scenario also occurred in the Suffolk neighborhoods of Wyandanch, North Amityville, North Bay Shore and Brentwood.
>
> The study also found that one-third of tenants across Long Island paid more than 35 percent of household income in rent. In many neighborhoods—such as Central Islip, North Amityville, Wyandanch and Lawrence Village—about 40 percent of renters pay more than half their wages on shelter. Rental units account for about 19 percent of Nassau's housing stock and 18 percent of Suffolk's—low, compared with 38 percent of Westcheter and 27 percent in Rockland.
>
> But some Nassau neighborhoods, including Manorhaven, Hempstead Village, Great Neck Plaza, Long Beach and Glen Cove, have more than 40 percent of their housing units in rental apartments. And in Suffolk, Bay Shore and Patchogue both have high ratios of rental units to owner-occupied housing.
>
> Elizabeth McCarthy, who grew up in Dix Hills and works at Canon USA's Lake Success offices in marketing, said at the news conference she's been struggling to find housing after graduating from Marist College in 1998. Earning about $31,000 annually, she rented a studio apartment for $900 per month in Bay Shore—but it was too costly. "I thought about leaving the area [Long Island]." She started looking for a house with her parents. "I was shocked to find that there was nothing out there, never mind anything in my price range." Eventually, she was able to buy a subsidizing affordable home through the Housing Partnership at the Highview, a complex in Huntington.
>
> Kamer added that since the 2000 census, when the data were gathered, the affordable-housing crisis has most likely worsened.
>
> Kamer said that many young workers, unable to afford housing here, are leaving. And many of these workers who have lower-paying jobs are essential to the Island's economy.
>
> Suffolk County Executive Robert Gaffney said some towns are reluctant to build rental units or affordable housing, fearing that it will decrease the value of an area. But if employers don't have the labor force they'll need because young workers leave, they'll set up businesses elsewhere.
>
> Among Morgo's list of possible solutions is his call to get towns to allow for greater zoning flexibility, when developers put forward proposals for affordable-housing units. While many young people earn much more than their parents, he said, they are unable to afford a home. "It's the inversion of the American Dream," Margo said.
>
> FEELING THE PINCH
>
> Communities on Long Island with the highest percentages of homeowners spending more than 35 percent of their income on housing costs. Minimum 3,000 housing units.
>
> 1. Hempstead Village: 34.9 percent.
> 2. Elmont: 34.2 percent.
> 3. Brentwood: 31.1 percent.
> 4. Dix Hills: 30.0 percent.
> 5. Central Islip: 29.9 percent.
> 6. Copiague: 29.7 percent.
> 7. Bay Shore: 29.5 percent.
> 8. Franklin Square: 29.3 percent.
> 9. North Valley Stream: 29.3 percent.
> 10. Freeport: 28.8 percent.
> 11. East Islip: 28.7 percent.
> 12. Greenlawn: 27.9 percent.
> 13. Uniondale: 27.8 percent.
> 14. West Babylon: 27.5 percent.
> 15. Deer Park: 27.4 percent.
> 16. Ridge: 27.0 percent.
> 17. St. James: 25.9 percent.
> 18. Selden: 25.9 percent.
> 19. North Massapequa: 25.8 percent.
> 20. Glen Cove: 25.7 percent.
> 21. Lindenhurst: 25.7 percent.
> 22. Long Beach: 25.7 percent.
> 23. West Islip: 25.7 percent.
> 24. South Farmingdale: 25.6 percent.
> 25. Merrick: 25.5 percent.
>
> Source: U.S. Census Bureau, Census 2000.

RECOGNIZING THE LAO STUDENTS MOVEMENT FOR DEMOCRACY AND THE URGENT NEED FOR HUMAN RIGHTS REFORMS IN LAOS

HON. ADAM SMITH

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. SMITH of Washington. Mr. Speaker, last month marked the third anniversary of the bloody intervention by Lao communist security forces against peaceful student demonstrators. In October of 1999, the communist regime in Vientiane sought to crush the Lao Students Movement for Democracy. I was recently honored to join with Laotian-American constituents and survivors of this brutal crackdown to speak at the Congressional Forum on Laos, which had a series of special events in the U.S. House of Representatives this year to mark the anniversary of this dark chapter in the history of Laos and the free world.

Mr. Speaker, my district is the home to many freedom-loving Lao-Americans as well as the Lao Students Movement for Democracy—whose members are comprised largely of the survivors of the pro-democracy movement in Laos in 1999. The students escaped the Lao communist regime to neighboring Thailand and then were admitted to the United States as refugees after the outpouring of concern by Laotian-Americans in the South King County area. Sadly, however, many of the Lao pro-democracy student leaders and their families still remain jailed in Laos and have disappeared into their horrific prison system. Amnesty International continues to raise concerns about their plight and the systemic torture that exists within the prisons and gulag system of Laos.

Mr. Speaker, I would like to commend and thank the leaders of the Lao community for their steadfast efforts on behalf of freedom and democracy in Laos and for the hard work of all those involved in organizing the U.S. Congressional Forum on Laos sessions held on September 17 and October 1st.

Mr. Speaker, I remain deeply concerned about the ongoing plight of the Lao students leaders and others who are still jailed in Laos for their political or religious beliefs, or simply because they are members of an ethnic minority like the Hmong people. I would urge my colleagues, therefore, to work toward helping to bring freedom, hope and human rights to Laos and its suffering people. We should remember those who are still persecuted and jailed in Laos, struggling for basic human rights and freedoms.

Mr. Speaker, I would like to include into the RECORD the following news article from the Agence France Press ("Lao Exiles Demand Freedom for Imprisoned Comrades," July 18, 2002) regarding the Lao Students' efforts in Congress in Washington, DC:

> Exiled dissidents have demanded the release of five colleagues who have disappeared into the prison gulag in Laos, following unprecedented anti-Communist protests.
>
> The Lao government is holding five of the eleven strong core leadership of the Lao Students for Democracy after it crushed surprise protests in the capital, Vientiane, in October 1999.
>
> Six others, two of whom appeared at a U.S. Congressional forum devoted to their cause, on Wednesday, escaped to Thailand, before being granted political asylum by the United States.
>
> "My colleagues are still in jail, they are asking for peace and justice for the Lao people, I would like them to be put on trial as soon as possible," said one of the leaders, Aly Chantala.
>
> Another dissident leader Nouamkhan Khamphylavong added: "We still heard nothing about their fate since they were arrested."
>
> Rights group Amnesty International has accused the ruling Lao People's Revolutionary Party of denying that the arrests even took place and of holding prisoners in cruel and degrading conditions.
>
> Campaigners say the five student leaders were arrested, tortured an incarcerated by the Lao government in violation of the country's one year limit on detention without trial.
>
> They want the United States and world financial bodies to withhold financial aid and make trade benefits for Laos conditional on improvements in its human rights record and the granting of political rights.
>
> Some business groups and sectors of the U.S. administration have, however, been pushing for Laos to be granted normal trade relations with the United States, arguing that economic opening will trigger an easing of the political situation.
>
> Wednesday's event in a Congressional building was part of an ongoing campaign to block the aspirations of the pro Laos-trade lobby.

HONORING THE EDUCATIONAL CAREER OF HULON WATSON

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. GORDON. Mr. Speaker, I rise today to congratulate Hulon Watson for an outstanding 44-year career in education. He has spent the last 5½ years helping my hometown of Murfreesboro, Tennessee, deal with a population explosion as the school superintendent for Rutherford County. Prior to that post, Hulon served 18 years as the principal of Murfreesboro's Riverdale High School.

But after more than four decades as an educator, Hulon has decided to retire and spend more time with his wife, Charlotte; their two children; and their four grandchildren and two great-grandchildren. Hulon's last official work day will be December 31 of this year.

Hulon began his career as a teacher and coach in nearby Winchester, Tennessee. After he moved to Murfreesboro in 1979 to take the principal's position at Riverdale High School, he began helping Rutherford County students achieve success. And when he took over the helm of the Rutherford County School System, he helped raise scholastic standards countywide and guided a vigorous campaign to build much-needed schools.

Hulon did all this during a time when every penny counted. Rutherford County can now count itself as among one of the best, most efficiently operated school systems in the entire nation. In years to come, Rutherford County residents will be able to see Hulon's legacy through their prosperity. I congratulate him for his efforts and accomplishments in providing Rutherford County children with an education second to none and wish him the best in his well-deserved retirement.

CENTRAL NEW JERSEY CELEBRATES THE MONMOUTH COUNCIL OF GIRL SCOUTS, INC. 2002 WOMEN OF DISTINCTION

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. HOLT. Mr. Speaker, I rise to recognize and celebrate the Monmouth Council of Girl Scouts, Inc. 2002 Women of Distinction honorees and their significant contributions to Central New Jersey.

For forty years, through its efforts, the Monmouth Council of Girl Scouts has served tens of thousands of young women across Central New Jersey. This year's women of Distinction honorees exhibit the altruistic ideals that our Nation needs now, more than ever. These ideals, no doubt grew from their involvement in Girl Scouts and the grounding principles of the Girl Scout Promise and the Girl Scout Law which read as follows:

THE GIRL SCOUT PROMISE

On my honor, I will try, to serve God and my country, to help people at all times, and to live by the Girl Scout Law.

THE GIRL SCOUT LAW

I will do my best to be honest and fair, friendly and helpful, considerate and caring, courageous and strong, and responsible for what I say and do; And to, respect my self and others, respect authority, use resources wisely, make the world a better place, and be a sister to every Girl Scout.

The 2002 Women of Distinction Honorees are Carole Robinson for her inspiring Girl Scout spirit, Anna Diaz-White and Paulette Roberts for their professional excellence and Sister Ellen Kelly for her dedication and service to our community. As we celebrate women's History Month, we honor each of these recipients for their hard work and dedication and we celebrate the legacy they have created for women and women's history in Central New Jersey.

Mr. Speaker, again, I rise to celebrate, honor and command these outstanding New Jerseyans. I have personally observed the effective work of some of these honorees and I ask my colleagues to join me in recognizing their invaluable contributions to our community and to New Jersey.

IN HONOR OF NATIONAL ADOPTION MONTH

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mrs. MCCARTHY of New York. Mr. Speaker, I rise in strong support of November being National Adoption Month. Every year, thousands of American families are blessed by adoption. Whether through domestic or international adoption of children from foster care, the love of compassionate families embraces children of all ages and from every background. During National Adoption Month, we recognize the heartfelt commitment of these good citizens, and we renew our pledge to make adoption a more accessible and positive path for American families.

Children thrive in loving families where they are nurtured, comforted, and protected. We are making important progress in placing children in foster care with adoptive families, and the overall number of children being adopted continues to rise. In the past five years, adoptions have increased dramatically, and thus far in 2002, tens of thousands of children have already been adopted.

In addition, as a member of the Congressional Caucus on Adoption, I have worked to ease the financial burden on adoptive families and to ensure that more children find a caring, permanent home.

But with most adoption costs ranging from $8,000 to $20,000 and even upwards of $30,000, many families can not afford this huge expense. No child should be forced to grow up without a family because of the tremendous cost of adoption.

That's why I am proud that the President signed into law a bill I supported from its inception that provides for an Adoption Tax Credit for those who take this important step into parenthood. As part of the Economic Security and Worker Assistance Act of 2002, this provision will go a long way to making adoption more affordable.

Mr. Speaker, every child deserves a permanent, loving home and, with so many families who want to open their hearts and their homes to these children, this measure will help remove the financial barriers that may hinder this union.

Therefore, Mr. Speaker, on behalf of my constituents of the fourth Congressional district of New York, I, Congresswoman CAROLYN MCCARTHY, do hereby commend Nassau County Executive Thomas R. Suozzi, the Nassau County Department of Social Services and the Nassau County's Surrogate's Court for finalizing the adoptions of thirty-two children from foster care.

HONORING VIRGINIA GAINES FOX

HON. ERNIE FLETCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. FLETCHER. Mr. Speaker, It is an honor to rise today to pay tribute to a trailblazer, a visionary, a dedicated public servant, and a Kentucky original. I speak of the inimitable Virginia Gaines Fox, president and CEO of Kentucky Educational Television, who is retiring next month after 42 years of service in public broadcasting.

Virginia Fox—or Ginni, as she is known by her friends and colleagues—has created a legacy of innovation, public service and the highest standards of excellence. Under her astute leadership, she has built KET into an industry leader. Kentucky Educational Television is the number one provider of adult education in America, providing thousands of broadcast hours of instructional programming to classrooms and hundreds of hours of professional development resources to Kentucky's K–12 instructors. KET's GED on TV program has helped 11,400 adults in Kentucky—and literally millions more across the country—to earn their high school diploma.

KET is also leading the way in the industry's digital conversion, pioneering datacasting services for Kentucky communities in partnership with Federal, State and local agencies—particularly in the area of public safety, weather alerts, and homeland security. This initiative is serving as a model for similar efforts around the country.

Virginia Fox has been an innovator in distance learning throughout her prestigious career. She was a founding member of the congressionally-created Independent Television Service (ITVS) Board and created the first national ITV satellite schedule, serving more than 23 million students annually with distance learning curricula. She also founded the Satellite Educational Resources Consortium, the first public broadcasting/Department of Education interstate consortium for distance learning.

Virginia Fox's career is highlighted by numerous personal as well as professional accomplishments. She broke the glass ceiling by becoming the first female CEO of a national organization in public broadcasting. She has served on the board of the Public Broadcasting Service and chaired the Public Television Outreach Alliance. She received an honorary doctorate from her alma mater, Morehead State University, and earlier was named Appalachian Woman of the Year by that same institution. This year, she was inducted into the Kentucky Journalism Hall of Fame and received the Corporation for Public Broadcasting's Lifetime Achievement Award.

A seventh-generation Kentuckian, Virginia Fox proves once again that the great Commonwealth of Kentucky has an abundance of human resources. It has been my privilege to work with her during my tenure in Congress to ensure that America's children will continue to benefit from the finest educational programming available, and that they will enter formal schooling "Ready to Learn". She has demonstrated the power of television to educate, inform and inspire.

Mr. Speaker, the education of our children is one of our greatest responsibilities. Virginia Gaines Fox must be commended for her innovation, her vision, and her dedication to education. Her leadership will be sorely missed, but her retirement is richly deserved, and we wish her the very best that life has to offer.

SCHOOL PERFORMANCE NETWORK

HON. WILLIAM J. COYNE

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. COYNE. Mr. Speaker, I rise today to let my colleagues know about an important education initiative that is currently under way in western Pennsylvania. This initiative is the School Performance Network, an organization dedicated to disseminating best practices in education to teachers, and to encouraging connections and shared resources among educators.

The School Performance Network today consists of 33 public school districts and 3 dioceses from 14 different counties in western Pennsylvania. The organization's mission is to "assist schools and districts in the development and use of systems, tools, and practices that help educators improve learning." The SPN attempts to improve educational outcomes through the pursuit of "total performance."

Total performance is a phrase used to describe a philosophy espousing continuous effort to promote greater student learning and achievement. This approach focuses on setting high achievement standards and developing a curriculum that meets them. Total performance seeks to use these standards and performance data to modify teachers' instructional approaches. It also seeks to ensure that teachers and principals take full advantage of available resource like religious and civic organizations—and that they use the available resources strategically to maximize performance improvements. This approach also endeavors to establish a culture that supports collective effort and accountability. Finally, it emphasizes establishing partnerships to enhance and extend student learning opportunities.

The School Performance Network provides schools with access to research that highlights the best teaching methods, as well as to colleagues with similar goals and different experiences. This organization also brokers external partnerships and promotes Cooperative Learning Teams that collaborate across geographic and political boundaries.

The stimulus for this initiative came from the Heinz Endowments. This philanthropic institution recognized that isolation limited the ability of individual schools to improve student achievement. In the course of a 1996 program review of school efforts to promote "total performance," the Endowment's education staff, having made a number of grants to regional schools in order to improve education results, concluded that even greater progress could be made by promoting communication among these schools. The Endowment provided funding in 1998 to develop plans for establishing such a network. Subsequently, in early 2000, a pilot program consisting of 8 school districts was undertaken. Later that year, the pilot program was successfully concluded and the School Performance Network began expanding its membership.

I want to commend the Heinz Endowment for its vision in establishing the School Performance Network. I want to commend Dr. Mary Catherine Conroy Hayden for her leadership of the School Performance Network. And I want to thank the School Performance Network and its many partners for their efforts to improve the quality of education in this country.

Mr. Speaker, this regional collaborative effort holds tremendous potential for implementing education reform nation-wide. I urge my colleagues to explore the possibility of establishing similar efforts in their own communities.

HONORING FORMER PRESIDENT JORGE QUIROGA RAMIREZ OF THE REPUBLIC OF BOLIVIA

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. HASTERT. Mr. Speaker, I, along with the co-chairmen of the Speaker's Task Force for a Drug Free America, want to recognize Jorge Quiroga Ramirez, former President of the Republic of Bolivia, for his years of steadfast support, commitment and leadership in the fight against illegal drugs.

Most of us first met Jorge Quiroga in the early days of the Administration of former President Hugo Banzer, when he served as Vice President of Bolivia. He came to Washington early on in his tenure to seek U.S. support and backing for Bolivia's "Dignity Plan"—a five year strategy to remove Bolivia from the international narcotics circuit. At the time he assumed office in August of 1997, Bolivia was the world's second largest producer of cocaine with nearly 113,000 acres of coca under cultivation.

The Dignity Plan that was presented to the U.S. Administration and the Congress was the product of a well-conceived political strategy designed to build domestic consensus within Bolivia against the drug trade. Late in 1997, civic, religious, labor, indigenous, private sector and political leaders met together under the leadership of then-Vice President Quiroga, in what was called the National Dialogue, a series of discussions and consensus-building meetings around four pillars: Opportunity (economic issues), Equity (social development), Integrity (institutional strengthening) and Dignity (fight against drugs). This last pillar, focused on how to move Bolivia out of the international drug trade circuit by 2002.

As a result, the Dignity Plan began its implementation by the end of 1997, with ambitious goals centered on four areas: Interdiction, Eradication, Alternative Development and Prevention.

We in Congress have occasionally heard foreign leaders make eloquent statements about their plans to reduce drug cultivation and work with the U.S. to end this scourge—plans that ultimately were not successful. Bolivia proved how such a program can be truly successful.

There were two things about the Dignity Plan that we found appealing. First, it was the product of an extensive discussion within Bolivian civil society, seeking to eliminate the drug trafficking stereotype for which this Andean country was known. Second, we found in Vice President Quiroga an honest and sincere individual whose commitment to Bolivia's future as a drug free country mirrored our own commitments here at home. Vice President Quiroga was precisely the kind of straight-talking, action-oriented leader that we believed was required to take real and meaningful action. A great many of us signed on to the Dignity Plan and did our best to provide political and financial support.

Over the past five years, as Vice President of Bolivia and later as President, Jorge Quiroga implemented the Dignity Plan with stunning success. This past August, President Quiroga turned over the Office to his democratically elected successor, the Honorable Bonzalo Sanchez de Lozada. It is with great satisfaction we now take a look back at former President Quiroga's efforts and see how successful the Dignity Plan has been and what our investment in his vision earned.

Since the outset of the Dignity Plan in late 1997, the government of Bolivia has eradicated more than 130,000 acres of illegal coca.

The annual cocaine production in Bolivia has fallen by 70 percent.

In the past five years, nearly $3.0 billion in Bolivian cocaine was taken off the international market.

Alternative development programs in the Chapare, Bolivia's primary coca growing region, have taken hold and are providing stable and meaningful income to former coca growers. Today there are more than 290,000 acres of legal agricultural crops under cultivation in the Chapare.

In these areas, family incomes are rising, proving that the transition to legal agricultural activity can be successful.

In the law enforcement area, nearly 5,000 coca base labs were seized and destroyed and over 58 metric tons of drugs, including cocaine base, cocaine and others, were seized.

I am pleased to report these results to Congress to show that with the proper combination of leadership and political will, the battle against illegal drugs can be won. I am hopeful and optimistic that the Honorable Gonzalo Sanchez de Lozada, the new President of Bolivia, will pick up and continue where former President Quiroga left off, ensuring Bolivia remains a shining example of success in the Western Hemisphere.

Lastly, I wish to say thank you to President Quiroga, with whom many of us have worked so closely during the past five years. We have no doubt that his leadership, vision and commitment to Bolivia were essential to the remarkable success of the Dignity Plan program. He should take great pride in his extraordinary record of success in the drug war and know that he has many good friends in the U.S. Congress who are grateful.

H.R. 4546

HON. GENE TAYLOR

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. TAYLOR of Mississippi. Mr. Speaker, as the House considers passage of the conference report to the National Defense Authorization Act for Fiscal Year 2003, I would like to recognize the contributions of an outstanding member of the staff of the House Armed Services Committee. His name is George Withers. Of all of the people I have come to know in my 13 years on Capitol Hill, I can truly say that I have not met a finer person than George Withers.

As a professional staff member of the Armed Services Committee since 1993, I have had an opportunity to work closely with George. Over these many years, I have come to appreciate his knowledge of the legislative process, judgment, professionalism and wisdom.

Although he has a heart of gold, and a smile that is genuine as a sunrise, he was indeed mistaken for a very prominent elected official who is not known for his smile. One of the highlights of George's career on Capitol Hill was when President George W. Bush, upon meeting him, noted his resemblance to the Vice President and remarked, "How's your heart?"

Around the world, there are likely many members of our nation's military who are watching this broadcast. George Withers was a Navy Aerographers Mate Third Class (AG3) with an Aircrew designation. He flew with VW–1 and VQ–1 flying WC–121 and EC–121 aircraft out of Danang during the Vietnam War. He also deployed and flew out of Agana, Guam; Cubi Point, Philippines; South Korea, and numerous other locations in the Western Pacific. A large number of those flights were electronic intercept missions over the Tonkin Gulf. During his distinguished service in the Navy, he earned the Bronze Star and completed 86 penetrations into the eye of typhoons as a typhoon-tracker.

George's service in Vietnam took place to the advent of the "all volunteer force". This was a time when folks often "had to be there" rather than "volunteered to be there". Since they had to be there, it was pretty obvious from those who were there that our nation didn't pay nearly enough attention to what they wanted their barracks or housing to look like, what there mess halls served for meals, or what they wanted in the way of recreational opportunities. George has spent the better part of his career on Capitol Hill correcting those mistakes, and seeing to it that they never happen again.

To the soldiers, sailors, airmen and Marines, who are living in new quarters or work in new facilities, it has been made possible with the great assistance of George Withers. If you're in one of these new facilities in South Korea, Germany, Ecuador, Mississippi, or serving anywhere in the world, credit for the quality of your quarters is often given to a Congressman or a Senator. However, I know for a fact that none of these important quality of life improvements for our nation's military personnel could have happened without the dedication and hard work of a great American named George Withers.

George, on behalf of the men and women in uniform, your friends here on Capitol Hill, and the countless other people that you have helped throughout your many years of military and public service, thank you. God Bless you in your retirement. You will be sorely missed.

NATIONAL JOURNAL STORY, "BUSH'S QUIET PLAN"

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Ms. McCOLLUM. Mr. Speaker, I would like to submit the following National Journey story, "Bush's Quiet Plan," for the RECORD. It clearly describes how this administration is rolling back our key environmental protections.

[From the National Journal, Nov. 23, 2002]

BUSH'S QUIET PLAN

(By Margaret Kriz)

The Bush administration is quietly but systematically working to make the 32-year-old environmental law that's considered the Magna Carta of national environmental policy less of an impediment to development. Environmentalists charge that, by routinely bypassing or greatly speeding up the preparation of environmental impact statements required under the National Environmental Policy Act, the Bush White House is chipping away at the very foundation of the Nation's environmental protections.

President Bush has taken steps aimed at expediting or even eliminating the environmental impact studies that federal regulators have long been required to conduct before any major development project—whether it involves a new dam by the Army Corps of Engineers or logging in a national forest—can be undertaken on federal property or with federal funds. Industry lobbyists applaud the administration's actions because, in their view, environmental impact statements have largely served as a weapon for anti-development zealots to wield in court.

Environmentalists contend that the administration's efforts to shorten the reach of the law known as NEPA are part of a continuing campaign to put resource development and business interests ahead of resource protection and environmental quality. "The Bush administration views NEPA as an obstacle, not a tool," says Sharon Buccino, a senior attorney at the Natural Resources Defense Council. "To the extent that they're removing these activities, like logging projects, from the NEPA process, they're cutting the public out of the process."

NEPA is merely a full-disclosure statute: It forces regulators to make assessments and share them with the public, but it doesn't block projects that would harm the environment. Yet environmental groups have often been able to use the government's NEPA-mandated environmental impact statements in conjunction with the other environmental laws, such as the Endangered Species Act or the Clean Air Act, to persuade courts to stop or significantly modify controversial projects.

Under NEPA, all government agencies—from the Interior Department to the Navy to the Small Business Administration—must study the environmental implications of major projects before undertaking them. Private companies that receive federal funds or use federal lands also fall under NEPA's umbrella.

Business lobbyists cheer Bush for using his broad administrative authority to limit the public's ability to challenge industry projects on federal lands. Supporters of the administration's approach argue that environmentalists have abused NEPA by filing thousands of essentially nuisance lawsuits that stem from a philosophical objection to, say, drilling for oil on federal land, rather than from objections to the potential consequences of a specific drilling proposal.

"A lot of challenges being raised are part of a larger strategy to oppose energy development in this country," contends Lee Fuller, vice president for government relations at the Independent Petroleum Association of America.

NEPA's defenders charge that regulators are already producing slipshod impact assessments in their rush to comply with Bush administration demands for faster action. "Asking them to do [the assessments] more quickly raises more opportunity for litigation," because careless work would leave the government open to charges of not having complied with NEPA, warns Jonathan Adler, an environmental law professor at Case Western Reserve University.

The controversy over the accelerating attempts to rein in NEPA centers on several administration actions:

A Forest Service proposal—leaked by environmentalists and slated to be formally released later this year—would allow federal regulators to rewrite National Forest Management Plans without first assessing the environmental implications of the new plans. Forest plans are the blueprints for commercial development, recreation, and land preservation on the nation's 191 million acres of national forests and grasslands.

Bush's wildfire proposal, dubbed the "Healthy Forests Initiative," would exempt 10 million acres of national forest lands from NEPA to speed up the logging aimed at thinning the trees in those forests. The plan was drafted in response to this summer's catastrophic forest fires and would allow commercial logging companies to remove some large, healthy trees as an incentive to participate in the thinning projects. The Democratic-controlled Senate blocked Bush's proposal, but the plan is certain to be resurrected after the Republicans take control of the chamber in January.

The administration tried to exempt most U.S.-controlled ocean waters from NEPA. But in October, a federal court rejected the Justice Department's contention that the environmental law's reach did not extend beyond this country's territorial waters, which end three miles offshore. The court ruled that NEPA applies within the nation's entire Exclusive Economic Zone, which extends 200 nautical miles offshore. That case was triggered by objections to Navy sonar tests, which environmentalists claim have caused whale beachings and permanent damage to whales and other sea mammals.

In September, Bush issued an executive order requiring federal regulators to speed up environmental assessments of transportation construction projects. Transportation Department officials say the administration is also considering legislation to amend the law's application to highway and other transportation projects. The administration has not taken a position, however, on a bill introduced this year by House Transportation and Infrastructure Committee Chairman Don Young, R-Alaska, that would create a separate, less rigorous environmental-assessment process for transportation projects.

In May, Bush ordered expedited environmental reviews of energy-development projects. Meanwhile, Sen. Ben Nighthorse Campbell, R-Colo., has urged that NEPA requirements be waived for energy development on tribal lands.

According to Forest Service officials, the administration plans to greatly expand the "categorical exclusion" provisions of NEPA to exempt certain kinds of logging projects—the logging of dead trees in burned forests, for example—from environmental impact statements. These exemptions would apply to far more than the 10 million acres included in Bush's forest fire proposal.

Meanwhile, the White House Council on Environmental Quality, which has jurisdiction over NEPA, has created an interagency task force focused on updating the NEPA process. James Connaughton, who heads the council, said the task force seeks to "modernize" the way federal regulators conduct their environmental reviews—by, for example, increasing the use of computers. Some departments, he said, "are using the Pony Express when we could be using the electron to facilitate all kinds of interagency and external communications."

Environmentalists are suspicious of the task force. "This administration," Buccino says, took "significant destructive actions related to NEPA before they had even begun the task force." Bush's critics contend that what the White House portrays as mere streamlining is actually part of a far-reaching campaign to grant polluters and developers relief from environmental safeguards by doing such things as easing restrictions on coal-fired power plants and scuttling a Clinton-era rule that preserves roadless regions in the national forests. "They're saying, 'Trust us,' but we have no reason to trust them," says David Alberswerth, director of the Wilderness Society's Bureau of Land Management program.

Connaughton angrily denies that the administration wants to gut environmental protections and says the environmentalists' accusations are politically motivated. "I think that there is a lot of chasing after ghosts," he says. (For a Q&A with Connaughton, see p. 3476.)

OVERDUE OR OVERBOARD?

The Bush administration's aggressive efforts to limit NEPA's role represent a marked change in federal environmental policy—and in some quarters, a welcome one. "It represents a shift in the institutional perspective on NEPA," says Chris Horner, senior fellow at the Competitive Enterprise Institute, a conservative think tank. "They're saying that the statutory sprawl that NEPA has created is not acceptable. [The shift] is something that's long overdue."

But environmentalists are alarmed. Unlike the Endangered Species Act and the Clean Air Act, which deal only with certain environmental issues, NEPA is a comprehensive tool that activists can use to force regulators—and, by extension, industry—to abide by a multitude of environmental laws.

"NEPA is a procedural statute that cuts across every environmental program," says William J. Snape III, chief counsel at Defenders of Wildlife. "So rather than announce that they're going to gut NEPA, the administration has decided that they're just going to do it on an individual-sector basis. That makes it difficult for us to piece [the administration's actions] all together."

Most environmental assessments are completed without a hitch. But projects that compete for space with wildlife and wilderness areas—logging, energy development, and military action on federal lands or waterways, as well as transportation construction projects—often rise red flags with environmental activists and nearby residents. Lengthy lawsuits often ensue.

Bush administration officials insist that they're not out to stop all environmental analyses or to propose a wholesale rewrite of the law. According to Connaughton, the aim is to speed up the environmental-assessment process and focus on the biggest projects. The administration also wants to stem the flood of legal challenges to what government officials want to do on federal lands.

"There's just too many lawsuits, just endless litigation," Bush told an Oregon audience in August in introducing his forest fire plan. "We want to make sure our citizens have the right to the courthouse. . . . But there's a fine balance between people expressing [themselves] and their opinions and using litigation to keep the United States of America from enacting commonsense forest policy."

Since its inception, NEPA has been largely defined by court rulings that give it teeth. NEPA was passed during the Nixon administration but floundered until President Carter's Council on Environmental Quality outlined a regulatory strategy for systematically complying with its mandates. Since then, each agency has developed its own NEPA rules designed to mesh with the laws the agency implements.

Until those ground rules were established—and even since then—judges often were the government officials who determined what a NEPA requirement meant in a given situation. "Court decisions were pouring out," recalls James Gustave Speth, who headed the Council on Environmental Quality under President Carter and now is dean of the Yale School of Forestry and Environmental Studies. "It was the first major federal environmental legislation. And it became extraordinarily powerful, primarily because of the courts."

Environmentalists, who filed many of those lawsuits, see NEPA as one of the best ways to force recalcitrant bureaucrats to weight—and disclose—the environmental consequences of their proposals."The whole purpose of the law was to slow down the government juggernaut and to make public officials think long and hard before they take any action that could be harmful to the environment," notes John Echeverria, executive director of the Georgetown Environmental Policy Project. "There's no question that environmentalists have used NEPA to block projects that they thought were ill-advised and particularly harmful."

Conservatives and industry lobbyists, for their part, say NEPA causes delays that inflate the price tag of important business and government initiatives. The Transportation Department, for example, estimates that environmental impact statements for major highway projects take an average of four to five years to complete.

"Sometimes you feel a little bit like that small rodent in a maze, trying to complete all these reviews," complains Mary E. Peters, administrator of the Transportation Department's Federal Highway Administration.

But many observers insist that NEPA's foes vastly overstate the influence of NEPA reviews. "The great bulk of NEPA projects are changed in the NEPA process, but they're not, in the end, stopped," says Yale's Speth.

Environmentalists are not the only cause of delay. Government regulators often lack funding to undertake NEPA reviews quickly. The petroleum group's Fuller says that some oil companies, eager to begin work on new projects, have begun paying the government agencies to complete the required environmental assessments. "We've found that in order to get our permitting processes moving, the only way to do that is to provide private money," he explains. Federal officials still control the studies, he adds.

The environmental reviews are also hampered by bureaucratic resistance. Even after 32 years, some regulators still oppose having to consider the environmental implications of a project early in the planning stages, according to law professor Adler. "At a lot of agencies, their decision-making process does not incorporate the sorts of factors that NEPA asks them to look at," he says. "That's one of the reasons why agencies get into trouble with lawsuits."

THUMPER TRUCKS AND SNOWMOBILES

In April, an internal review board at the Interior Department issued a scathing judgment criticizing the Bureau of Land Management for approving coal-bed methane extraction projects in Wyoming's Powder River Basin. Interior's Board of Land Appeals ruled that the environmental yardstick that regulators used to assess the projects was woefully inadequate and failed to consider the "unique potential impacts" of the proposed extraction process.

Coal-bed methane extraction, first tested in the 1990s, involves draining salty water from coal seams to tap the methane gas trapped in the coal. The tainted liquid often pours onto nearby lands. But the bureau had approved the methane leases based on studies that looked solely at the environmental effects of entirely different projects—oil and natural gas drilling in the region.

In a separate case, a federal judge recently suspended a seismic exploration project near Arches National Park at the urging of two environmental groups. The organizations charge that the government failed to examine the environmental impact that the heavy pounding of 30-ton "thumper trucks" would have if energy companies were allowed to use them in searching for oil deposits.

Environmentalists argue that regulators are doing slap-dash environmental analyses on these and other energy projects in response to increased administration pressure to open more federal lands to mining and drilling. "This administration is indicating that every square acre of land in the West ought to be open to oil and gas" says Snape of Defenders of Wildlife. "They don't care about environmental quality or the public. This is 'Energy über alles.' "

But perhaps the most dramatic NEPA developments are occurring at the Forest Service, where Bush administration officials are rewriting the rules for managing the nation's 153 national forests. In the past, developing a forest management plan, which spells out how a forest can be used, was considered to be a "major action" that required extensive environmental impact analysis under NEPA. Now Bush officials are working on a proposal that would give forest supervisors greater leeway to revise forest plans without having to conduct in-depth environmental studies.

Under the revised rules, full environmental reviews would continue to be required when industry groups sought permission to begin specific projects, such as logging or construction of new recreation facilities. But more general changes to the forest management plan might not require extensive study, according to Mark Rey, the Agriculture Department under-secretary for natural resources and environment who has authority over the Forest Service. "In the past, we were dealing with the first generation of a forest plan, and there was no question that an environmental impact statement was going to be required," he said. "What we're saying now is, it is not as clear that revising plans or amending them involves a need for a similar level of analysis, depending on the circumstances."

Rey cites the example of a forest supervisor considering changing a forest plan to allow more snowmobiles to be used in a forest. "If we're saying that we might accommodate a greater degree of snowmobile use but that we don't have enough information right now to decide where we're going to locate the trails, then we probably would acknowledge that this issue is under consideration," he said. "But we'd do an environmental impact statement when we're ready to lay out the trails."

Logging industry officials enthusiastically support the new approach, arguing that it makes more sense for regulators to focus their NEPA resources on industry development projects than on forest management plans. "Why would you do a full-blown analysis of how you're going to basically zone a forest and manage it, when the real rubber hits the road when you propose an action," said Chris West, vice president of the timber industry's American Forest Resource Council in Portland, Ore. But environmentalists say that Rey's proposals are purposely vague and confusing. They accuse him of attempting to create loopholes to allow forest supervisors to make sweeping changes in the way the forests would be used without gaining public input or examining the environmental consequences.

The Forest Service is also considering new proposals that would make it easier to approve some logging projects without having to assess the environmental impact of each project. Agency staffers are working on "categorical exclusions" that would pave the way for quicker approval of forest-thinning projects and logging of dead and dying trees after forest fires. Those exclusions are similar to the president's forest proposal, which would exempt some national forest lands from NEPA. Environmentalists say they'll fight those changes.

THE LONG HAND OF NEPA

Bush officials are more than happy to share their anecdotes about NEPA reviews gone haywire. They point to the case of the little town of Stillwater, Minn., 13 miles east of St. Paul, which has spent 30 years trying to build a four-lane bridge over the St. Croix River.

Bridge proponents say the new structure is needed to replace a 70-year-old lift bridge, which is on National Register of Historic Places. City officials and local developers say they hope a new bridge would divert truck traffic away from historic downtown Stillwater and increase development in communities on both sides of the bridge.

"The mayor of Stillwater told me recently that sometimes you can't see the historic town for the semis lined up to go across the bridge," says Peters of the Transportation Department.

But the $135 million project is opposed by environmental groups, who say the new bridge would damage wetlands and mar the bluffs that line the St. Croix River, which is a "wild and scenic river" protected by federal law. Environmentalists also assert that the project would accelerate urban sprawl from the Twin Cities area into western Wisconsin. Some of these concerns are shared by the National Park Service, which has jurisdiction over wild and scenic rivers.

Over the years, several environmental analyses of the proposed bridge have been completed, but no consensus about its impact has been reached. The Transportation Department is trying to break the deadlock by including the Stillwater Bridge project on its list of seven high-priority construction projects set for quick environmental review under the president's September executive order. The department plans to add more projects to its priority list in December.

Conservatives charge that the long hand of NEPA is increasingly reaching into unlikely government programs. Horner of the Competitive Enterprise Institute cites a recent lawsuit in which environmental groups and the city of Boulder, Colo., claimed that the Export-Import Bank of the United States and the Overseas Private Investment Corp. violated NEPA when they gave developing countries more than $32 billion for oil fields, pipelines, and coal-fired plants without first assessing the projects' contribution to global warming. Horner argues that as a result of the lawsuit, agencies could soon be pressured to consider global warming in their NEPA reviews. "You're talking about a tremendous new regulatory burden, which is going to cost you more time and money," he says.

Industry lobbyists see such delays and expanded use of NEPA as reason to dramatically scale back the environmental impact assessment process or eliminate it altogether. One industry group boldly suggested amending the law to bar national environmental groups from filing NEPA lawsuits.

In recent comments to the White House task force on NEPA, the Idaho Cattle Association recommended that NEPA lawsuits be limited to "individuals who have an economic stake in the outcome of a NEPA decision or those who are directly affected" by the project being reviewed. Connaughton of the Council on Environmental Quality says he disagrees with that proposal but understands the frustration of industry groups. "The procedural requirements of the law should not be deployed to wreak havoc," he argues.

But what the White House and industry see as abuse of the system, environmental activists see as their fundamental right to ensure that taxpayer dollars are not spent on projects that harm the air, water, wildlife, or wilderness. NEPA supporters say they fear that the environmental goals that NEPA was created to advance could be lost in the rush to speed up or eliminate environmental assessments and to restrict the public's ability to challenge their conclusions. As the Wilderness Society's Alberswerth puts it, "If you don't have judicial review, you have no guarantee that the [Bureau of Land Management] or any other agency will comply with the laws."

A TIME AND A PLAN TO TEACH PEACE AND DISARMAMENT IN OUR SCHOOLS

HON. GEORGE MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 22, 2002

Mr. GEORGE MILLER of California. Mr. Speaker, I am delighted to bring to my colleagues' attention, and to the attention of their constituents who may wish to get involved in peace education, the recently released United Nations Study on Disarmament and Non-Proliferation Education.

The study is the result of successful collaboration between the Hague Appeal for Peace—a citizen's organization dedicated to reducing wars and armed conflict and promoting reconciliation and economic development—the Government of Mexico and the United Nations Department for Disarmament Affairs.

By working together—governments, civil society and the United Nations—the effort to sustain peace through education stands a greater chance of success.

Humankind's genius invented technological wonders in the last century that have made life more livable and longer for many. It also produced, and then governments used, the atomic bomb, and then perfected it to incomprehensible destructive capacity. We are discovering new pieces of information from direct participants about how close we came to a global nuclear exchange during the Cuban Missile crisis 40 years ago. And we are confronted with a new awareness of dangers that might arise with the use of weapons of mass destruction for terrorism.

Education alone is not a security blanket. It is not a guarantee for progressive thinking. Indeed, we have learned that young people being educated in some religious schools in the Middle East were being indoctrinated with hatred for the West and the United States.

However, in a democratic society, education is a tool for enlightenment. As H.G. Wells said in his 1921 work, The Outline of History, "Human history becomes more and more a race between education and catastrophe." We would do well to heed his warning.

Fortunately, the complacency and lack of interest in questions of disarmament and nonproliferation, especially about extant nuclear dangers and solutions, is starting slowly to break down. During talk of war and inspections of weapons of mass destruction, we find ourselves in a teachable moment.

Mr. Speaker, we are at a time in history when it is critical to embrace the idea that peace, dialogue, and disarmament can and should be taught in school and that it should be taught as an integral part of school curricula and programs in the United States and across the world. And there has emerged a plan to help educators learn how to teach peace.

A ten-country United Nations group of experts issued a study in October on the status of disarmament and non-proliferation education efforts world-wide, making a set of 34 recommendations to Governments, the UN, other international organizations, and civil society on how to improve peace and disarmament education as a means of fostering tolerance and a culture of non-violence.

It calls for a joint effort to revitalize disarmament education to empower young people through knowledge to help make the world a more peaceful place. Surely this is an idea that all of us in Congress, regardless of party or political persuasion, can support.

The Study is available on the United Nations Web site at http://disarmament.un.org/education/index.html, and I commend it to my colleagues for further reading. I am also enclosing several additional documents for the RECORD about the project for the benefit of my colleagues and their constituents.

Mr. Speaker, I appreciate the opportunity to share this information with my colleagues and I also appreciate the hard work that the Hague Appeal for Peace, the United Nations, and the Government of Mexico put into this exciting and important peace education project.

[From the Report of the Secretary-General, Aug. 30, 2002]

SECTION VIII. PROMOTION OF DISARMAMENT AND NON-PROLIFERATION EDUCATION AND TRAINING: PRACTICAL RECOMMENDATIONS

All the following recommendations are important. They vary, however, in the resources required for their implementation, the pace with which they can be put in place and the amount of time needed before they yield significant results. Those recommendations with asterisks represent steps that can and should be taken rapidly and at a relatively low cost.

*1. Member States are encouraged to accord importance to disarmament and non-proliferation education and training in their programmes and policies, consistent with their national legislation and practices, taking into account present and future trends. They are also encouraged to use, designate or establish public advisory bodies, where appropriate, whose responsibilities include advising on disarmament and non-proliferation education and training practices. Member States are encouraged to share their experience in disarmament and non-proliferation education and training with other Member States, international organizations, civil society and the Department for Disarmament Affairs.

*2. Relevant United Nations offices and other international organizations and agencies should prepare, adapt and disseminate a wider range of user-friendly educational material on disarmament and non-proliferation. The current experience in this field should be tapped and existing educational material, including educational modules, resource books, guide and online programmes, should be tailored to the needs of individual countries, specific audiences or the international community at large.

*3. The United Nations and other international organizations should translate its disarmament and publications into all United Nations official languages and, when possible, into other languages for additional dissemination. Upon request by the United Nations or relevant international organizations, Member States, academic and research institutions and NGOs are encouraged to support or assist in translating relevant materials.

4. The United Nations and other international organizations should increase their capacities to disseminate disarmament and non-proliferation education-related materials (print and audio-visual) more widely, to all regions of the world. While strengthening existing distribution channels, they should explore new ones, such as cooperation with educational networks, teachers unions and curriculum committees as well as electrical access. Member States, local academic institutions, research centres and NGOs are also encouraged to assist in dissemination efforts. As it is essential to reach the local community level, channels of dissemination such as school libraries, gathering places, radio and television are highly recommended.

5. The Department of Disarmament Affairs should gather information about the involvement of regional and intergovernmental organizations in disarmament and non-proliferation education, training and data collection activities. The Department should examine ways to foster an exchange of experiences and regional perspectives to facilitate the development of disarmament and non-proliferation education programmes.

6. The Department of Disarmament Affairs should examine, accumulate and make public and easily accessible the different disarmament and non-proliferation curricula and programmes that States have developed for their formal school systems and university courses as well as for informal training.

7. UNU and UPEACE are encouraged to develop intensive postgraduate and other courses on disarmament and non-proliferation for representatives of all regions of the world, including government officials, legislators, military officers, NGOs, the media and students, working in cooperation with academic and non-governmental institutions that have expertise in designing and implementing such courses. UPEACE, in coordination with the Department of Disarmament Affairs, may wish to host seminars and workshops as well as to develop model university and school material.

8. Member States are encouraged to include parliamentarians and/or non-governmental advisers in delegations to United Nations disarmament-related meetings, taking into account national legislation and practices.

9. The Department of Disarmament Affairs and its regional centres, in cooperation with UNIDIR, UNU and UPEACE, are encouraged to establish a virtual library of reports of "lessons learned" on disarmament-related aspects of peace operations and make it available to both Governments and NGOs on a disarmament and non-proliferation online education resource site (see recommendations 25).

10. Municipal leaders, working with citizen groups, are encouraged to establish peace cities, as part of the UNESCO Cities for Peace network, through, for example, the creation of peace museums, peace parks, web sites and the production of booklets on peacemakers and peacemaking.

11. UNU and UPEACE are encouraged to provide assistance to those city councils and prefectures that are willing to host seminars on disarmament and non-proliferation issues for the media, academics, local and national politicians, trade union representatives, religious leaders and the wider public.

12. Religious leaders and institutions are encouraged to develop educational material promoting a culture of peace and disarmament.

*13. Member States, in cooperation with the United Nations and relevant international organizations, are encouraged to sponsor training, fellowships, and awareness programmes, on as wide a geographical basis as possible, for researchers, engineers, scientists and other academics in areas of particular relevance, but not limited to treaties and agreements on weapons of mass destruction and their means of delivery. They are also encouraged to give special emphasis to training customs, licensing and law enforcement officers for the purpose of fulfilling international obligations of Member States in the disarmament and non-proliferation fields.

*14. The Department of Disarmament Affairs, in cooperation with UNU and UPEACE, should be encouraged to organize a programme of training for educators and trainers in disarmament and non-proliferation. These programmes may be implemented cooperatively with international organizations such as IAEA, OPCW and the Preparatory Commission for the Comprehensive Nuclear-Test Ban Treaty Organization.

15. The Department of Disarmament Affairs, in cooperation with UNESCO, UPEACE, UNIDIR and NGOs, should produce and maintain an updated international bibliography of reference literature for teachers, including an updated directory of peace studies programmes and disarmament and non-proliferation research centres, and make this available on a disarmament and non-proliferation online education resource site (see recommendation 25).

16. UNESCO IBE is encouraged to convene regional meetings with ministers of education, educational administrators and university presidents to discuss the issues involved in developing disarmament and non-proliferation education for primary, secondary and university students. The International Conference on Education is encouraged to devote one session of a future meeting to disarmament and non-proliferation education, for example, through a workshop on science and ethics.

*17. The United Nations, relevant international organizations, Member States, NGOs and research institutes should develop and strengthen programmes, workshops, fellowships and materials or disarmament and non-proliferation topics for journalists and media representatives in order to enhance their knowledge of these issues. Special attention should be paid to the development of programmes and materials designed for local media in post-conflict situations, as essential partners in the disarmament and non-proliferation education process.

18. Disarmament and non-proliferation educational materials developed by the United Nations, such as the Cyberschoolbus web site, should include complementary material on how parents can encourage attitudes of peace and non-violence. Efforts should also be made by educators, parents and the business community to devise and produce toys, computer games and videos that engender such attitudes.

19. Additional fellowships and scholarships should be provided for various target audiences by or through the Department of Disarmament Affairs (directly or through its regional centres), UPEACE, UNIDIR and the NGO Committee on Disarmament, among others. An important educational supplement to disarmament and non-proliferation classroom training should be on-the-job training, which may be conducted at the sites of international organizations, national governmental agencies, NGOs and research centres. Opportunities for such on-the-job training should be expanded.

*20. The United Nations, relevant international organizations, Member States, and corporate and private donors are encouraged to provide assistance, including funds, educational material and equipment to NGOs in different regions of the world and to universities to establish or expand their disarmament and non-proliferation libraries with free and open public access to their resources. Member States should be encouraged to fund research institutes that focus on disarmament and non-proliferation and offer scholarships for advanced university students to carry out research on disarmament and non-proliferation and its pedagogy. The United Nations should make greater efforts to tap the financial resources of private enterprises in the fields of information and communications technology.

AMERICAN WILDLIFE ENHANCEMENT ACT OF 2001

SPEECH OF

HON. C.L. "BUTCH" OTTER

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. OTTER. Mr. Speaker, early on the morning of November 15, 2002 the House of Representatives passed, by unanimous consent, S. 990, the American Wildlife Enhancement Act. This bill, which amends the Pittman-Robertson Wildlife Restoration Act, is purported to improve the provisions relating to wildlife conservation and restoration programs. Had I been present when the House considered this legislation, I would have opposed the bill. I am concerned that as written this bill could undermine private property rights and impact state water rights. I am concerned that no hearings were held in the House and we never had time to consider the full implications of the bill. I am hopeful the bill does not make it to the President's desk this year. If this legislation is introduced next Congress, I will work with my colleagues to ensure the protection of private property and water rights.

HOMELAND SECURITY ACT OF 2002

SPEECH OF

HON. BART STUPAK

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2001

Mr. STUPAK. Mr. Speaker, I reluctantly voted for H.R. 5005, the Homeland Security Act of 2002.

I say reluctantly because I have very strong objections to certain provisions contained in the bill which favor "special interests."

In particular, I am opposed to provisions in the bill that would protect pharmaceutical firms and other corporations from lawsuits. Gut our efforts to crack down on companies that move abroad to escape U.S. taxes. Provide protection against lawsuits for companies that have provided passenger and baggage screening in airports. Give the new homeland security secretary broad authority to protect companies that sell anti-terrorism technologies.

These provisions were inserted without consulting any Democratic leaders, and put in the bill literally in the middle of the night!

Mr. Speaker, I have a long and well-known record of fighting against provisions such as these.

These provisions were not in the original bill we passed earlier this year and I cannot understand why the Republican Caucus felt it necessary to include them in the most significant reorganization of the federal government in fifty years!

These provisions harm the average American by curtailing their legal rights to seek justice from corporations. Haven't we seen the dangers of allowing big business to operate this way?

The Senate was right in drawing national attention to this sham.

I am hopeful the Republican leadership will live up to its promise to remove these provisions early next Congress, but I fear they are already backing off their promise to do so.

Mr. Speaker, we desperately need a Department of Homeland Security, and that is why I voted for the bill. However, we do not need more give aways for corporate special interests, and I urge my GOP colleagues to move with great speed to remove the provisions early next session.

CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

SPEECH OF

HON. BETTY McCOLLUM

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2001

Ms. McCOLLUM. Mr. Speaker, I rise today in opposition to the Conference Report for the "Bankruptcy Reform" bill, H.R. 333. This legislation will impose new restrictions to prevent working families facing financial misfortune from getting back on track. It also does nothing to stop the irresponsible and predatory practices of some businesses and credit card companies. I support efforts to prevent abuse of our bankruptcy system as a financial tool but this legislation goes too far in cutting off avenues to relief for working families who face unmanageable debt.

Central to this legislation is a new, inflexible "means test" that will be imposed on every individual filing for bankruptcy. While judges currently have the ability to determine the appropriate relief for consumers, this new "means test" will eliminate that flexibility and prevent all but the most impoverished families from filing for bankruptcy under Chapter 7. The implementation of this "means test" will also be a costly mandate on our bankruptcy court system, which is already operating on rudimentary funding.

I have listened to concerns of bankruptcy judges in my state of Minnesota who fundamentally oppose this legislation because of the disastrous effect it will have on working families facing financial crises. These judges echoed facts that are widely known—that the vast majority of individuals who file for bankruptcy are low- and moderate-income citizens facing crisis situations such as the loss of a job, medical emergencies or divorce. The actual number of individuals who try to "game the system" and escape debts by filing for bankruptcy is very low. According to one bankruptcy judge, abusive filings constitute only about 2–3 percent of all cases and bankruptcy courts are currently able to block about 95 percent of those "bad faith" filings by converting or dismissing certain cases.

This legislation would also have a negative impact on the availability of quality, affordable representation for families filing for bankruptcy. Provisions of this legislation would impose new liability standards on bankruptcy attorneys, making them responsible for the accuracy of all information given to them by their clients when filing a bankruptcy petition. Many attorneys will be apprehensive to continue representing clients in bankruptcy cases knowing that they may be sanctioned for inaccurate information. Bankruptcy lawyers in Minnesota have told me that this will severely decrease the number of attorneys willing to provide *pro bono* services, limiting the ability of low-income individuals to obtain quality legal representation.

I agree that something must be done to curb the number of personal bankruptcies that strain our banks, credit unions and responsible financial institutions. But we must be equitable in asking everyone—borrowers and lenders alike—to practice good financial planning. This unbalanced legislation unfairly targets consumers and allows irresponsible companies to continue extending credit to college students and others who are already deep in debt or have had a past history of bad credit. For the working families of Minnesota and the nation, I cannot support this legislation.

CONFERENCE REPORT ON S. 1214, MARITIME TRANSPORTATION SECURITY ACT OF 2002

SPEECH OF

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. YOUNG of Alaska. Mr. Speaker, I rise to speak about the Conference Report on S. 1214, which the House approved last week and is now ready for signature by the President. I would like to point out a particular concern that is addressed in Section 445 of the conference agreement. Section 445 addresses the current problem, and the potential for greater future problems, of local jurisdictions seeking to impose taxes and fees on vessels merely transiting or making innocent passage through navigable waters subject to the authority of the United States that are adjacent to the taxing community. We are seeing instances in which local communities are seeking to impose taxes or fees on vessels even where the vessel is not calling on, or landing, in the local community. These are cases where no passengers are disembarking, in the case of passenger vessels, or no cargo is being unloaded in the case of cargo vessels and where the vessels are not stopping for the purpose of receiving any other service offered by the port. In most instances, these types of taxes would not be allowed under the Commerce Clause of the United States Constitution. Unfortunately, without a statutory clarification, the only means to determine whether the burden is an impermissible burden under the Constitution is to pursue years of litigation.

Section 445 of the Conference Report addresses this problem by clarifying the sole circumstances when a local jurisdiction may impose a tax or fee on vessels. Local governments, and other non-Federal interests, may impose taxes or fees only under an existing exception under the Water Resources Development Act or under extremely limited circumstances in which reasonable fees can be charged on a fair and equitable basis for the cost of service actually rendered to the vessel. The fees must also enhance the safety and efficiency of interstate and foreign commerce and represent at most a "small burden" on interstate and foreign commerce. Generally, taxes will not be allowed under this section. The sole exceptions are stated in Section 445.

Mr. President, I support Section 445 as an important correction of a silence in current law that should not be allowed to imperil legitimate commerce.

E-GOVERNMENT ACT OF 2001

SPEECH OF

HON. STEPHEN HORN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, November 14, 2002

Mr. HORN. Mr. Speaker, title V of H.R. 2458 incorporates the text of another bill that was recently reported out of the Government Reform Committee: H.R. 5212, the "Confidential Information Protection and Statistical Efficiency Act of 2002." I wish to thank the gentleman from Texas, Mr. TURNER, and the gentleman from Virginia, Mr. DAVIS, for including the Confidential Information Protection and Statistical Efficiency Act of 2002 in their bill.

On July 25, 2002, I introduced the Confidential Information Protection and Statistical Efficiency Act of 2002 on behalf of myself, as well as the gentleman from Ohio, Mr. SAWYER, and the gentlewoman from New York, Mrs. MALONEY. The Subcommittee on Government Efficiency, Financial Management and Intergovernmental Relations, which I chair, held a hearing on the bill on September 17. All witnesses—representing the statistical agencies, the Administration and the private sector-testified in favor of the bill. On the same day, the subcommittee approved the bill by voice vote.

On October 9, the full Committee on Government Reform approved the bill by voice vote and ordered it favorably reported. I want to briefly summarize this important legislation. The committee report on H.R. 5215 explains the Confidential Information Protection and Statistical Efficiency Act of 2002 in much greater detail.

Enactment of the Confidential Information Protection and Statistical Efficiency Act of 2002 will greatly improve the efficiency and quality of Federal statistical activities. Right now, there is much duplication of effort among the Federal Government's three principal statistical agencies—the Bureau of the Census, the Bureau of Labor Statistics and the Bureau of Economic Analysis. Because of their inability to share data, they often collect the same data separately. This wastes taxpayer dollars and imposes unnecessary burdens on those who supply the data.

Furthermore, the inability of the agencies to compare the data they collect results in major disparities in the reports they issue. For example, during the last economic census in 1997, the Bureau of Labor Statistics reported payroll data in the information technology sector that was 13 percent higher than the data reported by the Census Bureau. In addition, there was a 14 percent disparity in the payroll data reported by these two agencies for the motor freight, transportation and warehousing industries.

This legislation will allow the Census Bureau, the Bureau of Economic Analysis and the Bureau of Labor Statistics to share business data they collect for statistical purposes. This data sharing will substantially enhance the accuracy of economic statistics by resolving serious reporting inconsistencies such as those that I just mentioned. It will also reduce reporting burdens on the businesses that must now supply data separately to the individual agencies. I want to emphasize that the data sharing applies only to these three agencies, and it only applies to business data—not personal data.

Of equal importance, the bill ensures that the confidential data that citizens and businesses provide to federal agencies for statistical purposes are subject to uniform and rigorous statutory protections against unauthorized use. Currently, confidentiality protections vary among agencies and are often not based in law. The bill would provide uniformly high confidentiality standards that federal statistical agencies must follow. This part of the bill applies to all federal statistical agencies—not just the Census Bureau, Bureau of Labor Statistics and Bureau of Economic Analysis. Furthermore, it covers all data that all statistical agencies collect on a confidential basis—both business and personal data.

Finally, the bill includes language that will enhance the usefulness of statistical data for congressional decision-making. This language encourages the statistical agencies to provide the Congressional Budget Office with access to statistical data in order to help CBO analyze pension and health care financing issues. However, the bill does not expand CBO's current legal rights of access to statistical data. Thus, it does not permit disclosure of information to CBO in a manner of form that would constitute a violation of existing law.

Mr. Speaker, this worthy legislation has been years in the making. I sponsored a similar bill in 1999, but it encountered last minute concerns and was not enacted. The current bill resolves those concerns as well as all other issues that have been raised. The Administration strongly supports it, as do many individuals and organizations in industry and academic circles. I am delighted that the bill finally will be enacted this year.

SENATE—*Monday, December 16, 2002*

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 2001, the following enrolled bills, previously signed by the Speaker of the House, were signed on November 21, 2002, by the President pro tempore (Mr. BYRD):

S. 1010. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of North Carolina.

S. 1226. An act to require the display of the POW/MIA flag at the World War II Memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1907. An act to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon.

S. 1946. An act to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail.

S. 2339. An act to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

H.R. 727. An act to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

H.R. 2595. An act to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

S. 3044. An act to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 2712. An act to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 3156. An act to provide for a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

H.R. 3908. An act to reauthorize the North American Wetlands Conservation Act, and for other purposes.

H.R. 5504. An act to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on November 22, 2002, during the recess of the Senate, received a message from the House of Representative announcing that the House agrees to the amendment of the Senate to the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes.

The message also announced that the House has agreed to the following concurrent resolution, without amendment.

S. Con. Res. 160. Concurrent resolution providing for the sine die adjournment of the One Hundred Seventh Congress, Second Session.

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on November 22, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills and joint resolution:

S. 1240. An act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes.

S. 2237. An act to amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes.

H.R. 3210. An act to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

H.R. 3833. An act to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be a haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes.

H.R. 5005. An act to establish the Department of Homeland Security, and for other purposes.

H.R. 5469. An act to amend title 17, United States Code, with respect to the statutory license for webcasting and for other purposes.

H.J. Res. 117. A joint resolution approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

Under the authority of the order of the Senate of January 3, 2001, the enrolled bills and joint resolution were signed subsequently by the President pro tempore (Mr. BYRD).

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on December 3, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills:

H.R. 38. An act to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes.

H.R. 308. An act to establish the Guam War Claims Review Commission.

H.R. 451. An act to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

H.R. 706. An act to direct the Secretary of the Interior to convey certain properties in the vicinity of the Elephant Butte Reservoir and the Caballo Reservoir, New Mexico.

H.R. 1712. An act to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes.

H.R. 1776. An act to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Buffalo Bayou National Heritage Area in west Houston, Texas.

H.R. 1814. An act to amend the National Trails System Act to designate the Metacomet-Monadnock-Mattabesett Trail extending through western New Hampshire, western Massachusetts, and central Connecticut for study for potential addition to the National Trails System.

H.R. 1870. An act to provide for the sale of certain real property within the Newlands Project in Nevada, to the city of Fallon, Nevada.

H.R. 1906. An act to amend the Act that established the Pu‘uhonua O Honaunau National Historical Park to expand the boundaries of that park.

H.R. 1925. An act to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes.

H.R. 2099. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver national Historic Reserve.

H.R. 2109. An act to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System.

H.R. 2115. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within the outside of the service area of the Lakehaven Utility District, Washington.

H.R. 2187. An act to amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.

H.R. 2385. An act to convey certain property to the city of St. George, Utah, in order to provide for the protection and preservation of certain rate paleontological resources on that property, and for other purposes.

H.R. 2628. An act to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the

Muscle Shoals National Heritage Area in Alabama, and for other purposes.

H.R. 2818. An act to authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the state of Idaho to resolve an occupancy encroachment dating back to 1971.

H.R. 2828. An act to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, and for other purposes.

H.R. 2937. An act to provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range.

H.R. 2990. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.

H.R. 3048. An act to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska.

H.R. 3180. An act to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

H.R. 3401. An act to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes.

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 3747. An act to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledate Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.

H.R. 3858. An act to modify the boundaries of the New River Gorge National River, West Virginia.

H.R. 3909. An act to designate certain Federal lands in the State of Utah as the Gunn McKay Nature Preserve, and for other purposes.

H.R. 3954. An act to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, and for other purposes.

H.R. 4129. An act to amend the Central Utah Project completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes.

H.R. 4692. An act to amend the Act entitled "An Act to authorize the Establishment of the Andersonville National Historic site in the State of Georgia, and for other purposes", to provide for the addition of certain donated lands to the Andersonville National Historic Site.

H.R. 4750. An act to designate certain lands in the State of California as components of the National Wilderness Preservation System, and for other purposes.

H.R. 4823. An act to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime.

H.R. 4874. An act to direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey.

H.R. 4944. An act to designate the Cedar Creek and Belle Grove National Historical Park as a unit of the National Park System, and for other purposes.

H.R. 4953. An act to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

H.R. 4099. An act to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

H.R. 5125. An act to amend the American Battlefield Protection Act of 1996 to authorize the Secretary of the Interior to establish a battlefield acquisition grant program.

H.R. 5436. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.

H.R. 5472. An act to extend for 6 months the period for which chapter of title 11 of the United States Code is reenacted.

H.R. 5738. An act to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

H.R. 2017. An act to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

Under the authority of the order of the Senate of January 3, 2001, the enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

ENROLLED BILLS SIGNED

Under the authority of the order of the Senate of January 3, 2001, the Secretary of the Senate, on December 4, 2002, during the recess of the Senate, received a message from the House of Representatives announcing that the Speaker has signed the following enrolled bills.

H.R. 2458. An act to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

H.R. 3609. An act to amend title 49, United States Code, to enhance the security and safety of pipelines.

H.R. 4664. An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.

H.R. 4883. An act to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

Under the authority of the order of the Senate January 3, 2001, the enrolled bills were signed subsequently by the President pro tempore (Mr. BYRD).

ENROLLED BILLS AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on November 22, 2002, she had presented to the President of the United States the following enrolled bills and joint resolution:

S. 1010. An act to extent the deadline for commencement of construction of a hydroelectric project in the State of North Carolina.

S. 1226. An act to require the display of the POW/MIA flag at the World War II Memorial, the Korean War Veterans Memorial, and the Vietnam Veterans Memorial.

S. 1907. An act to direct the Secretary of the Interior to convey certain land to the city of Haines, Oregon.

S. 1946. An act to amend the National Trails System Act to designate the Old Spanish Trail as a National Historic Trail.

S. 2239. An act to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

S. 2712. An act to authorize economic and democratic development assistance for Afghanistan and to authorize military assistance for Afghanistan and certain other foreign countries.

S. 3044. An act to authorize the Court Services and Offender Supervision Agency for the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 3156. An act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

S.J. Res. 53. A joint resolution relative to the convening of the first session of the One Hundred Eighth Congress.

The Secretary of the Senate reported that on November 25, 2002, she had presented to the President of the United States the following enrolled bills:

S. 1240. An act to provide for the acquisition of land and construction of an interagency administrative and visitor facility at the entrance to American Fork Canyon, Utah, and for other purposes.

S. 2237. An act to amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes.

The Secretary of the Senate reported that on December 3, 2002, she had presented to the President of the United States the following enrolled bills:

S. 2017. An act to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

HOUSE OF REPRESENTATIVES—*Monday, December 16, 2002*

PROCEEDINGS OF THE HOUSE OF REPRESENTATIVES AFTER SINE DIE ADJOURNMENT OF THE 107TH CONGRESS 2D SESSION

OMISSION FROM THE CONGRESSIONAL RECORD OF FRIDAY, NOVEMBER 22, 2002, AT PAGE H9126

BILLS PRESENTED TO THE PRESIDENT

Jeff Trandahl, Clerk of the House reports that on November 22, 2002 he presented to the President of the United States, for his approval, the following bills:

H.J. Res 117. Approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

H.R. 727. To amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such act.

H.R. 2595. To direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

H.R. 3210. To ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

H.R. 3908. To reauthorize the North American Wetlands Conservation Act, and for other purposes.

H.R. 5005. To establish the Department of Homeland Security, and for other purposes.

H.R. 5469. To amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.

COMMUNICATION FROM STAFF MEMBER OF THE HONORABLE JOHN M. McHUGH AFTER SINE DIE ADJOURNMENT

NOVEMBER 8, 2002.

Hon. J. DENNIS HASTERT,
The Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to formally notify you, pursuant to Rule VIII of the Rules of the House, that I have been served with a trial subpoena for testimony and documents issued by the U.S. District Court for the Northern District of New York.

After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

RUTH MARY ORTLOFF,
Consultant Services
Representatives.

ENROLLED BILLS SIGNED AFTER SINE DIE ADJOURNMENT

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker pro tempore, Mr. TOM DAVIS of Virginia, on December 2, 2002:

H.R. 38. An act to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes.

H.R. 308. An act to establish the Guam War Claims Review Commission.

H.R. 451. An act to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

H.R. 706. An act to direct the Secretary of the Interior to convey certain properties in the vicinity of the Elephant Butte Reservoir and the Caballo Reservoir, New Mexico.

H.R. 1712. An act to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega within the park, and for other purposes.

H.R. 1776. An act to authorize the Secretary of the Interior to study the suitability and feasibility of establishing the Buffalo Bayou National Heritage Area in west Houston, Texas.

H.R. 1814. An act to amend the National Trails System Act to designate the Metacomet-Monadnock-Mattabesett Trail extending through western Massachusetts and central Connecticut for study for potential addition to the National Trails System.

H.R. 1870. An act to provide for the sale of certain real property within the Newlands Project in Nevada, to the city of Fallon, Nevada.

H.R. 1906. An act to amend the Act that established the Pu'uhonua O Honaunau National Historical Park to expand the boundaries of that park.

H.R. 1925. An act to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes.

H.R. 2099. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.

H.R. 2109. An act to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne Bay, Florida, for possible inclusion in the National Park System.

H.R. 2115. An act To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington.

H.R. 2187. An act to amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.

H.R. 2385. An act to convey certain property to the city of St. George, Utah, in order to provide for the protection and preservation of certain rare paleontological resources on that property, and for other purposes.

H.R. 2628. An act to direct the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Muscle Shoals National Heritage Area in Alabama, and for other purposes.

H.R. 2818. An act to authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971.

H.R. 2828. An act to authorize payments to certain Klamath Project water distribution entities for amounts assessed by the entities for operation and maintenance of the Project's transferred works for 2001, to authorize refunds to such entities of amounts collected by the Bureau of Reclamation for reserved works for 2001, and for other purposes.

H.R. 2937. An act to provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range.

H.R. 2990. An act to amend the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize additional projects under that Act, and for other purposes.

H.R. 3048. An act to resolve the claims of Cook Inlet Region, Inc., to lands adjacent to the Russian River in the State of Alaska.

H.R. 3180. An act to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

H.R. 3401. An act to provide for the conveyance of Forest Service facilities and lands comprising the Five Mile Regional Learning Center in the State of California to the Clovis Unified School District, to authorize a new special use permit regarding the continued use of unconveyed lands comprising the Center, and for other purposes.

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 3747. An act to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.

H.R. 3858. An act to modify the boundaries of the New River Gorge National River, West Virginia.

H.R. 3909. An act to designate certain Federal lands in the State of Utah as the Gunn McKay Nature Preserve, and for other purposes.

H.R. 3954. An act to designate certain waterways in the Caribbean National Forest in the Commonwealth of Puerto Rico as components of the National Wild and Scenic Rivers System, and for other purposes.

H.R. 4129. An act to amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other

☐This symbol represents the time of day during the House proceedings, e.g., ☐1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such prepayment.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes.

H.R. 4692. An act to amend the Act entitled "An Act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes", to provide for the addition of certain donated lands in the Andersonville National Historic Site.

H.R. 4750. An act to designate certain lands in the State of California as components of the National Wilderness Preservation System, and for other purposes.

H.R. 4823. An act to repeal the sunset of the Economic Growth and Tax Relief Reconciliation Act of 2001 with respect to the exclusion from Federal income tax for restitution received by victims of the Nazi Regime.

H.R. 4874. An act to direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible commission of lands from an 1880 survey.

H.R. 4944. An act to designate the Cedar Creek and Belle Grove National Historical Park as a unit of the National Park System, and for other purposes.

H.R. 4953. An act to direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

H.R. 5099. An act to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

H.R. 5125. An act to amend the American Battlefield Protection Act of 1996 to authorize the Secretary of the Interior to establish a battlefield acquisition grant program.

H.R. 5436. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.

H.R. 5472. An act to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

H.R. 5738. An act to amend the Public Health Service Act with respect to special diabetes programs for Type 1 diabetes and Indians.

On December 5, 2002, the Speaker pro tempore, Mr. TOM DAVIS of Virginia, signed:

H.R. 2458. An act to enhance the management and promotion of electronic Government services and processes by establishing a Federal Chief Information Officer within the Office of Management and Budget, and by establishing a broad framework of measures that require using Internet-based information technology to enhance citizen access to Government information and services, and for other purposes.

H.R. 3609. An act to amend title 49, United States Code, to enhance the security and safety of pipelines.

H.R. 4664. An act to authorize appropriations for fiscal years 2003, 2004, 2005, 2006, and 2007 for the National Science Foundation, and for other purposes.

H.R. 4883. An act to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

SENATE ENROLLED BILL SIGNED AFTER SINE DIE ADJOURNMENT

The SPEAKER pro tempore, Mr. TOM DAVIS of Virginia, announced his signature to an enrolled bill of the Senate of the following title on December 2, 2002:

S. 2017. An act to amend the Indian Financing Act of 1974 to improve the effectiveness of the Indian loan guarantee and insurance program.

BILLS PRESENTED TO THE PRESIDENT AFTER SINE DIE ADJOURNMENT

Jeff Trandahl, Clerk of the House reports that on November 25, 2002 he presented to the President of the United States, for his approval, the following bill.

H.R. 4628. "Intelligence Authorization Act for Fiscal Year 2003".

Jeff Trandahl, Clerk of the House reports that on November 26, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 3833. "Dot Kids Implementation and Efficiency Act of 2002".

H.R. 4546. To authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths of such fiscal year for the Armed Forces, and for other purposes.

H.R. 5504. To provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

Jeff Trandahl, Clerk of the House reports that on December 4, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 38. To provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes.

H.R. 308. To establish the Guam War Claims Review Commission.

H.R. 451. To make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

H.R. 706. "Lease Lot Conveyance Act of 2002".

H.R. 1712. To authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega with the park, and for other purposes.

H.R. 1776. "Buffalo Bayou National Heritage Area Study Act".

H.R. 1814. "Metacomet-Monadnock-Mattabesett Trail Study Act of 2002".

H.R. 1870. "Fallon Rail Freight Loading Facility Transfer Act".

H.R. 1906. To amend the Act that established the Pu'uhonua O Honaunau National Historical Park to expand the boundaries of that park.

H.R. 1925. To direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes.

Jeff Trandahl, Clerk of the House reports that on December 6, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 2099. To amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserves.

H.R. 2109. To authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne, Florida, for possible inclusion in the National Park System.

H.R. 2115. To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington.

H.R. 2187. To amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.

H.R. 2385. "Virgin River Dinosaur Footprint Preserve Act".

H.R. 2628. "Muscle Shoals National Heritage Area Study Act of 2002".

H.R. 2818. To authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971.

H.R. 2828. "Klamath Basin Emergency Operation and Maintenance Refund Act of 2002".

H.R. 2937. To provide for the conveyance of certain public land in Clark County, Nevada, for use as a shooting range.

H.R. 2990. "Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2002".

Jeff Trandahl, Clerk of the House reports that on December 9, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 2458. "E-Government Act of 2002".

H.R. 3048. "Russian River Land Act".

H.R. 3180. To consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

H.R. 3401. "California Five Mile Regional Learning Center Transfer Act".

H.R. 3449. To revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 3609. "Pipeline Safety Improvement Act of 2002".

H.R. 3747. To direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park System.

H.R. 3858. To modify the boundaries of the New River Gorge National River, West Virginia.

H.R. 3909. "Gunn McKay Nature Preserve Act".

H.R. 3954. "Caribbean National Forest Wild and Scenic Rivers Act of 2002".

H.R. 4129. To amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate the deadline for such payment.

H.R. 4638. To reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4664. "National Science Foundation Authorization Act of 2002".

H.R. 4883. To reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

Jeff Trandahl, Clerk of the House reports that on December 10, 2002 he presented to the President of the United States, for his approval, the following bills.

H.R. 4682. To revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes.

H.R. 4692. To amend the Act entitled "An Act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes", to provide for the addition of certain donated lands to the Andersonville National Historic Site.

H.R. 4750. "Big Sur Wilderness and Conservation Act of 2002".

H.R. 4823. "Holocaust Restitution Tax Fairness Act of 2002".

H.R. 4874. To direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey.

H.R. 4944. "Cedar Creek and Belle Grove National Historical Park Act".

H.R. 4953. To direct the Secretary of the Interior to grant to Deschutes and Crook Counties in the State of Oregon a right-of-way to West Butte Road.

H.R. 5099. To extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

H.R. 5125. "Civil War Battlefield Preservation Act of 2002".

H.R. 5436. To extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.

H.R. 5472. To extend for 6 months the period for which chapter 12 of the title 11 of the United States Code is reenacted.

H.R. 5738. To amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

BILLS AND JOINT RESOLUTIONS APPROVED BY THE PRESIDENT PRIOR TO SINE DIE ADJOURNMENT

On July 23:

H.J. Res. 87. Joint Resolution approving the site at Yucca Mountain, Nevada, for the development of a repository for the disposal of high-level radioactive waste and spent nuclear fuel, pursuant to the Nuclear Waste Policy Act of 1982.

On July 24:

H.R. 2362. An act to establish the Benjamin Franklin Tercentenary Commission.

H.R. 3971. An act to provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover.

On July 30:

H.R. 3763. An act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

On August 1:

H.R. 3487. An act to amend the Public Health Service Act with respect to health professions programs regarding the field of nursing.

On August 2:

H.R. 4775. An act making supplemental appropriations for further recovery from and response to terrorist attacks on the United States for the fiscal year ending September 30, 2002, and for other purposes.

On August 5:

H.R. 2175. An act to protect infants who are born alive.

On August 6:

H.R. 1209. An act to amend the Immigration and Nationality Act to determine whether an alien is a child, for purposes of classification as an immediate relative, based on the age of the alien on the date the classification petition with respect to the alien is filed, and for other purposes.

H.R. 3009. An act to extend the Andean Trade Preference Act, to grant additional trade benefits under that Act, and for other purposes.

On August 21:

H.R. 223. An act to amend the Clear Creek County, Colorado, Public Lands Transfer Act of 1993 to provide additional time for Clear Creek County to dispose of certain lands transferred to the county under the Act.

H.R. 309. An act to provide for the determination of withholding tax rates under the Guam income tax.

H.R. 601. An act to redesignate certain lands within the Craters of the Moon National Monument, and for other purposes.

H.R. 1384. An act to amend the National Trails System Act to designate the route in Arizona and New Mexico which the Navajo and Mescalero Apache Indian Tribes were forced to walk in 1863 and 1864, for study for potential addition to the National Trails System.

H.R. 1856. An act to expand the boundary of the Booker T. Washington National Monument, and for other purposes.

H.R. 1576. An act to designate the James Peak Wilderness and Protection Area in the Arapaho and Roosevelt National Forests in the State of Colorado, and for other purposes.

H.R. 2068. An act to revise, codify, and enact without substantive change certain general and permanent laws, related to public buildings, property, and works, as title 40, United States Code, "Public Buildings, Property, and Works."

H.R. 2234. An act to revise the boundary of the Tumacacori National Historical Park in the State of Arizona.

H.R. 2440. An act to rename Wolf Trap Farm Park as "Wolf Trap National Park for the Performing Arts", and for other purposes.

H.R. 2441. An act to amend the Public Health Service Act to redesignate a facility as the National Hansen's Disease Programs Center, and for other purposes.

H.R. 2643. An act to authorize the acquisition of additional lands for inclusion in the Fort Clatsop National Memorial in the State of Oregon, and for other purposes.

H.R. 3343. An act to amend title X of the Energy Policy Act of 1992, and for other purposes.

H.R. 3380. An act to authorize the Secretary of the Interior to issue right-of-way permits for natural gas pipelines within the boundary of Great Smoky Mountains National Park.

On September 18:

H.R. 5012. An act to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts, and for other purposes.

On September 24:

H.R. 3287. An act to redesignate the facility of the United States Postal Service located at 900 Brentwood Road, NE, in Washington, D.C. as the "Joseph Curseen, Jr. and Thomas Morris, Jr. Processing and Distribution Center."

H.R. 3971. An act to authorize a national memorial to commemorate the passengers and crew of Flight 93 who, on September 11, 2001, courageously gave their lives thereby thwarting a planned attack on our Nation's Capital, and for other purposes.

H.R. 5207. An act to designate the facility of the United States Postal Service located at 6101 West Old Shakopee Road in Bloomington, Minnesota, as the "Thomas E. Burnett, Jr. Post Office Building."

On September 30:

H.J. Res. 111. Joint Resolution making continuing appropriations for the fiscal year 2003, and for other purposes.

H.R. 1646. An act to authorize appropriations for the Department of State for fiscal year 2003, to authorize appropriations under the Arms Export Control Act and the Foreign Assistance Act of 1961 for security assistance for fiscal year 2003, and for other purposes.

On October 1:

H.R. 3880. An act to provide a temporary waiver from certain transportation conformity requirements and metropolitan transportation planning requirements under the Clean Air Act and under other laws for certain areas of New York where the planning offices and resources have been destroyed by acts of terrorism, and for other purposes.

H.R. 4687. An act to provide for the establishment of investigative teams to assess building performance and emergency response and evacuation procedures in the wake of any building failure that has resulted in substantial loss of life or that posed significant potential of substantial loss of life.

H.R. 5157. An act to amend section 5307 of title 49, United States Code, to allow transit systems in urbanized areas that, for the first time, exceeded 200,000 in population according to the 2000 census to retain flexibility in the use of Federal transit formula grants in fiscal year 2003, and for other purposes.

On October 4:

H.J. Res. 112. Joint Resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

H.R. 486. An act for the relief of Barbara Makuch.

H.R. 487. An act for the relief of Eugene Makuch.

H.R. 4558. An act to extend the Irish Peace Process Cultural and Training Program.

On October 9:

H.R. 640. An act to adjust the boundaries of Santa Monica Mountains National Recreation Area, and for other purposes.

On October 11:

H.J. Res. 122. Joint Resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

On October 16:

H.J. Res. 114. Joint Resolution to authorize the use of United States Armed Forces against Iraq.

H.R. 3214. An act to amend the charter of the AMVETS organization.

H.R. 3838. An act to amend the charter of the Veterans of Foreign Wars of the United

States organization to make members of the armed forces who receive special pay for duty subject to hostile fire or imminent danger eligible for membership in the organization, and for other purposes.

On October 18:

H.J. Res. 123. Joint Resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

On October 21:

H.R. 5531. An act to facilitate famine relief efforts and a comprehensive solution to the war in Sudan.

On October 23:

H.R. 2121. An act to make available funds under the Foreign Assistance Act of 1961 to expand democracy, good governance, and anti-corruption programs in the Russian Federation in order to promote and strengthen democratic government and civil society and independent media in that country.

H.R. 4085. An act to amend title 38, United States Code, to provide a cost-of-living increase in the rates of compensation for veterans with service-connected disability and dependency and indemnity compensation for surviving spouses of such veterans, to expend certain benefits for veterans and their survivors, and for other purposes.

H.R. 5010. An act making appropriations for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes.

H.R. 5011. An act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2003, and for other purposes.

On October 26:

H.R. 5651. An act to amend the Federal Food, Drug, and Cosmetic Act to make improvements in the regulation of medical devices, and for other purposes.

On October 29:

H.J. Res. 113. Joint Resolution recognizing the contributions of Patsy Takemoto Mink.

H.R. 2486. An act to authorize the National Oceanic and Atmospheric Administration, through the United States Weather Research Program, to conduct research and development, training, and outreach activities relating to inland flood forecasting improvement, and for other purposes.

H.R. 3295. An act to establish a program to provide funds to States to replace punch card voting systems, to establish the Election Assistance Commission to assist in the administration of Federal elections and to otherwise provide assistance with the administration of certain Federal election laws and programs, to establish minimum election administration standards for States and units of local government with responsibility for the administration of Federal elections, and for other purposes.

H.R. 5647. An act to authorize the duration of the base contract of the Navy-Marine Corps Intranet contract to be more than five years but not more than seven years.

On October 30:

H.R. 669. An act to designate the facility of the United States Postal Service located at 127 Social Street in Woonsocket, Rhode Island, as the "Alphonse F. Auclair Post Office Building."

H.R. 670. An act to designate the facility of the United States Postal Service located at 7 Commercial Street in Newport, Rhode Island, as the "Bruce F. Cotta Post Office Building."

H.R. 3034. An act to designate the facility of the United States Postal Service located at 89 River Street in Hoboken, New Jersey, as the "Frank Sinatra Post Office Building."

H.R. 3738. An act to designate the facility of the United States Postal Service located at 1299 North 7th Street In Philadelphia, Pennsylvania, as the "Herbert Arlene Post Office Building."

H.R. 3739. An act to designate the facility of the United States Postal Service located at 6150 North Broad Street in Philadelphia, Pennsylvania, as the "Rev. Leon Sullivan Post Office Building."

H.R. 3740. An act to designate the facility of the United States Postal Service located at 925 Dickinson Street in Philadelphia, Pennsylvania, as the "William A. Cibotti Post Office Building."

H.R. 4102. An act to designate the facility of the United States Postal Service located at 120 North Maine Street in Fallon, Nevada, as the "Rollan D. Melton Post Office Building."

H.R. 4717. An act to designate the facility of the United States Postal Service located at 1199 Pasadena Boulevard in Pasadena, Texas, as the "Jim Fonteno Post Office Building."

H.R. 4755. An act to designate the facility of the United States Postal Service located at 204 South Broad Street in Lancaster, Ohio, as the "Clarence Miller Post Office Building."

H.R. 4794. An act to designate the facility of the United States Postal Service located at 1895 Avenida Del Oro in Oceanside, California, as the "Ronald C. Packard Post Office Building."

H.R. 4797. An act to redesignate the facility of the United States Postal Service located at 265 South Western Avenue, Los Angeles, California, as the "Nat King Cole Post Office."

H.R. 4851. An act to redesignate the facility of the United States Postal Service located at 6910 South Yorktown Avenue in Tulsa, Oklahoma, as the "Robert Wayne Jenkins Station."

On November 2:

H.R. 2215. An act to authorize appropriations for the Department of Justice for fiscal year 2002, and for other purposes.

H.R. 4967. An act to establish new non-immigrant classes for border commuter students.

H.R. 5542. An act to consolidate all black lung benefit responsibility under a single official, and for other purposes.

H.R. 5596. An act to amend section 527 of the Internal Revenue Code of 1986 to eliminate notification and return requirements for State and local party committees and candidate committees and avoid duplicate reporting by certain State and local political committees of information required to be reported and made publicly available under State law, and for other purposes.

On November 5:

H.R. 2245. An act for the relief of Anisha Goveas Foti.

H.R. 2733. An act to authorize the National Institute of Standards and Technology to work with major manufacturing industries on an initiative of standards development and implementation for electronic enterprise integration.

H.R. 3656. An act to amend the International Organizations Immunities Act to provide for the applicability of that Act to the European Central Bank.

H.R. 3801. An act to provide for improvement of Federal education research, statistics, evaluation, information, and disseminations and for other purposes.

On November 6:

H.R. 4013. An act to amend the Public Health Service Act to establish an Office of Rare Diseases at the National Institutes of Health, and for other purposes.

H.R. 4014. An act to amend the Federal Food, Drug, and Cosmetic Act with respect to the development of products for rare diseases.

H.R. 5200. An act to establish wilderness areas, promote conservation, improve public land, and provide for high quality development in Clark County, Nevada, and for other purposes.

H.R. 5308. An act to designate the facility of the United States Postal Service located at 301 South Howes Street in Fort Collins, Colorado, as the "Barney Apodaca Post Office."

H.R. 5333. An act to designate the facility of the United States Postal Service located at 4 East Central Street in Worcester, Massachusetts, as the "Joseph D. Early Post Office Building."

H.R. 5336. An act to designate the facility of the United States Postal Service located at 380 Main Street in Farmingdale, New York, as the "Peter J. Ganci, Jr. Post Office Building."

H.R. 5340. An act to designate the facility of the United States Postal Service located in 5805 White Oak Avenue in Encino, California, as the "Francis Dayle 'Chick' Hearn Post Office."

On November 7:

H.R. 3253. An act to amend title 38, United States Code, to enhance emergency preparedness for the Department of Veterans Affairs, and for other purposes.

H.R. 4015. An act to amend title 38, United States Code, to revise and improve employment, training, and placement services furnished to veterans, and for other purposes.

H.R. 4685. An act to amend title 31, United States Code, to expand the types of Federal agencies that are required to prepare audited financial statements.

H.R. 5205. An act to amend the District of Columbia Retirement Protection Act of 1997 to permit the Secretary of the Treasury to use estimated amounts in determining the service longevity component of the Federal benefit payment required to be paid under such Act to certain retirees of the Metropolitan Police Department of the District of Columbia.

H.R. 5574. An act to designate the facility of the United States Postal Service located a 206 South Main Street in Glennville, Georgia, as the "Michael Lee Woodcock Post Office."

SENATE BILLS AND JOINT RESOLUTIONS APPROVED BY THE PRESIDENT PRIOR TO SINE DIE ADJOURNMENT

On July 23:

S. 2594. An act to authorize the Secretary of the Treasury to purchase silver on the open market when the silver stockpile is depleted, to be used to mint coins.

On August 6:

S.J. Res. 13. Joint Resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

On October 1:

S. 1834. An act for the relief of retired Sergeant First Class James D. Benoit and Wan Sook Benoit.

S. 2810. An act to amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering.

On October 11:

S. 238. An act to authorize the Secretary of the Interior to conduct feasibility studies on water optimization in the Burnt River basin, Malheur River basin. Owykee River basin, and Powder River basin, Oregon.

S. 1175. An act to modify the boundary of Vicksburg National Military Park to include the property known as Pemberton's Headquarters, and for other purposes.

S. 1325. An act to ratify an agreement between the Aleut Corporation and the United States of America to exchange land rights received under the Alaska Native Claims Settlement Act for certain land interests on Adak Island, and for other purposes.

On October 26:

S. 1533. An act to amend the Public Health Service Act to reauthorize and strengthen the health centers program and the National Health Service Corps, and to establish the Healthy Communities Access Program, which will help coordinate services for the uninsured and underinsured, and for other purposes.

On October 29:

S. 1227. An act to authorize the Secretary of the Interior to conduct a study of the suitability and feasibility of establishing the Niagra Falls National Heritage Area in the State of New York, and for other purposes.

S. 1270. An act to designate the United States courthouse to be constructed at 8th Avenue and Mill Street in Eugene, Oregon, as the "Wayne Lyman Morse United States Courthouse."

S. 1339. An act to amend the Bring Them Home Alive Act of 2000 to provide an asylum program with regard to American Persian Gulf War POW/MIAs, and for other purposes.

S. 1646. An act to identify certain routes in the States of Texas, Oklahoma, Colorado, and New Mexico as parts of the Ports-to-Plains Corridor, a high priority corridor on the National Highway System.

S. 2558. An act to amend the Public Health Service Act to provide for the collection of data on benign brain-related tumors through the national program of cancer registries.

On November 13:

S. 1210. An act to reauthorize the Native American Housing Assistance and Self-Determination Act of 1996.

S. 2690. An act to reaffirm the reference to one Nation under God in the Pledge of Allegiance.

BILLS AND JOINT RESOLUTIONS APPROVED BY THE PRESIDENT SUBSEQUENT TO SINE DIE ADJOURNMENT

The President, subsequent to sine die adjournment of the 2nd Session, 107th Congress, notified the Clerk of the House that on the following dates he had approved and signed bills and joint resolutions of the following titles:

On November 25:

H.J. Res. 124. Joint Resolution making further continuing appropriations for the fiscal year 2003, and for other purposes.

On November 25:

H.R. 5005. An act to establish the Department of Homeland Security, and for other purposes.

On November 26:

H.R. 2546. An act to amend title 49, United States Code, to prohibit States from requiring a license or fee on account of the fact that a motor vehicle is providing interstate pre-arranged ground transportation service, and for other purposes.

H.R. 3210. An act to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism.

H.R. 3389. An act to reauthorize the National Sea Grant College Program Act, and for other purposes.

H.R. 4878. An act to provide for estimates and reports of improper payments by Federal agencies.

H.R. 5349. An act to facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri.

On November 27:

H.R. 1070. An act to amend the Federal Water Pollution Control Act to authorize the Administrator of the Environmental Protection Agency to carry out projects and conduct research for remediation of sediment contamination in areas of concern in the Great Lakes, and for other purposes.

H.R. 3340. An act to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes.

H.R. 3394. An act to authorize funding for computer and network security research and development and research fellowship programs, and for other purposes.

H.R. 4628. An act to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

On December 2:

H.J. Res. 117. Joint Resolution approving the location of the commemorative work in the District of Columbia honoring former President John Adams.

H.R. 2621. An act to amend title 18, United States Code, with respect to consumer product protection.

H.R. 3758. An act for the relief of So Hyun Jun.

H.R. 3908. An act to reauthorize the North American Wetlands Conservation Act, and for other purposes.

H.R. 3988. An act to amend title 36, United States Code, to clarify the requirements for eligibility in the American Legion.

H.R. 4546. An act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces and for other purposes.

H.R. 4727. An act to reauthorize the national dam safety program, and for other purposes.

H.R. 5590. An act to amend title 10, United States Code, to provide for the enforcement and effectiveness of civilian orders to protection on military installations.

H.R. 5708. An act to reduce preexisting PAYGO balances, and for other purposes.

H.R. 5716. An act to amend the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to extend the mental health benefits parity provisions for an additional year.

SENATE BILLS APPROVED BY THE PRESIDENT SUBSEQUENT TO SINE DIE ADJOURNMENT

The President, subsequent to sine die adjournment of the 2nd Session, 107th Congress, notified the Clerk of the House that on the following dates he had approved and signed bills of the Senate of the following titles:

On November 25:

S. 1214. An act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes.

On November 26:

S. 3044. An act to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

On December 2:

S. 3156. An act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

On December 4:

S. 2239. An act to amend the National Housing Act to simplify the downpayment requirements for FHA mortgage insurance for single family homebuyers.

S.J. Res. 53. Joint Resolution relative to the convening of the first session of the One Hundred Eighth Congress.

BILLS AND JOINT RESOLUTIONS PRESENTED TO THE PRESIDENT SUBSEQUENT TO SINE DIE ADJOURNMENT

Honorable Jeff Trandahl, Clerk of the House, subsequent to sine die adjournment of the 2nd Session, 107th Congress, reported that, on the following dates, he presented to the President of the United States, for his approval, the bills and joint resolutions of the following titles:

On November 25:

H.R. 4628. "Intelligence Authorization Act for fiscal year 2003."

On November 26:

H.R. 3833. "Dot Kids Implementation and Efficiency Act of 2002."

H.R. 4546. An act to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 5504. An act to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

On December 4:

H.R. 38. An act to provide for additional lands to be included within the boundaries of the Homestead National Monument of America in the State of Nebraska, and for other purposes.

H.R. 308. An act to establish the Guam War Claims Review Commission.

H.R. 451. An act to make certain adjustments to the boundaries of the Mount Nebo Wilderness Area, and for other purposes.

H.R. 706. "Lease Lot Conveyance Act of 2002."

H.R. 1712. An act to authorize the Secretary of the Interior to make adjustments to the boundary of the National Park of American Samoa to include certain portions of the islands of Ofu and Olosega with the park, and for other purposes.

H.R. 1776. "Buffalo Bayou National Heritage Area Study Act."

H.R. 1814. "Metacomet-Monadnock-Mattabesett Trail Study Act of 2002."

H.R. 1870. "Fallon Rail Freight Loading Facility Transfer Act."

H.R. 1906. An act to amend the Act that established the Pu'uhonua O Honaunau National Historical Park to expand the boundaries of that park.

H.R. 1925. An act to direct the Secretary of the Interior to study the suitability and feasibility of designating the Waco Mammoth Site Area in Waco, Texas, as a unit of the National Park System, and for other purposes.

On December 6:

H.R. 2009. An act to amend the Omnibus Parks and Public Lands Management Act of 1996 to provide adequate funding authorization for the Vancouver National Historic Reserve.

H.R. 2109. An act to authorize the Secretary of the Interior to conduct a special resource study of Virginia Key Beach Park in Biscayne, Florida, for possible inclusion in the National Park System.

H.R. 2115. An act to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the design, planning, and construction of a project to reclaim and reuse wastewater within and outside of the service area of the Lakehaven Utility District, Washington.

H.R. 2187. An act to amend title 10, United States Code, to make receipts collected from mineral leasing activities on certain naval oil shale reserves available to cover environmental restoration, waste management, and environmental compliance costs incurred by the United States with respect to the reserves.

H.R. 2385. "Virgin River Dinosaur Footprint Preserve Act."

H.R. 2628. "Muscle Shoals National Heritage Area Study Act of 2002."

H.R. 2818. An act to authorize the Secretary of the Interior to convey certain public land within the Sand Mountain Wilderness Study Area in the State of Idaho to resolve an occupancy encroachment dating back to 1971.

H.R. 2828. "Klamath Basin Emergency Operation and Maintenance Refund Act of 2002."

H.R. 2937. An act to provide for the conveyance of certain public land in Clark County, Nevada, for use as shooting range.

H.R. 2990. "Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2002."

On December 9:

H.R. 2458. "E-Government Act of 2002."

H.R. 3048. "Russian River Land Act."

H.R. 3180. An act to consent to certain amendments to the New Hampshire-Vermont Interstate School Compact.

H.R. 3401. "California Five Mile Regional Learning Center Transfer Act."

H.R. 3449. An act to revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.

H.R. 3609. "Pipeline Safety Improvement Act of 2002."

H.R. 3747. An act to direct the Secretary of the Interior to conduct a study of the site commonly known as Eagledale Ferry Dock at Taylor Avenue in the State of Washington for potential inclusion in the National Park Systems.

H.R. 3858. An act to modify the boundaries of the New River Gorge National River, West Virginia.

H.R. 3909. "Gunn McKay Nature Preserve Act."

H.R. 3954. "Caribbean National Forest Wild and Scenic Rivers Act of 2002."

H.R. 4129. An act to amend the Central Utah Project Completion Act to clarify the responsibilities of the Secretary of the Interior with respect to the Central Utah Project, to redirect unexpended budget authority for the Central Utah Project for wastewater treatment and reuse and other purposes, to provide for prepayment of repayment contracts for municipal and industrial water delivery facilities, and to eliminate a deadline for such payment.

H.R. 4638. An act to reauthorize the Mni Wiconi Rural Water Supply Project.

H.R. 4664. "National Science Foundation Authorization Act of 2002."

H.R. 4883. An act to reauthorize the Hydrographic Services Improvement Act of 1998, and for other purposes.

On December 10:

H.R. 4682. An act to revise the boundary of the Allegheny Portage Railroad National Historic Site, and for other purposes.

H.R. 4692. An act to amend the Act entitled "An act to authorize the Establishment of the Andersonville National Historic Site in the State of Georgia, and for other purposes", to provide for the addition of certain donated lands to the Andersonville National Historic Site.

H.R. 4750. "Big Sur Wilderness and Conservation Act of 2002."

H.R. 4823. "Holocaust Restitution Tax Fairness Act of 2002."

H.R. 4874. An act to direct the Secretary of the Interior to disclaim any Federal interest in lands adjacent to Spirit Lake and Twin Lakes in the State of Idaho resulting from possible omission of lands from an 1880 survey.

H.R. 4944. "Cedar Creek and Belle Grove National Historical Park Act."

H.R. 4953. An act to direct the Secretary of the Interior to grant to Deschutes and Crook Countries in the State of Oregon a right-of-way to West Butte Road.

H.R. 5099. An act to extend the periods of authorization for the Secretary of the Interior to implement capital construction projects associated with the endangered fish recovery implementation programs for the Upper Colorado and San Juan River Basins.

H.R. 5125. "Civil War Battlefield Preservation Act of 2002."

H.R. 5436. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Oregon.

H.R. 5472. An act to extend for 6 months the period for which chapter 12 of tne title 11 of the United States Code is reenacted.

H.R. 5738. An act to amend the Public Health Service Act with respect to special diabetes programs for Type I diabetes and Indians.

OATH FOR ACCESS TO CLASSIFIED INFORMATION

Under clause 13 of rule XXIII, the following Members executed the oath for access to classified information:

Neil Abercrombie, Aníbal Acevedo-Vilá, Gary L. Ackerman, Robert B. Aderholt, W. Todd Akin, Thomas H. Allen, Robert E. Andrews, Richard K. Armey, Joe Baca, Spencer Bachus, Brian Baird, Richard H. Baker, John Elias E. Baldacci, Tammy Baldwin, Cass Ballenger, James A. Barcia, Bob Barr, Thomas M. Barrett, Roscoe G. Bartlett, Joe Barton, Charles F. Bass, Xavier Becerra, Ken Bentsen, Doug Bereuter, Shelley Berkley, Howard L. Berman, Marion Berry, Judy Biggert, Michael Bilirakis, Sanford D. Bishop, Jr., Rod R. Blagojevich, Earl Blumenauer, Roy Blunt, Sherwood L. Boehlert, John A. Boehner, Henry Bonilla, David E. Bonior, Mary Bono, John Boozman, Robert A. Borski, Leonard L. Boswell, Rick Boucher, Allen Boyd, Kevin Brady, Robert A. Brady, Corrine Brown, Sherrod Brown, Henry E. Brown, Jr., Ed Bryant, Richard Burr, Dan Burton, Steve Buyer, Sonny Callahan, Ken Calvert, Dave Camp, Chris Cannon, Eric Cantor, Shelley Moore Capito, Lois Capps, Michael E. Capuano, Benjamin L. Cardin, Brad Carson, Julia Carson, Ed Case, Michael N. Castle, Steve Chabot, Saxby Chambliss, Donna M. Christensen, Wm. Lacy Clay, Eva M. Clayton, Bob Clement, James E. Clyburn, Howard Coble, Mac Collins, Larry Combest, Gary A. Condit, John Cooksey, Jerry F. Costello, Christopher Cox, William J. Coyne, Robert E. (Bud) Cramer, Jr., Philip P. Crane, Ander Crenshaw, Joseph Crowley, Barbara Cubin, John Abney Culberson, Elijah E. Cummings, Randy "Duke" Cunningham, Danny K. Davis, Jim Davis, Jo Ann Davis, Susan A. Davis, Thomas M. Davis, Nathan Deal, Peter A. DeFazio, Diana DeGette, William D. Delahunt, Rosa L. DeLauro, Tom DeLay, Jim DeMint, Peter Deutsch, Lincoln Diaz-Balart, Norman D. Dicks, John D. Dingell, Lloyd Doggett, Calvin M. Dooley, John T. Doolittle, Michael F. Doyle, David Dreier, John J. Duncan, Jr., Jennifer Dunn, Chet Edwards, Vernon J. Ehlers, Robert L. Ehrlich, Jr., Jo Ann Emerson, Eliot L. Engel, Phil English, Anna G. Eshoo, Bob Etheridge, Lane Evans, Terry Everett, Eni F. H. Faleomavaega, Sam Farr, Chaka Fattah, Mike Ferguson, Bob Filner, Jeff Flake, Ernie Fletcher, Mark Foley, J. Randy Forbes, Harold E. Ford, Jr., Vito Fossella, Barney Frank, Rodney P. Frelinghuysen, Martin Frost, Elton Gallegly, Greg Ganske, George W. Gekas, Richard A. Gephardt, Jim Gibbons, Wayne T. Gilchrest, Paul E. Gillmor, Benjamin A. Gilman, Charles A. Gonzalez, Virgil H. Goode, Jr., Bob Goodlatte, Bart Gordon, Porter J. Goss, Lindsey O. Graham, Kay Granger, Sam Graves, Gene Green, Mark Green, James C. Greenwood, Felix J. Grucci, Jr., Luis Gutierrez, Gil Gutknecht, Ralph M. Hall, Tony P. Hall, James V. Hansen, Jane Harman, Melissa A. Hart, J. Dennis Hastert, Alcee L. Hastings, Doc Hastings, Robin Hayes, J. D. Hayworth, Joel Hefley, Wally Herger, Baron P. Hill, Van Hilleary, Earl F. Hilliard, Maurice D. Hinchey, Rubén Hinojosa, David L. Hobson, Joseph M. Hoeffel, Peter Hoekstra, Tim Holden, Rush D. Holt, Michael M. Honda, Darlene Hooley, Stephen Horn, John N. Hostettler, Amo Houghton, Steny H. Hoyer, Kenny C. Hulshof, Duncan Hunter, Henry J. Hyde, Jay Inslee, Johnny Isakson, Steve Israel, Darrell E. Issa, Ernest J. Istook, Jr., Jesse L. Jackson, Jr., Sheila Jackson-Lee, William J. Jefferson, William L. Jenkins, Christopher John, Eddie Bernice Johnson, Nancy L. Johnson, Sam Johnson, Timothy V. Johnson, Stephanie Tubbs Jones, Walter B. Jones, Paul E. Kanjorski, Marcy Kaptur, Ric Keller, Sue W. Kelly, Mark R. Kennedy, Patrick J. Kennedy, Brian D. Kerns, Dale E. Kildee, Carolyn C. Kilpatrick, Ron Kind, Peter T. King, Jack Kingston, Mark Steven Kirk, Gerald D. Kleczka, Joe Knollenberg, Jim Kolbe, Dennis J. Kucinich, John J. LaFalce, Ray LaHood, Nick Lampson, James R. Langevin, Tom Lantos, Steve Largent, Rick

Larsen, John B. Larson, Tom Latham, Steven C. LaTourette, James A. Leach, Barbara Lee, Sander M. Levin, Jerry Lewis, John Lewis, Ron Lewis, John Linder, William O. Lipinski, Frank A. LoBiondo, Zoe Lofgren, Nita M. Lowey, Frank D. Lucas, Ken Lucas, Bill Luther, Stephen F. Lynch, Carolyn B. Maloney, James H. Maloney, Donald A. Manzullo, Edward J. Markey, Frank Mascara, Jim Matheson, Robert T. Matsui, Carolyn McCarthy, Karen McCarthy, Betty McCollum, Jim McCrery, James P. McGovern, John McHugh, Scott McInnis, Mike McIntyre, Howard P. McKeon, Cynthia A. McKinney, Michael R. McNulty, Martin T. Meehan, Carrie P. Meek, Gregory W. Meeks, Robert Menendez, John L. Mica, Juanita Millender-McDonald, Dan Miller, Gary G. Miller, George Miller, Jeff Miller, Patsy T. Mink, Alan B. Mollohan, Dennis Moore, James P. Moran, Jerry Moran, Constance A. Morella, John P. Murtha, Sue Wilkins Myrick, Jerrold Nadler, Grace F. Napolitano, Richard E. Neal, George R. Nethercutt, Jr., Robert W. Ney, Anne M. Northup, Eleanor Holmes Norton, Charlie Norwood, Jim Nussle, James L. Oberstar, David R. Obey, John W. Olver, Solomon P. Ortiz, Tom Osborne, Doug Ose, C.L. Otter, Major R. Owens, Michael G. Oxley, Frank Pallone, Jr., Bill Pascrell, Jr., Ed Pastor, Ron Paul, Donald M. Payne, Nancy Pelosi, Mike Pence, Collin C. Peterson, John E. Peterson, Thomas E. Petri, David D. Phelps, Charles W. Pickering, Joseph R. Pitts, Todd Russell Platts, Richard W. Pombo, Earl Pomeroy, Rob Portman, David E. Price, Deborah Pryce, Adam H. Putnam, Jack Quinn, George Radanovich, Nick J. Rahall, II, Jim Ramstad, Charles B. Rangel, Ralph Regula, Dennis R. Rehberg, Silvestre Reyes, Thomas M. Reynolds, Bob Riley, Lynn N. Rivers, Ciro D. Rodriguez, Tim Roemer, Harold Rogers, Mike Rogers, Dana Rohrabacher, Ileana Ros-Lehtinen, Mike Ross, Steven R. Rothman, Marge Roukema, Lucille Roybal-Allard, Edward R. Royce, Bobby L. Rush, Paul Ryan, Jim Ryun, Martin Olav Sabo, Loretta Sánchez, Bernard Sanders, Max Sandlin, Tom Sawyer, Jim Saxton, Bob Schaffer, Janice D. Schakowsky, Adam B. Schiff, Edward L. Schrock, Robert C. Scott, F. James Sensenbrenner, Jr., José E. Serrano, Pete Sessions, John B. Shadegg, E. Clay Shaw, Jr., Christopher Shays, Brad Sherman, Don Sherwood, John Shimkus, Ronnie Shows, Bill Shuster, Rob Simmons, Michael K. Simpson, Joe Skeen, Ike Skelton, Louise McIntosh Slaughter, Adam Smith, Christopher H. Smith, Lamar S. Smith, Nick Smith, Vic Snyder, Hilda L. Solis, Mark E. Souder, John N. Spratt, Jr., Cliff Stearns, Charles W. Stenholm, Ted Strickland, Bob Stump, Bart Stupak, John Sullivan, John E. Sununu, John E. Sweeney, Thomas G. Tancredo, John S. Tanner, Ellen O. Tauscher, W.J. (Billy) Tauzin, Charles H. Taylor, Gene Taylor, Lee Terry, William M. Thomas, Bennie G. Thompson, Mike Thompson, Mac Thornberry, John R. Thune, Karen L. Thurman, Todd Tiahrt, Patrick J. Tiberi, John F. Tierney, Patrick J. Toomey, James A. Traficant, Jr., Jim Turner, Mark Udall, Robert A. Underwood, Fred Upton, Nydia M. Velázquez, Peter J. Visclosky, David Vitter, Greg Walden, James T. Walsh, Zach Wamp, Maxine Waters, Wes Watkins, Diane E. Watson, Joe Wilson, Melvin L. Watt, J.C. Watts, Jr., Henry A. Waxman, Anthony D. Weiner, Curt Weldon, Dave Weldon, Jerry Weller, Robert Wexler, Ed Whitfield, Roger F. Wicker, Heather Wilson, Frank R. Wolf, Lynn C. Woolsey, David Wu, Albert Russell Wynn, C.W. Bill Young, and Don Young.

EXTENSIONS OF REMARKS

ACTIVITY REPORT OF THE SELECT COMMITTEE ON HOMELAND SECURITY

HON. RICHARD K. ARMEY

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. ARMEY. Mr. Speaker, due to the unique circumstances of the Select Committee on Homeland Security, we were unable to complete the committee activity report required under clause 1(d) of rule XI of the Rules of the House of Representatives for the 107th Congress in time to have it printed as a House report. However, I am submitting this report for printing in the RECORD so that the legislative history of the Homeland Security Act will be preserved.

REPORT ON THE ACTIVITY OF THE SELECT COMMITTEE ON HOMELAND SECURITY FOR THE 107TH CONGRESS

Mr. ARMEY, from the Select Committee on Homeland Security, submitted the following Report:

AUTHORIZING RESOLUTION

On June 18, 2002, the Committee on Rules reported an original measure, H.Res. 449 (H. Rept. 107–517), to establish the Select Committee on Homeland Security. On June 19, 2002, the House agreed to the resolution by a voice vote. The text of the resolution follows:

H. RES. 449

In the House of Representatives, U.S., June 19, 2002.

Resolved, That there is hereby established a Select Committee on Homeland Security.

SEC. 2. COMPOSITION.—The select committee shall be composed of nine Members appointed by the Speaker, of whom four shall be appointed on the recommendation of the Minority Leader. The Speaker shall designate one member as chairman.

SEC. 3. JURISDICTION.—The select committee may develop recommendations and report to the House on such matters that relate to the establishment of a department of homeland security as may be referred to it by the Speaker and on recommendations submitted to it under section 6.

SEC. 4. PROCEDURE.—(a) Except as provided in paragraphs (1) and (2), rule XI shall apply to the select committee to the extent not inconsistent with this resolution.

(1) Clause 1(b) and clause 2(m)(1)(B) of rule XI shall not apply to the select committee.

(2) The select committee is not required to adopt written rules to implement the provisions of clause 4 of rule XI.

(b) Clause 10(b) of rule X shall not apply to the select committee.

SEC. 5. FUNDING.—To enable the select committee to carry out the purposes of this resolution, the select committee may utilize the services of staff of the House.

SEC. 6. REPORTING.—Each standing or permanent select committee to which the Speaker refers to a bill introduced by the Majority Leader or his designee (by request) that proposes to establish a department of homeland security may submit its recommendations on the bill only to the select committee. Such recommendations may be submitted not later than a time designated by the Speaker.

(b) The select committee shall consider the recommendations submitted to it on a bill described in subsection (a) and shall report to the House its recommendations on such bill.

SEC. 7. DISSOLUTION.—(a) The select committee shall cease to exist after final disposition of a bill described in section 6(a), including final disposition of any veto message on such bill.

(b) Upon the dissolution of the select committee, this resolution shall not be construed to alter the jurisdiction of any standing committee.

SEC. 8. DISPOSITION OF RECORDS.—Upon dissolution of the select committee, the records of the select committee shall become the records of any committee designated by the Speaker.

LEGISLATIVE AND OVERSIGHT ACTIVITIES

LEGISLATIVE ACTIVITIES

HOMELAND SECURITY ACT OF 2002

Public Law 107–296 (H.R. 5005, H.R. 5710)

Summary. The Homeland Security Act of 2002, will create the Department of Homeland Security (DHS) to provide for the security of the American people, territory, and sovereignty within the United States. The Department of Homeland Security will help fulfill the Constitutional responsibility of the Federal government by providing for the common defense by uniting, under a single department those elements within the government whose primary responsibility is to secure the United States homeland. This department will have the mission of preventing terrorist attacks within the United States, reducing the United States' vulnerability to terrorism, minimizing the damages from attacks, and assisting in recovery from any attacks, should they occur. The Department must fulfill these missions while protecting civil liberties.

The Department's primary responsibilities will include: analyzing information and protecting infrastructure; developing countermeasures against chemical, biological, radiological, and nuclear attacks; securing U.S. borders and transportation systems; organizing emergency preparedness and response efforts; conducting homeland security related research, development, technology, and acquisition programs; coordinating counterterrorism activities with other Federal agencies, State and local governments, and the private sector. The Department will bring together 22 existing Federal agencies or portions of agencies under a single clear chain of command. Each of these agencies will continue to be responsible for carrying out existing and emergent homeland security functions.

Leading the Department will be a Secretary who is appointed by the President, with the advice and consent of the Senate. The Department will have one Deputy Secretary and a total of 5 Under Secretaries who report to the Secretary for each of the following functional areas: Information Analysis and Infrastructure Protection; Science and Technology; Border and Transportation Security; Emergency Preparedness and Response; and Management. Additionally, there will also be no more than 12 Assistant Secretaries and a Director of the Bureau of Citizenship and Immigration Services. The Commandant of the Coast Guard and the Director of the United States Secret Service will also report directly to the Secretary. Finally, the Transportation Security Administration will be maintained as a separate entity within the Department for 2 years.

Legislative History. H.R. 5005, the Homeland Security Act of 2002, was introduced by request by Mr. Armey and 113 original cosponsors on June 24, 2002. Pursuant to the provisions of H. Res. 449, the bill was referred to the Select Committee and additionally to 12 other committees of jurisdiction through July 12, 2002.

While only the Select Committee was authorized to report the legislation to the House, several committees marked up their recommendations to the Select Committee. The Committee on Agriculture met and approved their recommended amendments on July 11, 2002 by a voice vote. The Committee on Armed Services met and approved their recommended amendments on July 10, 2002 by a voice vote. The Committee on Energy and Commerce met and approved their recommended amendments on July 11, 2002 by a voice vote. The Committee on Government Reform met and approved their recommended amendments on July 11, 2002 by a record vote of 31 yeas and 1 nay. The Committee on International Relations met and approved their recommended amendments on July 10, 2002 by a voice vote. The Committee on the Judiciary held a legislative hearing on June 27, 2002 and met and approved their recommended amendments on July 10, 2002 by a voice vote. The Committee on Science held a legislative hearing on June 24, 2002 and met and approved their recommended amendments on July 10, 2002 by a voice vote. The Committee on Transportation and Infrastructure met and approved their recommended amendments on July 11, 2002 by a voice vote. The Committee on Ways and Means met and approved their recommended amendments on July 10, 2002 by a record vote of 34 years and 3 nays. The Committees on Appropriations and Financial Services, and the Select Committee on Intelligence forwarded recommendations without formal meetings. On July 12, 2002, all of the committees of jurisdiction were discharged from the further consideration of the bill.

The Select Committee on Homeland Security held a legislative hearing on July 15, 16, and 17, 2002. On July 19, 2002, the Select Committee met in open session and ordered H.R. 5005 favorably reported to the House, with an amendment, by a record vote of 5 yeas and 4 nays, a quorum being present. The Select Committee reported the bill to the House on July 24, 2002 (H. Rept. 107–609, Part I).

The Committee on Rules met and reported a rule, H. Res. 502, providing for the consideration of H.R. 5005 (H. Rept. 107–615) on July 25, 2002 (the legislative day of July 24, 2002).

The rule provided for 90 minutes of general debate, followed by consideration of a set of amendments mutually agreed upon by the Speaker and Minority Leader. The House considered H. Res. 502 on July 25, 2002 and agreed to the resolution by a voice vote.

The House began consideration of H.R. 5005 on July 25, 2002. Consideration of the bill and amendments made in order by the rule continued through July 26, 2002. A motion to recommit with instructions offered by Ms. DeLauro, addressing the ability of companies incorporated in "tax haven" countries to contract with the Department of Homeland Security, was agreed to by a record vote of 318 yeas and 110 nays. The House passed the bill by a record vote of 295 yeas and 132 nays.

H.R. 5005 was received in the Senate on July 30, 2002 and placed on the Senate legislative calendar. On July 31, 2002, a motion to proceed to the consideration of the bill was made and a cloture motion on the motion to proceed was presented. The cloture motion was withdrawn on August 1, 2002. On September 3, the motion to proceed was considered by unanimous consent and agreed to by a vote of 94 yeas and no nays.

The Senate considered H.R. 5005 from September 5, 2002 through October 1, 2002.

On November 12, 2002, H.R. 5710, the Homeland Security Act of 2002, was introduced by Mr. Armey and 9 original cosponsors. The text of the measure was drafted as an effort to reconcile the House-passed version of H.R. 5005, and the Gramm amendment to H.R. 5005 in the Senate. The bill was referred solely to the Select Committee on Homeland Security. The Select Committee did not act on this bill.

On November 13, 2002 (the legislative day of November 12, 2002), the Committee on Rules reported a rule providing for the consideration of H.R. 5710 (H. Res. 600; H. Rept. 107–773). A closed rule, the resolution provided for one hour of general debate, equally divided, and a motion to recommit, with or without instructions. The House considered the Rule on November 13, 2002, and agreed to the resolution by a vote of 237 yeas and 177 nays.

On November 13, 2002, the House proceeded to the consideration of H.R. 5710. Mr. Roemer offered a motion to recommit the bill with instructions to add provisions creating a commission to investigate the events of September 11, 2001. The motion to recommit was not agreed by a vote of 203 yeas and 215 nays, and the bill was passed by a vote of 299 yeas and 121 nays. The bill was received in the Senate on November 14, 2002.

On November 13, 2002, the Senate resumed consideration of H.R. 5005. The text of H.R. 5710 was offered as the Thompson amendment to H.R. 5005 (S. Amdt. 4901). Cloture on the amendment was invoked on November 15, 2002 by a vote of 65 yeas and 29 nays and the amendment was agreed to on November 19, 2002 by a vote of 73 yeas and 26 nays.

Cloture on the bill was also invoked on November 19, 2002 by a vote of 83 yeas and 16 nays and the bill passed the Senate, as amended, by a vote of 90 yeas and 9 nays.

On November 22, 2002, the House concurred in the Senate amendment to H.R. 5005 by unanimous consent, clearing the bill for the President. The bill was presented to the President on November 22, 2002 and was signed on November 25, 2002, becoming public law number 107-296.

OVERSIGHT ACTIVITIES

TRANSFORMING THE FEDERAL GOVERNMENT TO PROTECT AMERICA FROM TERRORISM

On July 11, 2002, the Select Committee held a hearing on transforming the Federal government to protect American from terrorism. The hearing focused on the changes domestically and abroad which led to the homeland security situation found in the wake of the events of September 11, 2001. Testifying at the hearing were the Honorable Collin Powell, Secretary of State, the Honorable Paul H. O'Neill, Secretary of the Treasury, the Honorable Donald Rumsfeld, Secretary of Defense, and the Honorable John Ashcroft, Attorney General.

HEARINGS HELD

Transforming the Federal Government to Protect America from Terrorism.—Oversight hearing on transforming the Federal government to protect America from terrorism. Hearing held on July 11, 2002. Serial No. 107-1.

Homeland Security Act of 2002.—Legislative hearing held on H.R. 5005, the Homeland Security Act of 2002. Hearing held on July 15, 16, and 17, 2002. Serial nos. 107-2 and 107-3.

DR. GEORGE V. IRONS, SR.'S INDUCTION TO THE ALABAMA MEN'S HALL OF FAME

HON. ROBERT B. ADERHOLT

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. ADERHOLT. Mr. Speaker, I rise today to recognize one of Alabama's greatest native sons—Dr. George Vernon Irons, Sr.

Dr. Irons recently received Alabama's highest posthumous honor—induction into the Alabama Men's Hall of Fame in Birmingham. The Alabama Men's Hall of Fame was created by the Alabama legislature in 1987. Its selection board is comprised of members from all seven congressional districts, the Governor, director of archives and history and the President of Samford University.

Past inductees include America's most distinguished leaders: Wernher Von Braun, famed scientist who developed the rocketry to blast American astronauts to the Moon and return safely—a first in human history; George Washington Carver, botanist who mutated plants to give the south vital food sources; and James A. "Brother" Bryan, humanitarian, who gave sacrificially to fellow Alabamians during its severest economic times.

Its most recent inductee, Dr. Irons, was distinguished professor of history and political science, Samford University for a near half century and one of the Nation's greatest athletes. Born in the "Shadows of Gaineswood" in Demopolis, Alabama in 1902, a century later, he is still breaking records. Dr. Irons is the only athlete inducted by the Alabama Men's Hall of Fame—the only Samford University Professor—and the only individual inducted by both the Alabama Men's Hall of Fame and the prestigious Alabama Sports Hall of Fame.

While at the University of Alabama, he was first spotted by Coach Hank Crisp running across the campus—late to class. He promptly put him on the track team, where he broke a collegiate record the first time he ever pulled on a Crimson Tide uniform. Here's how a southern Governor described Bama's "Chariot of Fire:"

"Long before Bama had been to its first bowl game, before legendary Coach Paul Bear Bryant had won a game, Captain George Irons blazed a crimson streak across southern skies establishing an athletic tradition, smashing records in distance events as 'Ironsides' and the 'Knight of the Cinder Path.'"

As road racing champion (distance events begun at halftime of major football games and finishing as the halftime show—after a hill and dale course of about 4 miles), Bama's superstar was the "best there ever was." Legendary Crimson Tide coach Wallace Wade (three time Rose Bowl winner) said Irons was: "The greatest distance runner of his era."

He is the only Crimson Tide track man—the only distance man ever inducted by the Alabama Sports Hall of Fame—rare honors he may hold forever. Remarkably, some of his records still stand—nearly a century later.

Pretty swift in the classroom too, Irons was Phi Beta Kappa honor graduate, Rhodes scholar nominee, earning his doctorate at Duke University. Dr. George Denny, president of the University of Alabama, appointed him assistant to the faculty beginning his "longest run" in higher education. He later joined Howard College (now Samford University) in 1933. He also distinguished himself in World War II, rising to the rank of colonel, serving 33 years active and reserve duty—a Samford record.

Dr. Irons received Freedom Foundation's (Valley Forge, Pennsylvania), George Washington Medal of Honor for his speech in 1962 entitled: "Freedom, America's Weapon of Might." It was broadcast worldwide on the U.S. Armed Forces Network. Irons was the first southerner to win this prestigious national award.

Mr. Speaker, Dr. Irons was the only man elected by the Alabama Men's Hall of Fame from the 20th century. J. Lamar Monroe Curry, former Member of the United States Congress and Ambassador to Spain, was elected for the 19th century. To be considered, nominees must have strong connections to our State and have made a national or international impact in his profession.

Dr. Irons taught seventeen students who became university presidents—a record in American education. His innovations in curriculum became a model for higher education across the South and Nation. A former student wrote: "Dr. Irons was more than a teacher, he was an architect of the human mind. When he looked out to teach a class, he did not see simply students—he saw the mirror image of God."

His influence continues through the many students who were inspired by his life. It's no surprise his student roster included those who became captains of industry, Supreme Court Justices, Governors, law school deans and America's leaders.

The induction ceremony was held at the club in Birmingham by the Committee of 100 Women (leaders of Alabama's civic and social communities) and the Alabama Men's Hall of Fame. Dr. Irons' son, Mountain Brook attorney, William L. Irons, gave a moving speech highlighting his father's contributions to Alabama and the American Nation. His bust was unveiled by Dr. Irons' great grandson, Dylan Alexander Irons of Charlotte, North Carolina.

Inductees' busts are housed in the Alabama Men's Hall of Fame located in the Harwell G. Davis Library of Samford University. As inductee of both of Alabama's most prestigious halls of fame, Dr. Irons has placed a footprint where no man or woman has trod and should inspire future Alabamians.

Mr. Speaker, I ask that the article in the University of Alabama Alumni Magazine, entitled: "Knight of the Cinder Path," be included in the CONGRESSIONAL RECORD for America to share the achievements of this great American who served his university as distinguished educator a near half century, his country in war and peace for a third of the 20th century and his alma mater, the University of Alabama, as record breaking champion athlete and honor graduate.

SEC

HON. JOHN J. LaFALCE

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. LAFALCE. Mr. Speaker, it is my pleasure to submit to the CONGRESSIONAL RECORD the important work that has been done at the Securities and Exchange Commission (SEC) in the last year under Chairman Harvey Pitt. While there has been much turmoil and controversy over the last year, we should recognize and honor the many very real and important accomplishments of the Commission and its staff during this period. From the incredible efforts of Chairman Pitt and Commission staff to help the securities markets recover from the devastation of September 11, 2001, to the unprecedented number of enforcement cases and complex financial fraud investigations undertaken in the last year, Chairman Pitt and the Commission have much of which to be proud.

SEC ACCOMPLISHMENTS

FISCAL YEAR 2002

The 2002 Fiscal Year has been challenging for the markets and investors alike. This past year included not only the continued effects of the tragedies of September 11, 2001, but also the significant corporate scandals that began with Enron. Fiscal Year 2002 represented a continuation of the SEC's work on important issues such as market structure, regulatory reform for mutual funds, and improved regulation of research analyst conflicts. In the past year, the SEC has taken unprecedented, aggressive steps to investigate possible wrongdoing, propose tough new regulations, and fully implement the Sarbanes-Oxley Act.

Overall agency highlights

Implementation of the Sarbanes-Oxley Act—The Commission has moved aggressively to implement provisions of the landmark legislation signed into law on July 30, 2002, to reform the accounting industry and restore the integrity of the financial reporting system. Since the bill was signed into law, the Commission has undertaken ten major rulemakings, while making significant progress on the seven studies required by the legislation.

Response to the September 11, 2001 terrorist attacks—The Commission actively responded to the events of September 11. During the attacks, the New York offices of the SEC were destroyed, and the Commission worked quickly to reestablish operations. The Commission continues to work with other U.S. financial regulators—the Federal Reserve Board, the Office of the Comptroller of the Currency and the New York State Banking Department—on a project to strengthen the operational resilience of the financial sector. The Commission has also taken numerous steps to implement the Patriot Act to deter international money laundering and combat terrorist financing.

SEC, NY Attorney General, NYSF, NASD, NASAA Agreement on Reforming Wall Street Practices—The Commission, the New York State Attorney General's Office, the NYSE, the NASD and the North American Securities Administrators Association announced a joint effort to bring to a speedy and coordinated conclusion the various investigations concerning analyst research and IPO allocations. (October 3, 2002)

Review of Initial Public Offering Process—The SEC asked the National Association of Securities Dealers and the New York Stock Exchange to review the initial public offering (IPO) process, including IPO allocation practices and the roles of issuers and underwriters in the price setting and offering process. (August 22, 2002)

Enforcement initiatives

In the past year the Enforcement Division of the SEC has taken a record 598 actions, a 24% increase over 2001, and a 19% increase over 2000. (See "Record of Enforcement" below.)

This year's actions include the following significant cases:

Charged former Enron CFO, Andrew Fastow with fraud. (October 2, 2002)

Settled fraud charges against Michael Kopper, a former high-ranking Enron official. (August 21, 2002)

Charged three former senior executives of Homestore Inc. with perpetrating an extensive scheme to fraudulently inflate Homestore's advertising revenues by arranging fraudulent "round-trip" transactions. The defendants agreed to return ill-gotten gains of approximately $4.6 million to be paid to the benefit of shareholders, under the Fair Funds provision of the recently enacted Sarbanes-Oxley Act of 2002. (September 25, 2002)

Settled with Dynegy for securities fraud charges involving Special Purpose Entities (SPEs) and round-trip energy trades. (September 24, 2002)

Charged three former top Tyco International executives, including CEO L. Dennis Kozlowski, with failing to disclose multimillion dollar low interest and interest-free loans from the company, and in some cases, never repaid. They were also charged with selling shares of Tyco stock valued at millions of dollars while their self-dealing remained undisclosed. (September 12, 2002)

Charged Adelphia and Rigas family with massive financial fraud. (July 24, 2002)

Filed fraud charges against WorldCom within 24 hours of the company's revelation of its massive accounting problems. (June 26, 2002)

Charged former Rite Aid senior management with fraud in connection with its financial disclosures. (June 21, 2002)

Settled SEC enforcement action for financial fraud with Xerox, assessing a $10 million penalty, the largest ever penalty against a public company for financial fraud. (April 11, 2002)

Filed a settled action against Credit Suisse First Boston for IPO allocation practices that violated NASD rules. CSFB agreed to pay $100 million in penalties and disgorgement. (January 22, 2002)

Brought a settled administrative action charging Trump Hotels with fraud in the first enforcement action based on misleading "pro forma financials." (January 16, 2002)

Brought a series of significant settled enforcement actions alleging violations of the auditor independence rules against Price WaterhouseCoopers, Moret Ernst & Young Accountants and KPMG. (July 17, 2002; June 27, 2002; January 14, 2002)

Corporate disclosure and accounting initiatives

Pro Forma Financial Statements—The Commission issued cautionary advice related to "pro forma" financial information, or information that is not prepared using Generally Accepted Accounting Principles required for financial statements filed with the SEC, and that may be confusing or misleading. The Commission issued an "Investor Alert" that describes how "pro forma financials should be analyzed, including a reminder that they should be viewed with appropriate and healthy skepticism." (December 4, 2001)

Monitoring Annual Reports of Fortune 500 Companies—The Commission monitored the annual reports of all Fortune 500 Companies to identify information that may be unclear or conflict with Generally Accepted Accounting Principles or SEC rules. (December 21, 2001)

Disclosure of Equity Compensation Plan Information—Adopted rule amendments designed to enhance disclosure about equity compensation plans, including stock options. (December 21, 2001)

Disclosure Requirements for Public Companies—Called for corporate disclosure of the impact of off-balance sheet arrangements and other obligations regarding liquidity and capital resources. (January 22, 2002)

Disclosure of Certain Management Transactions—Proposed amendments responding to investors' need for timely disclosure of transactions and other arrangements between companies and their executive officers and directors. (April 12, 2002—later included in the Sarbanes-Oxley Act)

Acceleration of Periodic Report Filing Dates—Proposed (April 12, 2002) and adopted (August 17, 2002) acceleration of the filing of quarterly and annual reports to be phased in over three years. These rules require that annual reports be filed within 60 days of the close of the fiscal year and quarterly reports be filed within 35 days of each quarter's end.

Mandated EDGAR Filing for Foreign Issuers—Adopted rule amendments to require foreign private issuers and foreign governments to file their securities documents electronically through the EDGAR system. (May 8, 2002)

Critical Accounting Polices—Proposed amendments to enhance investors' understanding of the application of companies' critical accounting polices. (May 10, 2002)

Additional Current Disclosure Requirements and acceleration of Filing Date—To provide investors with up-to-date information, proposed additional items and events that must be reported on Form 8-K within two business days of the action. (June 17, 2002)

Certification of Disclosure in Companies' Quarterly and Annual Reports—To increase the accountability of senior company officers, proposed rules to require certification of a company's reports by the CEO and CFO. (June 17, 2002—later included in the Sarbanes-Oxley Act)

SEC Order to Largest Publicly Traded Companies—Ordered the 947 largest publicly traded companies to certify the accuracy and completeness of their filings. (June 27, 2002)

SRO Listing Standards on Corporate Governance—In response to the SEC's request in February, the NYSE and Nasdaq have come forward with proposals that will produce the most substantial corporate governance and listing standards reform in decades.

Market regulation initiatives

Commodities Futures Modernization Act (CFMA) Rulemakings—Conducted extensive rulemaking, much of it jointly with the Commodities Futures Trading Commission, to permit for the first time trading in security futures products, including single stock futures.

Analyst Conflicts of Interest—Approved NASD and NYSE rules that address potential conflicts of interest by research analysts. Launched a thorough examination of analyst conflicts of interest. Proposed Regulation AC, requiring research analysts to certify the truthfulness of their views in research reports and public appearances and disclose whether they have received any compensation related to the specific recommendation provided in those reports and appearances.

Rating Agencies—Launched a thorough examination of the role of rating agencies in the U.S. securities markets.

Significant Progress on Options Market Linkage—Approved an amendment to the Linkage Plan filed by the options exchanges that, among other things, requires the intermarket linkage to be fully implemented no later than April 30, 2003. The intermarket linkage in an important step in improving options customers' ability to receive the best prices available. (May 29, 2002)

Investment management initiatives

Investment Adviser Public Disclosure—Launched website which provides investors a valuable tool to help compare the business practices, services and fees of investment advisers online, free of charge. The website also contains disciplinary information regarding advisers. (September 25, 2001)

Mutual Fund Advertising Proposal—Proposed amendments to modernize the mutual fund advertising rules. (May 14, 2002)

Hedge Funds Investigation—Launched a formal fact-finding investigation to provide the Commission with a better understanding of the issues currently affecting private investment funds, including Hedge Funds. (May 29, 2002)

Disclosure of Proxy Voting by Mutual Funds and Investment Advisers—Proposed amendments that would require mutual funds and other registered management investment companies to file with the Commission, and make available to shareholders, their proxy voting records relating to portfolio securities and disclose the policies and procedures they use to determine how to vote proxies. The proposal would require advisers to adopt proxy voting policies, to disclose these policies to clients and how clients can obtain information on how the adviser has voted on the proxies. (September 19, 2002)

Fixed Income Exchange-Traded Funds—Approved the first exchange-trade funds based on fixed income indices, giving investors another option to invest in a basket of fixed income securities, providing lower expenses and intra-day pricing.

Investor education and assistance initiatives

Fake "Scam" Site Initiative—Launched three fake "scam" Web sites that warn investors about fraud before they lose their money. *http://www.mcwhortle.com.* (January 20, 2002)

Roundtables and Investor Summit—Held three Roundtables on Accounting and Auditing: New York (March 4, 2002), Washington, DC (March 6, 2002) and Chicago (April 4, 2002) and held the first-ever Investor Summit. (May 10, 2002)

Investor Assistance—Provided individual responses to over 82,000 complaints and questions from investors. Additionally, the interactive "Fast Answers" database on the SEC's Web site provided instant answers to nearly 206,000 questions from the public.

U.S. SECURITIES AND EXCHANGE COMMISSION RECORD OF ENFORCEMENT

	FY 2000	FY 2001	FY 2002
Total Enforcement actions filed	503	484	598
Financial fraud and issuer reporting actions filed	103	112	163
Officer and director bars sought (in all categories of cases)	38	51	126
Temporary restraining orders filed (in all categories of cases)	33	31	48
Asset freezes (in all categories of cases)	56	43	63
Trading suspensions	11	2	11
Subpoena enforcement proceedings	8	15	19
Disgorgement ordered (in millions)[1]	$463	$530	$1.328
Penalties ordered (in millions)[1]	$43.7	$56.1	$116.4

[1] Includes amounts disbursed to the NASD as part of the Credit Suisse First Boston settlement.

COST ESTIMATE FOR H.R. 4966

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 4966 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 2002.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4966, the National Oceanic and Atmospheric Administration Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,
BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4966—National Oceanic and Atmospheric Administration Act

Summary: H.R. 4966 would update the organization plan for the National Oceanic and Atmospheric Administration (NOAA) and would authorize appropriations for several NOAA coastal and ocean research programs and support functions. Assuming appropriation of the amounts authorized for these activities, CBO estimates that the agency would spend $235 million in 2003 and about $1.6 billion over the 2003–2007 period. Enacting the bill would not affect direct spending or revenues.

The bill contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). Certain programs reauthorized by the legislation could provide grants and technical assistance to state and local governments. Any costs incurred by those entities as a result of participating in the NOAA programs would be voluntary.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4966 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment). For this estimate, CBO assumes that the amounts authorized by the bill will be appropriated for each of fiscal years 2003 through 2007 and that outlays will follow historical spending patterns for the authorized NOAA programs.

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION[1]					
Authorized level	335	339	342	346	349
Estimated outlays	235	321	334	344	348

[1] About $280 million was appropriated in fiscal year 2002 for the NOAA programs and activities that would be authorized by H.R. 4966. A full-year appropriation for 2003 has not yet been enacted for these programs.

Intergovernmental and private-sector impact: H.R. 4966 contains no intergovernmental or private-sector mandates as defined in UMRA. Certain programs reauthorized by the bill could provide grants and technical assistance to state and local governments. Any costs incurred by those entities as a result of participating in the NOAA programs would be voluntary.

Estimate prepared by: Federal costs: Deborah Reis; impact on state, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR H.R. 4840

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 4840 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 15, 2002.

Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4840, the Sound Science for Endangered Species Act Planning Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,
STEVEN LIEBERMAN,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4840—Sound Science for Endangered Species Act Planning Act of 2002

Summary: Under the Endangered Species Act (ESA), certain species of plants and animals are listed as threatened or endangered based on assessments of the risk of their extinction. H.R. 4840 would amend the ESA to clarify the role of science as the basis for making certain decisions under that act.

CBO estimates that implementing H.R. 4840 would cost $94 million over the 2003–2007 period, assuming appropriation of the necessary amounts. The bill would not affect direct spending or revenues. H.R. 4840 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of

H.R. 4840 is shown in the following table. the costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
Estimated authorization level	18	18	19	19	20
Estimated outlays	18	18	19	19	20

[1] In fiscal year 2002, federal agencies received about $65 million for consultation and administrative expenses under the ESA. The Congress has not yet provided a full-year appropriation for such activities for the current year.

Basis of estimate: Under the ESA, the Secretary of the Interior and the Secretary of Commerce maintain a list of species that are threatened or endangered. The ESA outlines a multistage process of review and public participation that the two secretaries must follow in making decisions to list or unlist a species and develop plans for its recovery.

H.R. 4840 would amend the ESA to clarify the role of science as the basis for certain decisions under that act. Specifically, the bill would:

Authorize the Secretaries of the Interior and Commerce to appoint independent scientific review boards to review particularly controversial ESA decisions before they become final;

Direct the secretaries to solicit and consider information from state agencies, landowners, and others who might be affected by decisions under the ESA;

Require the secretaries to promulgate regulations establishing criteria that scientific and commercial studies must meet in order to serve as the basis for decisions under the act; and

Direct the secretaries to give greater weight to studies that use empirical or field-tested data.

Based on information from the Department of the Interior and the National Marine Fisheries Service, CBO estimates that funding scientific review boards would cost $15 million in 2003 and $79 million over the 2003–2007 period, assuming appropriation of the necessary amounts. That estimate assumes that the secretaries would appoint 200 panels each year at an average cost of $75,000. Based on information from the agencies, we also estimate that meeting new requirements under H.R. 4840 would increase administrative costs by roughly $3 million annually, assuming the availability of appropriated funds.

Intergovernmental and private-sector impact: H.R. 4840 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Megan Carroll; impact on state, local and tribal governments: Marjorie Miller; impact on the private sector: Jean Talarico.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR H.R. 4912

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 4912 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 25, 2002.
Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4912, a bill to increase the penalties to be imposed for a violation of fire regulations applicable to public lands, National Park System lands, or National Forest System lands when the violation results in damage to public or private property, to specify the purpose for which collected fines may be used, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Annie Bartsch (for revenues).

Sincerely,
BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4912—A bill to increase the penalties to be imposed for a violation of fire regulations applicable to the public lands, National Park System lands, or National Forest System lands when the violation results in damage to public or private property, to specify the purposes for which collected fines may be used, and for other purposes.

CBO estimates that H.R. 4912 would not significantly affect the federal budget. The bill would increase both revenues and direct spending, but by less than $500,000 a year. H.R. 4912 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal government.

H.R. 4912 would increase fines and imprisonment terms for violating fire regulations on certain federal lands. The bill would authorize the Secretary of Agriculture and the Secretary of the Interior to spend, without further appropriation, amounts received from such fines to reimburse the appropriate department for certain costs incurred to respond to fires, rehabilitate damaged lands, and increase public awareness of legal requirements regarding the use of fire on public lands.

Under current law, collections of such fines are recorded in the budget as governmental receipts (revenues) and are deposited in the Crime Victims Fund and later spent. Based on information from the Department of the Interior and the Forest Service, CBO estimates that increasing those fines and authorizing the agencies to spend them would increase revenues and direct spending by less than $500,000 annually. We also estimate that any increased costs for prison operations, which would be subject to appropriation, would not be significant.

The CBO staff contacts for this estimate are Megan Carroll (for federal costs), and Annie Bartsch (for revenues). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR H.R. 4601

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 4601 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 17, 2002.
Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4601, a bill to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Megan Carroll (for federal costs), and Marjorie Miller (for the state and local impact).

Sincerely,
BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 4601—A bill to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes

CBO estimates that enacting H.R. 4601 would not significantly affect the federal budget. The bill would direct the Secretary of the Interior to convey, without consideration, 68.8 acres of federal land to Douglas County, Oregon. The county would use that land for recreational purposes. According to the Bureau of Land Management, the parcel to be conveyed currently generates no significant receipts and is not expected to do so over the next 10 years. Hence, we estimate that enacting H.R. 4601 would not significantly affect direct spending or revenues. We also estimate that the agency's administrative costs to complete the proposed conveyance would be negligible.

H.R. 4601 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. This conveyance would be voluntary on the part of Douglas County, as would any costs incurred by the county to comply with the conditions established by the bill.

The CBO staff contacts for this estimate are Megan Carroll (for federal costs), and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR H.R. 635

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 635 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 10, 2002.
Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 635, the Homestead Steel Works National Historic Site Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,
BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 635—Homestead Steel Works National Historic Site Act

Summary: H.R. 635 would establish the Homestead Steel Works National Historic Site (NHS) in Pennsylvania as a unit of the National Park System. The federal budgetary impact of enacting this legislation is uncertain and would depend on unknown factors such as the condition of property that may be acquired by the National Park Service (NPS), the need for mitigating environmental or other safety hazards, and the extent of nonfederal participation in the project. Depending on the level of restoration, stabilization, and development for visitor use that is undertaken, CBO estimates that initial costs to establish and operate the new NHS would be between $60 million and $120 million over the five years following enactment. Some of these costs could be borne by state, local, or nonprofit entities, but the legislation would not require cost-sharing. All federal spending to implement the project, including operating expenses of about $1 million annually, would be subject to appropriation. Enacting the legislation would not affect direct spending or revenues.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Major provisions: The Homestead Steel Works National Historic Site would consist of three or more separate properties in southwestern Pennsylvania—the Battle of Homestead site (between 3 acres and 5 acres and related structures), the 35-acre Carrie Furnace complex (including blast furnaces, an ore yard, and related buildings), the hot metal bridge over the Monongahela River, and possibly up to 10 acres of nearby land that may be acquired by the NPS for visitor and administrative facilities. H.R. 635 would authorize the NPS to accept donation of all of these sites as well as any related personal property. In addition to managing the NHS, the NPS could provide technical and financial assistance to local parties for their preservation and management efforts. The agency also would prepare a general management plan for the site within three years of the bill's enactment.

Estimated cost to the Federal Government: CBO estimates that one-time planning, restoration, and development costs to establish the Homestead Steel NHS would be between $50 million to $115 million over the first five years following the bill's enactment. Of this amount, an estimated $6 million to $14 million would be used to build administrative and visitor facilities and develop an interpretive program. Planning (including the preparation of a general management plan, historic structures report, environmental assessments, and other requisite studies) would cost $1 million over the first three years. The balance of one-time costs would be used to restore historic structures, stabilize or rehabilitate industrial property such as blast furnaces and the hot metal bridge, and mitigate hazardous conditions and environmental contamination.

We estimate that managing the new NHS would increase NPS operating costs by a total of $5 million through 2007. After 2007, estimated ongoing costs would be about $1.5 million a year. Annual costs would include routine NPS operating expenses, services to secure and maintain special property such as the bridge and blast furnaces, and technical assistance to nonfederal participant organizations.

This estimate is based on information provided by the nonprofit Steel Industry Heritage Corporation, the NPS, and other federal, state, and local agencies. For this estimate, CBO assumes that any property acquired for the proposed NHS would be donated to the NPS at no significant cost to the federal government. CBO further assumes that any significant contamination or other safety hazards located on donated property would be corrected before or soon after federal acquisition. (If the agency acquired contaminated or unsafe property, the federal government could be liable for future third-party damages, but CBO has no basis for estimating the likelihood or amount of such costs.)

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Deborah Reis; impact on state, local, and tribal governments: Marjorie Miller; impact on the private sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR H.R. 5399

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 5399 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 23, 2002.
Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5399, the Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,
BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 5399—Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2002

CBO estimates that implementing H.R. 5399 would have no significant impact on the federal budget. This bill would direct the Secretary of the Interior to convey all right, title, and interest of the federal government in the Carpinteria Distribution System to the Carpinteria Valley Water District, and in the Montecito Water Distribution System to the Montecito Water District. Both of these water distribution systems are part of the Cachuma Project in Santa Barbara County, California.

The Carpinteria Valley Water District has made all required payments on its contract with the Bureau of Reclamation for construction of the Carpinteria Distribution System. The Montecito Water District still owes about $9,000 for construction of the Montecito Water Distribution System and would be required to pay that sum as a condition of conveyance. Currently, the bureau spends less than $5,000 every three years to inspect these water distribution systems. Once these systems are conveyed, all operations and maintenance, including inspections, would be the responsibility of the districts.

Enacting H.R. 5399 would not affect direct spending or revenues. This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Julie Middleton. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COST ESTIMATE FOR H.R. 5319

HON. JAMES V. HANSEN

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2002

Mr. HANSEN. Mr. Speaker, I request that the attached cost estimate for H.R. 5319 be submitted for the RECORD under General Leave.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 16, 2002.
Hon. JAMES V. HANSEN,
Chairman, Committee on Resources, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5319, the Healthy Forests and Wildfire Risk Reduction Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis and Megan Carroll.

Sincerely,
BARRY B. ANDERSON,
(For Dan L. Crippen, Director).

Enclosure.

H.R. 5319—Healthy Forests and Wildfire Risk Reduction Act of 2002

Summary: H.R. 5319 would establish procedures to be followed by the Department of the Interior and the Department of Agriculture in carrying out certain hazardous fuels reduction projects. These are projects undertaken to reduce the risks from catastrophic wildfires through controlled burning or other methods. The bill also would authorize the appropriation of whatever amounts are necessary to implement the bill's new procedures and to plan and conduct the projects to reduce wildfire risks.

Assuming appropriation of the amounts necessary to carry out the hazardous fuels reduction program, CBO estimates that implementing the bill would cost about $80 million in fiscal year 2003 and nearly $1.3 billion over the 2003–2007 period. Enacting this legislation could reduce offsetting receipts (a credit against direct spending), but CBO estimates that any such changes would be less than $500,000 a year.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Major provisions: H.R. 5319 would authorize expedited procedures for planning and conducting projects to reduce the risk of wildfires on certain high-priority federal lands managed by the Forest Service or the Bureau of Land Management (BLM). These procedures, which would limit some environmental assessment requirements and shorten administrative and judicial appeals, would apply to projects necessary to reduce risks to human life, property, water supplies, and wildlife. The expedited procedures authorized by the legislation would expire after September 30, 2005.

The legislation also would authorize the Forest Service and BLM to carry out the hazardous fuels reduction projects by entering into stewardship contracts or other agreements similar to those currently used by the Forest Service. The two agencies would be allowed to enter into a total of 41 new multiyear contracts through September 30, 2005.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5319 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—				
	2003	2004	2005	2006	2007
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Hazardous fuels reduction projects:[1]					
Estimated authorization level	410	420	430	450	460
Estimated outlays	80	170	250	340	430

[1] In 2002, $395 million was appropriated for similar activities.

Basis of estimate: For this estimate, CBO assumes that H.R. 5319 will be enacted early in fiscal year 2003 and that the amounts estimated to be necessary to carry out the hazardous fuels reduction program are appropriated for each fiscal year. The estimated costs are based on the amounts appropriated to the Forest Service and BLM for similar activities in 2002, including adjustments for anticipated inflation. (No appropriations have yet been enacted for this purpose in 2003.) Outlays are estimated on the basis of historical spending patterns for this activity.

Section 11 of the bill would expand and extend the authority provided for a pilot stewardship contract program in Public Law 105–277, the Department of the Interior and Related Agencies Appropriations Act, 1999. Under the new authority, both agencies could contract out hazardous fuels reduction projects and reduce payments to their contractors by the value of timber and other vegetation that a contractor retained. Because the new contracts could apply to lands that may otherwise have been the subject of future timber sales, offsetting receipts could be reduced by the value of removed vegetation that otherwise would have been sold. CBO estimates that the effect on such receipts would be less than $500,000 a year because most of the projects authorized by the bill would not be conducted on commercially valuable timberlands anyway.

Intergovernmental and private-sector impact: H.R. 5319 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Deborah Reis and Megan Carroll; Impact on state, local, and tribal governments: Marjorie Miller; Impact on the private sector: Lauren Marks.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.